States of Jersey
States Assembly

États de Jersey
Assemblée des États

Public Accounts Committee

Review of the report of the Comptroller and Auditor General entitled: "Energy from waste plant: management of foreign currency exchange risks"

Presented to the States on 10th August 2009

P.A.C.1/2009

REPORT

CHAIRMAN'S FOREWORD

The publication of this review is the culmination of many months of investigation, diligence, and discussion by the Public Accounts Committee. It was undertaken as part of an ongoing process whereby the financial management of the States will be examined in great detail as we endeavour to ensure that high standards are achieved in every area.

It was always going to be difficult to write a non-political Report on such a politically charged subject and I would like to thank my colleagues, Connétables John Refault and Simon Crowcroft, Senator Alan Breckon and Deputy Tracey Vallois, and particularly the non-politicians on the Committee, Mr. Alex Fearn, Mr. Martin Magee, Mr. Kevin Keen and Mr. Patrick Ryan, for bringing balance to the review.

The Recommendations are for the Minister for Treasury and Resources to consider and we are pleased to note that he has already acknowledged that change is required in the Treasury area. I make no apologies if some of our views are somewhat forthright and our recommendations blunt as this is far too important an issue to skirt around the edges or make excuses.

Effective financial management is of critical importance in a period of limited resources. In such times, allocating resources efficiently to achieve the greatest benefit and managing resources to achieve the greatest value lie at the heart of political debate. Improvements in financial management thus lie at the heart of government and are not a peripheral matter.

Finally, I would like to thank our Committee Clerk, Anna Heuston, for her support and hard work in piecing together the many fragments of detail that make up this report.

Senator Ben Shenton
Chairman

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY

1.1 The Committee has reviewed the Comptroller and Auditor General's (C&AG) report entitled: 'Energy from waste plant: management of foreign currency exchange risks' (R.24/2009 refers).

1.2 This report was the result of an investigation into the management of foreign currency exchange risks arising from a contract for the procurement of a new energy from waste plant for the Island.

1.3 The report of the C&AG focused around action taken by the States Treasury on 3 key dates – 10th July, 14th November and 17th December 2008 – and the impact these actions had on the cost of procuring the plant.

1.4 In his conclusions, the C&AG observed that the problems encountered in managing the currency risks had been exacerbated by 2 factors: the lack of staff with the appropriate skills and experience within the Treasury, and administrative failures within the department.

1.5 The Committee agreed to review the report in order to establish whether –

(a) the currency exposure disclosed to the States in P.73/2008, which led to the cost of the procurement being higher than the cost originally indicated to the States, could have been avoided;

(b) the total project cost of the energy from waste plant could have been reduced had there been sufficient staff with appropriate skills and experience within the Treasury and Resources Department, and had failures not occurred in basic administrative practice;

(c) procedures could be implemented within the States to ensure the effective management of foreign currency exchange risks in future.[1]

1.6 The Committee acknowledges that the scale of the economic downturn in 2008 could not have been predicted by the States, however, it considers that far greater precautions could have been put in place in order to ensure more efficient management of foreign currency exchange risks throughout this project.[2]

1.7 Mistakes were made in managing the foreign currency exchange risks, and no civil servant or Minister will admit that they were accountable for the way the project was handled.

1.8 Poor project management led to risks not being identified, responsibility not being taken, and accountability not being accepted in respect of the funding process for the procurement.

[1] The full terms of reference for the review are set out at Appendix A.
[2] A chronology of events is at Appendix B.

1.9 Since the C&AG released his report, a new Financial Direction has been issued on managing foreign currency[3] and the policy for managing scheduled euro payments on the energy from waste plant has been revised.[4] However, the Committee does not believe that this is enough.

1.10 Fundamental changes need to occur in the way large-scale projects are managed, implemented and monitored within the States, and the senior management team should examine how departmental coordination can be improved to ensure clear lines of accountability in future.

1.11 This report contains a number of recommendations which, if adopted, will assist the States in avoiding a recurrence of the errors made in managing foreign currency exchange risks throughout this project.

