

STATES OF JERSEY



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

Presented to the States on 19th January 2010
by the Minister for Planning and Environment

STATES GREFFE

COMMENTS

1. The proposition is seeking to request to request the Minister for Planning and Environment, before determining the application for the development known as “Zephyrus” on the waterfront, to –
 - (a) present to the States his formal response to the Key findings and recommendations of the Scrutiny report on the EFW EIA process;
 - (b) present to the States a formal appraisal of the EIA for the Zephyrus development;
 - (c) present to the States a report on the alleged breaches at the La Collette incinerator site currently under investigation; and
 - (d) report to the Assembly lessons learned from La Collette and Castle Quays and measures to be implemented.

The Zephyrus Planning Application and the Scrutiny Review into the EFW Plant EIA

2. The Planning Application known as Zephyrus was submitted to the Planning and Environment Department on 3rd August 2009. The scheme is for 59 residential apartments in 5 buildings with ground floor commercial space and underground parking and storage.
3. Upon receipt and following further discussions with the applicant, it was decided that the scheme required an Environmental Impact Assessment. The Environmental Impact Statement was received on 20th October 2009.
4. The Department has a published performance standard for planning applications of 13 weeks from receipt to determination. The determination target date for this application following the receipt of the EIS is therefore 19th January 2010.
5. The requirement to deal with planning applications in a timely manner is a principle enshrined in planning case law. A local case is relevant, *Wightman v. Island Dev. Ctee.* (Royal Ct.), 1963 JJ 315, where after an unreasonably long delay in dealing with an application, the Royal Court directed that a decision had to be made by a particular date. It is also a fundamental principle of British administrative law to make decisions in an expeditious manner – in effect, it should take no longer than is necessary to collect all the information that is material to the case, to consider it, and to make the decision. Failure to do so may also impact on an individual’s human rights.
6. The application has been received, duly considered and is now ready for a determination.
7. The Deputy is trying to link this planning application to the Scrutiny review undertaken of the Energy from Waste EIA process. The Zephyrus application is not related, they are not by the same developer, and are for different types of development. The only link between the two is that they are both in coastal locations and are both subject to the EIA process. There is therefore an

underlying principle whereby this application should not be linked to a Scrutiny review of a past planning decision, and due process should be followed as this is what the applicant and the Public should expect of the planning system.

Responding to Scrutiny

8. The Minister is also surprised that the report accompanying the proposition relies heavily on a draft of the Scrutiny Report which has not yet been released. The Minister has already given public assurances that the Scrutiny Report into the Environmental Impact Assessment for the Energy from Waste Plant, and associated issues, will be responded to in full.
9. The Minister can therefore accept Part A of the proposition as this is current general practice in any case, and assurances have already been given to the Deputy confirming that the Scrutiny Report will be considered in full.

Reporting on the Zephyrus EIA

10. The Deputy is seeking to discuss the Environmental Impact Assessment for the Zephyrus scheme in the States Assembly. The Minister is mindful that the responsibility for Planning matters lies with him as the Minister for Planning and Environment, but should the States consider it appropriate to comment on this current planning application, he would be very pleased to take any States comment, or indeed any individual Member's comments into account during this consideration. The report into this planning application will be a public document in due course, and will cover all relevant issues pertaining to this application. This will be made available to States Members if they would like a copy.

The investigation into alleged breaches of the Water Pollution Law

11. The Department can confirm that there is an ongoing criminal investigation under the Water Pollution (Jersey) Law 2000. However, details of the investigation cannot be shared at this time as this may prejudice the investigation.

Lessons to be learned

12. Part D of the proposition takes the position that environmental pollution has occurred at the La Collette site and at Castle Quays. Whilst an investigation is underway in relation to one incident at La Collette, there is no action underway or any environmental protection concerns in relation to Castle Quays.
13. The Department is continually learning from best practice, which improves its regulatory function. Construction activities on sites are the responsibility for the developer and the application of statute and any prosecutions which follow, will also lead to better practice by developers.
14. The Department will be responding to the Scrutiny Report on the EIA process in full, and this response will show how practice has developed in the period since 2006 when the EIA was prepared and submitted.

Financial and manpower implications

15. Responding to Scrutiny is part of the ongoing work of the Department and is therefore covered by existing resources.
16. Additional reports to the States will be managed within existing resources, but will divert staff time away from Environmental Protection investigations and Planning Applications work.

Conclusion

17. Whilst the Department is very supportive of the Deputy's overall desire to protect and enhance the environment, he is urged to work closely with the Department and the environmental professionals and specialists the States has the benefit of employing that allows this to take place.

The States Assembly is therefore urged to:

- Reject the proposition to delay determining the Zephyrus planning application before the States considers the Minister's response to the Scrutiny Report on the EFW plant.
- Reject parts (b) and (c) of the proposition as it is considered that a robust process already exists to consider the planning application and its associated EIA, and it is not considered appropriate for the States Assembly to discuss an ongoing criminal investigation at this time.
- Reject part (d) of the proposition on the basis that the Department will include this within its response to the Scrutiny Report on the Energy from Waste EIA process.