

STATES OF JERSEY

Environment Panel Energy from Waste Plant and Ramsar: Review of Planning Process

WEDNESDAY, 8th JULY 2009

Panel:

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

Witnesses:

Senator F.E. Cohen (Minister for Planning and Environment)
Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Environment)
Mr. A. Scate (Chief Executive Officer)
Ms. S. Le Claire (Assistant Director, Environmental Policy)
Dr. L. Magris (Assistant Director, Environmental Policy)
Mr. W. Peggie (Assistant Director, Environmental Protection)
Mr. T. Du Feu (Head of Water Resources)
Mr. R. Glover (Principal Planner)

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

Good morning, ladies and gentlemen. It is now 10.30 a.m. by my watch. I think that clock is running a little slow, therefore, I will open the meeting. The meeting this morning is obviously the review on the Ramsar of which the Planning Department and Public Services will have been notified that they are in the frame. Well, the Minister for Planning and Environment is in the frame with these officers. The order of questioning may not be exactly as you have it in front of you but, in fact, they will all be there somewhere within your paperwork. Obviously, the purpose of this meeting today is to consider the scope of the environmental impact assessment for the new Energy from Waste plant at La Collette and whether this and the related environmental impact statement were appropriate and fully compliant with the relevant standards, and (b) to establish whether they are genuine environmental concerns which still need to be addressed regarding the possible impact of the Energy from Waste plant on the Ramsar wetlands site adjacent land areas; and to examine the consultation with stakeholders including the planning process; then to consider

whether Jersey has fulfilled its international obligation under the Ramsar convention and any other matters that may arise during the course of the review. The Panel will report its findings and recommendations to the States. We will start off with the first question for the Minister and if you intend, Minister, to ask your advisers or members of your staff to answer the questions, will you indicate please. At times when we are questioning our own adviser, Mr. Robert McInnes, will also be putting questions to your officers and yourself where we think appropriate. If a number of questions have to be dealt with in great detail, we might cut those short. Tomorrow at the meeting that has been prearranged between my officers, our adviser, your staff and your officers, that those can be dealt with in greater detail across the table between the 2 parties concerned. Before we start with the questions I am going to introduce myself. I am the Chairman of the Environment Scrutiny Panel, Deputy Rondel ...

Deputy D.J.A. Wimberley of St. Mary (Vice Chairman):

Deputy Wimberley, Vice-Chairman.

Mr. R. McInnes (Adviser):

I am Rob McInnes. I am the consultant.

Connétable J.M. Réfault of St. Peter:

John Réfault, Constable of St. Peter, Scrutiny Member.

The Deputy of St. John:

Could you introduce your officers, please?

Senator F.E. Cohen (Minister for Planning and Environment):

Yes. Louise, would you like to start?

Dr. L. Magris (Assistant Director for Environmental Policy):

I am Louise Magris, Assistant Director for Environmental Policy.

Ms. S. Le Claire (Assistant Director for Environmental Policy):

Sarah Le Claire, Assistant Director for Environmental Policy.

Mr. A. Scate (Chief Officer for Planning and Environment):

Andrew Scate, Chief Officer for Planning and Environment.

Senator F.E. Cohen:

Freddie Cohen, Minister for Planning and Environment.

Mr. W. Peggie (Assistant Director, Environmental Protection):

Willie Peggie, Assistant Director, Environmental Protection.

Mr. R. Glover (Principal Planner, Planning Section):

I am Richard Glover, Principal Planner in the Planning Section.

Mr. T. Du Feu (Head of Water Resources, Environmental Protection):

Tim Du Feu, Head of Water Resources, Environmental Protection.

Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Environment):

I am Rob Duhamel, Assistant Minister.

Mr. M. Orbell (Scrutiny Office):

Malcolm Orbell, Scrutiny Officer.

The Deputy of St. John:

I will lay the first question. Did the E.I.A. (Environmental Impact Assessment) follow E.C. (European Communities) standards?

Senator F.E. Cohen:

Sarah is going to answer this one.

Ms. S. Le Claire:

Yes. We are convinced that the E.I.A. did follow E.C. standards. There are a number of processes; steps to the E.I.A., which result in the production of an environmental impact statement as it is called in Jersey. I think it is worth, potentially, giving an outline of those. If we just give maybe the fundamentals of E.I.A. and the respective roles of Planning and Environment within that. Would you find that useful to do that now?

The Deputy of St. John:

Can you speak up so the actual media can hear and the people in the back of the room can also hear, please?

Ms. S. Le Claire:

Yes. The E.I.A. is a process that identifies the positive and negative environmental effects of the proposed development prior to planning permission being granted and then the resulting document is an environmental impact statement which brings together the results of that process in a clearly comprehensive and understandable format and it accompanies the planning application. The role of Planning and Environment is to advise that process and to assist with, and provide information where necessary, and if requested to do so we would then provide a screening and scoping opinion. There is no statutory or mandatory requirement for the developer to request either of these. It is the role of the developer to seek information on the project and decide on the scope of the information he needs and in so doing the developer would refer to the plans and policies that exist and seek information on baseline environmental conditions. They use this information then to develop the environmental impact statement. This information is then ... and the results of the consultation are considered by the Minister in reaching a decision on the application. So, to go back to some history, at that time we have an environmental policy advice note which was based on E.U. (European Union) best practice. Within the time that this E.I.A. was being developed, I am sure you are aware the 2006 Environmental Impact Order came into being. That also followed best practice as does the subsequent guidelines that were developed.

The Deputy of St. John:

So can you define exactly what standards should be followed?

Ms. S. Le Claire:

On every part of the ... without a reference document, I am sorry, we did not receive that question, in terms of ... we follow both E.I.A. guidance from the E.U. and in every single part of it we have done a cross reference and I am sorry, I do not have that information to hand.

The Deputy of St. John:

All right.

Dr. L. Magris:

We have submitted that as evidence, so I believe you have that.

The Deputy of St. John:

Can that be raised tomorrow, please, thank you?

Ms. S. Le Claire:

All right. I will have a document which outlines all of that.

The Deputy of St. John:

All right. Can you define exactly which standards were followed?

Ms. S. Le Claire:

The standards were followed which would ...

The Deputy of St. John:

Define exactly what standards were followed.

Ms. S. Le Claire:

The guidance that we followed follows E.U. directive. We also look at the U.K. (United Kingdom) regulations and then they get appropriated to Jersey at the Jersey level. So, those standards; the E.U. directive standards and U.K. E.I.A. regulation level standards were followed in Jersey.

Mr. R. McInnes:

Can I just ask for clarification, you are referring to the E.I.A. directive?

Ms. S. Le Claire:

Yes.

Mr. R. McInnes:

What about any other E.C. standards, E.C. directives which you would expect to also be addressed within that?

Ms. S. Le Claire:

As in terms of the E.I.A. process?

Mr. R. McInnes:

Yes.

Ms. S. Le Claire:

I am not sure what you are getting at?

Mr. R. McInnes:

The E.S. (Environmental Statement) refers to following E.C. standards, in the plural, and so there are a whole range of environmental directives which could be put under that umbrella, such as bathing waters and waste water, Habitats Directive; a whole range of them.

Ms. S. Le Claire:

All right. Sorry, I thought you meant specifically relating to...

Mr. R. McInnes:

No. I am just trying to find out, was the standard referred to here the environmental impact assessment directive or was it more encompassing of other E.U., E.C. directives?

Ms. S. Le Claire:

I would expect ... in Jersey we have a stated intention to follow E.U. standards in the absence of local legislation for things like air quality, the waste incineration directive; those standards are followed. I am sorry, I thought you meant in terms of the actual process itself.

Mr. A. Scate:

If it helps, Chairman, we can provide a list of those E.C. standards that we have followed in our work in environmental protection and environmental regulation as part of our day job through the department, if that would help the Panel.

The Deputy of St. John:

Thank you. Connétable ...

The Connétable of St. Peter:

Yes, just a bit of clarification for me, please, if you do not mind? You said that you would carry out an E.I.A. if requested to do so by the developer?

Ms. S. Le Claire:

No. Sorry, I will clarify that. The responsibility to undertake an environmental impact assessment lies with the developer. What we do; we can provide a screening opinion, which is saying whether or not one is required, and a scoping opinion if requested to do so. The actual responsibility ... we do not undertake the environmental impact assessment; we assist with the process of doing it and then review it when it comes back to us accompanying the planning application.

The Connétable of St. Peter:

Did that happen in this instance, with the Energy from Waste plant?

Ms. S. Le Claire:

I think it was very clear at the beginning that something of that size fell within the category of requiring an environmental impact assessment, so the screening opinion went without saying. In terms of the scoping opinion, I do not know if you want me to move on to that?

The Connétable of St. Peter:

Yes, that would be helpful, thank you.

Ms. S. Le Claire:

We undertook a pre-scoping, as I am sure you are aware, and during that pre-scoping stage there were various workshops internally to try and establish what would need to come up within the scope of the assessment. The pre-scoping report which you have seen ... we confirm that that was fine to that point but in the absence of a decision on where the final location of the E.f.W. (Energy from Waste) would be, so ...

The Connétable of St. Peter:

So the pre-scoping was more about location rather than environmental aspects.

Ms. S. Le Claire:

No. It had a lot of environmental aspects within it, including the Ramsar site, but at that point we did not know the final location, so to define scope even further when there was no defined location, we said we need to draw a line in the sand and then, if necessary, if T.T.S. (Transport and Technical Services) were to request one, we could then conduct a scoping exercise afterwards. They did not come back and request one and it is not mandatory for them to do that. Now, in an ideal world, that would have happened. I probably also should add in there, at that point I went on maternity leave so there was a break in continuity in covering that, but, having said that, it is still totally within the guidance and now regulations that T.T.S. follows through, and they then submitted the application.

The Connétable of St. Peter:

Just to come back again, so where we got a point where we did some pre-scoping before we knew where the E.f.W. was going to go, once we had a location, was there further pre-scoping done to see whether the pre-scoping exercise that had been done originally, was still pertinent?

Ms. S. Le Claire:

No, at that point, T.T.S. were then working on their full application, in principle.

The Connétable of St. Peter:

So, in fact, are we saying, then, that there was no pre-scoping done once the final site was identified?

Ms. S. Le Claire:

The pre-scoping was done; what we did not do was a full scoping opinion but it is not a mandatory requirement to do that. That would result as a request from T.T.S. but T.T.S. did not request a full scoping opinion from us.

The Connétable of St. Peter:

So, was it never thought that building alongside a Ramsar site probably needed some more investigation done with regard to the impact on the Ramsar site?

Ms. S. Le Claire:

Ramsar was raised.

Mr. A. Scate:

If I can just outline the process; I just started thinking we need to go back to the screening, scoping and statement process of which E.I.A. is part. Screening is really to decide whether or not we need an E.S. or not, so it was very clear in this case that we did. It was a very large-scale development. We did pre-scoping because we were not specific on the location, so we did a lot of work with the applicant to identify what the likely environmental impacts were going to be and what issues they would have to incorporate into their environmental statement when it was submitted. Once the location was then identified through the States decision, the onus is then on the applicant, again, to decide whether they need further scoping advice from us as to do they need any further information for their environmental statement? Do they need any further advice on what to include in their environmental statement? That is the purpose of the scoping opinion; for us to be able to say: "You need to cover some of these additional matters." The applicant was confident that pre-scoping ... and that they knew what issues were to be raised through the environmental statement, therefore, they got on and did the environmental statement. I think, once submitted, the purpose of scoping is to start the dialogue with the regulatory authority, in effect, to make sure that they are covering all the bases. I think the fact that they did not apply for a formal scoping opinion once the site had been identified, indicates that they felt comfortable that they knew the environmental issues that they would need to take into account in their environmental statement. Clearly, when we receive that, if there are any holes in that or if we feel there is further information required, the process allows for us to go back to the applicant and ask for that and, clearly, there was a bit of dialogue at that stage as well.

The Connétable of St. Peter:

I think there are still a number of issues in there for me but I am not going to hog the meeting so we will come back on that one.

The Deputy of St. John:

Deputy Wimberley?

The Deputy of St. Mary:

Yes, my first question for Sarah Le Claire is: "we undertook a pre-scoping." What did you mean when you said that?

Ms. S. Le Claire:

The pre-scoping exercise was undertaken by T.T.S. in consultation with us and other States departments.