[3] Financial Direction 3.8 is included at Appendix C.
[4] The revised policy on scheduled euro payments is included at Appendix D.

2. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

2.1 There was a lack of management applied across the project, particularly in relation to the project financials. *(See 3.41)*

2.2 There was lack of clearly defined areas of responsibility as the project moved from inception through design to implementation phases as established project management best practice dictates. *(See 3.43)*

2.3 Lines of accountability among accounting officers within the States are not clear in respect of cross-departmental procurements. *(See 3.45)*

2.4 The Chief Executive and Corporate Management Board failed to identify the risks involved and prioritise the largest ever capital project undertaken by the States. *(See 3.50)*

2.5 Project documentation was a problem, with key meetings and decisions not being recorded. *(See 3.52)*

2.6 The Committee is concerned that Ministers and departments might have the opportunity to mislead the States by including vital information in an accompanying report rather than a main proposition. *(See 4.8)*

2.7 The Treasury never requested or secured specific advice on funding the payments for the energy from waste plant. *(See 4.25)*

2.8 States advisers do not have an in-depth profile of their client and are unaware of the level of risk the States is able to take or their preferred investment options. *(See 4.34)*

2.9 The current strategy employed by Treasury and Resources, and supported by the Minister, to manage the ongoing currency exchange risks in relation to the funding process for the procurement of the energy from waste plant does not sufficiently guard against further strengthening of the Euro and further substantial losses. *(See 5.17)*

2.10 The current policy does not meet the objectives as the Committee understands them and the risk is still not being appropriately managed, despite the focus in this area over the past few months. *(See 5.28)*

2.11 The States Assembly did not question or give full consideration to the risks associated with the management of foreign currency exchange when agreeing the funding for the energy from waste plant. *(See 6.10)*

2.12 The Committee is concerned that the Treasurer does not appear to have a sufficient balance between day to day accounting matters and the strategic requirements of his role, such as monitoring the funding of the largest ever capital project undertaken by the States of Jersey. *(See 6.58)*

2.13 At the same time as euros were being purchased to fund the energy from waste plant, the substantial sums of euros received as part of the French air traffic agreement were being exchanged into pounds sterling. *(See 7.9)*

2.14 There still appear to be no formal mandates in place for the ongoing provision of professional foreign exchange advice. *(See 7.17)*

2.15 A similar incident could occur on future projects, as the Treasury does not appear to have a robust enough policy for the management of foreign currency exchange risks going forward. *(See 7.20)*

RECOMMENDATIONS

2.16 The Chief Executive should ensure all States decisions are implemented and risks identified and managed appropriately. *(See 3.53)*

2.17 Key project roles and accountabilities should be defined, assigned and recorded at the outset of every future project undertaken by the States. *(See 3.54)*

2.18 A steering group should be established for the energy from waste plant project, which is likely to include the responsible Ministers and departmental Chief Officers. *(See 3.55)*

2.19 Lines of accountability among accounting officers within the States should be defined. *(See 3.56)*

2.20 States departments should ensure the proper recording of key decisions and the decision making process during all future projects in order to effect proper implementation and accountability. *(See 3.57)*

2.21 Where contractual negotiations are taking place, appropriate dissemination of progress and potential implications for risk and funding in particular should be disseminated to all project stakeholders, including steering group and sub project work-stream managers. *(See 3.58)*

2.22 Exchange rate considerations should be analysed, the appropriate policy put in place, and consideration given to the proper use of advisers, at a far earlier stage when managing projects in future, and before the project has been approved by the States. *(See 4.44)*

2.23 Careful consideration should always be given to the appropriate time to sign up to high-worth contracts and to the possible financial consequences of variations in timetables. *(See 4.45)*

2.24 States' advisers should be provided with an in-depth profile of the States as a client which outlines the level of risk the States is able to take and its preferred investment options. *(See 4.46)*

2.25 Terms of engagement with Hewitt should be reviewed. *(See 4.47)*

2.26 The Privileges and Procedures Committee and Council of Ministers are requested to ensure that, going forward, reports and propositions are structured so that key undertakings are clearly stated and are binding. *(See 5.29)*

