

# STATES OF JERSEY



## MINISTER FOR PLANNING AND ENVIRONMENT: DISMISSAL

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Lodged au Greffe on 8th January 2014  
by the Chief Minister

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STATES GREFFE

## PROPOSITION

**THE STATES are asked to decide whether they are of opinion –**

in accordance with Article 21(4) of the States of Jersey Law 2005, to dismiss Deputy Robert Charles Duhamel of St. Saviour as Minister for Planning and Environment.

CHIEF MINISTER

**Note:** In accordance with the requirements of Article 21(6) and (7) of the States of Jersey Law 2005 –

- (a) the Minister for Planning and Environment was given the opportunity to be heard by the other Ministers;
- (b) a majority of Ministers gave their agreement, on 6th January 2014, to the lodging of this proposition;
- (c) the reasons for dismissal are set out in the accompanying report.

## REPORT

### 1. Introduction

I bring this proposition to ask the Assembly to dismiss the Minister for Planning and Environment. I do this with the support of the majority of the members of the Council of Ministers, excluding the Minister himself.

The Council have lost trust and confidence in Deputy Duhamel. We can no longer work with a Minister who has failed to be honest, straightforward and open with fellow Ministers or with this Assembly.

In 2011, I proposed the Deputy as Minister for Planning and Environment despite knowing that a Vote of No Confidence<sup>1</sup> forced him to step down as President of the Chairman's Committee in 2007 for failing to work effectively. I did so because I believed that he would overcome this and work co-operatively and collectively with fellow Ministers in order to ensure our Island benefited from strong environmental advocacy.

He has not done so.

Instead he has failed to provide Ministers, fellow States Members and Officers with straight answers to straight questions. He has dissembled, chosen not to disclose critical pieces of information and hidden behind omissions and silence. Neither the Council, nor this Assembly nor his Department can function fully and effectively in those circumstances.

States Members and Council Ministers legitimately and rightly hold a diverse range of views. That diversity, and the tensions it can generate, help ensure good governance, but only if we have trust and faith in each other. Where the working relationship has irreparably broken down because we no longer believe each other, then we cannot do the best for our Island.

I do not bring this Proposition lightly. To call for the dismissal of a Minister is a serious matter, but I do so because it is the right course of action.

The following report sets out examples of the ways in which the Deputy has failed to discharge his Ministerial duties and obligations. I have explored these issues in depth and have ensured that the Minister has been provided with opportunities to be heard and to respond. I am not satisfied with his account however, and neither I nor my fellow Ministers believe he should continue to hold office.

I therefore bring forward this proposition to dismiss the Minister in accordance with the States of Jersey Law 2005.

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<sup>1</sup> P.40/2007

## 2. Background to proposition

On 13th November 2013, the Council considered proposition P.148/2013 “*Minister for Planning and Environment: Vote of No Confidence*” and concluded that concerns relating to the Minister needed further consideration.

On 20th November 2013, I met with the Minister and on the following day I wrote to him setting out my concerns about his conduct as Minister. The letter<sup>2</sup> focused on 4 examples –

- two planning applications where the Minister failed to act with the level of transparency and openness required of a Minister:
  - the Channel Islands Co-operative Society Charing Cross planning application (section 2.1);
  - Jersey Electricity Company St. Helier western sub-station application (section 2.2);
- two matters of critical importance with which he failed to deal in an efficient and appropriate manner, thus displaying a lack of judgement as a Minister:
  - Transport and Technical Services Department’s application for the disposal of asbestos (section 2.3);
  - review of the Island Plan (section 2.4).

This letter was not the first occasion on which I had expressed concerns to the Minister about his conduct and performance; there had been ongoing exchanges between myself, other Ministers and himself about such issues. The letter marks, however, the point at which it was irrefutably clear that action was required, not in relation to each individual issue, but in relation to the failure of the Deputy to uphold the role of Minister as a whole.

On 27th November 2013, the Minister attended a Council of Ministers’ meeting, where my letter was discussed and he was provided an opportunity to respond to the concerns raised. Having heard the Minister’s response, all members of the Council – excluding the Minister himself – concluded that he should resign. Accordingly, I met with him on 28th November and asked for his resignation. The Minister refused.

I wrote again on 29th November 2013<sup>3</sup> and asked that he reconsider his refusal. I explained that if he did not resign, I would lodge a Report and Proposition requesting his dismissal – having first provided him an opportunity both to review that draft Report and Proposition and to attend a Council of Ministers’ meeting to respond to that draft Report and Proposition.

This process of outlining concerns, and providing the Minister with an opportunity to respond at each stage, was the proper course of action both in terms of my legal obligations under the States of Jersey Law 2005 and my natural desire to treat the Deputy openly and fairly.

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<sup>2</sup> Letter dated 21st November 2013: Appendix 2, Attachment 1

<sup>3</sup> Letter dated 29th November 2013: Appendix 2, Attachment 2

## 2.1 Channel Islands Co-operative Society Planning Application (Charing Cross)

The *Code of Conduct for the Minister in the determination of planning applications and pre-application advice*<sup>4</sup> was introduced by the Deputy himself in order to ensure clarity about the role the Minister could play in the consideration of individual development proposals. That Code clearly outlines that pre-application meetings should only be attended by the Minister in exceptional circumstances and with his Officers. Pre-application advice includes advice given in relation to initial applications and advice given prior to the submission of revised applications.<sup>5</sup>

On 19th October 2012<sup>6</sup>, the Minister attended a meeting with the Chief Executive Officer of the Channel Islands Co-operative Society (“CI Co-op”) without his Officers present and without their knowledge. The matter discussed was the CI Co-op Charing Cross site.

On 10th December 2012, Officers met with representatives of CI Co-op, who indicated that they would be submitting a revised planning application for the Charing Cross site. Unlike the previous application it would include the demolishing of all 4 historic buildings on the site.

On 21st December 2012, I met with the Minister and his Chief Officer and specifically asked whether any politician or officer had met with the developer to discuss the loss of all the historic buildings on the Charing Cross site.<sup>7</sup>

The Chief Officer answered my question and said that no-one had discussed the loss of all historic buildings – until the point at which the CI Co-op brought forward the proposal – because he had not been informed by his Minister of the meeting on 19th October 2012. The Minister, however, chose not to answer my direct question and did not correct the inaccurate answer inadvertently given by his Chief Officer.

Later that day the Chief Officer, who still did not know from his Minister whether or not a meeting had taken place between the Minister and the CI Co-op, e-mailed the Minister to advise by e-mail that: *“if you have met with the applicant privately, and you have given advice on the application, then I feel that as per the protocol<sup>8</sup> ...you should declare this and play no further part in the decision making process. Such a decision would then be assigned to the Planning Applications Panel”<sup>9</sup>*.

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<sup>4</sup> Code of Conduct: Appendix 2, Attachment 3

<sup>5</sup> As set out in Supplementary Planning Guidance, Practice Note 1: Pre-application advice *“might be provided after a one-off meeting or, for more complex proposals, could form part of an ongoing process over a number of months”*

<sup>6</sup> See Appendix 1: Chronology of events

<sup>7</sup> The letter to the Minister, dated 21st November 2013, directly quotes the question the Chief Minister asked at the 21st December 2012 meeting of both the Minister and the Environment Department Chief Officer, this being: *“at any time between the application in August being deferred and the new and revised application coming in to demolish the historic buildings, did any politician or Officer meet the developer to discuss the loss of the historic buildings?”*. In asking the question in the meeting, 2 minor errors were made. The application was received in September 2011, not August as stated. The revised application which included the plans to demolish all the historic buildings had not been formally received, although the Department had been informed in an officer meeting that took place on 10th December 2012 with the CI Co-op that such an application was due to be submitted.

<sup>8</sup> The protocol referred to is the Code of Conduct as referenced above.

<sup>9</sup> E-mail dated 21st December 2012: Appendix 2, Attachment 4

The Minister did not respond to his Chief Officer, or to me to declare that he had indeed met with the CI Co-op. His silence and failure to disclose this information, either face-to-face at our meeting, or subsequently, is an unacceptable act of omission and falls below the standards of honesty and integrity expected of a Minister.

It was not until 9 months later, on 10th September 2013<sup>10</sup>, when Deputy J.A. Hilton of St. Helier asked in an oral question whether the Minister had met or spoken with the Management Team of the CI CO-OP, that the Minister confirmed he had indeed had a meeting.

When asked by Deputy Hilton if he had broken the Code of Conduct by meeting without Officers he said he: “*did not agree*”. When directly asked whether, at that meeting, alternative developments were discussed, the Minister stated that: “*it is my recollection that no alternatives were discussed*”. He confirmed again that this was his position at a following States Sitting on 24th September 2013<sup>11</sup>.