The Deputy of St. Mary:

Right.

Ms. S. Le Claire:

They held a workshop.

The Deputy of St. Mary:

Roughly what sort of timeline are we talking about? What sort of time ... I am trying to get it into some sort of chronology because I am now more confused than when I started.

Ms. S. Le Claire:

All right. The pre-scoping, I believe, was started in November 2005 and I think the final workshop and the confirmation we were happy with the pre-scopes was early May 2006.

The Deputy of St. Mary:

You are referring to that entire process now as pre-scoping?

Ms. S. Le Claire:

At that point, that was when they started the scoping process and we participated in meetings.

The Deputy of St. Mary:

All right. To change track a little bit; what other E.I.A.s have been run by the department, like major-ish E.I.A.s in the last few years? I am just trying to get a feel for similar work done.

Ms. S. Le Claire:

The Fire Training Ground at the airport, Simon Sand and Gravel, La Gigoulande Quarry (there are 2 of those), Les Ormes (the holiday village); I can provide a full list of all E.I.A.s done; there are in excess of 20.

The Deputy of St. Mary:

Which would you say was the biggest?

Ms. S. Le Claire:

The Esplanade Quarter, most recently.

The Deputy of St. John:

All right, let us move on. Now, are the forecasting methods used to assess the effects on the marine environment described in the E.S.?

Mr. W. Peggie:

Chapter 16 relates to water resources and drainage, relates to impacts and potentially polluting processes, among other things, so, yes, I believe.

The Deputy of St. John:

The answer is yes, all right.

Mr. W. Peggie:

Yes.

The Deputy of St. John:

Are the forecasting methods used to assess the effects of atmospheric pollution on human health and the environment described in the E.S.?

Mr. W. Peggie:

Atmospheric pollution is dealt with in respect of emissions to atmosphere in terms of compliance, which, as far as we are concerned from a regulatory perspective through the waste management legislation on the Island, is an environmental legislation. Health protection required that an independent H.I.A. (Health Impact Assessment) was undertaken which refers to emissions or the relative effects of emissions to human health.

The Deputy of St. John:

Was the H.I.A. undertaken?

Mr. W. Peggie:

I believe it was, but that is not something that is regulated by us or is under our jurisdiction.

The Deputy of St. John:

All right. Are the forecast methods used to assess the effects on the adjacent Ramsar site, described in the E.S.?

Mr. W. Peggie:

Sorry, could you just clarify? Is this in terms of air quality or water quality?

The Deputy of St. John:

Both, in fact.

Mr. W. Peggie:

Or the Ramsar site specifically?

The Deputy of St. John:

Both air and water.

Mr. W. Peggie:

Water, I would refer again to chapter 16. So, yes; and chapter 8 deals with air quality.

The Deputy of St. John:

So the answer is yes to both?

Mr. R. McInnes:

The wording of the Planning and Building Environmental Impact Order is very clear. It says that the emission of pollutants, the creation of nuisances and the elimination of waste and the description by the applicant of the forecasting methods used to assess the effects on the environment, so one would expect to see a breakdown of those methods; the actual methodology used to understand the impact on the environment and the use of the Ramsar site as a surrogate for the wider environment in this situation. From upholding the spirit of that legislation, do you think the detail in the forecasting methods is sufficient within the E.S.?

Mr. W. Peggie:

I think I am right in saying - and correct me if I am wrong here - T.T.S. rather, undertook an independent review of emissions to atmosphere and ... perhaps I could

refer to 8.1.3 of the E.S., which states that detailed flue gas dispersion modelling was carried out using the computer model ADMS 3.3, developed and supplied by Cambridge Environmental Research Consultants. So, it clearly has the specific reference to it there and we have seen and discussed the effects of that.

Mr. R. McInnes:

All right, and then to the aquatic environment; is there similar detail on the methodology?

Mr. W. Peggie:

I think, again, referring back to chapter 16, it gives reference there in generalistic terms, I think ... coming back to C.E.M.P. the Construction Environment Management Plan ...

Mr. R. McInnes:

But that is not for forecasting, that is for management.

Mr. W. Peggie:

That is a fair point.

Mr. R. McInnes:

I am talking about the forecasting methods for the water environment.

Mr. W. Peggie:

Let me just refer back to ... we concede that we deemed that there was going to be no impact to the aquatic environment.

Mr. R. McInnes:

But that is before you had done the forecasting, surely? Forecasting methods should be predicting whether there is, rather than saying there will be none, then we do the forecast.

Mr. W. Peggie:

I think perhaps that is something we need to refer to specifically during the course of tomorrow's discussion, if you would not mind?

Mr. R. McInnes:

Chairman, are you happy with that?

The Deputy of St. John:

Yes, I am happy with that, yes. We can do that. All right, we will move on. Did the States of Jersey have any recommended guidelines or procedures to follow for undertaking ecological assessments of sites within the planning context?

Dr. L. Magris:

Sorry, could you repeat that?

The Deputy of St. John:

Yes. Did the States of Jersey have any recommended guidelines or procedures to follow for undertaking ecological assessments of sites within the planning context?

Dr. L. Magris:

We do not have formal guidelines, but what we would normally do in the circumstances is, through the process, discuss with the developer and the consultant undertaking the environmental impact assessment the methodology which they were going to use. In this case, for the terrestrial site ... in this instance a walk over the terrestrial site was carried out by Ambios and they used the Guidelines for Baseline Ecological Assessment, which is agreed by the Institute of Environmental Assessment and we were satisfied that that was sufficient for that particular site.

The Deputy of St. John:

In the United Kingdom standard procedure is to adhere to the I.E.E.M. (Institute of Ecology and Environmental Management) Guidelines. Are these used in Jersey?

Mr. R. McInnes:

That is the Institute of Ecology and Environmental Management, just for clarification.

Dr. L. Magris:

We do not have formal guidelines that request that, but we would expect that U.K. consultants would cover that experience and, in general, they do and we discuss that with them and ensure that they intend to be using those guidelines. If they do not intend to be using those guidelines, we would ask what they were going to be using and make a decision at the review stage as to whether we thought that that was sufficient survey methodology or that it was lacking in some way. We would go back to them for further information.

The Deputy of St. John:

Did they, on this occasion, come with those guidelines?

Dr. L. Magris:

They used the Institute of Environmental Assessment Guidelines.

The Deputy of St. John:

All right. In other words, the answer is no?

Dr. L. Magris:

Sorry, I ...

The Deputy of St. John:

Would the answer be no then?

Dr. L. Magris:

That is what they used, so there was no need to go back to them.

The Deputy of St. John:

All right. Why were the I.E.E.M. Guidelines not used in the case of the Energy from Waste plant?

Dr. L. Magris:

As far as I understand ... sorry, I ... the methodology for the walkover of the Energy from Waste site, the Institute of Environmental Assessment Guidelines were used.

Mr. R. McInnes:

No, it is 2 different things, is it not?

Dr. L. Magris:

Sorry, I am confused.

Mr. R. McInnes:

Yes, there are too many acronyms for it. There is the Institute of Environmental Assessment, which are guidelines which are effectively obsolete now in the U.K.

Dr. L. Magris:

Yes.

Mr. R. McInnes:

The standard for professional practice is the Institute of Ecology and Environmental Management.

Dr. L. Magris:

Yes.

Mr. R. McInnes:

That would be considered the normal standard to follow when doing an ecological assessment.

Dr. L. Magris:

Yes.

Mr. R. McInnes:

So we are just trying to understand why Ambios chose to go down that route rather than the standard practice which would be accepted in the U.K.

Dr. L. Magris:

Sorry, I was confused, I understand where you are coming from. In 2006, the standards that we used were the Institute of Environmental Assessment, so you are right, it was not the latter guidelines that we were talking about, it was the original guidelines which have now been superseded.

The Deputy of St. John:

Yes, all right.

Mr. A. Scate:

Can I just make a note?

The Deputy of St. John:

Yes.

Mr. A. Scate:

I think it is important to note that clearly we would be answering questions as to the practice we undertook or we advised on 3 years ago, rather than in terms of developing standards, clearly, in that period of time, since 2006.

The Deputy of St. John:

Yes. I appreciate that.

Mr. A. Scate:

Our own processes and procedures have developed over that time and, clearly, as best practice develops in the U.K. and within the E.U., we will also look to embrace that in Jersey as well, but, clearly, in 2006 we were at a different position as to where, possibly, best practice is now.

The Deputy of St. John:

Yes. So, in fact, who set and approved the brief for the Ambios baseline ecological assessment? Who did that at the time?

Dr. L. Magris:

There was no need to approve the brief, because they came to us with those results as part of the environmental statement when they submitted the statement. I do not believe that there was any discussion ahead of time with us, because that would have been for the developer to come to us and say: "We intend to use those guidelines, are you satisfied with them?" They take the risk that they use those guidelines, if they do not come to us and ask, and we look at them and say: "No, that was insufficient" but that was not the case in this instance.

The Connétable of St. Peter:

Just a quick one before we finish off on that; it would be fair to say then that T.T.S. gave Ambios the brief? If you did not give it to them, would it be fair to say then the developer?

Dr. L. Magris:

I could not say who gave them that brief. I suspect it would be the developer, yes. I would imagine that the consultants would advise T.T.S. of the best practice available at that time, but I would not ...

The Connétable of St. Peter:

To agree the brief with them, rather than with you?

Dr. L. Magris:

That would be between the developer and the consultant, because they are running that process. We are there simply to regulate when it comes to us, unless we are asked. We were not asked, as I understand, so therefore we looked at what we were given.

Mr. A. Scate:

I think it is just worth, again, outlining the role of the Planning and Environment Department as recipients of the environmental statement and environmental impact work. I asked through scoping, our advice on what methodologies to take and what information is required, then clearly we would advise in that role. The contract

between applicant and their consultants to provide the information in to the environmental statement would have been a decision between T.T.S. and their consultants and their over-arching consultant, obviously was Babbie Fichtner, so they would have had contractual discussions with Babbie Fichtner around what they were required to do to put into the environmental statement. The discussion would have been had by the developer.

The Connétable of St. Peter:

Yes, but when that came through, you were happy with the information that was provided to you?

Mr. A. Scate:

Yes. I think in terms of methodologies, we are clear that the purpose of the survey was to identify ecological impacts on site, or any potential habitats on site. So as long as we were ... we were concerned it was a relevant methodology undertaken and was a relevant survey undertaken to highlight any potential impacts.

The Deputy of St. John:

Deputy Wimberley? Or, sorry, do you have something else?

Mr. R. McInnes:

Yes, I would just like a bit of clarification on the statement in the *Ambios Report*, which was produced in February 2006 prior to scoping being finalised. It says there will be no impact on the Ramsar site. Can you explain how that statement could have got into that report?

Dr. L. Magris:

We did not write that report so I am afraid I cannot really.

Mr. R. McInnes:

All right.

Dr. L. Magris:

If that was submitted as an appendix to the environmental statement, that is exactly right.

Mr. R. McInnes:

Yes, which it was.

Dr. L. Magris:

There is discussion about the potential effects or not on the Ramsar site as part of the environmental impact statement that we felt comfortable with. That throwaway sentence in the ecological report, was not pertinent in that the actual environmental statement itself, through chapter 16 and others that we have quoted, covered the interaction with the Ramsar site to our satisfaction. I do not know why Ambios made that statement.

Mr. R. McInnes:

Yes, because it would be normal practice if you were to follow that, even if you follow the issued Environmental Assessment Guidelines, that if you have an

internationally important site next door, or immediately adjacent contiguous with that site, that you would look at that within the ecological assessment. It seems that it has been looked at within the ecological assessment and that it has been discarded and that has made it into the E.S. as a supporting statement. It seems strange that that has happened before the actual process has been scoped through in terms of what the impacts could be. I just wonder, was that an error within the methodology or the guidance that was followed, or was that an issue that was agreed and already been effectively scoped out at that stage?

Dr. L. Magris:

No, I do not believe that that is the case. I think the *Ambios Report* refers to the ecological value of the land at the site.

Mr. R. McInnes:

But it also says quite clearly at the Ramsar site, so it is not just the land at the site.

Dr. L. Magris:

I agree with you. There is that sentence in there which seems out of place, given that the report is about the land. Our decision, when reviewing the environmental impact statement, was that the potential effects on the Ramsar site were dealt with in the body of the bigger document to our satisfaction.