2.27 The Treasury and Resources Department should include a stop loss in its policy on the ongoing management of currency exchange risks with regard to the funding process for the procurement of the energy from waste plant. *(See 5.30)*

2.28 The role of Treasurer of the States should be reviewed, with defined responsibility given in respect of overall financial control and responsibility. *(See 6.61)*

2.29 The Treasurer should receive appropriate sanction for any failure in relation to the financial management of this project. *(See 6.62)*

2.30 Financial Direction 5.1, which deals with the engagement and use of consultants, should include an instruction to ensure that those giving advice are qualified to do so, and are provided with a clear brief regarding the type of advice being sought. *(See 7.6)*

2.31 A strategy should be in place to ensure that euros received by the States, such as airport landing fees, are used to fund the States' euro liabilities in other projects. *(See 7.11)*

2.32 Financial Direction 3.8 should be strengthened to outline clear roles of accountability; to include advice specific to actual currency problems that may need to be addressed and to outline procedures covering the appointment of advisers. *(See 7.21)*

3. PROJECT MANAGEMENT

3.1 Throughout the Committee's investigations, it has been difficult to determine exactly how the funding process for the procurement of the energy from waste plant was project managed.

3.2 There appears to have been some confusion within the States as to who should have been involved in a project of this scale.

3.3 The Public Accounts Committee has considered the departments, politicians and civil servants who were involved in the project, and has been unable to find a clearly defined overarching project management structure for the funding process in respect of the procurement.

3.4 A project brief was created dated February 2008[5], which confirmed the source of funding as "*financed through an alternative States funding source – namely through a Sovereign Bond or borrowing…"*. It appears this document was never updated to reflect the changing scope of the source of funding or the required fixing of any exchange rate risk, as required by the States' approval.

THE TREASURY

3.5 When P.73/2008, 'Energy from waste facility: funding', was lodged 'au Greffe' in May 2008, the accompanying report included the following statement:

> ***"3.0 Fluctuations – Exchange Rate***
>
> *3.3 The Treasury has conducted a sensitivity analysis of the currency exposure and obtained expert advice on anticipated currency fluctuations. As with all States capital projects the Treasury will monitor and manage the fluctuations risk."*

3.6 This was the first time the Treasury had been involved in a project in this way. The Treasury had never before monitored or managed fluctuations risk on capital projects as it did not have the experience. Instead, currency exchanges had always been handled by individual departments:

> ***"Senator B.E. Shenton:***
> *…the Treasury … had no experience, with regard to the logistics of hedging or the management of foreign currency.*
>
> ***Treasurer of the States:***
> *You are quite right … There were no major currency exchanges prior to this one and those that did exist were handled by departments."*[6]

3.7 Whilst accepting that this was a major project the Treasurer admits that the project management structure was unclear:

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[5] The Project Brief is included at Appendix E.
[6] Transcript of hearing with the Treasurer of the States, page 7.

"Treasurer of the States:
…there are lots of learning points from this. One of them was, we have not had such a major procurement before and one of the issues was … a lack of clarity about who was responsible for what"[7]

THE CHIEF EXECUTIVE

3.8 *"**Senator B.E. Shenton:***
… would you have expected the Chief Executive of the States to get involved in a funding of this nature?

Treasurer of the States:
I do not know, I do not think so. I am not sure, I do not think so."[8]

3.9 The Chief Executive did not see a need to be involved in the energy from waste plant project, as he understood his role to be one of monitoring:

*"**Chief Executive:***
I did not see myself having an active management role in the specifics of this contract."[9]

TRANSPORT AND TECHNICAL SERVICES

3.10 A Funding Working Group was set up to deal with the funding issue identified in 2005 when the States approved the project in principal. The group was chaired by the Chief Officer, Transport and Technical Services, and included representatives from Treasury and Resources. The Group held its first meeting on 21st August 2007 and identified at that time that the funding source risk fell to Treasury and Resources[10].