However, I am of the opinion that the Minister did discuss an alternative scheme at that meeting on 19th October because the Chief Executive Officer of the CI Co-op has himself confirmed in writing that during the meeting the Minister “indicated he might look more favourably on a scheme that addressed the Department’s concerns but which saw the demolition of the historic buildings”<sup>12</sup>. A proposal which was reflected in the revised proposals first discussed between the CI Co-op and Officers on 10th December 2012 and then in the revised application submitted by the CI Co-op on 29th January 2013.

It seems clear that a discussion on an application did take place between the Minister and the CI Co-op in October 2012, and therefore the Minister broke the clear intent of the Code of Conduct that he himself had introduced only 10 months previously.

As to his account to the Assembly, if one accepts that the Minister simply failed to recollect such a significant conversation on an application, then serious doubts must exist about his ability to uphold his duties and be accountable to the Assembly. If one does not accept the failure to recollect, then the Minister misled the Assembly, an act which requires resignation under the 2006 Ministerial Code of Conduct.

In summary, the Minister –

- failed in his responsibilities when he met with the applicant without officers present and participated in a discussion about an alternative, thus breaching the clear intent of the Planning and Environment Minister’s own Code of Conduct relating to the determination of planning applications:
- failed to be honest, open and transparent when he omitted to admit, when directly asked, whether he had met the applicant;
- either failed to recollect a significant matter, which has bearings on his capability to act as a Minister OR knowingly misled the Assembly.

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<sup>10</sup> Hansard transcript: Appendix 2, Attachment 5

<sup>11</sup> Hansard transcript: Appendix 2, Attachment 6

<sup>12</sup> Letter dated 14th November 2013: Appendix 2, Attachment 7

## 2.2 Jersey Electricity Company (JEC) – St. Helier western sub-station

At the Council of Ministers' meeting<sup>13</sup> on 13th November 2013<sup>14 15</sup>, Treasury and Property Holdings Officers presented a report concerning proposals for a new site for JEC electricity sub-station. The report focused on 2 sites, the Old Quarry, which had been under consideration for some time, and an area of the Lower Park. The Minister, when asked at that meeting if he had "pre-determined his preference" as to the site, stated that he had not, indicating he had not expressed any such preference on the subject to either the JEC or to the Parish of St. Helier.

The Minister's position is, however, very clearly contradicted by the Chief Executive Officer of the Jersey Electricity Company ("CEO JEC") and by officers of the Environment Department. Nor does it accord with the view of the Connétable of St. Helier –

- On both 25th June<sup>16</sup> and 28th June 2013, the Minister had meetings with the JEC to discuss proposed sites for the sub-station. JEC officials, and the Departmental Officers that accompanied the Minister, are very clear that at those meetings the Minister expressed a very clear preference for the Lower Park site despite, at the very same meetings, his Officers expressing their reservations about Lower Park.

In an e-mail dated 4th July 2013<sup>17</sup> from the CEO JEC to the Minister, the CEO summarises the discussion at those meetings and unequivocally states to the Minister that he recognises: "...*your strong support for the Lower Park facility – and that it is your clear preference over and above the old quarry site...*". The CEO goes on to note that "*it is clear that your officers... had some reservations about the merits of the Lower Park site. I note your willingness and commitment to progressing this Lower Park site despite your officer's reservations*". The CEO finishes by stating to the Minister that: "*With the confidence and commitment you provided last Friday, we would be willing to proceed with this site...*".

The CEO's view of the meeting is confirmed by the Environment Department Chief Officer who has stated in writing that: "*it was clear that both I and (name of officer) advised against the Lower Park option, but the Minister gave oral support to the JEC Chief Executive about the Lower Park option*"<sup>18</sup>.

- It is also the case that he had engaged the Connétable of St. Helier in discussions, despite stating he did not do so at the Council of Ministers' meeting on 13th November 2013. The CEO JEC, in an e-mail dated 5th July 2013 to the Connétable of St. Helier, states that: "*The Minister has also advised me in our meeting that he had discussed the (Lower Ground) site*

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<sup>13</sup> COM minutes for 13th November are currently in draft. Council is unable to sign off because the Minister for Planning and Environment disputes their accuracy.

<sup>14</sup> See Chronology of events: Appendix 1

<sup>15</sup> Extract of COM meeting minutes 13th November 2013: Appendix 2, Attachment 8

<sup>16</sup> In the Chief Minister's letter to the Minister dated 21st November 2013, the Chief Minister states the Minister attended a meeting with the JEC on 25th June at which no planning officer was present. For the purposes of clarification, the meeting was attended by the Director of Environment, but in his capacity as Deputy Chief Officer for the Planning and Environment Department.

<sup>17</sup> E-mail 4th July 2013: Appendix 2, Attachment 9

<sup>18</sup> Letter 14th November 2013: Appendix 2, Attachment 10

*with you*".<sup>19</sup> In an e-mail dated 17th November 2013, the Connétable of St. Helier confirms that he had discussed alternative JEC sites with the Minister<sup>20</sup>.

The Minister failed to be straightforward and transparent with the Council about the extent to which he had expressed a preference as to the site to the JEC or the Parish. This is not acceptable and falls below the standards of honesty and integrity expected of a Minister.

### **2.3 Disposal of asbestos**

The Minister has a responsibility to safeguard our environment and to challenge any planning application which presents a risk to it. It was therefore right and proper that he raised questions about Transport and Technical Services' application in 2010 to construct and operate an asbestos disposal cell.

In so doing, however, it was incumbent on the Minister to secure the Island's overall best interests. The Minister, however, pursued his personal preferences and opinions which were contrary to best practice and to the expert advice received. This was to the detriment of good governance and timely, robust decision-making, and represented a serious failure on the part of the Minister because of the lack of appropriate asbestos disposal facilities rated as TTS' highest priority on their risk register due to –

- the deteriorating condition of the existing containers and the potential for asbestos to be released into the environment;
- the existing containers being located close to the Energy from Waste plant and La Collette fuel farms, and hence the potential for them to be subjected to a blast wave in the event of an explosion.

This failure to make a timely decision constituted a very real risk to the health of Islanders.

In 2009, TTS undertook a detailed feasibility study into all available options for the disposal of asbestos. This study concluded that the construction of the asbestos cell was the best way forward, hence their 2010<sup>21</sup> application.

In early 2012, after finalisation of the Environmental Impact Assessment process that is standard for all such planning applications, the Minister requested that other options were explored – including off-Island vitrification – as he felt unable to make a decision until it was demonstrated that the solution proposed was the most appropriate. This was despite his officers clearly indicating their support for the application.

Work was therefore undertaken to provide the Minister with the information, evidence and expert opinion he required, including –

- In April 2012 LQM, a leading specialist environmental consultancy with an international reputation for assessing the risks posed by contaminants, published an independent review of disposal options and confirmed that TTS's proposed disposal route was the best available at the time.

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<sup>19</sup> E-mail 5th July 2013: Appendix 2, Attachment 11

<sup>20</sup> E-mail 17th November 2013: Appendix 2, Attachment 12

<sup>21</sup> See Chronology of events: Appendix 1



- This was further supported by a report compiled by the Minister's own States Environmental protection team, who upheld the LQM findings and concluded that the off-Island vitrification option, reviewed at the request of the Minister, was not a practical option.
- Advice received from the UK's DEFRA, which confirmed the recommended option, and also stated that vitrification via plasma was overly energy-intensive.

In August 2012, the Minister was accompanied by the Director of Environment – as waste regulator – on a visit to a French waste facility to further explore disposal options, including vitrification, at the request of the Minister. After that visit, Officers made a formal recommendation to the Minister, at a Ministerial hearing, that he approve the application.

At this point the Minister should have been reasonably satisfied and should have approved the application. He chose to defer the decision however, requesting that the alternative options were further explored, contrary to the advice of his officers, although he could easily have approved the application subject to an appropriate condition.

It was not until November 2013 that the Minister approved the application. This was –

- almost 3 years after it was submitted; and
- more than 12 months after he had received extensive and compelling expert evidence, and a clear recommendation from his Officers, that the application should be approved.

The Minister was entitled to be satisfied that these hazardous materials were handled in the best manner. It was clear as far back as August 2012 that TTS' proposals were in line with best practice. The Minister, however, in repeatedly requiring officers to pursue other options, subjected the Island to prolonged risk and potential danger from the existing asbestos storage facilities, and also to unnecessary expense.

This is not acceptable. It displays a lack of judgement and a serious inability to give proper weight to issues of public safety.