Mr. R. McInnes:

All right.

Senator F.E. Cohen:

Can I come in quickly?

The Deputy of St. John:

Sorry, Minister.

Senator F.E. Cohen:

I think it is important to recognise that the department determined when we considered all the representations and documentation that, with proper management, there should not be an impact on the Ramsar site. That is why we are in the position we are in; because the clear view of the department was that the impact, properly managed, should be not significantly detrimental to the Ramsar site.

Mr. R. McInnes:

That is not the purpose of the review that I am involved in. The purpose is one of process; how you got to that conclusion.

Senator F.E. Cohen:

All right. I just want to ...

Mr. R. McInnes:

If that is the starting point, and that conclusion has to be proven, that is a different process.

Senator F.E. Cohen:

No, no. I am saying that is the end point.

Mr. R. McInnes:

Yes. That is the end point.

Senator F.E. Cohen:

That is the end point in the position that I took when I determined the application.

Mr. R. McInnes:

But that does not obviate the need for due process, does it?

Senator F.E. Cohen:

No, no, no. Not at all.

Mr. R. McInnes:

All right. That was all I ...

The Deputy of St. John:

Deputy.

The Deputy of St. Mary:

Yes. The Chief Officer said, going back a little bit but it is still on the scoping, that P. and E., (Planning and Environment), were the recipients of the Environment Statement and I sort of want to have clarification on that in going back to what Sarah first said about this pre-scoping, because it puzzles me. My understanding was that the Planning and Environment Department managed the process and you are providing the issues that the applicant has to deal with, rather than the other way around, and I just want clarification on that.

Mr. A. Scate:

I can clarify it. An environmental statement accompanies a planning application so we are the recipients of the environmental statement and the environmental impact assessment is something you need to go through as a process as part of the planning process. So we are the recipient as a planning authority in that sense; we receive the planning application with the environmental statement that accompanies it. So, we do not undertake the environmental impact assessment and we do not furnish the environmental statement for the planning application. We do not do that work; we are the recipient, however, we have a role prior to submission and obviously during submission in terms of a dialogue with the applicant of any planning application as to what the likely issues that an environmental impact assessment should be taking into account. That is called scoping. Clearly, the first stage is screening, just to decide whether you need one of these or not. In this case it is very clear. We did not do a formal screening opinion because it was very clear. The scoping opinion is a dialogue prior to submission of a planning application to identify what are the likely environmental impacts that need to be assessed in the environmental statement. We had done some pre-scoping work prior to a location being identified. We did not do any formal scoping work at the time of the location being identified because the applicant did not request it and they are entitled to under the regulations not to request it if they feel that they have enough information on which to proceed to their environmental statement. So, in this case, they felt that they had enough information

to move straight to the environmental statement and to prepare that statement in line with their planning application. We then received that information. Clearly, the dialogue then continues because we need to review it and assess the content of that statement and there are a number of occasions where we went back to the developer and asked him for further clarification and details that we felt we needed to come to a decision.

Mr. R. McInnes:

Just on that final point, it would be useful to provide those clarification points that you asked the developer to provide and that would be very useful to know which ones you went back to, because that is a crucial part of that process, that iterative process.

Ms. S. Le Claire:

Can I just come in there about the iterative part of the process? It is crucial to say it is depending on the comfort levels that the developer has as to whether or not they ask for a formal scoping opinion, regardless of what we put within the scoping opinion, the Minister is within his rights to still request further information at the review stage. So, the scoping report is not the definitive list of what is required. So while there is obviously a focus on that in this review, at any further stage within that, right up to before planning application was granted, any of that information could have been asked for.

Mr. R. Glover:

Can I just interject on that point, because the applicant made a formal submission on the 28th September 2007 that addressed the issues that have been raised by the consultation responses and the representations that have been received and I have got copies of those documents I can let you have after this meeting?

The Deputy of St. John:

Thank you. All right. Were the likely significant effects of contamination from within the made ground assessed appropriately within the E.I.A.?

Mr. W. Peggie:

Within the E.S. it was deemed that excavations into the made ground were predominantly into areas of inert fill, so that is the first area they considered. In a consultation response we referred to the fact that, generally speaking, the site itself is, indeed, inert fill but there are areas of that site which contain hydraulically independent ash shells, for example, and some historic areas of disposal for asbestos. They addressed that by means of continuing along the lines of excavation in inert fill with the need for a watching brief, should any further contamination become apparent. That is a fairly standard process as far as we are concerned, in respect of managing expectations at the E.S. stage, I think.

The Deputy of St. John:

All right. Did you want to ask a question on that one? No? All right. Did this assessment cover direct or indirect, secondary cumulative, short-, medium- and long-term, permanent and temporary positive and negative effects?

Mr. W. Peggie:

Could you say that again, sorry?

The Deputy of St. John:

Yes. Did the assessment cover direct and indirect, secondary cumulative, short-, medium- and long-term, permanent and temporary, positive and negative effects?

Mr. W. Peggie:

From a contamination perspective?

The Deputy of St. John:

Yes.

Mr. W. Peggie:

We would not necessarily expect that at the E.S. stage. We would expect it to be reviewed in respect of further work and certainly from a point of view of potential contravention of pollution legislation, we would require that an assessment was carried out in respect of potential pollution at a later stage.

Mr. R. McInnes:

So in reserve matters, that would be expected to be managed?

Mr. W. Peggie:

Yes. It would be through waste management licensing process which would follow. An application will be expected for a waste management license for that site and that assessment will be undertaken within the bounds of that license.

The Deputy of St. Mary:

What would happen in the absence of real investigation in the environmental statement, if you had come across such contamination that the work had to cease?

Mr. W. Peggie:

The work would cease. We would require that mitigatory procedures were put in place. If there was potential contamination of the marine environment, there would be an investigation undertaken. We would treat it as we would any other potential pollution incident in terms of the externalisation of the ...

The Deputy of St. Mary:

The problem is that you do not know what is there; or do you know what is there?

Mr. W. Peggie:

I was going to say we have got historical evidence. In terms of what has been stated at the E.S. stage, we know that T.T.S. are comfortable that the area they are constructing in is, indeed, an area of inert fill; they have stated as much in their E.I.S. We have gone back to them and said: "Yes, that may well be the case, but let us make sure you consider that there may be areas which are not inert" and that is a fairly standard approach to us.

The Deputy of St. Mary:

Yes. Do you still believe that that area is full of inert fill?

Mr. W. Peggie:

Indeed.

The Deputy of St. Mary:

Exclusively?

Mr. W. Peggie:

It is going to be inert fill with *de minimis* quantities of non-inert material, as one would expect from an historical inert fill landfill site.

The Deputy of St. Mary:

Can you explain the lab report? If that is inert fill, it is funny amounts of metal coming out of granite and rubble.

Mr. W. Peggie:

We have got many cross-referencing lab reports, some of which are more damning if you like, in terms of leached water quality, than others, from the site. We would expect a deal of leachability of metals coming out of inerts and high arsenic levels naturally occur in many soils throughout the country, not just in Jersey. So, yes, we would be comfortable that majoratively speaking that is inert fill but historically there have been less controls on that than nowadays we would be expecting.

The Deputy of St. Mary:

So, for example, if the constructors had come across a lot of asbestos, hypothetically, because you did not know what was down there, as a result of this E.I.S. process, what would happen with the assessment of what that asbestos could do to human health on the beach, to marine life ...

Mr. W. Peggie:

We would not be looking at a human health perspective but I would certainly be looking at a methodology to be put in place to remove that asbestos to a place which is going to be an acceptable disposal point for that. As I said, that would come under the watching brief process.

Mr. R. McInnes:

I was looking at information presented in the E.S. and I still have not seen the full tranche of information but my understanding, from reading appendix 8 which was the ground investigation, there is no reference to any chemical testing at all at E.S. stage. So to pick up on the Deputy's point, it is difficult to put in place mitigation and management if you do not know what you are mitigating or managing for. There is reference to known asbestos as you rightly say, so would it be normal to expect additional site investigations prior to construction?

Mr. W. Peggie:

Post E.S. prior to construction?

Mr. R. McInnes:

Yes, as part of the reserve matters potentially to inform a Construction Environmental Management Plan. Would you expect that to happen? Sorry, I have to get a better understanding of what needs to be addressed within any control measures.

Mr. W. Peggie:

I tried, with this particular C.E.M.P., was some ...

Mr. R. Glover:

I think, in some cases, it would be acceptable but I think in this case, given the desktop study that was done as to what was there, what was imposed, effectively, was a stage 1 contaminated land condition which said you need to just keep a watching brief. We have to be careful when the E.I.A. informs the planning process and the planning process takes note of the E.I.A. in making a decision and issuing a planning permit. It also has to be cognisant of other limitations that the planning process has. If a developer comes along and, as was in this case, reasonably demonstrates that what is more than likely to be down there is inert waste, there is only so far the planning process can go in asking how much information is required before the permission is granted. That was the situation in this case; they had gone far enough to be able to say: "We are pretty certain it is inert waste down there." We accepted that methodology and we said: "We accept that but just in order to protect everybody's position on this, you need to keep this watching brief." Now, that is standard practice with planning permissions and planning law and the role that the actual planning permit plays in facilitating a development.

Mr. R. McInnes:

Reasonable demonstration would be no chemical testing?

Mr. R. Glover:

If the desktop study said that it was inert waste.

Mr. R. McInnes:

If the desktop study says additional testing to be done, which is what the E.S. chapter says?

Mr. R. Glover:

Yes, it does, but it is important that the appendix 8 of the E.I.S., really refers to geotechnical issues rather than contamination issues and so it is informing the suitability of the site for construction, not necessarily the contamination issues.

Mr. R. McInnes:

So, which appendix and chapter does the contamination issues?

Mr. R. Glover:

Chapter 11, which is the one on the water environment, again it says that the site of the plant lies over made ground comprising waste, inert material including natural soil and rocks, as well as building waste which is concrete and masonry.

Mr. R. McInnes:

You felt that was reasonable demonstration?

Mr. R. Glover:

It was at that stage, in terms of determining a planning application. As I say, that reflects the standard stage 1 approach to contaminated land.

Mr. R. McInnes:

Even though, under 11.3.1 it clearly says: “Further ground investigation is necessary”?

Mr. R. Glover:

That was the position we took at the time. I do not think it specifically says that it is necessary in order to ...

Mr. R. McInnes:

I understand that was a contamination issue.

Mr. R. Glover:

Chapter 11 then goes on to talk about the construction methods that are proposed in terms of making sure that any water generated during the construction period is managed and that is an important consideration in looking at what the impact of the construction and operating phases are of the development.

The Deputy of St. Mary:

So the summary of the position is that no investigation of ground contamination took place before the planning approval was given?

Mr. R. Glover:

That is right.

The Deputy of St. Mary:

So, to take an analogy, if I start to build a table in my kitchen with hammer and nails and I run out of nails I run to the shop and get some more? Not serious, is it, but here we are talking about £95 million of incinerator and there is no investigation of contamination?

Mr. R. Glover:

Again, in terms of the planning process, that has to strike a balance between the information that is available and the development that it is looking to authorise. There is guidance available that is adopted by the States of Jersey that looks at contaminated land and it operates the 3-stage approach, which is U.K. best practice for contaminated land. It was considered in this case that it fell within stage 1 of that approach.

The Deputy of St. Mary:

Is that related in any way to the scale of the project?

Mr. R. Glover:

Well, it should not do, because if the information is there, then whether it is building a table or building an Energy from Waste plant, if it is the same level of information that is being provided and the same issues are arising, then we are obliged to follow that process that we have said we will follow.

The Deputy of St. Mary:

When T.T.S. told you reasonably demonstrates that it was inert fill, pretty certain, could we have that document?

Mr. R. Glover:

Well, it is in the E.I.S.

The Deputy of St. Mary:

Later, not now.

Mr. W. Peggie:

It is in chapter 11 of the E.I.S.

The Deputy of St. Mary:

The actual document from the assessment from T.T.S. saying that it was ...

Mr. R. McInnes:

In terms of the actual ground conditions, yes.

The Deputy of St. Mary:

Well where does it give the source? I do not see a source. So if we could have the source?

The Deputy of St. John:

Could we have the source please?