3.11 The original project brief confirmed the project structure, citing the Minister for Transport and Technical Services as the sponsoring Minister and investment decision-maker. In addition, the project sponsor role was confirmed as the Chief Officer, Transport and Technical Services, who was also defined as the senior responsible owner, with the project manager being the Director, Waste Strategy Projects.

3.12 The project brief clarified these roles as: "being followed to align the project governance with the Office of Government Commerce (OGC) Construction (Achieving Excellence) model used within the energy from waste plant project governance." The brief said:

"This model has been introduced to ensure integration of processes across the project lifecycle given the scale and importance of the energy from waste plant project."[11]

[7] Ibid, page 13.
[8] Ibid, page 29.
[9] Transcript of hearing with the Chief Executive, page 7.
[10] Report of the C&AG entitled "Energy from waste plant: management of foreign currency exchange risks", page 19, paragraph 70.
[11] See Appendix E.

3.13 The Committee notes that the formation of the project board and funding working group, together with the engagement of financial advisers, should have been sufficient for the euro exposure to have been identified and appropriately addressed.

3.14 Although the Committee believes it was reasonable for Transport and Technical Services to expect Treasury and Resources to find the euros, the contractual negotiations led by Transport and Technical Services should have recognised that the risk of exposure to the deteriorating sterling exchange rate was being shifted from the contractor to the States.

3.15 On 6th November 2008 a meeting was held between the Ministers for Treasury and Resources and Transport and Technical Services and staff from both departments, to discuss the funding position of the energy from waste plant project[12].

3.16 It was then that Transport and Technical Services advised that they could not sign the energy from waste plant contract as the cost was well above the amount sanctioned by the States:

"Treasurer of the States:
…That meeting on that day, which was arranged at very short notice, was quite simply because the costs of the contract had grown to the extent that Transport and Technical Services felt unable to sign the contract. It had grown because of the exchange issues. The States were informed it would be locked out on the contract date and ... the deal had been very stable .... Suddenly it started declining and there was an additional cost to the contract and at the same time, there were contractual negotiations that had added some cost and ... there were legitimate planning requirements on finishes and the like which added quite significantly to the cost of the scheme. It was as a result of that that T.T.S. convened a meeting at short notice to say they could not proceed on that basis and that meeting was to discuss how to deal with the issue."[13]

THE MINISTERS

3.17 This meeting represented the first time the Minister for Treasury and Resources and the Treasurer had been involved in discussions to do with the immediate period prior to signing[14].

3.18 Although the Ministers for Treasury and Resources and Transport and Technical Services were present, and therefore aware of the issues arising in relation to the management of foreign currency exchange risks, it did not result in greater political involvement in the project:[15]

[12] Transcript of hearing with the Treasurer of the States, page 29.
[13] Ibid, page 30.
[14] Ibid, page 29.
[15] See paragraph 6.12 of this report.

"Connétable of St. Helier:
Following that meeting, did the Minister working with you realise that action had to be taken to bring this ... because clearly, politically, this was drifting away from what the States agreed?

Treasurer of the States:
That did not happen at a political level, to be fair. I am happy to talk about the other reasons why the decision moved but it was not at a political level that the decision to move it took place." [16]

3.19 This was a serious decision to make, and one that was never recorded – the C&AG could find no formal record of the meeting.[17]

THE CORPORATE MANAGEMENT BOARD

3.20 The Corporate Management Board is responsible for ensuring the effective and efficient allocation and management of resources within the States and for undertaking regular future scanning to identify major issues which could impact on the States or which need to be planned for.[18]

3.21 In 2006, the Corporate Management Board established an Audit Committee to support them in their responsibilities for monitoring and reviewing the risk, control, and governance processes within States' funded bodies and the associated assurance that these processes were adequate.[19]

3.22 On this basis, the Committee would have assumed that major risks were being monitored by the Corporate Management Board; however, the energy from waste plant project did not feature as a Board agenda item at any time between the States' decision in July and the signing of the contract in November[20] 2008.