## **2.4 Review of Island Plan**

This Assembly, in its Strategic Plan, unequivocally set out the need for affordable housing. We did so because it is a priority to address the shortfall in social housing provision and to enable hardworking Islanders to realise their home-ownership dreams.

Over the summer of 2012, the Minister conducted a consultation on H3, the Island Plan policy which aims to support the provision of affordable housing. This work was subject to excessive and unnecessary delay and was not concluded until July 2013, at which point a series of Island Plan revisions were finally proposed<sup>22</sup>.

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<sup>22</sup> Revisions related to (i) remove the H3 policy; (ii) replace it with additional sites, and alongside this to; (iii) explore alternative mechanisms to extract value from new developments to support affordable housing

Neither myself nor my fellow Ministers disagree with the proposed revisions – on the contrary we were very clear with the Minister that revisions were required – however we have serious concerns about the time taken to get to this point.

The Minister failed to expedite the review of the Island Plan. Excessive delay was caused by the pursuance of his own policy ideas around home ownership through community trusts, and in seeking to establish control of access to affordable housing, even though access issues fall outside his remit. He did so despite myself and Ministerial colleagues expressing, and re-iterating our concerns, from December 2012 onwards.

### **3. Conclusion**

The Code of Conduct for Ministers sets out that the Council of Ministers “*will work together on the basis of consensual and collective decision-making*” and that the Council will be a “*forum for frank and open discussion*”.

We cannot achieve that, we cannot uphold the Code of Conduct, and we cannot maintain integrity of collective decision-making if any Member of the Council fails in their obligations to be honest, straightforward and open. The majority of the Council believes that the Minister must be dismissed. He has misled the Chief Minister, the Council, the Assembly and ultimately the people of the Island by failing on a number of occasions to be transparent and to disclose critical information, even when directly asked.

The majority of the Council believes he has failed to secure the Island’s overall best interest in the pursuance of policies which are not supported by expert advice or which have resulted in unnecessary delays. In so doing, he has displayed a lack of judgement and capability. We believe he has also breached the Minister for Planning and Environment’s own Code of Conduct relating to planning application advice.

It is the Minister’s right and duty to determine planning applications on his own, but this does not excuse him from his obligations to work as part of a team. Members of the Council of Ministers have tried very hard to work with him, but he seems unable to uphold the Council of Ministers’ Code of Conduct and work co-operatively with his colleagues.

I bring forward this proposition with regret, but also with the firmly held belief that it is the right course of action.

I therefore ask Members to dismiss the current Minister for Planning and Environment.

### **4. Financial and manpower implications**

There are no financial or manpower implications for the States arising from this proposition.

## CHRONOLOGY OF EVENTS

## Channel Islands Co-operative Society Planning Application (Charing Cross)

<b>Date</b>	<b>Event</b>	<b>Summary</b>
23 Sept 2011	Planning application submitted	Demolish 2 listed buildings but retain 4 listed buildings.
12 Oct 2012	Application considered at Ministerial Meeting	Decision deferred by Minister.
19 Oct 2012	Meeting <ul style="list-style-type: none"> <li>• Minister</li> <li>• CEO CI Co-op</li> <li>• No officers present</li> </ul>	Minister does not recall if an alternative scheme was discussed but the CEO Co-op confirms an alternative scheme discussed, including demolition of the historic buildings.
10 Dec 2012	Meeting <ul style="list-style-type: none"> <li>• Planning Officers</li> <li>• CI Co-Op reps</li> </ul> (Minister and Environment Department Chief Officer not present)	CI Co-op inform Officers, for the first time, that they will be submitting revised plans which include proposals to demolish all the historic buildings.
21 Dec 2012	Meeting <ul style="list-style-type: none"> <li>• Chief Minister</li> <li>• Minister</li> <li>• Environment Department Chief Officer</li> <li>• SoJ CEO</li> </ul>	Chief Minister asked the Minister about his involvement with pending revised application from CI CO-OP to demolish the historic buildings. Minister does not respond.
21 Dec 2012	E-mail – Environment Chief Officer to the Minister	Chief Officer advises that if Minister has met with applicant he should declare this.
29 Jan 2013	Revised plans received	Plans include proposal to demolish all listed buildings on sites, as set out in 10th December officer meeting.
13 May 2013	The Minister passes responsibility to determine Co-op application to Planning Application Panel	Minister's decision recorded at an internal meeting with Officers. Reason for decision not provided by the Minister.
2 July 2013	Further revised plans submitted	Demolish 4 listed buildings but retain 2 listed buildings
22 August 2013	Planning Applications Panel meeting	Refuse revised plans (now subject of Royal Court Appeal).
10 Sept 2013	Oral question – Deputy Hilton to the Minister	The Minister states: <ul style="list-style-type: none"> <li>• he does not agree that meeting without Officers was a breach of Code of Conduct as application determined by Panel, not himself;</li> <li>• he has “no recollection” of whether alternative developments were discussed at his meeting with Co-op.</li> </ul>

<b>Date</b>	<b>Event</b>	<b>Summary</b>
24 Sept 2013	Oral question – Deputy Hilton to the Minister	Minister: <ul style="list-style-type: none"> <li>• confirms position that he has no recollection if alternative developments were discussed;</li> <li>• states he withdrew from determining application in favour of Panel because he was conflicted but declines to disclose why.</li> </ul>

### **Jersey Electricity Company (JEC) – St. Helier western sub-station**

<b>Date</b>	<b>Event</b>	<b>Summary</b>
25 June 2013	Meeting <ul style="list-style-type: none"> <li>• Minister</li> <li>• ED Officer (Director of Environment)</li> <li>• JEC (CEO and Energy Division Director)</li> </ul>	Site of St. Helier sub-station discussed.
28 June 2013	Meeting <ul style="list-style-type: none"> <li>• Minister</li> <li>• ED Officers (CEO; Director of Planning)</li> <li>• JEC officials</li> </ul>	ED officers advise against Lower Park option. Minister gives oral support to JEC re: Lower Park.
4 July 2013	E-mail JEC CEO to the Minister	E-mail records that: <ul style="list-style-type: none"> <li>• JEC had looked at Old Quarry site over a number of years;</li> <li>• Minister had subsequently stated that was his intention to list old quarry site;</li> <li>• Minister requested on 25 June that JEC re-examine 3 additional sites ahead of 28 June meeting;</li> <li>• 28 June meeting: 3 additional sites discussed. Minister shows his “strong support” for Lower Park option, although it was “clear” that ED Officers “had reservations”;</li> <li>• Minister had already discussed Lower Park option with Constable of St. Helier who had also indicated support;</li> <li>• JEC to proceed with the Lower Park option on the basis of the “confidence and commitment” the Minister provided.</li> </ul>

<b>Date</b>	<b>Event</b>	<b>Summary</b>
5 May 2013	E-mail JEC CEO to Connétable of St. Helier	E-mail records that Minister advised JEC that he had already discussed Lower Park site with the Connétable (Connétable confirms to Chief Minister on 17 November that he had discussed alternative JEC sites on a number of occasion).
13 Nov 2013	COM Meeting minutes (draft)	<ul style="list-style-type: none"> <li>• Discussion about proposals for site for JEC sub-station discussed.</li> <li>• The Minister for Treasury and Resources expresses concern that the Minister had “pre-determined his preference” as to the site.</li> <li>• Denied by the Minister.</li> </ul>

### **Disposal of asbestos**

<b>Date</b>	<b>Event</b>	<b>Summary</b>
April 2009	TTS undertake a detailed feasibility study into all available methods for disposal of asbestos	Conclude construction of disposal cell is best option.
Dec 2010	TTS Planning application submitted	Application for construction of disposal cell.
Jan 2011 – October 2011	Full environmental impact assessments undertaken in accordance with the planning process.	
Feb 2012	Minister asks TTS to do further work looking at other options for treatment including off-Island vitrification.	
April 2012	TTS commission independent report Land Quality Management Ltd. (LQM)	Report confirmed TTS disposal route was best available option.
July 2012	Report – States Environmental protection team	Agree with LQM position. State off-Island vitrification not practical. State landfill the best option – as is common practice across jurisdictions including UK and France.
July 2012	Correspondence with DEFRA	DEFRA confirm recommended disposal route via landfill. State vitrification via plasma is very energy-intensive.
21 August 2012	Visit to waste management operation in Normandy, France: <ul style="list-style-type: none"> <li>• Minister for Planning and Environment</li> <li>• Director for Environment</li> </ul>	Minister wishes to research potential for vitrification via plasma and/or landfill. Visit confirms Director for Environment’s position – as waste regulator – that on-Island landfill is the best option.