Mr. A. Scate:

I think that is a question for T.T.S. in terms of what they use to provide the information for their environmental statements. Clearly they would have been using their historic data on filling operations in that area and their knowledge of the site that they operated.

The Deputy of St. Mary:

Sorry, but I have to pick that up. They filed a report with yourselves, which meant that you were able to say: "Okay, we will not look into this anymore." So that is what I am asking for. You must have that on file. Sorry to press but that is the situation.

Mr. W. Peggie:

That report is the E.S.

The Deputy of St. John:

Can we follow this up tomorrow? Thank you. How compatible is the approach taken within the E.I.A. with the recommendations made on the Construction in the Aquatic Environment leaflet?

Mr. W. Peggie:

We generated that Construction in the Aquatic Environment leaflet and not having it to hand at the moment, I think we can answer that tomorrow. It is not something we can specifically refer to now.

The Deputy of St. John:

All right.

Mr. R. McInnes:

One final point on this; so effectively, the watching brief would be expected to be wrapped up in the Construction Environmental Management Plan that your department would basically, not sign off on, but say that meets the standard in terms of a watching brief, so that potential contamination, if it did arise, could be dealt with within that Construction Environmental Management Plan. Is that correct?

Mr. W. Peggie:

It would refer to a P.P.G. (Pollution Prevention Guideline) within that C.E.M.P. I cannot remember which P.P.G. it is in terms of dealing with construction on potentially contaminated land but, yes you are right, it would wrap it up in a specific reference in that C.E.M.P.

The Deputy of St. John:

All right. Would the Planning and Environment Department consider Jersey as the Ramsar site as an equivalent to the E.U. special protection area (S.P.A.s) or special areas of conservation (S.A.C.s)?

Ms. S. Le Claire:

I know in the U.K. Ramsar sites have been designated as S.P.A.s. We do not have the Habitats Directive in Jersey and, therefore, we have not implemented that. So, while in the U.K. it has been considered, that is not something ... we do not have that legislation in Jersey.

Mr. R. McInnes:

So you do not consider them in the same way?

Ms. S. Le Claire:

We do not consider them in the same way.

The Deputy of St. John:

All right.

Ms. S. Le Claire:

I will clarify that. That is not to say we do not think that the Ramsar Site is special, but in terms of whether you say we are following the Habitat Directive and regulations; we do not have those regulations.

The Connétable of St. Peter:

I think the only thing I want to pick up is, earlier on, Sarah, you said that where there is absence of legislation in Jersey we look to the E.U. for guidance, and now we are saying we are not looking to the E.U. for guidance in this particular aspect?

Ms. S. Le Claire:

We have a raft of other legislation for ecology and marine ecology that covers that, we feel. We have also the Wildlife Law in Jersey. I am not familiar enough now with the Habitats Directive to make a proper comparison, how that compares with the legislation we have, but we are signatory to a number of other directives. Whether or not we need to bring in a Habitats Directive equivalent in Jersey, that is up for review.

The Connétable of St. Peter:

I think the point that needs to be clarified, probably not again today but perhaps for tomorrow, is do we follow the E.U. directives in the absence of legislation in Jersey or do we not? Because we are getting 2 different views here at the moment.

Ms. S. Le Claire:

We do, but in air quality as an example, where there is a directive, where there is an absence of local legislation. There is not an absence of local legislation, we have the Ramsar, we are a signatory to Ramsar, we are a signatory to the Berne and Bonne Conventions on ...

Mr. R. McInnes:

But that is not legislation.

Ms. S. Le Claire:

But it is guidance, there is guidance.

Mr. R. McInnes:

So there is guidance on Ramsar sites?

Ms. S. Le Claire:

We use the guidance within the Ramsar directive and then we implement that through our local legislation, which is the Wildlife Law. We do not have ...

The Deputy of St. John:

Do you agree that the aspiration to work to E.C. standards as cited in the pre-scoping report, could be interpreted as an aspiration to adopt the principles of the Birds and habitat directive?

Ms. S. Le Claire:

I think that is a technical question which I wish to discuss tomorrow.

The Deputy of St. John:

All right, for tomorrow. We will move on. That is for tomorrow. The E.C. have produced guidance on screening which includes a checklist of criteria for evaluating significant effects. Was the guidance followed at the screening stage?

Mr. A. Scate:

We have outlined already that we did not undertake screening because it is very clear from the outset that it did require an environmental statement.

The Deputy of St. John:

All right. Was the scoping report produced summarised in the results of the scoping process? We note a pre-scoping report was produced, but this is not the same thing.

Mr. A. Scate:

Yes, we have done pre-scoping but we did not do formal scoping because the applicant did not request it.

The Deputy of St. Mary:

On the scoping, I feel we have covered this before but I just wonder at what stage the Planning Department says to the developer you need to cover this, this, this and this and how do you arrive at that?

Mr. A. Scate:

It is either covered in a formal scoping opinion if requested, or it is covered when the environmental statement is submitted and it is very clear then to the Planning Authority that additional information is required. So there are 2 bites of the cherry, in effect. We either do it formally through a scoping process, or if we feel the environmental statement, when submitted, is deficient in certain areas, we would then pick it up then and ask for further information at that stage.

The Deputy of St. Mary:

I have to say this is a different version from what we heard in the hearing, going back a few months, Mr. Chairman, where we were told that the E.I.A.: “You start off by looking at the proposition and scoping what its impacts might be and you do that in a collaborative, concerted way.” There is not a mention here of doing it together with the developer, there is “in a collaborative, concerted way.” The onus is then on the developer or the proposer of the project to address the issues identified in the scoping study and it seems to me that what we were being told then was that the scoping study is a separate piece, it comes first and is managed by Planning and Environment.

Mr. A. Scate:

When we met before, we spoke about environmental impact assessments in generalities. We outlined the 3 S’s in terms of the process and we gave a description of a screening, scoping and statement process, which would occur, in generic terms, for an environmental impact assessment. Now we are talking in very specific terms as to what process was undertaken in relation to this site. Clearly, the regulations still allow for screening, scoping and statement. Screening, we have already answered because it was very obviously a required one. Scoping, we were not requested for a scoping opinion and that is also okay under the law; you either have one or you do not. It helps a developer form their ideas as to what they put into their environmental statement in a collaborative way. So the collaboration mentioned in the previous meeting is a collaboration between developer, regulatory authority and any other third parties the developer wishes to engage with. Generally, I would call the scoping process ... it is commonsense to help the developer form their idea and what environmental impacts they should be assessing. If the developer is very aware of the Environmental Impacts that they are assessing, then they do not have to go through scoping; they can just move straight to the statement stage and get the views formally then, from the regulatory authorities and whether we felt they were appropriate or not.

The Deputy of St. Mary:

I have to say that the notion that the developer asks you for an opinion simply was not touched on at all when we were briefed about how an E.I.A. works in general, and I am not sure that it is in the legislation but you say it is; that it is an option. So, if this is the case, can you explain the status of the scoping workshop and where does that fit in? Was it run by the developer?

Mr. A. Scate:

The pre-scoping workshop?

The Deputy of St. Mary:

Well, I thought it was a scoping workshop?

Mr. A. Scate:

Any of the workshops which were formed were instigated by the developer and the applicant.

The Deputy of St. John:

All right. Let us move on. Can justification be provided for why and at what stage the potential impact on the marine environment, and the Ramsar site in particular, were scoped out of the E.I.A.?

Mr. W. Peggie:

I think that is one of our questions, is it not? If we can just read the response out, this is a pre-prepared answer to a pre-prepared question. "The E.S. states the Ramsar site would potentially be vulnerable should pollutants be released during construction or operation of the site [and that is in section 16.3.1]. The potential impact on the marine environment was not scoped out. Reference is made to the potential risk of water pollution during both the construction and operational phases of the site. Within the E.S. there are sufficient controls in place to provide assurances that the design of the facility would aim to break the links between those sources of pollution during construction and operation and the receptor, which is the coastal Ramsar site." Again, I think that is in 16.3.1, second paragraph.

Mr. R. McInnes:

Can I just ask for clarification? There is a term which I like hearing; commonsense in what people should assess. There is an internationally important site next to an area that is being developed. To me, commonsense dictates you look at the internationally important site and make sure belt and braces protect it. In the document that was agreed and signed off, I think it was on the 4th of May, it quite clearly says: "Coastal waters scoped out." So, to me, that means, while there is a Ramsar site, it says: "cooling water plume statement", no issues on aerial deposition. To me, that does not fit with a commonsense approach. Equally it gives the developer a steer that those are less significant. They are scoped out, agreed, but they still choose to look at them and the department might still choose at a subsequent part of the process to come back and say: "They need to be looked at in more detail." But that, I think, is a very strong message to the developer that they are scoped out, unless I am misunderstanding the words "scope out". Can someone explain, because that seems slightly at odds with then what went in and the way it was dealt with ...

Mr. R. Glover:

I think that may be in the context of the pre-scoping workshop and I think that is possibly the document you are referring to which is a record of that. I mean, the context of that note may be, because I think they are notes that came out not entire paragraphs explaining exactly what was happening, that the developer may well have been saying at that point: "We intend to scope out the impact on the marine environment when we come back to you for a scoping opinion." They did not come back for a scoping opinion so that is one interpretation of that phrase.

Mr. R. McInnes:

It was subsequently to be scoped out.

Mr. R. Glover:

Yes. I think that reflects the nature of the pre-scoping workshop where issues were discussed in a co-operative manner, in an iterative manner to sort of say: "Right, how are we going to address these issues?" That phrase may well reflect that position.

Mr. R. McInnes:

You say may well, did that happen? That would be a question for the developer, I suppose.

Mr. R. Glover:

Yes, a long time ago, so I cannot remember.

Mr. R. McInnes:

But there should be documented evidence dealing with something like a marine environment or an internationally important site.

Mr. R. Glover:

It is evident at the time by the fact that we described them as pre-scoping workshops that we were anticipating a scoping opinion to be submitted and that scoping opinion was not submitted. If a request for a scoping opinion had been submitted we would have probably gone back to our notes from the pre-scoping workshop and said: "We understood this slightly differently. You said you were going to do this, you have not done that." That sort of thing. In the end they did not submit for a scoping opinion.

The Deputy of St. Mary:

Can I ask who attended the scoping workshop that gave rise to the flip chart notes because normally you would have an attendees list?

Mr. W. Peggie:

I think I may have attended that. I attended that one with Gerry Jackson, my predecessor.

The Deputy of St. Mary:

3rd April 2006.

Mr. A. Scate:

I think we can look through the files and come up with a list of attendees at the time.

The Deputy of St. Mary:

Can I ask why the word "scope" has now become pre-scoping? In all this discussion I am mystified at the transformation of scoping, which is what it was a few months ago, to pre-scoping now.

Mr. A. Scate:

Right. Pre-scope and scope are different stages. Scoping takes place when there is a defined location and we have a defined proposal on a defined site and we are asked for a scope on the environmental impacts. Clearly we used the term "pre-scope"

because at that time we were talking about generic environmental impacts prior to a location being identified. Pre-scope is just a phrase that it was not a formal scoping opinion relating to a specific location.

The Deputy of St. Mary:

I am sorry, but I have to point out to you that as of 24th February the word consistently used was “scope” and now it has suddenly become “pre-scoping”.

Mr. A. Scate:

That is correct, yes.

The Deputy of St. Mary:

The flip chart report is the scoping issues, the letter that went signing off the scoping referred to “scope” both in the subject line and in the text. I just want you to explain why, for this hearing, it has suddenly become a “pre-scoping” exercise.

Mr. A. Scate:

When we met earlier in the year we were talking in generic terms about the environmental impact assessment process and clearly we were using the terms “screening”, “scoping” and “statement” and therefore the evidence that the Panel heard at that time as to what the process was about clearly refers to scoping and that is what the order refers to. In this specific case we did not do formal scoping because we were not requested. However, pre-scoping took place on the ideas on environmental impact surrounding an energy from waste plant and therefore it was a unique stage to this process.

The Deputy of St. Mary:

Sorry, with respect, I was not talking about the hearing of the Panel, I was talking about (a) in my written question of 24th February where “scope” is the word I use and the word the department uses in their reply, but also the Head of Policy Manager’s letter: “Dear Quintin” which signs off the scope: “E.I.A. Confirmation of Scope”, is how it is headed. Therefore you, the Planning Department, saw this as a scoping exercise and I think it is important; we are going to get to questions later on how important this is. I am still asking why the word “scope”, as in this hearing, becomes “pre-scoping”. Is there something wrong with “scoping”?