"Former Chief Officer, Transport and Technical Services:[21]
At Corporate Management Board, very little discussion other than I was updating them on progress, it is clearly a very big project, and we were obviously very concerned because the costs of this project, which is the biggest capital project the States were undertaking, but it certainly was not ... this project and all of the issues relating to it was not referred to the Corporate Management Board as an item on the agenda."[22]

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[16] Transcript of hearing with the Treasurer of the States, page 30.
[17] Report of the C&AG entitled "Energy from waste plant: management of foreign currency exchange risks", page 47, paragraph 169.
[18] The complete terms of reference of the Corporate Management Board are set out at Appendix F.
[19] States of Jersey Financial Report and Accounts 2007. States of Jersey Statement on Internal Control, paragraph 3, "The Internal Control Environment", page liv.
[20] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 7.
[21] The former Chief Officer, Transport and Technical Services, is now employed by the States as Deputy Chief Executive – Chief Officer, Resources.
[22] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 7.

3.23 The risk was not being monitored at management level:

"Former Chief Officer, Transport and Technical Services:
… I think that the risk for these specific projects would fall to the individuals concerned and the Audit Committee was established but their function tends to be to review the internal audit reports that come through and certainly the Corporate Management Board has got a strategic risk register which we monitor and maintain, but we do not go down into individual specific areas and specific projects as such."[23]

3.24 The role and function of the Corporate Management Board is called into question here. The Board has responsibility for monitoring and reviewing risk – a responsibility that they cannot waive whenever they see fit.

3.25 This was the biggest capital project the States were undertaking, and even in the knowledge that the States' decision to eliminate foreign currency exchange risk had been set aside, the Chief Minister (who was Minister for Treasury and Resources at the time), did not feel it was necessary for the Board to get involved:

"Senator T.A. Le Sueur*:*
I do not think that the Corporate Management Board has a role to play in this one. The decision had been made by the States. It is not for the Corporate Management Board to second guess that decision, nor is it up to the Corporate Management Board to implement the decision. So I fail to see any particular role in this particular case for the Corporate Management Board."[24]

3.26 With a large project, where responsibility falls within the remit of more than one Chief Officer, the Public Accounts Committee would expect greater co-ordination at Corporate Management Board level, or certainly at joint management level, as expressed by the former Chief Officer, Transport and Technical Services:

"Former Chief Officer, Transport and Technical Services:
I think if the Treasurer had flagged up that there was a significant problem then or a very high degree of risk or the Treasurer had a problem, then it would have been reasonable in the first instance for the Treasurer to have discussed it with myself and I would have expected probably the Treasurer, myself and the Chief Executive would have sat down and said: "What is the risk? How are we managing it? Is it an issue?" I do not think we would have gone straight to Corporate Management Board, but I certainly never had an indication from the Treasurer or the Treasury officers that they were not managing this, they were not in control of what was going on."[25]

[23] Ibid, page 10.
[24] Transcript of hearing with the Chief Minister, page 13.
[25] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 8.

3.27 The Committee has considered criteria warranting overarching control and oversight, as opposed to individual departmental responsibility, which appears to have been a contributing factor to the decisions made. These criteria include the following:

- the high cost of the contract compared to previous projects involving high levels of capital spend;
- cross departmental responsibility with increased risk associated with potential lack of responsibilities, accountability and key decisions falling between departments;
- the first time involvement in such a project, and having to monitor and develop a payment strategy in light of a fluctuating exchange rate environment, through times of extreme market dislocation.

Based on these criteria the Committee would have expected acute focus to be applied at the Corporate Management Board level with regular discussions as to progress, key milestones, potential for cost overruns, risks arising with mitigation strategies and any potential divergence to agreed States policy.

THE CORPORATE APPROACH

3.28 The Committee considered how this type of decision might have been handled in the private sector, and that the following may have been considered particularly relevant:

- it was a very large and unusual project;
- an undertaking had been given that the risk of currency fluctuation would be closed off;
- the lack of specialist currency risk management experience in the Treasury.

