

4.1 Deputy D.J.A. Wimberley of St. Mary of the Minister for Planning and Environment regarding planning permission given for the Zephyrus project on the Waterfront:

Can the Minister give an assurance that no planning permission will be given for the Zephyrus project on the Waterfront until the Scrutiny Panel report on the planning processes and errors made surrounding the Energy from Waste plant is published and until the pending court case around the major pollution incident of La Collette is heard?

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

I have a duty to determine planning applications submitted to my department within a reasonable period of time. I shall not do this, however, until I am satisfied that the key elements of the development have been fully assessed. My department has not yet completed its review of the proposed development and, as a result, I am not able to determine the application at this time. I anticipate being in a position to do so in January 2010. To unduly delay determination of the application to await the Scrutiny Report on the E.f.W. (Energy from Waste) may be considered an unreasonable delay. This is particularly the case as the E.f.W. is at a different site. However, should the report be available before I determine the application I will, of course, take into account any relevant findings. On the matter of a court case, I am not aware that any decision has been taken to instigate a court case. I will of course take into account any submissions made by the Deputy in relation to the Zephyrus application prior to determination.

4.1.1 The Deputy of St. Mary:

I am a bit surprised by that answer and I am going to leave the Scrutiny aspect to others but we seem to be in the “school of not learning from past mistakes”. Has the Minister been kept informed of the progress of the inquiry into the criminal investigation into the pollution incident at La Collette or incidents - we do not know - which has taken 7 months so far? Has the Minister been kept informed and if it was a major incident, is it not irresponsible not to learn from it, and if it was a minor incident, why has it taken 7 months and we are still waiting for it to go to the Attorney General?

Senator F.E. Cohen:

I have been regularly updated by my officers on the developments in relation to this matter and I am not able to say at this time what the extent of the infractions, if any, were and of course we will endeavour to learn from the experience should this be considered to be significant or insignificant. Thank you.

4.1.2 Deputy P.J. Rondel of St. John:

As the regulator, I find it hard to understand why the Minister is considering moving ahead with giving a permit on the site until he has had the ruling from his officers and from the Attorney General whether or not a prosecution may take place on the Energy from Waste site because as that is a leader in whatever contaminants may be in the overall site in that area, it is a leader on any permit that may be given on the pre-site which is the Zephyrus site on the West of Albert. Therefore, I have some concerns that you may be considering giving a permit without finalising the outcome of the Energy from Waste site.

Senator F.E. Cohen:

In relation to the Energy from Waste site, this is of course a different site but I can assure the Deputy and Members that I will do everything I can to ensure that best practice is followed, but I cannot unreasonably delay determining the application. All I can do is to ensure that if the application is approved - and of course it is only "if" at this stage - that best practice is followed and that appropriate conditions are attached to ensure that the Island and Islanders are properly protected in relation to work on the site. Thank you.

4.1.3 Senator B.E. Shenton:

I have a colleague in the U.K. (United Kingdom) that has been waiting 2 years for the determination of a planning application due to the sensitivity of the project and my colleague does not consider this unreasonable. Does the Minister for Planning and Environment not agree that it is better to make the right decision rather than a quick decision?

Senator F.E. Cohen:

Yes, I most certainly do agree that it is better to make the right decision rather than a quick decision and all I can say is that I have not made a quick decision and we are not yet in a position to determine the application because the application has not been fully assessed, but I have informed the House because I believe it was appropriate to do so but we expect to be in a position to determine the application in January of next year. That of course may change. Thank you.

4.1.4 Deputy R.G. Le Hérissier of St. Saviour:

Does the Minister not think that, given his historically good relationship with Scrutiny, it appears very odd that if Scrutiny were to come up with a report which might well question some of the fundamentals of his decision and he has ignored Scrutiny, is it not his job to liaise with Scrutiny, find when they are reporting and try and get some agreement in order to work on their report and respond to it?

Senator F.E. Cohen:

I most certainly have no intention of ignoring Scrutiny. Indeed, I always endeavour to work with Scrutiny as far as is possible but this must be taken within the context of my obligation under the Planning Law. I certainly am more than happy to discuss the matter with the chairman of the Scrutiny Panel and to take on board any points he wishes to make in relation to this application before it is determined. Thank you.

4.1.5 Deputy R.G. Le Hérissier:

A supplementary. Could the Minister therefore assure the House that, if Scrutiny is reporting within a reasonable time and it does not lead to undue delay, he will be incorporating its findings into his determination?

Senator F.E. Cohen:

I cannot give an assurance in relation to timescale. All I can say is that I am unable to unreasonably delay the application because that would not be complying with my obligations under the Law. What I will do is commit to engage with the chairman of Scrutiny and to take on board any points he wishes to make in relation to this application before I determine the application. I, of course, hope that the full report will be ready in time but it may be that there are sections of the impending report that he wishes to make available to me before I determine the application. Thank you.

4.1.6 Deputy G.P. Southern of St. Helier:

The Minister keeps referring to his obligations and the unreasonableness of any delay. Under what conditions does he believe that waiting for a report from Scrutiny on this particular subject could in any way be deemed as unreasonable?

Senator F.E. Cohen:

I am prepared to wait a reasonable time to determine the application, as I have already said, but we must remember that the Scrutiny Report does not relate specifically to this site and, therefore, it is a question of how long it is reasonable to delay determination of this application based on a report relating to another site. But I will endeavour to take on board any points Scrutiny wishes to make that are delivered to me within time and to give plenty of notice of when I intend to determine the application. Thank you.

4.1.7 The Deputy of St. Mary:

The Minister says that it is a different site. The fact is the contamination, as we all know, is far, far worse on the site Zephyrus and the processes of environmental impact statement and assessment and mitigation are exactly the same, so I find it astonishing that he is talking about having no intention of ignoring Scrutiny. I put it to him that he has every intention of ignoring Scrutiny. He does not give a toss about the Scrutiny Report. I am sorry. He has not said: "I will wait for it." It is 10 months work, over £20,000 of expert advice, it is a big report and it will have major conclusions because we already know the outline.

The Deputy Bailiff:

Your question, Deputy?

The Deputy of St. Mary:

I would ask the Minister whether he is insisting on basically sidelining Scrutiny and refusing to learn from the past, both with respect to Scrutiny and with respect to the court case?

Senator F.E. Cohen:

I regret the language used by the Deputy in his question. **[Approbation]**

The Deputy of St. Mary:

I apologise for that particular term of phrase but I am very upset and I think everyone who takes the environment and its importance to heart would be upset too.

Senator F.E. Cohen:

I have given an undertaking to the House that I will take on board any points that Scrutiny wishes to make. I will give plenty of notice to Scrutiny as to my intended date of determining the application. I will not rush it through but I cannot just give a blanket assurance that I will wait for ever for a Scrutiny Report.

Deputy G.P. Southern:

May I seek a ruling for future guidance of Members on the use of the phrase "give a toss"? Is that parliamentary or is it not because I might be tempted to use it myself if it is?

The Deputy Bailiff:

If you wish to have a ruling on the hoof, the ruling would be that it is not parliamentary language.