Mr. A. Scate:

No, not at all. No, in terms of this hearing, we are using the term “pre-scoping” because we did not produce a formal scoping opinion under the regulation because we were not requested to.

The Deputy of St. Mary:

What is the status of these flip chart notes?

Mr. A. Scate:

It is pre-scoping and it did not form part of a formal scoping opinion.

The Deputy of St. Mary:

But the pre-scoping report was written by Babbie Fichtner as the lead in to this workshop.

Mr. A. Scate:

Yes, but again, it did not form part of a formal scoping opinion for the site-specific energy from waste plants.

The Deputy of St. Mary:

There is no attendees list? You confirm that there is no attendees list.

Mr. A. Scate:

We need to look and provide that back to you.

The Deputy of St. Mary:

Fine. Okay.

The Deputy of St. John:

Right, we will move on. Best E.I.A. practice recommends that the scoping process is a participative one as this is considered the best way to build the confidence among concerned organisations and the public. The States of Jersey have produced an environmental “Who’s Who” in Jersey. How many of the non-governmental organisations listed in the document were contacted and then actively engaged in the scoping process?

Mr. A. Scate:

Again, as previously outlined, we have not had a formal scoping process but many consultations took place at the time of the statement being submitted.

Senator F. E. Cohen:

I think we should also add that copies of the environmental impact statement were sent to the standard list of the States departments as well as external consultees, including Jersey Water, the Société, National Trust for Jersey Concern. In fact, of those groups, only the Société environment section submitted a formal response.

The Deputy of St. Mary:

Could I just check what you say you sent to them?

Senator F. E. Cohen:

The environmental impact statement.

The Deputy of St. Mary:

Once it had been written.

Senator F. E. Cohen:

Yes, once it had been written. Yes. I think we need to be very clear that if there has been some confusion, as it appears there may have been, there was no scoping because the applicant did not request scoping; there was pre-scoping. It may be that the term “pre-scoping” and “scoping” have become interchanged during the period, by the sounds of it. But we need to be very clear, whatever has been said, there was only pre-scoping.

The Deputy of St. John:

Moving on slightly from there, Save Our Shoreline and Ramsar were not included in your list.

Mr. A. Scate:

That is correct. In terms of the scope or the statement? Because obviously we did not consult anyone on the scoping because there was no scoping.

The Deputy of St. John:

Either.

Mr. A. Scate:

No. We did not consult Ramsar, again because under the convention we are the responsible authority and we only need to consult Ramsar through Defra if we feel there are likely significant effects on the Ramsar site. As a department, we do not consider there are likely significant effects which would warrant a change in that Ramsar site which would then warrant a consultation with Ramsar.

The Deputy of St. Mary:

You came to this conclusion before the E.S. was written?

Mr. A. Scate:

No, throughout the process.

The Deputy of St. John:

All right. Let us move on. Baseline information is essential within an E.S.; it is important to avoid overloading an E.S. with information on baseline conditions. The main purpose of the E.S. should be to describe the main significant adverse effects. Detailed baseline information should be placed in appendices rather than in the main text. No baseline data has been presented on the baseline ecology conditions within the Ramsar site. Similarly, no baseline information has been included in the contamination potential of the mud ground. Why was it considered adequate not to provide any data on a key receptor and key sources of pollution?

Mr. W. Peggie:

I think we may have referred to, or I think we have given you the answer to this in a question you asked earlier on in respect of number 4 on our document: "Further ground investigations not commissioned and evaluated as part of the E.I.A." I think we will be revisiting old ground again in respect of that and question 8 on our original list.

The Connétable of St. Peter:

I am just slightly concerned that if you have no baseline information at all to see what impact of any change is whatsoever from either the construction or operation phase of the E.f.W. You have got nothing to measure against what was going on before to what is going to be happening now and after. What we are saying is we have got nothing to measure against.

Mr. W. Peggie:

Referenced in the E.I.S., that is probably quite true in respect of works that we have undertaken and data sets that we have on marine biota, potential contaminant take up,

then we do have historical data that we can refer potential problematic instances to. We have submitted that previously to you in the form of a document drafted by Dr. Du Feu.

The Connétable of St. Peter:

The lack of it within the E.I.S did not concern you; from an environmental point of view, that that was lacking?

Mr. W. Peggie:

It was not something I specifically requested or looked for in my role at that time.

The Connétable of St. Peter:

Who would have been expected to have noticed that was missing and to ask for it?

Mr. W. Peggie:

It very much depends on whether it is defined as missing.

Mr. A. Scate:

Yes. Can we just clarify what you think is missing?

The Connétable of St. Peter:

The baseline survey.

Mr. A. Scate:

Okay, I think it is again clear to point out that the environmental statement refers to a number of the information sources that we have available so the consultants preparing the environmental statement will have been sourcing their interpretation and their environmental statement from the baseline data available. Clearly, some of that data does exist in terms our measurement of the marine environment and our water testing.

The Connétable of St. Peter:

But with all due respect, Andy, we know we have got a changing environment down there; it is changing right now the environment down at La Collette, so are we looking at historical data or data which is pertinent at the time the application came in. I would have thought it reasonable to have expected a baseline survey to have been done at that time which set the scene for whatever happened from that point in time.

Mr. A. Scate:

Okay, can I ask Tim Du Feu just to answer the question around changing water environment because we do undertake significant water testing and trend-based data. We have trend-based data from which we take conclusions around what the environment is doing in the water around Jersey and specifically in this location. I think it may just be worth just outlining ...

The Connétable of St. Peter:

Certainly, I am quite happy with that but I think for the moment, now, I think my concern again is coming back to process and the fact that the process of establishing a baseline was not teased out. I am really coming back to who should have made sure that that baseline survey data was there. Would it have been you, the regulators, who

made sure that the applicant had given you sufficient information on which to make your planning application or should it have been somebody else?

Mr. A. Scate:

Certainly the baseline data on water quality I would say we have. Tim can outline the extent of the testing regime and its historic basis. In terms of the availability of a baseline data set on water quality, we certainly do have.

The Connétable of St. Peter:

Are we saying now, then, that your department does not require any baseline surveys because you do all the testing anyway?

Mr. A. Scate:

We would expect the applicant to use the relevant data sources available to him or her.

The Connétable of St. Peter:

Basically you are saying you do it for them now?

Mr. A. Scate:

If there are any gaps then, clearly, we need the applicant to fill those gaps in coming to their assessment in the environmental statement.

The Deputy of St. John:

Yes. How was the considerable range of baseline information that exists on the ecology of the marine environment used within the E.I.A. process?

Ms. S. Le Claire:

We have provided our baseline data sets to the T.T.S. consultants, but the E.I.A. did not identify any direct impacts from the project on the marine environments that could not be mitigated against; for example, ensuring surface water did not drain into the marine environment. Consequently, we felt there was no need to investigate the potential consequence of any impact there might have been and no need for an established baseline beyond the baseline information we had given.

The Deputy of St. John:

Did the Planning and Environment Department at any point request more information or details on any section of the E.S.?

Mr. R. Glover:

Yes, they did. It is the document I referred to earlier of which I can give copies to you at the end of this meeting.

Mr. R. McInnes:

One of the things that quite often gets forgotten in an E.I.A. process is while people usually get hung up on the negatives, there is also elements of positives that should be pulled out from any E.I.A. process. You should not just be assessing negative impacts, there can be positive impacts. A good baseline data set on the ecology and environmental data, be it air quality, be it any issues within the marine environment, can demonstrate a positive benefit, a positive impact. But what seems to be

completely lacking in the E.I.A. process that I have seen in the E.S. is any presentation of data saying: "This is what the conditions are, this is the baseline" and, therefore, the change will be either positive or negative. One would expect to see those baseline data definitely in an E.S. in some form. What there seems to be is lists of data sources, which is great, but there is no synthesis of those data sources. Without seeing the raw information, at some point in the process, I do not understand how anyone can make a value judgment on whether the change is positive or negative. I just wonder how the decisions were made in the absence of the empirical data on which decisions were made rather than having a summary paragraph.

Dr. L. Magris:

I think that is a fair criticism. There could be a synthesis of the data. I think the decision was made at the pre-scoping stage when discussions were held that there was a significant amount of baseline data out there. We were able to refer the consultants to the reports and point them at other data sets that might be available. The decision was made at the time that that was sufficient. I think it is a fair criticism that those could be synthesised and put in the report. The information is there but it is not presented as part of the E.I.A., I take that as reasonable.

Mr. R. McInnes:

If that is a fair criticism, how can you then make a decision if the information is not there on which to make a decision?

Dr. L. Magris:

I guess what we were doing was drawing on departmental and professional judgment with knowledge of the site, again taking into account that there was not expected to be significant impact on the site. We were able to use our professional judgment in what we knew to be the case with the existing sources. I think it is a fair criticism that a member of the public coming to that environmental statement would not see that information clearly laid out to them or would have to go delving among the sources if they were to want to follow that up. I think that is a deficiency. I think we made the decision based on what we knew about the site and what we knew about the likely impact on the site which we deemed to be insignificant to the overall ecology of the site.

Mr. R. McInnes:

That was done at pre-scoping, yes?

Dr. L. Magris:

No, that was done as a result of the information given to us from the statement, yes. It was not deemed ahead of time because we did not have the information to make that decision.

Mr. R. McInnes:

Effectively, you are saying ... as a member of the public, if I picked up the E.S. and I tried to make a decision on what would be the impact on the marine environment, there is no substantive information in there other than a statement saying: "There will not be an impact because we can mitigate against it." If you are making a decision based on the E.S. that is the conclusion you have to come to. There is no way to verify that statement, there is no comparison of levels in terms of, let us say,

pollution; there is no identification of mitigation processes. It seems like you are saying a decision was made on the information presented in the E.S. but there is no empirical backup to give you the confidence that that is the right decision.

Dr. L. Magris:

The decision was made because of the operation of the plant being within standard from emissions to air and being hydraulically independent from the marine environment; there is no run-off that could not be mitigated against. The decision was made that the operations of the plant would have an insignificant on whatever the baseline conditions were.

The Deputy of St. Mary:

Are you beginning to regret that judgment in respect of the construction of the plant which is also part of the E.S, that there would not be any ...

Dr. L. Magris:

No. It is not a case of regretting anything. There are procedures in place to be able to legislate should breaches occur that cause pollution to the environment and that is what basically we are doing.

Mr. W. Peggie:

Which is evidenced in fact by works being undertaken at the moment in terms of investigation into an alleged pollution incident at the site so we have got very robust pieces of legislation in place that are able to adequately deal with potential problems arising.

The Deputy of St. Mary:

But the legislation did not stop 3 feet of water covering the entire site.

Mr. W. Peggie:

Legislation is not supposed to do that. We are looking at potential pollution outside into the marine environment.

Mr. R. Glover:

Can I just clarify the issue? The Construction and Environmental Management Plan was included within the planning permission and I think it was included in the reserve matters approval. Now what the Construction and Environmental Management Plan does, through the planning process, it requires the developer to demonstrate to the decision-making body, which is the Planning Department, the Minister, that the developers have thought about how they are going to construct the plans and how they are best going to do it in light of a raft of other legislation that is not planning legislation but is legislation such as the control of pollution legislation or, indeed, nuisance legislation in relation to noise or, indeed, traffic legislation in terms of where construction traffic will go. The planning permission tries to fix that to say: "You have a responsibility to abide by or comply with this Construction and Environmental Management Plan." It demonstrates to the regulatory bodies such as the Pollution Control Body that steps that will be taken will look to avoid any pollution incidents. What the Construction and Environmental Management Plan cannot do is stop or give an absolute guarantee there will not be any pollution incidents. If there are pollution incidents, it will not be the planning process that looks to prosecute or looks to

enforce those issues. They will be in breach of a different law that will be enforced through that particular law. The Construction and Environmental Management Plan offers the decision-maker, in terms of the planning permission, comfort that the developer is not just going to pile on to the site and just get on with it with no regard to any other responsibilities.

Mr. R. McInnes:

Just on that, will it be normal practice to have that agreed upfront prior to work starting, yes, and that would be signed off by your department?