Date	Event	Summary
28 August 2012	Recommendation – Environmental protection and planning officers recommend to Minister that TTS application is approved	
4 Sept 2012	Decision deferred by Minister	Minister receives e-mail, on 3 Sept, from French waste facility, stating they would be able to transport and treat waste depending on regulatory requirements. Minister therefore defers decision, <u>contrary to officer advice</u> , in order to establish if export possible.
Sept to end 2012	Correspondence Minister for TTS and the Minister	Minister for TTS requesting urgent decision. Minister for TTS reiterates unequivocal advice received from Environment officer and UK authorities that export for disposal would not be permitted/not be best option.
Jan 2013 – June 2013	Officers work to seek resolution, including additional research into alternatives options.	
June 2013	Officers visit French waste facility <ul style="list-style-type: none"> <li>• Director of Environment</li> <li>• Director of Health and Safety</li> <li>• Chief Officer TTS</li> </ul>	Whilst vitrification facility had been reviewed as part of TTS feasibility study in 2009, which concluded use of facility was prohibitively expensive, and had also been discussed as non-viable with DEFRA – officers visit to look at other additional aspects including: <ul style="list-style-type: none"> <li>• Health and safety</li> <li>• Environmental best option.</li> </ul>
September 2013	Report Officer report produced summarising issues	Rules out use of vitrification for Jersey's asbestos from on grounds of: <ul style="list-style-type: none"> <li>• health and safety</li> <li>• cost.</li> </ul>
November 2013	Approval of TTS application	

## Attachment 1

**Chief Minister of Jersey**

Cyril Le Marquand House  
 St Helier, Jersey, JE4 8QT  
 Tel: +44 (0)1534 440546

21<sup>st</sup> November 2013

**Private & Confidential**

Deputy Rob Duhamel  
 5 Douro Terrace  
 Le Mont Pinel  
 St Saviour  
 Jersey JE2 7RS

Dear Rob

Further to our meeting on Wednesday 20<sup>th</sup> November 2013 I am writing to outline my concerns regarding a number of matters and the way in which you have conducted yourself as the Minister for Planning & Environment over the past two years. My concerns have been expressed to you on a number of occasions and I detail below two specific cases in which I believe you have not been open with me, and the Council of Ministers.

**Channel Island Co-Operative Society (CICO-OP) – Planning Application**

As States Members we are all aware of the extremely protracted planning process for the redevelopment of the CICO-OP site at Charing Cross. My attention was drawn to your personal involvement in this application in late 2012 when it was stated that you had met (without officers) with the Chief Executive Officer of the CICO-OP and that you had indicated to him that a revised application that involved the demolition of the historic buildings would be acceptable to you.

I met with you on the 21<sup>st</sup> December 2012 at which time I raised a number of matters which included your involvement with the revised application from the CICO-OP to demolish the historic buildings. I asked you a specific question "at any time between the application in August being deferred and the new and revised application coming in to demolish the historic buildings, did any politician or officer meet the developer to discuss the loss of the historic buildings?".

Your Chief Officer replied "No, only when the scheme came in."

You did not provide an answer to my direct question.

On the 10<sup>th</sup> September 2013, Deputy J Hilton put to you an oral question asking whether you or any member of your Planning Application Panel had met or spoken with the Management Team of the CICO-OP. In your response you stated "so it just leaves the Minister, and the Minister has spoken with the Chief Executive Officer of the CI Co-Op and discussed a previous Planning Application in certain regards and that is it." A number of ensuing supplementary questions were raised by Members and in response to those questions, you

did reaffirm that a meeting had taken place, albeit you stated that it was to discuss the outcome of the Ministerial hearing in a particular regard and that regard being the particular chronology of the whole sorry state of affairs that had gone on for the last eighteen years. I find it unacceptable that you did not advise me of this meeting when I questioned you so clearly in December 2012 and it was not until you were being questioned openly and in public by another States Member that the true position was revealed.

As a consequence of the views expressed at the Council of Ministers' meeting of 13<sup>th</sup> November 2013 I wrote to the Chief Executive of the CICO-OP directly. The Chief Executive has confirmed to me that you did meet with him (without officers from the Planning Department). At that meeting you indicated that you might look more favourably on a scheme that addressed many of the Department's concerns but which saw the demolition of the historic buildings on the site. The Chief Executive did however say that you did not say categorically that you would approve such a scheme.

Again, I find it totally unacceptable that you did not give me a direct response in 2012 and it is now some eleven months later that we find out what actually happened.

I also believe that the response from the CEO of the CICO-OP shows that you misled the assembly when you answered Deputy Hilton as follows:

"I did not keep a note. Perhaps the question should be asked of the Co-Op, of the Chief Executive Officer, and it is my recollection that no alternatives were discussed."

#### Jersey Electricity Company (JEC) - St Helier Western Sub-Station

The location of the new Jersey Electricity Company (JEC Sub-Station) to the West of St Helier has been subject to much debate over recent months and the JEC have become extremely frustrated over the entire episode. When this matter was raised at the Council of Ministers' meeting on 13<sup>th</sup> November 2013 the discussion focused on two sites, the first being the Old Quarry Site that had been under consideration for some months and the second being the use of the Lower Park. During the meeting it was stated that you had been directly involved in discussions with the JEC and had expressed a preference for the Lower Park Site. You denied this assertion and stated that you had not expressed any view on the subject to either the JEC or the Parish of St Helier. There was clearly a significant divergence of views and I therefore wrote to the Chief Executive of the JEC, the Chief Officer of Planning & Environment Department and the Connétable of St Helier.

I have received a clear indication from the Chief Executive of the JEC, with supporting email correspondence, to which you were copied at the time, that you had been actively involved in discussions.

For example, the JEC have confirmed that you attended a meeting at their headquarters on 25<sup>th</sup> June 2013 with no Planning Officers present. There was a further meeting on 28<sup>th</sup> June 2013 at the Town Hall which was confirmed by your Chief Officer and he also confirmed that he was present at that meeting.

There is an email dated 5<sup>th</sup> July 2013 from the Chief Executive of the JEC to the Connétable of St Helier in which he states that the company met with you twice the previous week which again confirms that you did meet during the week of 24<sup>th</sup> – 28<sup>th</sup> June 2013. In their email the JEC state that you were prepared in principle to consent to it. I reproduce the extract from that email but for completeness, I also attach a full set of emails with the last being dated 2<sup>nd</sup> August 2013 which include this particular reference. You were copied into the entire string of emails:



"He also asked us to look at an above ground facility at Lower Park. As you may know, Planning Officers rejected this site completely initially, which is why it was not advanced but the Minister is prepared in principle to consent it, despite some reservations of his Planning team. It is not ideal for JE, involves longer cabling and some technical challenges, but we believe it is feasible."

From this email string, and from the confirmation letter I have received from the Chief Executive of the JEC, it is clear to me that you were directly involved in conversations about the use of the Lower Park and yet you have made no attempt to challenge the accuracy of the email string if you believed the content to inaccurately portray your position as Minister for Planning & Environment.

To deny that you had expressed any view on these two important planning matters when challenged directly by the Council of Ministers can at best be seen as misleading Ministers. I believe this is unacceptable behaviour for a Minister when dealing with Ministerial colleagues and also when holding a position of such responsibility.

In addition to the two matters highlighted above, there are also a number of other issues that have been raised during 2012/2013 which I do not consider you have dealt with in an efficient and effective manner to fully discharge your responsibilities as Minister.

When we met on 21<sup>st</sup> December 2012 we discussed the Transport & Technical Services Department application for the disposal of asbestos. The delay in determining this application has been unacceptable when one considers the chronology dating back to the original application being submitted in December 2010. You understandably challenged the disposal route being proposed. Between your Officers and Transport & Technical Services it is clear that a number of further reviews were undertaken to determine the appropriate disposal route for the Island's asbestos. By April 2012 a further independent report had been compiled and submitted to you that confirmed the disposal route as being the best available option at this present time. In August 2012, despite further off-Island disposal options being requested by yourself, and following receipt of correspondence from DEFRA, Officers from your Department made a clear recommendation to you that the TTS application should be approved.

The ensuing delay from that time up to the final approval date did not see any material change in the advice you were receiving on best practice for the safe disposal of asbestos waste.

Whilst I and many others would have welcomed the opportunity to export the Island's asbestos waste to an alternative jurisdiction, it should have been clear to you as far back as August 2012 given all of the advice your Officers were providing to you and the expert advice received from DEFRA, TTS Officers and their external professional advisors, that the disposal route being proposed in Jersey was best practice.