3.29 It considered that a corporate approach to a similar situation may have been to:

- recognise the importance of the decision and allocate responsibility for it to the finance director;
- seek specialist advice on an appropriate strategy for dealing with the risk, probably from the company's bankers;
- put forward a strategy for managing the risk to the executive committee (the corporate equivalent of the States of Jersey's Corporate Management Board) and then the board of the company (the corporate equivalent of the Council of Ministers) and seek approval;
- once approved, execute the strategy promptly.

3.30 In this way there would have been clarity of the risk being taken which would have been in line with the capacity to take that risk. What ever risk was taken, the Board would certainly have known about, and approved it. There would also have been regular reporting about the risk and any open positions which would have given an opportunity for review and action where needed.

3.31 The creation of a cross-functional group by Transport and Technical Services in the form of the Funding Working Sub-Group[26] was a good initiative, and the Committee recognises that a decision had to be made. It also acknowledges that with foreign currency there is a level of risk, even with a well thought through and formal strategy.

3.32 However, in this case there seems to have been too many junior staff dealing with the issue and too many consultants involved without clear instructions. The group appears to have come to the conclusion that hedging the risk was just too expensive – a situation which appears to remain.

CONCLUSIONS

3.33 There were two separate States departments involved, namely Transport and Technical Services and Treasury and Resources, with the existence of distinct subgroups including the Funding Working Sub-Group. This should not have prevented a structure being put in place with an agreed steering group to make sure the required liaison and interdepartmental co-operation continued throughout the project's lifecycle.

3.34 With regard to overarching responsibility, the clear line of sight between Ministerial Decisions and implementation and accountability remain the Committee's main concern, this energy from waste plant funding process being a good example of the shortcomings.

3.35 Project governance structure was, and remains, unclear.

3.36 The learning points are to ensure:

- clarity of control between the Chief Executive and the Treasurer of the States;
- the formal structure of a project to manage the full lifecycle from inception to implementation and to ensure robust handover of responsibility between the different phases;
- the formation of a steering group which is likely to include the responsible Ministers and departmental Chief Officers.

[26] The Funding Working Sub-Group first met in August 2007, as detailed in the report of the C&AG entitled: "Energy from waste Plant: management of foreign currency exchange risks", page 18, paragraph 69.

3.37 The normal discipline followed for a major project such as this is to appoint a project or programme manager if the size of the project warrants it (running a series of projects or work streams within a programme), supported by a steering group or committee. This committee should meet regularly during the entire project lifecycle and to make decisions around key milestones and deliverables, including scope and financing.

3.38 The project manager is responsible for ensuring that all key project roles and accountabilities are defined, assigned and understood. This would include identification of specific project phases and appropriate risk management to ensure clear and full handover between phases, and as different parties become involved in those different phases.

3.39 The project should have a dedicated financing work stream, with responsibility for funding, cash management, hedging strategies etc. In this case, while there was a dedicated financing work stream, its effectiveness could be questioned. The project manager should ensure that the aims of the project and agreed actions of the steering committee are implemented by the sub project groups.

3.40 Further key actions (for example the Strategic Investments Manager, Treasury and Resources, checking whether euro payments capability existed in the States on 1st September 2008) should be centrally tracked and not left to individuals to complete.

KEY FINDING

3.41 There was a lack of management applied across the project, particularly in relation to the project financials.

3.42 As the project moved through the phases, there should have been discipline applied by the project manager and steering group to ensure key decisions which were made were communicated and implemented.

KEY FINDING

3.43 There was lack of clearly defined areas of responsibility as the project moved from inception through design to implementation phases as established project management best practice dictates.

3.44 Specifically there appears to have been a lack of clarity around the November 2008 signing of the contract and tracking the progress made in relation to how the price was going to be fixed and the key decision of 11th July 2008 to move responsibility for the contract payment, and therefore hedging, to the Treasury Department.

KEY FINDING

3.45 Lines of accountability among accounting officers within the States are not clear in respect of cross-departmental procurements.