Mr. R. Glover:

The Construction and Environmental Management Plan, yes, it was. It is approved through the approval of the reserve matters submission.

Mr. R. McInnes:

Yes, okay, and likewise the foul and surface water drainage?

Mr. R. Glover:

That was approved through the reserve matters approval, yes.

The Deputy of St. John:

Where possible, can we keep our ... the time is moving on and we have got three-quarters of an hour or thereabouts left, keep our responses short and if we do get bogged down, we will deal with that tomorrow and we will just move on, if at all possible, okay? Right, when assessing unknown pollution risks from potential contaminated ground, are there guidelines which a developer would be expected to follow?

Mr. W. Peggie:

There are. I refer back to the P.P.G. that we alluded to earlier on.

The Deputy of St. John:

Were these guidelines followed at La Collette?

Mr. W. Peggie:

Insofar as the need for a phase 1 investigation, as my colleague Richard referred, what was done there was tantamount to a phase 1 and then a following watching brief was deemed adequate, yes.

The Deputy of St. Mary:

Can you clarify phase 1 means desktop, does it?

Mr. W. Peggie:

It does, yes.

The Deputy of St. John:

Okay, that question is all right, okay. Is it normal practice for the controlled measures for dealing with potentially contaminated surface and ground waters not to be specific and described within the E.S. ?

Mr. W. Peggie:

Yes.

The Deputy of St. Mary:

So, it would be normal for them not to be specified?

Mr. W. Peggie:

We would not be specifically looking for control measures; specific site based control measures onsite, although in chapter 16 we have got a very robust indication that mitigatory operations will be put in place.

Mr. R. Glover:

Again, this is an example of the environment impact assessment process and the E.I.S. itself informing the planning decision. Because the planning decision was clear that the drainage for the site, whether it be foul and contaminated water, had to be submitted and had to be approved before any work started. Firstly, it would not have been appropriate at the planning permission stage in this case because the precise design of the plant still had not been identified at that point. By the point of the reserve matters submission it is clear that the exact design of the plant would be available and as such that design could then be made as to how surface water would be managed on the site.

The Deputy of St. Mary:

And ground water?.

Mr. R. Glover:

Surface water; not ground water.

The Deputy of St. Mary:

Sea water coming into the site? I do not know where that is covered, you see? Sea water coming into the site and then: "Oops, we have got stuff down there we did not think we had." I do not know where that is protected against or where that is covered.

Mr. W. Peggie:

There is a reference to ingress of sea water in the E.S..

The Deputy of St. John:

Can we cover that tomorrow morning, please?

Mr. W. Peggie:

16(3)(2).

Mr. R. Glover:

Yes, we can, we can explore that more tomorrow morning.

The Deputy of St. John:

Tomorrow morning, please. Okay. Would reserve matters; issues relating to the control of water; surface and ground and the implementation of appropriate mitigation measures for potential contamination release normally be satisfied prior to the construction beginning on the sites?

Mr. R. Glover:

Yes, and it was ... I think that might have been the question I just answered.

The Deputy of St. John:

Has the Planning and Environment Department signed off?

Mr. R. Glover:

They have.

The Deputy of St. John:

They have? All right, okay. Construction Environment Management Plan, Chapter 6, The Environmental Management System, has been provided as part of this review but with the proviso that it is commercially confidential and not for public release. Would this be considered normal practice for a document which is required to satisfy the reserve matters?

Mr. R. Glover:

That would be something I would have to take advice from the Law Officers on. In normal circumstances all documents are available that relate to a planning application, but matters of commercial confidentiality can be withheld. I have not taken specific advice on whether that is acceptable. My immediate reaction is to say I do not care if it says "commercial confidentiality", if we have made a decision and it is in the public domain, then the public should be entitled to see it. I would have to take advice from the Law Officers on that and I can do that.

Senator F.E. Cohen:

It may be in that case that, if there were elements that were commercially confidential that they could be just scratched out. I cannot imagine that the whole document can be regarded as commercially sensitive.

The Deputy of St. John:

So, would you follow that through, if you would, please?

Mr. R. McInnes:

Sorry, could I just ...? On the Construction Environmental Management Plan that has been signed-off, did you have the same messages sent through to you that it might be commercially ... because if you have signed-off then I assume ...

Mr. R. Glover:

No, I was not aware it was commercially confidential.

Mr. R. McInnes:

... that you could post it on your website or if someone requested it, you would not know whether that would be commercially confidential or not?

Mr. R. Glover:

The planning application requires the submission of the Construction Environmental Management Plan with the reserve matters submission and it was duly included as a

submission. That is ... you have caught me on the hop there because I did not realise there were any issues with commercial confidentiality.

The Deputy of St. John:

Right, okay, has the Planning and Environment Department signed-off on the schedule of foul and surface drainage? That has been confirmed, has it not?

Mr. W. Peggie:

Yes.

The Deputy of St. John:

Yes, who is responsible for issuing and policing consents to discharge in Jersey?

Mr. W. Peggie:

Environmental Protection. Planning and Environment.

The Deputy of St. John:

That is part and parcel of your department, is it not? Yes. What are the details of the existing formal consent to discharge into the Ramsar site from the J.E.C. (Jersey Electricity Company) power station?

Mr. W. Peggie:

Again, a prepared answer. "In accordance with the Water Pollution (Jersey) Law 2000, schedule 5 a deemed discharge permit, reference DPE2200001137, which was issued to the Jersey Electricity Company in respect of the power station at La Collette on 14th December 2000. This was in response to an application received from the company on 17th November 2000. The deemed permit allows the applicant to continue to make a discharge in accordance with their application until such time as the regulator is satisfied, then a more specific certificate will be issued. The application submitted was for the potential discharge of residual chemicals from the various treatment processes onsite which includes, biocides to control the marine growth within the cooling system in the discharge pipes, scale and corrosion and deposition inhibitors to prevent build-ups and prolong the life of the cooling system, boiler washing treatment chemicals, chemicals to treat boiler steam condensate, oxygen scavenger treatment, boiler water internal treatment chemicals, diesel treatment chemicals and chemicals to pre-treat the reverse osmosis of coagulants. It should be stressed that the above chemicals are those which are applied as part of the treatment processes at the power station and do not reflect the concentration of determinants entering the environment. Many of these materials may not be present in the discharge at all but their inclusion in the discharge permit application is in line with the precautionary principles. Environmental Protection worked closely with the J.E.C. in respect of this application and together successfully removed some of the potential contaminants from the original application which is now regulated under trade effluent consents.

Mr. R. McInnes:

So there are no actual levels specified in terms of hydro chemical levels or thermal levels in terms of actual values?

Mr. W. Peggie:

They are under review constantly and we have now knocked down about 15 of the 20 applied chemicals that were required or were specifically ...

Mr. R. McInnes:

But within the consent, are there actual chemical levels set?

Mr. W. Peggie:

Not determinant levels, no.

The Deputy of St. John:

Why did anyone not, in the Planning and Environment Department, identify that the representation of facts regarding discharge consents were at best disingenuous and, at worst, simply incorrect?

Mr. R. McInnes:

I think there is something like 23 occasions where there is reference made to the existing consent. There are no details given on that consent anywhere within the E.S. and it says that the discharges will be within terms of that consent but if that consent has no actual level, well, first of all it is not specified and then secondly it does not have any levels, then it seems somewhat disingenuous to say: "We are going to be matching that consent" when the consent first of all has not been explained.

Mr. W. Peggie:

I think it is fair to say that that is an aspirational statement which reflects the fact that they will indeed meet those consent levels because by the time the applications were required ... or by the time that the discharge is required a consent will have been drafted in order to ensure that it adequately reflects the need to protect the environment outside.

Mr. R. McInnes:

So that will be done retrospectively?

Mr. W. Peggie:

No, it will be done prior to discharge but it requires more work on behalf of T.T.S. and on behalf of our department to collaborate together to work out exactly what they are proposing to discharge the discharge.

Mr. R. McInnes:

Right, okay, that is dealt with, okay, that is dealt with sufficiently within the E.S. not to warrant a reserve matters issue?

Mr. W. Peggie:

I think it is a requirement of the water pollution law that a discharge consent specifically for that site will be required, so it is something that we would expect the applicants to undertake anyway.

Mr. R. McInnes:

Right, okay.

The Deputy of St. Mary:

Can you confirm about the J.E.C. discharges that are now approved under this deemed permit? You said that the various chemicals may not be present, implying that they may be present. I mean, just confirming that all 20, I think you said ...?

Mr. W. Peggie:

That is correct. There are somewhere in the region of 20 chemical determinants that were applied for within the confines of the application for that consent. We have worked with J.E.C. to remove the majority of those and continue to do so to ensure that they have got a workable permit for ultimate discharge so, while we are including these chemicals from the discharge consent application perspective, on a precautionary principle to ensure that if they exceed we are going to have levels of these sorts of things going out of the site, then we know what they are.

Mr. R. McInnes:

In terms of thermal discharge?

Mr. W. Peggie:

That is included as well.

Mr. R. McInnes:

Right, can we get those details tomorrow?

Mr. W. Peggie:

Thermal is dealt with in 16(4)(2) in the E.S.

The Deputy of St. John:

Okay, no factual values are provided in the E.S. regarding thermal discharges to the marine environment. Were these covered as part of the scoping exercise? If so, were they in the documented evidence?

Mr. W. Peggie:

I refer you to 16(4)(2) for thermal discharge. Again, let me just clarify whether ... we can discuss whether there is any more specific requirement there under. No direct thermal discharge to the water.

The Deputy of St. Mary:

So does the thermal discharge from the J.E.C. come under that consent we have just been talking about or is that also no consent? It comes under the 2000 consent?

Mr. W. Peggie:

J.E.C. does.

The Deputy of St. Mary:

The thermal?

Mr. W. Peggie:

Yes.

The Deputy of St. John:

Okay, you do not look happy with that answer.

Mr. W. Peggie:

I am still intrigued about your prior question in respect of the treatment of thermal discharge which I think has been adequately alluded to in 16(4)2 in the E.S.

Mr. R. McInnes:

I think, again, it comes down to providing empirical evidence to substantiate statements. Given there is monitoring at the power station of thermal discharge, it is alluding to the point we were making earlier on about having some sort of ... if a member of the public picks up an E.S., they should be able to say: "That is the existing thermal discharge; X degrees and the new discharge will be Y degrees and Y is less than X so there is no problem."

Mr. W. Peggie:

Which I accept it cannot be picked up from the E.S. itself but can be picked up from background detail.

Mr. R. McInnes:

No, not at all. But it cannot even be picked up from understanding the consent because the consent does not have an actual value for thermal discharge.

Mr. W. Peggie:

Not yet but there is a proposed ...

Mr. R. McInnes:

But that that is an exercise that is going to come; this is part of the E.S., so you cannot predicate an E.S. on a decision that might be made in the future; it has got to be based on the facts now, otherwise, the E.S. is flawed. So one would expect to have, even if it is not a consented value at least the range of values of the thermal discharge and what the proposed new thermal discharge might be but, again, it is the transparency of the data presentation. I hope that clears the confusion.

Mr. W. Peggie:

Yes, I understand where you are coming from.

The Deputy of St. John:

At what stage within an E.I.A. on Jersey would it be considered normal practice to consult with both internal and external consultees?

Mr. R. Glover:

It is when an application is received that is accompanied by an E.I.A. it goes out immediately to the consultees, there is the standard list of consultees which I presume has been shared with you previously in terms of how we deal with the E.I.A.s.

The Deputy of St. Mary:

You have told us that in this case there was not any scoping; that it was a pre-scoping exercise and that what we were told before was a general principle not followed in this case. Is that a correct summation of what we have been told so far about ...?

Mr. A. Scate:

The applicant did not request a formal scoping opinion.

The Deputy of St. Mary:

Yes, so there was not a scoping?

Mr. A. Scate:

So, there was not a formal scoping.

The Deputy of St. Mary:

Well, I am just going to quote you from the department's comments to the rescindment debate and one of the questions I have raised in my initial statement was why were no adequate environment assessment and marine impacts carried out? The department's reply was: "A rigorous environmental impact assessment, or E.I.A. which investigated the potential impact of airborne pollutants on the marine habitat was commissioned by T.T.S.", so that is what we are talking about. "The Environment Team, in consultation with internal and external advisers, including the National Trust, the Société and Concern, scoped the issues to be addressed in the E.I.A. and ensured that the final environmental statement was publicly available." The Environment Team, in consultation with internal and external advisers, including the National Trust, the Société and Concern, scoped the issues to be addressed in the E.I.A. Can you explain how that statement came to be written?