Another matter where your actions as Minister have caused me concern involves the review of the Island Plan H3 policy. The Council of Ministers was considering the requirement for this policy in late 2012 and we discussed the matter at our meeting on 21<sup>st</sup> December 2012 and at subsequent meetings in the early part of 2013. The Council of Ministers finally agreed the proposed revisions to the Island Plan in July 2013 and for the formal consultation and public enquiry process to commence.

During this period you were seeking more detailed information on the definition of affordable housing and specific legal advice which at subsequent meetings turned out to be not clearly defined with the Law Officers' Department. This caused tension at the Council of Ministers' meetings and a further delay to the process.

Overall, I am particularly concerned at the way in which you have conducted yourself over the CICO-OP application, JEC Sub-Station and the asbestos application. I am disappointed that you did not provide me with a straight answer regarding the CICO-OP meeting when we met in December 2012 and from the correspondence that I have now seen, I believe that you misled Council of Ministers' Members with what you said at the meeting on 13<sup>th</sup> November 2013.

As a result of the above, it is with regret that I must formally ask you to tender your resignation as Minister for Planning & Environment.

I am sorry that we have come to this point and that I have had to write to you in these terms.

Your early response would be appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Gorst', with a long horizontal stroke extending to the right.

**Senator Ian Gorst**  
**Chief Minister of Jersey**

direct dial: +44 (0)1534 440546  
email: [chiefminister@gov.je](mailto:chiefminister@gov.je)  
[www.gov.je](http://www.gov.je)

Encl.

**Chief Minister of Jersey**

Cyril Le Marquand House  
St Helier, Jersey, JE4 8QT  
Tel: +44 (0)1534 440546

29th November 2013

**Private & Confidential**

Deputy Rob Duhamel  
5 Douro Terrace  
Le Mont Pinel  
St Saviour  
Jersey JE2 7RS

Dear Rob

Further to the meeting we had on Thursday 28<sup>th</sup> November 2013, I am writing to ask you to reconsider your position following the Council of Ministers' meeting on Wednesday 27<sup>th</sup> November 2013.

When I met you yesterday to ask, on behalf of the Council of Ministers, for your resignation, you indicated to me that you may not resign. If that is your position, I will have no option, with the support of the Council of Ministers, but to take a report and proposition to the Assembly asking Members to approve your dismissal.

I would be grateful if you could respond in writing by lunchtime on Monday 2<sup>nd</sup> December 2013 giving me your final decision on this matter.

If your position remains that you will not resign, I will then start the process of drafting a report and proposition. Once that is drafted I will provide it to you for your consideration. I would then ask you to provide a written submission, addressing the issues raised in the report.

Once you have done that I will present both the report and proposition, and your response, to a Council of Ministers' meeting, where you will be invited to address Ministers again.

I regret that Ministers have felt it necessary to ask for your resignation and that I have had to write to you again in these terms.

Yours sincerely



**Senator Ian Gorst**  
**Chief Minister of Jersey**

direct dial: +44 (0)1534 440546  
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**Attachment 3****Determination of Planning Applications: Code of Conduct for Minister for Planning and Environment**

A decision made on 5 December 2011:

Decision Reference: MD-PE- 2011-0120

Decision Summary Title:	Code of Conduct for the Minister of Planning & Environment in the determination of planning applications and pre-application advice.	Date of Decision Summary:	5 December 2011
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Decision Summary Author:	Principal Planner	Decision Summary:	Public
		Public or Exempt?	

Type of Report:	Person Giving
Oral or Written?	Oral Report:

Written Report Title:	N/A	Date of Written Report:	5 December 2011
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Written Report Author:	Principal Planner	Written Report:	Public
		Public or Exempt?	

Subject: Code of Conduct for the Minister of Planning & Environment in the determination of planning applications and pre-application advice.

**Decision(s):**

The Minister adopted with immediate effect the Code of Conduct, attached at Appendix 1, for the consideration and determination of planning applications.

The Code will not apply to the applications attached at Appendix 2 as these applications have already had Ministerial involvement and it would be inappropriate and unreasonable to require the applicants to re-start the process of consideration.

**Reason(s) for Decision:**

To ensure that there is a clear framework in place that indicates when the Minister might become involved in the consideration of individual development proposals. This framework will assist the Minister, States Members, members of the public – whether they are pursuing a development or have concerns over a proposal –and Officers in understanding in what circumstances the Minister might become involved in considering development proposals.

## Resource Implications:

None

## Action required:

Publish the Code of Conduct and request the Greffier of the States present the Code to the States for their information

## Signature:

Deputy R Duhamel

## Position:

Minister

## Date Signed:

05.12.11

## Date of Decision (If different from Date Signed):

05.12.11

[Hide report](#)

MD-PE-2011-120

APPENDIX 1

## Minister for Planning &amp; Environment

Code of Conduct for the consideration and determination of planning applications and pre-application advice.

December 2011

## 1. Application Determination

1. The Minister will only become involved in determining applications for planning permission or any other application that requires consent in exceptional circumstances. The exceptions are likely to include:
  - Proposals of Island wide significance
  - Proposals where there is published ministerial guidance or recorded pre application advice for major proposals
2. In all cases when the Minister does become involved in determining applications for planning permission or any other consent the reasons for the intervention will be publicly recorded, and any proposed call in will be discussed with the officers prior to the Minister using reserve call in powers.

3. All applications determined by the Minister will be determined by way of a Public Inquiry or Ministerial Hearing. The Minister at a Ministerial Hearing will allow a full explanation of all material considerations to be given by the presenting officer, followed by a full audible debate to assist all those present to see how material considerations are being balanced.
4. Full reasons for a decision which address all the material issues raised during consideration of the application should normally be given in writing, after the Hearing, as part of the public record of the decision.

## 2. Pre Application Role

1. The Minister will only become involved in pre – application discussions in exceptional cases. These will include proposals of Island wide significance and major proposals where there is published Ministerial Guidance unless requested to become involved by officers. All pre applications with Ministerial involvement should, in every case:
  - be with officers present
  - be by appointment to allow time for preparation
  - be with ministerial guidance, officer note of advice and/or conclusions sent to proposer and recorded on file
  - avoid lobbying and explain the Minister will not be able to determine an application on which lobbying has occurred
  - include a statement in the note of the pre application discussion that the Minister has not made or pre-empted any decision on the application
  - include a statement in the hearing report of the Minister's recorded pre-application advice or guidance and that the Minister has not pre-determined him or herself on the application
2. If either of the last two bullet points cannot be included then the Minister is conflicted and should not determine the application.
3. The Minister should pass requests for advice or representations on other proposals to the case officer without comment
4. If the Minister is involved in pre-application discussion and guidance for a proposal of island wide significance the Minister will publish guidance and make it publicly available as soon thereafter as possible, following planning forums or other inclusive public consultation
5. If pre application discussions or guidance are offered on lesser applications at the request of officers, the officers will record that advice and ensure it is publicly available when any ensuing application is submitted, and incorporated in the officer report to a Planning Applications Panel or Ministerial Hearing.

## 3. Potential Interests and Pre application and Application Stages

1. If there is a direct or indirect financial interest or a prejudicial interest, or where the Minister has been lobbied, or has been subject to personal approaches or personal interests he or she would not be comfortable disclosing, the Minister should regard him/herself as conflicted on receipt of the application and not determine the application, to ensure public misconceptions of undue influence do not arise.
  
  2. If the Minister is conflicted the Planning Applications Panel (PAP) or Assistant Minister, subject to PAP Code of Conduct, will be responsible for determining the decision.
-

## Attachment 4

**From:**  
**Sent:** 21 December 2012 13:16  
**To:** Robert Duhamel  
**Cc:**  
**Subject:** Charing Cross - CoOp scheme

Dear Rob,

Further to our meeting this morning with the Chief Minister and our subsequent chat afterwards. I thought it would be helpful just to confirm what was discussed in relation to Charing Cross.

There was a question this morning as to whether there have been meetings with the applicant in the period of time between the Ministerial hearing and their subsequent meeting with the department on the 16th November.

I wanted to clarify my own involvement. I can confirm that I was made aware that the applicant was considering a new scheme when I met the Chief Exec of the CoOp at the Chamber of Commerce lunch on the 7th November as we were seated on the same table. This conversation led to my asking that they come in formally to discuss this with the department in the proper manner. This led to the meeting on the 16th November. I was very clear in my comment to the CoOp on the 7th November, in that their ideas would clear all other objections out of the way, but lead to a strong debate about heritage. Following this meeting we emailed the CoOp with the state of play as we saw it. We made it clear that the scheme had many plus points, but made the heritage argument far more difficult but that there was a basis for further discussions.