3.46 It is also unclear whether the Treasury officials actually understood the progress of the contract at that stage and the lack of a fixed price around the forthcoming euro liabilities contained within the project. This would have been the responsibility of the lead in contractual negotiations and the chair of the Funding Working Sub-Group – the Chief Officer, Transport and Technical Services.

3.47 Also periods such as the 6-day gap between the contract being signed on 14th November 2008, and further communication between the Investment Officer, Treasury and Resources, and the Head of Decision Support on 20th November 2008, would normally be followed up and monitored, being a key project milestone.

3.48 Clearly there are stages when the responsibility moved from project to department or between departments. It is at these points that follow up is normally necessary – as can be seen in this case – to ensure responsibility and accountability is clearly understood.

3.49 This raises questions over the ability to prioritise and co-ordinate roles at the most senior level.

<u>KEY FINDING</u>

3.50 The Chief Executive and Corporate Management Board failed to identify the risks involved and prioritise the largest ever capital expenditure undertaken by the States.

3.51 The C&AG's report highlighted that meetings which were key to the project and which led to the adoption of the current strategy were not documented, for example the meeting held on 6th November 2008[27]. This is a necessary discipline which should be rigorously applied and enforced.

<u>KEY FINDING</u>

3.52 Project documentation was a problem, with key meetings and decisions not being recorded.

RECOMMENDATIONS

3.53 The Chief Executive should ensure all States decisions are implemented and risks identified and managed appropriately.

3.54 Key project roles and accountabilities should be defined, assigned and recorded at the outset of every future project undertaken by the States.

[27] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", page 44, paragraphs 162 – 163.

3.55	A steering group should be established for the energy from waste plant project, which is likely to include the responsible Ministers and departmental Chief Officers.
3.56	Lines of accountability among accounting officers within the States should be defined.
3.57	States departments should ensure the proper recording of key decisions and the decision-making process during all future projects in order to effect proper implementation and accountability.
3.58	Where contractual negotiations are taking place, appropriate dissemination of progress and potential implications for risk and funding in particular should be disseminated to all project stakeholders, including steering group and sub project work-stream managers.

4. PROPOSED MANAGEMENT OF FOREIGN CURRENCY EXCHANGE RISKS

4.1 When the States went out to tender on the energy from waste plant in November 2007, bids were requested in pounds sterling, rather than euros. However, when the bids came in on 29th February 2008, neither bidder had followed these guidelines, both choosing instead to bid with an element of the contract charges being paid in euros rather than pounds.

4.2 This was the first sign that the States would need to seriously consider the effective management of currency exchange risks.

"Former Chief Officer, Transport and Technical Services:
… both bidders … wanted to put in the most commercially attractive bid to try to win the job and they obviously took the decision that they would put in their bid with a mix of euro and sterling.

Senator B.E. Shenton:
You could perhaps also put that they realised what the currency risk was better than the Treasury Department or the States of Jersey and they did not want to take the risk on that [which] *the States of Jersey seem to be more than happy to take on."*[28]

4.3 The fact that the bidders were unwilling to take on the currency risk at zero cost did not alert the Treasury to the risk that they were potentially taking on. A review of the events that followed indicated to the Committee that there was an ill-judged willingness to accept a risk that was not there at the start of the process. Similarly, the Treasury took on the responsibility from Transport and Technical Services without, it appears, a structure in place to adequately manage it.

4.4 A Funding Working Group first met in August 2007 to consider arrangements for financing the proposed energy from waste facility. The C&AG set out in his report the initial consideration that group gave to fixing the Euro:

"The Funding Working Group considered the option of fixing the Euro rate on 1 May 2008 and again on 1 September 2008 by which date the Euro/Pound exchange rate had fallen to €1.26. The Euro rate continued to fluctuate but remained above €1.20 to the pound between the start of September and the start of November 2008. Thereafter, the rate deteriorated quickly."[29]

4.5 In May 2008, the Minister for Treasury and Resources lodged the report and proposition entitled: 'Energy from waste facility: funding,' (P.73/2008 refers). This set out the initial policy for the purchase of euros.

4.6 The report indicated that the total cost would be £106.31 million, a figure which had been calculated in May 2008 using the exchange rate at the time.