Dr. L. Magris:

I can do that. This is a mistake and it is incorrect information that we have just discovered. When Sarah was on maternity leave - my colleague, Sarah Le Claire, obviously - was on maternity leave at the point of preparing that answer, I looked into the files and I saw the pre-scoping and made the assumption that those scoping notes, which had gone external to the department in the way that full scoping opinion would have done. If a normal scoping opinion is requested and done, that would be sent to the whole list of people that the environmental statement was sent to. On this occasion, because it is a pre-scope rather than a scope, I misinterpreted what was in the files and I made the assumption that those pre-scoping flip chart notes were sent to the other people. They were not and that is inaccurate because it was a genuine mistake as Sarah was on maternity leave and I misinterpreted what was in the file. So, they did not participate in the pre-scoping. Where they did participate was where the environmental statement was produced, was made public, they were on that list of people. They received the whole environmental statement and had the opportunity to comment on it and, as you know, the Société did. So, that was just a genuine mistake I can only apologise for.

The Deputy of St. Mary:

I mean, is scoping a normal part of an E.I.A.?

Dr. L. Magris:

It is, if requested by the developer but the legislation says that they do not have to. It is not mandatory and it is not mandatory in other jurisdictions, as I understand it. It is definitely best practice. We would definitely encourage an applicant. I think this is an unusual situation because at the time of this particular decision and the development of this E.I.A. the States were involved in choosing the location and

because the location was chosen after the pre-scoping began, they were limited in the amount of information that they could find.

The Deputy of St. John:

So were any external organisations consulted in the pre-scoping exercise?

Dr. L. Magris:

No, no, they were not.

The Deputy of St. John:

Okay, how were the views of external consultees documented? No, that would not cover it? No, that does not cover it. Let us move on.

Dr. L. Magris:

But again, to bring it back, the environmental statement certainly was sent around the normal list and was of course publicly available for the 6 statutory weeks and also the 9 months that the whole planning application was open for.

The Deputy of St. Mary:

You see the unfortunate thing is that best practice ... you know, we are looking at the biggest capital scheme ever in the history of the Island, on a site next to a Ramsar site and so on, with all its issues around La Collette, next to the fuel farm and you have said that best practice would have been to have consulted on the scoping and we would encourage an applicant to do this but it did not happen and I just, you know, want to bowl that question again; why not?

Dr. L. Magris:

Because it is not mandatory and if the applicant chooses not to do that then we have no legislative back-up to require them to do so.

The Deputy of St. Mary:

Is there room or scope to invite the applicant? I mean, you were in quite close contact and it was all very friendly and you were working together well, it says in that letter so, why not: "Nudge, nudge, would you like to do some proper scoping?" as this is a huge project?

Mr. A. Scate:

I think it comes back down to the point again of whether the applicant developer has a sufficient confidence that they have got environmental issues in mind, which seem to be covered in the environmental statements.

The Deputy of St. Mary:

But there is an issue though, is there not, around; there are 2 issues around pulling in stakeholders; one is to generate public involvement anyway as a goal and public confidence, because there is a lot of non-confidence around incinerators, obviously and the second issue is that you will learn things that will improve the scoping exercise. So, again, roll it back, given those 2 basic reasons for encouraging a good scoping process and encouraging involvement, would not a little nudge have been appropriate for the developer to say: "Come on, do you not want some scoping, or can you do it all yourselves?"

Mr. A. Scate:

Well, I think we can nudge and we can encourage but, ultimately, we are the regulatory authority and if we do not get a formal request for scoping, then one does not have to take place. I think the point you raised about involvement in the process, public involvement and other agencies' involvement, scoping is not the end of the process. We then enter a big dialogue around the submission of the environmental statement and if the environmental statement is deemed to be missing bits of information, there were 9 months of involvement when this is publicly available for people to engage with the Planning and Environment Department over the environmental statement.

Senator F.E. Cohen:

That was very much the point I was going to make. Clearly, on reflection and hearing the discussions, it would have been of benefit had there been a formal scoping but there was pre-scoping and the key is that the environmental impact statement was in the public domain, was sent to consultees and was properly assessed. I wonder if there had been this additional scoping, whether that would fundamentally have improved the outcome or not.

The Connétable of St. Peter:

Just picking up again from that, obviously you did not send out, formally, the pre-scoping document but you did send out, as the Minister just confirmed, the environmental impact statement. How many of the external consultants did you go out to; consultees did you go out to, including the organisation listed in the States of Jersey's environmental Who's Who?

The Deputy of St. John:

Can we have the list and then we can continue?

Mr. R. Glover:

Okay, we can provide that list for you tomorrow.

The Deputy of St. John:

If you can provide that list.

Mr. R. McInnes:

Just picking up on an earlier point, best practice for any E.I.A., it is about learning from other people; it is not just relying on the consultants to do the job and, whether it is part of a scoping exercise or whether it is part of the data collation exercise, it is good practice to involve other people in that process. Would you accept that that is good practice; that you should be asking people for information?

Mr. R. Glover:

I think it is, yes, and this has particularly been enshrined in recent developments in the U.K. over E.I.A developments where developers are required to demonstrate how they have engaged with stakeholders prior to actually submitting a planning application. So that actively means that developers have to go out and tell people ... whether they are non-governmental organisations, pressure groups or just members of the public, they have to demonstrate how they have engaged with those people before

they submit a planning application. We have not got that requirement on Jersey. I think it is vital to remind ourselves of the level of public consultation that did take place on this application before the decision was made. Now, the scoping issue; as we said, the applicants are not required to do that and that is their prerogative. I think if you look at the timeline of how things happened, I do not want to pre-empt what T.T.S. will say but I think they will say that they did not come back for a formal scoping opinion because of the pressures of time in terms of when the States debate was that identified that the incinerator would go down at La Collette, when the 2006 order came into force and when the submission was made, so that is a question for T.T.S. What is clear is when the application was submitted that the non-governmental organisations and the non-statutory consultees were consulted and they were given copies of the environmental impact statement. Secondly, the application was publicised. It was widely publicised by the Planning Department in accordance with that statutory requirement. T.T.S. also undertook a number of public meetings while the application was pending and they fed back the information from those meetings to the Planning Department. Thirdly, and the Minister will recall doing this, is when the application was approved; the outline planning application, the Minister insisted that a condition be attached to the application saying that the reserve matter submission must come in with a schedule and programme of public meetings that T.T.S. would undertake prior to the determination of that. So, Planning insisted that there was public engagement through the planning process.

The Deputy of St. Mary:

Sorry, there was public engagement towards the end of the planning process?

Mr. R. Glover:

Well, that had happened before. As I have said before, there was plenty of public engagement while the planning application was in, not only statutory public engagement but also voluntary public engagement by T.T.S. and they provided that information for us. Once the planning application outline was approved, it was ... because we did not know exactly what the shape and the size of the new plant was going to be at that stage, at the insistence of the Planning Department and the Planning Minister that further public engagement had to take place by T.T.S. before he would consider the final design of the E.f.W.

The Deputy of St. John:

At any point was the scope of the E.I.A. revisited to address a change in circumstances or significance within the risks?

Mr. R. Glover:

Yes, the information that I will provide for you will indicate where they did change the things. Just for an example, there was the *Buncefield Report* on the fuel farm. That report was published during the lifetime of the application, after submission but prior to determination. So the applicants had to go back and look at environmental issues related to the *Buncefield Report*. As I say, the papers I can give you at the end of this meeting will demonstrate those things that happened.

The Deputy of St. John:

Okay, if you would. The scope of the E.I.A. was formally agreed on 4th May 2006, however, any impact of the Ramsar site was rejected in the *Ambios Report* produced in February 2006. How could this be possible?

Mr. R. McInnes:

I think we have covered that one and we have dealt with the next one.

The Deputy of St. John:

We have dealt with that, have we not, and the next one? Okay, would the N.G.O.s (non-governmental organisations) usually be asked for information as part of the E.I.A. process in Jersey?

Mr. R. Glover:

Yes, when the application is submitted they are.

Mr. R. McInnes:

Prior to submission.

Mr. R. Glover:

Through the scoping process?

Mr. R. McInnes:

Well, through just a data collation process. If you are trying to understand the environment around you, would you go and ask the local people who might be informed about that environment? You would expect that?

Mrs. S. Le Claire:

Absolutely. We have got examples of that at Plémont, people who have gone to Durrell to ask about ...

Mr. R. McInnes:

Yes, that is the sort of example.

Mrs. S. Le Claire:

There are plenty of examples there. As I said, we ... if a developer or consultant comes to us to ask us who would know about it, we would then put them in the direction of people ...

The Deputy of St. Mary:

Can I just ask with the other E.I.A.s - you know, you gave us a little list at the beginning - did you bring people in at the scoping stage to say, you know, sit around a table and, you know: "What issues have we got here?" with the few that you mentioned?

Mrs. S. Le Claire:

If requested to produce a scoping opinion, we would then require the applicant to provide us with an outline of their proposal and we would then circulate that to a wide list of internal and external consultees so that we could be comfortable with forming a scoping opinion.

The Deputy of St. Mary:

But only if the scoping opinion is requested, you are now telling us?

Mrs. S. Le Claire:

Yes.

Mr. R. McInnes:

So, within the E.S. that was produced, and I am not talking about the scoping side of it, or the pre-scoping side of it; the actual, just gathering the information, do you feel that N.G.O.s that might be informed are adequately consulted and information was adequately requested from them?

Mrs. S. Le Claire:

That would be something the consultant and T.T.S. would probably have to answer because they would be the people who would request that information.

Mr. R. McInnes:

Right, but you would not be looking for that as part of the determination process?

Mr. R. Glover:

Do you mean in terms of data collection or in terms of seeking their opinions ...?

Mr. R. McInnes:

Whether they hold information, so one might assume that some of the N.G.O.s listed within the Who's Who would hold information on, say, the marine environment, as an example and it might be worth asking them: "What records have you got?" because their records might not be in the public domain and they might not be available to everyone and it might be useful and germane for understanding some of the issues that might be at hand. That would be normal practice that you would ask, as I just said, you would go and ask Durrell for information, or whoever it might be. Do you think that happened appropriately in this case? In terms of your reviewing the E.S., would you expect to say: "Oh, they have not contacted so and so and I would expect them to contact so and so" or: "They have come to me and I told them to go and contact so and so" and there is no record of that happening. Would that be something you would pick up on when you are reviewing an E.S. as part of this iterative process?

Mr. A. Scate:

If we were doing formal scoping, then clearly we would look to engage others in that scoping opinion. Once the E.S. is submitted, clearly we need to form a view ourselves as professionals as to whether we feel there is sufficient information within there. Those other agencies would be consulted on the E.S. and have been and clearly the onus is also on those other organisations to respond through the consultation that they feel the E.S. is coming to the wrong conclusion or otherwise.

Mr. R. McInnes:

But you would not be alerted to that; you would not be looking for whether organisations have been contacted? That would not fall under your remit on receipt of the E.S. because it is an iterative process; there is not just necessarily one receipt; you can request additional information?

Mr. A. Scate:

I think in this case the answer is no, but clearly, in another case, if we go through the formal scoping, we would have the evidence of engagement of other agencies through that process.

Mr. R. McInnes:

Yes, but we have already accepted there was not that scoping, but you might be looking for ... the Marine Society might hold information on the marine environment that might not be exactly the same information that is held by the Environment Department, so it might be that you would expect them to be feeding into this process.

Mr. A. Scate:

I think the onus is on the developer and their consultant to ensure they gather the correct information to produce the environmental statement. We have not audited the process by which the consultant went through to come up with their conclusions.

The Deputy of St. Mary:

So you are relying completely on when you, the department, get the E.S., your process of making sure that all the information that should be there, is there? That is what you are relying on?

Mr. A. Scate:

Yes, we are relying on the technical expertise and the scientific expertise within the department which crosses a range of very important fields; both water, environment, waste environment and environmental discipline so the scientific experts we have in the department use their experience to analyse that environmental statement and the conclusions it is coming up with. Through their many years of experience, if they feel uneasy around certain areas, they will raise questions back to the developer.