All I can advise in terms of your own position is that if you have met with the applicant at all privately, and you have given advice on that application, then I feel that as per the protocol we have in place, then you should declare this and play no further part in the decision making process. Such a decision would then be assigned to the Planning Applications Panel.

I am not in a position to say one way or another as to whether you have had contact or whether any contact you have had with the applicant falls into a box of application advice or could be construed as such, as that is a matter for you to consider.

I have no doubt that whilst a revision to the scheme to address the expected reasons for refusal is positive, the solution they are proposing does cause very strong heritage concerns. An officer report would have to take such strong concerns into account in any recommendation. We have not as yet received any amended plans and so whether or not their ideas turn into anything remains to be seen. I would in the meantime ask you however to review any involvement you have had, if any.

Regards

**Chief Executive Officer**

Department of the Environment  
States of Jersey  
telephone: +44 (0) 1534 448400  
fax: +44 (0) 1534 445528  
email: [a.scate@gov.je](mailto:a.scate@gov.je)  
[www.gov.je](http://www.gov.je)

 Think of the environment...do you need to print this e-mail?



10<sup>th</sup> September 2013

**5.3 Deputy J.A. Hilton of St. Helier of the Minister for Planning and Environment regarding discussions with the Channel Islands Co-operative Society regarding the planning application for Pitt Street/Dumaresq Street:**

Has the Minister or any member of his Planning Applications Panel met or spoken with the management team of the Channel Islands Co-operative Society to discuss their planning application for Pitt Street/Dumaresq Street without planning officers being present?

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

In order to answer this question, I have asked my Planning Applications Panel members to give me a written assurance as to whether they have or have not and the written assurances are as follows: Deputy Power: "No." Constable Le Sueur Gallichan did not send in a written reply, but he has spoken to me verbally this morning and he has assured me no. Constable Gallichan: "No. I was also not part of the panel that considered the application." Deputy Maçon: "No, I have not." Deputy Baudains: "I have not." Deputy Le Hérisier: "No, but I was invited and I declined." Deputy Bryans: "No." So it just leaves the Minister, and the Minister has spoken with the Chief Executive Officer of the Channel Islands Co-op and discussed a previous planning application in certain regards and that is it.

**5.3.1 Deputy J.A. Hilton:**

Can the Minister tell Members whether any member of the Planning Department, the planning officers, were present at that meeting?

**Deputy R.C. Duhamel:**

At the meeting that did take place, it was an invited meeting by the Chief Executive Officer to discuss the outcome of the Ministerial hearing in a particular regard, and that regard being the particular chronology of the whole sorry state of affairs that has gone on for at least 18 years, and to put the Minister in a position where he understood better the financial implications of a previous application. As I say, at that meeting no officer was present because no officer was invited.

**5.3.2 Deputy J.A. Hilton:**

Will the Minister agree with me that under the code of conduct that he has broken the code of conduct, that at all times the Minister for Planning or members of his panel should be accompanied by a planning officer when discussing planning applications with applicants?

**Deputy R.C. Duhamel:**

No, the Minister does not agree with that at all. The Minister for Planning and Environment has signed up to a code of conduct for consideration and determination of planning applications and pre-application advice. Under that particular code of

practice, under point 3, it does suggest: "3.1 If there is a direct or indirect financial interest or prejudicial interest or where the Minister has been lobbied or has been subject to personal approaches for personal interests he or she would not be comfortable in disclosing, the Minister should regard him or herself as conflicted on receipt of an application and should not determine the application to ensure public misconceptions of undue influence do not arise." The Deputy and Members of House will be aware that this Minister has not determined the application. The application has been determined or not determined, as the case may be, by the Planning Applications Panel, which is what the protocol asks me to do.

**5.3.3 Deputy J.H. Young of St. Brelade:**

Would the Minister tell the Assembly when that meeting took place, whether there was a note kept of it and whether or not the subject of alternative developments was discussed?

**Deputy R.C. Duhamel:**

I did not keep a note. Perhaps the question should be asked of the Co-op, of the Chief Executive Officer, and it is my recollection that no alternatives were discussed.

**5.3.4 Deputy J.A. Hilton:**

On reflection, would the Minister not agree that it is inadvisable for either himself or any member of his Planning Applications Panel to meet any applicants prior to an application being submitted or considered?

**Deputy R.C. Duhamel:**

I think as a general point this Minister would, but I would also state that this application has been going on for some 18 years. It has been discussed by many Members in the House, Ministers, ex-Ministers and Members to boot, and indeed it has gone on for far too long, so that does expose many Members to offhand discussions or comment or whatever over this particular application. But I say in general the Deputy is absolutely right, and that is why the planning inspector, working with myself when I was an Assistant Minister, worked up the code of practice. That is why this Minister has signed up to the code of practice and that is why the Minister has followed the code of practice in this regard.

**24th September 2013**

**7.4 Deputy J.A. Hilton of St. Helier of the Minister for Planning and Environment regarding a meeting between himself and representatives of the Co-op:**

Would the Minister for Planning and Environment inform Members of the date of the meeting which took place between himself and representatives of the Co-op (Channel Islands Co-Operative Society Limited) which he referred to on 10th September and would he also state when he made the decision not to take part in determining the planning application?

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

Friday 19th October 2012, and it was on Monday 13th May 2013 that I confirmed my decision not to sit in with my Planning Applications Panel to determine the application.

**7.4.1 Deputy J.A. Hilton:**

In an answer given to Deputy Young on 10th September, when asked if alternatives had been discussed, the Minister for Planning and Environment responded: "It was my recollection that no alternatives were discussed." Is the Minister for Planning and Environment still of the opinion he did not discuss alternative amendments or schemes with the applicant and, if so, did he not find it surprising that after considering the original application at a Ministerial meeting in October that the applicant should submit an application which included totally demolishing the building?

**Deputy R.C. Duhamel:**

I notice the Deputy Bailiff has left the Chamber and this application is *sub judice* at the moment so I am wondering or not I should answer that particular question.

**The Greffier of the States (in the Chair):**

I understand the matter is coming to the court, I am not sure it is yet before the court, so I think you can answer the question.

**Deputy R.C. Duhamel:**

I think in that case, yes, it is my recollection that alternatives were not discussed and it is not a matter of surprise that a particular application which has not been considered by the Planning Applications Panel or myself has not been discussed or presented to a panel or body for decision in the light of comments that have been expressed by the department. I feel that if I say any more we are starting to stray into an area that might be a form of challenge for the particular application that has been presented to the Planning Applications Panel for decision-making. I would just like to say that in all circumstances I have followed the Ministerial protocol, as I read out last time, and I remind the House that I have not determined the application.

**7.4.2 Deputy J.A. Hilton:**

I do not believe the Minister for Planning and Environment answered part of my question. The question that I asked the Minister for Planning and Environment was: was he surprised after the private meeting that took place with the applicant that they submitted an application to demolish all of the historic buildings?

**Deputy R.C. Duhamel:**

Personally, I was not surprised, particularly because of references that had been made by my officers as to a way forward in this particular difficult case. There are letters on file, which may be viewed, suggesting whatever advice had been given by the department, and it is pretty clear that advice did suggest that, having got to a stalemate position, the only alternatives left were the radical ones.

**7.4.3 Deputy J.H. Young:**

I wonder if I can ask the Minister for Planning and Environment to clarify: the answer he gave referred to his answers to earlier questions where my recollection is that he did say that he had not authorised his officers to make any suggestions about demolishing those buildings. Yet he appears to have indicated just now that that was not the situation that his officers did so. Could he clarify that?

**Deputy R.C. Duhamel:**

I do not think I have issued any statement saying that I have authorised officers to give advice. The advice that is given by officers is given by officers. All I can say is that I have on file and with me, a letter from the department suggesting ... and I can paraphrase it or read it out exactly, it is written by one of the officers: "Accordingly, I must advise you that the department's view on this application has not altered since it was expressed in the February letter. Additionally, we can suggest no alternatives other than radical reductions in both the size of the building and the loss of heritage to overcome these concerns." It goes on to discuss other matters. As I say, we are straying into things that might well be material to the challenge that the Co-op is making in respect of an application and I think it is not right that this House, in the absence of full particulars, should be straying into those questions.

**7.4.4 Deputy J.H. Young:**

Not wishing to lead the Minister for Planning and Environment into dangerous areas, but would he not agree that such a letter containing such comments from a planning officer - although the Minister for Planning and Environment says this was issued without his authorisation - would he not agree that such a letter issued by an officer does have potential legal implications as a principle? Would he not accept that?

**Deputy R.C. Duhamel:**

Again, Deputy Young is moving into an area that is asking me and the rest of the House to judge on something for which we do not have the particulars in front of us and we should not be drawn, so I am not in a position to comment on that.

**7.4.5 Deputy J.A. Hilton:**

A final question. Going back to the Minister for Planning and Environment having stated 2 weeks ago that there were no discussions around alternative amendments of schemes, can the Minister for Planning and Environment explain to me that if he did not give pre-planning advice why did he feel he had to withdraw from determining the application that he had determined the previous month in a Ministerial hearing? What did he feel had changed that he was not able to do that anymore?

**Deputy R.C. Duhamel:**

Again, it says under the protocol, and it is quite clear, which is why I read it out last time and I will read it out again, it says: "If there is a direct or indirect financial interest or prejudicial interest or where the Minister has been lobbied or has been subject to personal approaches or personal interests he or she would not be comfortable disclosing, the Minister should regard him or herself as conflicted on receipt of the application and not determine the application to ensure public misconceptions of undue influence do not arise."

[12:00]

I consider there are things that I am not comfortable disclosing, in particular other States Member interest in this particular application, and on that basis I have excluded myself from making the decision. It is absolutely quite clear that I have not made the decision and there are things, or I know things, such that I am counting myself as being conflicted on receipt of any application and I have not taken part in the decision-making. That is as far as I am prepared to go.

**7.4.6 Deputy J.A. Hilton:**

A supplementary, very briefly. Just in the Minister for Planning and Environment's last answer he said that there are things that he was uncomfortable about disclosing. Will he tell the Assembly what those things are?

**The Greffier of the States (in the Chair):**

Presumably not. [Laughter]

**Deputy R.C. Duhamel:**

Presumably not, absolutely right, Sir. Unless we are prepared to go into an in camera session and I can divulge things that perhaps I would not wish to divulge, then fair enough, but I am not prepared to go there at the moment. I do not think it is right I should be queried as to why I have excluded myself from making a decision and the protocol is very clear: it says that if the Minister, and I repeat: "Feels that he is conflicted, for whatever reason, then he does not take part in the decision." That is what has happened and that is that.

The Channel Islands  
**co-operative**  
Society Limited

14 November 2013

Senator Ian Gorst  
Chief Minister  
Chief Minister's Department  
Cyril Le Marquand House  
St Helier  
Jersey  
JE2 3QP


Dear Ian,

**CHARING CROSS PLANNING APPLICATION**

Thank you for your letter of 14 November 2013 in respect of the Planning Application for the Channel Islands' Co-operative Society.

Because of concerns that the Society had as to the way in which the Planning Department had dealt with applications relating to the site, it requested and was granted a meeting with the Minister at which no officers of the Department were present. At that meeting, while the Minister indicated he might look more favourably on a scheme that addressed many of the Department's concerns but which saw the demolition of the historic buildings on the site, he did not say categorically that he would approve such a scheme.

Yours sincerely,



Colin Macleod  
Chief Executive Officer

Co-operative House, 57 Don Street, St Helier, Jersey, JE2 4TR, Channel Islands  
Tel: 01534 879822 Fax: 01534 768312 Email: [help@channelislands.coop](mailto:help@channelislands.coop) [www.ci-cooperative.com](http://www.ci-cooperative.com) [www.travelmaker.co.uk](http://www.travelmaker.co.uk)

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**Confidential:  
exemption  
3.2.1(a)(xiv)**  
Electricity  
supply: west of  
St. Helier  
primary sub-  
station:  
proposal.  
file

B2. The Council discussed with the Assistant Minister for Treasury and Resources, together with the Treasurer of the States and the Director of Estates, Jersey Property Holdings, an undated report concerning proposals to site a primary electricity sub-station in the West Park area of St. Helier and the potential requirement to transfer land to the Parish of St. Helier.

It was recognised that the electricity supply network in the central and western parts of St. Helier was nearing full capacity and that demand was growing. Several cable circuits and related equipment had been in use for over 50 years and, as well as becoming aged, were also becoming 'stressed' due to the high electricity loadings. Concern was expressed regarding the possibility of reduced asset life and also an increased risk of disruption of supplies to existing customers, potentially both domestic and commercial. With limited backup infrastructure available to maintain supplies in the event of an 'electrical fault' occurring (especially if an event occurred during the winter months), there was a danger that a major fault could take 6 months to repair affecting two-thirds of St. Helier (and possibly some customers in adjacent Parishes), requiring the procurement of assets from specialist manufacturers off-Island.

The Council noted with concern that an additional consequence of the above-mentioned problems was that Jersey Electricity was currently unable to provide new supplies to new developments, including the proposed hospital development, housing schemes, as well as new supplies to businesses and the commercial district of St. Helier. It was noted that the company had been looking for a suitable site for a sub-station for a number of years, with Parish and States officials having been extensively involved in this process. It was recognised that in order to securely reinforce the electricity network in this part of St. Helier, the sub-station required critically needed to be physically located between the Esplanade and Queen's Road primary sub-stations as it would take loads from those 2 primary sub-stations thus relieving them of their overload operation. It was noted that the proposal would also offer additional capacity for existing and new customers in the

northern, western and central areas of St. Helier.

Having noted details of the 5 sites which Jersey Electricity had explored with various agencies in recent years, the Council noted that 2 possible location options had emerged: (1) an old quarry on the lower slope of Westmount Gardens at West Park and (2) enclosure in a bunker at the Lower Park site, adjacent to La Route de St. Aubin. Whereas it was reported that agreement had been reached with the Connétable of St. Helier in 2012, the Lower Park site was not now considered to be appropriate, although it appeared that the use of the old quarry site was likely to be supported by the Parish Roads Committee. This was to be on the basis of an exchange of a sloping, wooded area of land (measuring 3,644 square metres) adjacent to the Overdale Hospital site with the Parish.

The desirability of providing a viewing platform was considered and, although it was recognised that it might not be possible to install such a facility above the proposed sub-station, it was noted that it might be feasible to do so to one side of the new structure, albeit at some considerable additional cost. The Minister for Planning and Environment commented that he understood that whilst the Jersey Electricity Company was not keen for a viewing platform to be sited above the sub-station, it might be amenable to possible alternatives. He suggested also that the Lower Park site might not necessarily be entirely out of the picture and that, in any event, it would be a matter to be determined by the Parish Assembly in due course given that each site had its own and different attributes/problems.

The Minister for Treasury and Resources expressed concern that, from information he had received, it appeared that the Minister for Planning and Environment had pre-determined his preference as to which site would be supported by the Planning and Environment Department, although this was denied by Deputy Duhamel who indicated that he had not expressed any views on the subject to either the Jersey Electricity Company or to the Parish of St. Helier. The Chief Minister undertook to investigate the issue of confidentiality which this matter raised.

The Council, having accordingly agreed that it supported either of the above-mentioned 2 sites and the associated schemes, also indicated its support in principle to a transfer of land to the Parish of St. Helier in the event that this were to be required, on the basis that the land transaction and the relevant terms of disposal would be approved in due course by the Minister for Treasury and Resources under his delegated authority in accordance with Standing Order 168.

The Director of Property Holding was directed to take the necessary action accordingly.



## Attachment 9

**From:** Chris Ambler  
**Sent:** 04 July 2013 18:00  
**To:** 'Robert Duhamel'  
**Cc:** \_\_\_\_\_ (@gov.je); \_\_\_\_\_ (@gov.je); David Padfield;  
**Subject:** West St Helier Primary Substation

Dear Minister

Many thanks for taking the time to meet my Energy Division Director, David Padfield and I on Tuesday 25 June at the Powerhouse (with your Deputy Chief Officer, \_\_\_\_\_) followed by a meeting on Friday 28 June at the Town Hall in St Helier (with Chief Officer, \_\_\_\_\_ who was joined in a subsequent discussion later that morning with Head of Planning, \_\_\_\_\_ you and I).

During our discussions on Tuesday, I covered in some detail in a presentation to you (as attached) the importance of this substation not just for new development and the economy but most importantly for security of electricity supplies to existing parishioners. I explained that we had gone through a detailed process to identify a site that would be most acceptable to the community and planning officers as well as technically functional for the critical role the substation would serve in the power network.

Over years of work on this with both parish officials and planning officers, we had identified the old quarry site as one that was most suitable given the various criteria and trade-offs. You explained that you were strongly against this and it was now your intention to list the old quarry site at the bottom of Westmount Gardens, in accordance with the recommendation that has been given to you by Jersey Heritage. In addition despite his initial support and commitment to it, it was your understanding that the Constable of St Helier was also now no longer supportive of the old quarry site.