Dr. L. Magris:

Sorry, can I just jump in there? I think as well that the point that Andy makes is entirely correct but of course as a backdrop to us perhaps missing something, that is why that document is publicly available for a long period. If, going back to the example you gave before where an N.G.O. held some information that they felt was pertinent, and perhaps had not been picked up by either the consultant or we had been daft enough to miss it, that would be their opportunity to come back and say: "Hang on a minute; we have that information and you have missed it and therefore the E.S. is deficient" and, you know, we would then address that with their comments and take those comments on board and go back as part of the iterative process with the developer.

The Deputy of St. Mary:

Which is more enticing for Joanna Bloggs out there; a member of a stakeholder group: "We are inviting you to a meeting where we would like to look at how we are going to go about seeing whether this is the right thing to do" or: "Here is the environmental impact statement landing on your doormat, please would you like to comment?" Which is more inviting?

Mr. A. Scate:

I think it depends on the individual involved. Clearly a weighty technical tome will be more enticing to some than others and you can take a personal view as to who ... you know, we all like to be engaged in different ways.

The Deputy of St. Mary:

Do you have a record of the responses you have got from sending out the E.S. to however many people ... do you know how many people you sent it to? Do you have a rough number?

Mr. R. Glover:

One from the Société.

The Deputy of St. Mary:

Yes, one response and now how many did you send out, roughly? 100? 150?

Mr. R. Glover:

Of the statements? To non-statutory consultees, that is outside the organisation; 4.

Mrs. S. Le Claire:

As well as being publicly available. These are hefty documents. We can also send out the non technical summary more widely but we did not in this instance

Mr. R. McInnes:

So how many people did you send the non-technical summary to because that is obviously ... now you are telling us that is not on the list?

Mr. R. Glover:

We had it available at reception.

Mrs. S. Le Claire:

People can request to have copies of it.

Mr. A. Scate:

We do not, as a matter of course, send out copies of the planning statements and planning applications to all consultees. We make sure consultees are aware that the planning applications and accompanying statements are available and the onus is on the individual to come and look at the documents. Because the resource implication of sending out a copy of an E.S. or even any other weighty planning statement to hundreds, potentially thousands, of consultees, it just is not practical and it just is not done.

The Deputy of St. Mary:

No, I would not be suggesting that but you are in the business of reviewing a really important document; £100 million, Ramsar site, and you have sent the document to 4 people.

Mr. R. Glover:

We have not sent it to 4; we have sent it to 4 outside the States.

The Deputy of St. Mary:

Yes, well, 4 outsiders; 4 of the public.

Mr. R. Glover:

Well, no, 4 organisations.

The Deputy of St. Mary:

Well, 4 organisations.

Dr. L. Magris:

Of course, available in 2 locations for any interested parties.

The Deputy of St. Mary:

Available in 2 locations and yet you want the feedback. Yet you say you want the feedback of people who have all this expertise, like, you know, all these people who know stuff about stuff that you might not know about.

Mr. A. Scate:

Yes, there were also a number of public meetings held and it is also a very important issue to raise that, through the planning process we need to publicise the availability of documentation. If individuals in organisations feel it is important enough for them to engage, they do engage with the department. We get much engagement on many applications when individuals think it is of importance. Unfortunately we cannot go out and elicit responses from people because that is not our role. We need to make sure there is a channel available for them to access all the relevant information and, if they consider it appropriate, to then respond.

The Deputy of St. Mary:

It is now normal practice in the States to send out 200-odd consultation documents routinely, on new legislation; on, you know, shops opening. I mean, I am on the list and I just get these things.

Mr. A. Scate:

Under the Planning Law and it is the same in this jurisdiction and in any other jurisdiction I have worked in, there is not a requirement to send out copies of planning applications to all of your public consultees. What you have a duty to do is publicise the fact that you have received it and you have made it publicly available through various routes.

The Deputy of St. Mary:

Okay.

Mr. R. Glover:

Can I just add something to that? It is a bit tangential but it is indicating how far the applicants - and they can blow their own trumpets on this and fight for themselves - they tried to engage with people. The health impact assessment, which is not a statutory requirement, was carried out by T.T.S. as a commitment for them as applicants. Now, I was involved in that in a number of workshops and there was a significant amount of public engagement with stakeholder groups within St. Helier. Not necessarily environmental stakeholder groups but stakeholder groups who reflected the community, Help the Aged were there, Havre des Pas Residents'

Association were there. Now, during that process it was quite clear what was being discussed was a current planning application for the energy from waste project. So the people did not get engaged in terms of the health impact but they were under no disillusion as to what the ultimate aim of that process was. It was in connection with the energy from waste plant.

The Deputy of St. John:

Yes, I think this has been well covered, okay, can we move on? When did the States of Jersey first contact Ramsar, via Defra, with regard to the energy from waste plant at La Collette? This is important.

Mr. A. Scate:

We have outlined previously that we did not ... we are the responsible authority under Article 3 of the Ramsar convention, therefore we did not formally consult Ramsar or Defra. However, contact has been had with Defra and Ramsar over the past few months, mainly due to third party individuals on the Island contacting Defra and Ramsar themselves and Ramsar and Defra are then contacting us as the responsible jurisdiction to ask us why and pointing those third parties back to the States of Jersey as the responsible jurisdiction. So that is the sort of engagement we have had.

The Deputy of St. John:

I see, okay. What alternatives have been considered if other proposals are within the Island's solid waste strategy, for example, recycling of furnace bottom ash fails to come to fruition?

Mr. R. Glover:

This is a tricky one to answer. The solid waste strategy is an adopted States policy and, you know, that is the direction the States of Jersey, as an Island, has now chosen to deal with its solid waste issues. Anything could change. There could be lots of different things changing. Once those situations change, we will have to address them appropriately. If, for example, they cannot recycle the bottom ash, through the waste management licence, they will have to tell the States of Jersey, the regulator in this case, that there is a problem with how are they going to deal with the bottom ash. The regulator will say: "Well, unless you come up with a solution to that that complies not only with my legislation but the other legislation, be it Planning or be it Environmental Health legislation, you are going to have to stop doing it." So, it is difficult to take into consideration every potential scenario that may or may not happen through a project. It is a risk assessment issue in terms of the people who undertake the project and to a certain extent it is a risk assessment issue that regulators make when they are saying: "Yes, you can have planning permission on the basis of how you have described the facility is going to operate." It is also a risk assessment that the waste regulators may have to take in terms of saying: "You can have a waste management licence because you are going to do what you are telling us you are going to do in your submission for a waste management licence."

The Deputy of St. John:

Further investigation and analysis is required to understand better the potential impact on the marine biota and especially features of interest as defined on the Ramsar site designated in commercial fisheries. Is any further research planned?

Mr. T. Du Feu:

I think we have a very good and robust data set on marine biota, of which the report has been produced to date. I think we are honest and we recognise that, yes, the methodology behind that survey and monitoring work was not designed specifically for La Collette. That is why as part of that report, we have come up with recommendations in that sector to take into account that comment. On our side, the beauty of that is we have got historic data, we were alluding to that before about the baseline and the need for baseline data. It goes back to 1993 and we know the situation elsewhere. Marine biota are commonly used as monitoring tools to assess pollution. The beauty, again, is that we can compare results with the U.K. and that is what we have done to assess levels. So, I think I would be inclined to continue the monitoring of marine biota with those adjustments and recommendations. Yes, I mean, we have concerns about rising arsenic levels and we are consulting with C.R.E.H. (The Centre for Research of Environmental Health) on that to see how those relate to the U.K. and also to continue our baseline collection of water quality data, so heavy metal data. We have now got established transits running out from La Collette to Demi des Pas. We have got established sampling points around the head of La Collette; we have got the baseline data so as regulators of the Water Pollution Law, if there is an incidence of pollution, we have got baseline data there to monitor it. It is very much an ongoing monitoring exercise and we will adjust it as need be for the future.

The Deputy of St. John:

Okay, are all the potential pollutant sources and pathways to the Ramsar site known and are they monitored?

Mr. T. Du Feu:

Well, again, it is a study of the marine biota. We are looking at the process as well in that once the E.f.W. starts to discharge, we will be issuing a discharge permit under the Water Pollution Law. That will have stipulated levels put on through discussions and we will also instigate monitoring on that to assess the levels.

The Deputy of St. John:

Can I put the question again? Are all the potential pollutant sources and pathways to the Ramsar site known and are they monitored?

Mr. W. Peggie:

I think it would be foolish for us to even consider that they are known. No, I think what we would consider is that as development continues along that area or within that area, potential pathways and potential contaminants will be reviewed and discussed and mitigatory procedures, if required, will be put in place to ensure that the pollutants are held back.

The Deputy of St. Mary:

Can I just say we are actually meaning all the way along the coast. We are not talking just about La Collette. That is the question.

Mr. W. Peggie:

No, of course not.

The Deputy of St. Mary:

No, because people walking along the beach can probably tell you; there are people who know about these things, if we ask them. They know where the pollution is.

Mr. T. Du Feu:

The other thing is it is a very wide area. We alluded to directives. Yes, we are part of the Bathing Water Directive, we do try to conform to that in implementing the new directive so that will come in there. The Water Framework Directive, the E.U. Water Framework Directive, we are implementing that. We do regular bathing water quality checks, outfall checks, we are the regulators of TTS discharge, so it is all part of that wider process.

The Deputy of St. John:

Rob, have you got any final questions?

Mr. R. McInnes:

No, I am fine. No, thank you.

The Deputy of St. Mary:

Can I? Somebody mentioned all these experts who looked at this E.S. within the department because it did not get much scoping input so the department looked at the E.S. when it came in. I just wanted to run through a few issues and ask whether you are satisfied that you were happy with these issues as presented in the E.S.; the effect of burning temperature on aerial emissions and scoping that to know how that relates to waste composition, especially when we do not know about serious floods and so on, so that whole area of burning temperature calorific value and where do I find this in the E.S. and how could you have made a judgment? P.M. (particulate matter) 2.5, the same question; their effect on human health, how many come out and so on and so on. Also, global warming as part of the sustainability criterion which is mentioned in passing but very cursorily and the "It will be all right" attitude that we have referred to quite a few times; T.T.S. plan to sort this. I just put those 4 things to you and say okay, so with the expertise that you had in the department, how did you deal with those 4 considerations and come to a conclusion that this is all right? Maybe it is one for tomorrow but, okay.

Mr. W. Peggie:

No, no, the second of those you referred to is a health protection issue in terms of respirable particulates, the burning temperature, as far as we are concerned would relate to the W.I.D. (Waste Incineration Directive) compliance of the facility. We as waste regulators are able, and we have the A.G.'s (Attorney General's) agreement that we can, under our legislation, regulate output from the stack and T.T.S. and their contractors in this instance have alluded to the fact that W.I.D. compliance will be stuck with. There will be a mechanism within their waste management licence, T.T.S.' waste management licence, to ensure regular reporting on emissions and if contraventions of the agreed determinand levels going up the stack are in essence there, we will be able to regulate against that. So, we certainly have the ability to ensure that the burning temperature is part of the wider issue, which is W.I.D. compliance.

The Deputy of St. Mary:

Yes, okay, but that does not explain where the data is in the E.S. and how you came to form a judgment that it would be compliant.

Mr. W. Peggie:

The E.S. specifically details that W.I.D. compliance will be stuck with in terms of emissions and, as a regulator, at the moment we were happy with that because we will be undertaking discussions with T.T.S. to ensure that emissions stick with those limits.

The Deputy of St. John:

Due to the nature of the remainder of the question I think it would be better answered tomorrow. Okay, Minister, Assistant Minister, Officers, I would like to thank you for the time you have given this morning and the way you have answered the questions. Thank you.

Senator F.E. Cohen:

May I make a closing comment?

The Deputy of St. John:

By all means, Minister.

Senator F.E. Cohen:

I am sorry I have not participated significantly in answering the questions. I have done that on purpose because this is very much a technical issue and I thought you were far better to hear the views of the officers who are qualified to respond to your specific questions.

The Deputy of St. John:

Minister, I did not expect otherwise because we had spoken on this previously and I accepted wholeheartedly your approach. Thank you very much indeed, all of you.