Consequently we went through a brief process on Tuesday 25 June of re-testing all other alternatives with you. We concluded from this that all alternatives were dismissed as unsuitable but you requested that we re-examine 3 additional sites based on different assumptions including revised planning guidance from yourself:

1. **An underground facility in Victoria Park** (an above ground facility had previously been rejected by planning officers)
2. **An underground facility under People's Park** developed in conjunction with an underground car park (an above ground facility had previously been rejected by planning officers)
3. **An above ground facility on the western side of Lower Park** (planning officers had previously rejected any facility at all in Lower Park)

We reviewed the results of our appraisal in our meeting on Friday 28 June.

In short, we concluded that options 1 and 2 are not feasible, but option 3 is feasible, as follows:

1. **Underground facility in Victoria Park:** We do not believe an underground facility at Victoria Park is technically viable – it would lead to unacceptable risk in various ways and

Jersey Electricity engineers and its suppliers have strongly recommended we do not proceed with this. There are various problematic aspects to this including a bespoke and unique design, severe difficulties in securing access for installation, maintenance and emergency repair; technical issues around cooling and around the substrate ground works and in any case, this would require some sort of above ground structure to incorporate cooling systems which would not be acceptable on this unique site.

2. **Underground facility in People's Park:** For similar reasons to the above, including access, design risk, substrate issues, we do not believe an underground facility in People's Park is technically feasible either given the resultant risks. It would also be vitally important that this would be built at the same time at the underground car park, to avoid any construction activities damaging installed power plant and equipment, and hence putting critical supplies at risk. Coordinating with a third party car park developer would lead to excessive delay in constructing a facility that is now urgently needed.
3. **Above ground facility in Lower Park:** We believe that a facility on Lower Park would be technically feasible that we could make work. The facility does involve some longer cabling and we would of course need to ensure a minimum separation between the facility and neighbouring residential property for safety reasons. It would also involve some loss of trees along the pavement although of course we could replace that with landscaping, fresh trees and shrubbery and appropriate cladding of the building.

What I must bring to your attention at the outset is that our ability to lower the Lower Park facility into the ground is very limited indeed, maximum 0.5-1m (due to flooding risk amongst other issues) and you have suggested that this would not be a problem. You have also indicated that the size of the facility is not an issue given appropriate cladding and landscaping that would hide the structure. I should also say up front that we would not recommend creating a viewing platform on this facility as proposed due to safety reasons and the close proximity of people to high voltage systems.

You have said that it is important to you to ensure we have the right spacial setting and specifically your preference to site the building at an angle to the property line and road line to break up those lines along the road in a more natural way. You would also request that we seek to hide the facility where possible using landscaping, trees and shrubs and suitable cladding for the building.

Overall we recognise your strong support for the Lower Park facility – and that this is your clear preference over and above the old quarry site that we had previously explored in conjunction with your planning officers. You explained during our meeting that you have discussed this with the Constable of St Helier who has indicated his support for this Lower Park site and his willingness to proceed to planning permission stage.

Finally, it was clear that your officers, \_\_\_\_\_ and \_\_\_\_\_ had some reservations about the merits of the Lower Park site. I note your willingness and commitment to progressing this Lower Park site despite your officer's reservations. You have advised that the normal planning process is 13 weeks but given the importance of this site to the economy and security of supplies, it may be possible to compress this to 9-10 weeks and would seek to assist us in delivering a consented structure within this timeframe.

With the confidence and commitment you have provided last Friday, we would be willing to proceed with this site and will advance our proposals in conjunction with your officers. We would like to arrange a meeting with you and your officers to discuss the various architectural options, along the lines of what I have set out above, and would be grateful if your office could revert with

some dates at your earliest convenience. We will also be in touch with the Constable to seek his signature for a planning application.

I trust you will let me know if I have misunderstood the position in my précis above. Many thanks for your support for this.

Best rgds

**Chris**

Chris Ambler  
Chief Executive  
Jersey Electricity plc

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## Attachment 10

States   
of Jersey

Department of the Environment  
Planning and Building Services  
South Hill  
St Helier, Jersey, JE2 4US  
Tel: +44 (0)1534 445508  
Fax: +44 (0)1534 445528

14<sup>th</sup> November 2013

### Confidential

Senator Ian Gorst  
Chief Minister's Department  
PO Box 140  
Cyril le Marquand House  
The Parade  
St Helier  
Jersey  
JE4 8QT



Dear Ian,

I am writing in reply to your letter of the 14th November 2013.

I can confirm that on Friday 28th June, I met with the Chief Executive of Jersey Electricity and the Minister for Planning and Environment, to discuss the proposals for the substation. Specifically the Lower Park option was mentioned.

I remember the meeting clearly as it was in two parts. I was that morning delivering a lecture in the Town Hall assembly room as part of Architecture Week. I was ushered into part one of the meeting at just before 8am by the Chief Executive of the JEC who had started a meeting with the Planning Minister, both parties wanted me to be present. The meeting then resumed after my lecture at around 9.30 am. At this point we were joined by [redacted] the Director for Development Control.

It was clear at this meeting, that both I and [redacted] advised against the Lower Park option, but the Minister gave oral support to the JEC Chief Executive about the Lower Park option.

I can also refer you to a number of emails sent around the July 2013 period which I believe you were copied into. Specifically emails from Chris Ambler dated 5th July 2013 09.43 am and 23rd July 2013 17.56 pm in which Chris had confirmed meeting with the Minister and others to discuss these proposals.

Yours sincerely,



Chief Executive Officer

## Attachment 11

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**Subject:** FW: West of St Helier

From: Simon Crowcroft [mailto:Simon.Crowcroft@posh.gov.je]  
Sent: 05 July 2013 12:10  
To: Chris Ambler  
Subject: Re: Sale of land at Westmount Gardens to Jersey Electricity plc for creation of sub-station

Thanks Chris. Will be in touch on Monday as in Normandy w vets today

Kind regards  
Simon

**On 5 Jul 2013, at 10:45, "Chris Ambler" <cambler@jec.co.uk> wrote:**

> Dear Simon

>

> Many thanks for your note. We have indeed met twice last week with the Minister for Planning and Environment, Rob Duhamel, who I have cc'd into this note along with [redacted] Head of Planning and [redacted], Chief Officer.

>

> The Minister did raise several possible alternatives - all of which had been considered but which were dismissed for various reasons, which he accepted. He did however ask us to re-examine a facility at Victoria Park - in this case an underground facility, which we believe is fraught with difficulty and risk and, having consulted with our engineers and suppliers, is not technically viable.

>

> He also asked us to look at an above ground facility at Lower Park. As you may know planning officers rejected this site completely initially, which is why it was not advanced but the Minister is prepared in principle to consent it, despite some reservations of his planning team. It is not ideal for JE, involves longer cabling with some technical challenges, but we believe it is feasible.

>

> I have made it clear to the Minister that it would not be possible to sink the facility by more than 0.5-1m (due to flooding risk amongst other issues) so it would be an above ground facility. We would need to ensure appropriate separation from the residences at the western edge of the park for safety reasons. We could not recommend a viewing platform also for safety reasons given the close proximity of people to high voltage busbars.

>

> The Minister has also advised me in our meeting that he had discussed the site with you - and it would be acceptable to you as Constable and that you would be prepared to proceed to planning permission stage. He has indicated that it is a facility that should be concealed where possible, with suitable landscaping, trees, shrubbery and building cladding.

>

> It would be helpful if you could confirm that this is your position and that you are supportive of the approach being taken so that we can proceed with confidence. As I am sure you appreciate development of such plans, montages etc is a costly exercise that regrettably our customers ultimately bear. Also time is against us now and supplies will be at risk for longer given the delays. If you disagree with any of the above or the approach please raise this now.

>

> Having said all the above, if you prefer, the old quarry scheme could also still be made to work for JE.

>

> In any case it would probably be helpful if we could have a chat on the phone. Perhaps we could talk later today?

>

- > Many thanks.
- >
- > Chris
- >
- >
- > Chris Ambler
- > Chief Executive
- > Jersey Electricity plc
- >
- > Tel: +44 (0)1534 505320
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## Attachment 12

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**From:** Simon Crowcraft <Simon.Crowcraft@posh.gov.je>  
**Sent:** 17 November 2013 13:47  
**To:**  
**Cc:** Ian Gorst  
**Subject:** RE: Letter from the Chief Minister  
  
**Sensitivity:** Private

Hello

Thanks for this letter. Unfortunately I've been away since Thursday and have been unable to reply until today. I can confirm that I have discussed possible alternative sites for the JEC sub station with the Planning Minister on a few occasions. If memory serves I have also questioned him in the States about the original proposal for the disused quarry site.

Rgds  
Simon