[28] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 14.
[29] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", pages 14 – 15, paragraphs 60 – 61.

The States were advised that the euro/sterling rate would be frozen when the contract was signed, and the total cost of the procurement in terms of currency risk would thereby be established.

4.7 On 9th July 2008 the States approved the procurement of the energy from waste plant and associated funding, as outlined in P.72/2008 and P.73/2008. However, no action was taken by the Treasury to fix the exchange rate for the contract[30]. Instead, discussions continued about products to deliver the strategy. The date of the contract signing came and went on 14th November 2008, and the exchange risk remained un-hedged. The exchange risk had been discussed with States' advisers, however, no action was taken.

KEY FINDING

4.8 The Committee is concerned that Ministers and departments might have the opportunity to mislead the States by including vital information in an accompanying report rather than the main proposition.

DELOITTE

4.9 First to be involved in the project were Deloitte, who were engaged by the Transport and Technical Services Department to act as financial advisers[31].

4.10 The Group agreed that "the project adviser role should be limited to providing financial models evaluations and life cycle analysis with the funding source role being a sub-cliented role for Treasury to call on as and when required for negotiations with funders"[32].

4.11 In his report, the C&AG considers that: "the initial assumption was that the procurement would be financed by borrowing, possibly by means of a bond issued by the States, and that companies tendering for the contract to build the new plant would be expected to denominate their bids in sterling so that the States would not be exposed to any currency exchange risk."[33]

4.12 Deloitte's brief did not include the provision of advice on currency hedging. However, when the bids came in with the requirement for partial payment in euros, the Treasury approached Deloitte for their thoughts on the matter.

4.13 Deloitte's written submission to the Committee[34] states:

"Although advice on currency hedging was not included in the initial scope of our work, as a result of a request from ... the then Strategic Investment Manager, Treasury and Resources Department, the scope of our work was extended to include advice on the options for currency hedging. This advice took the form of discussion during Treasury and Resources Department

[30] Ibid, page 95, paragraphs 387-391.
[31] Deloitte's brief is included at Appendix G.
[32] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", page 19, paragraph 71.
[33] Ibid, page 20, paragraph 74.
[34] Deloitte's written submission to the Committee appears in full at Appendix H.

meetings and an email to [the Strategic Investment Manager] dated 25 March 2008."[35]

4.14 The e-mail from Deloitte dated 25th March 2008 put forward options which can be summarised as follows:

- transfer an amount equal to the expected euro element of the contract into a euro account or

- obtain an option to purchase euros equal to the contract amount at a point in the future.[36]

4.15 Deloitte's advice was considered, but never executed.

"At the time of our advice regarding currency hedging, neither bidder was offering a fixed price in sterling from the time of preferred bidder appointment. We identified the options for hedging ... TRD [Treasury and Resources Department] *decided not to take any action at that time. We were informed ... that the decision would be revisited in the period leading up to contract close, at which point TRD would review the options again and make a decision as to whether to hedge the risk. We understand that the options were revisited but received no further requests for advice on the matter."*[37]

4.16 Following the departure of the Strategic Investment Manager from the Treasury and Resources Department on 3rd October 2008, Deloitte was not asked to provide any further advice relating to currency hedging and advice was instead sought from other organisations. As a result, the only specific issues Deloitte advised the Funding Group on were:

- the appropriate method of funding for the energy from waste plant (e.g. from reserves, bank funding, Private Finance Initiative, etc.);

- the options for currency hedging, as outlined above.

4.17 Deloitte appears to have been under the impression that the Treasury would provide the ownership of ensuring that the currency was hedged on the date of signing of the contract:

"In our evaluation of the bidders we noted that neither bidder was offering a fixed price in Sterling from the time of preferred bidder appointment. We therefore factored into our evaluation the impact that a potential change in exchange rates would have on each bidder's price. The purpose of this analysis was, however, to assist in the decision of selecting the preferred bidder rather than hedging against the risk. We understood that subsequent to the appointment of the preferred bidder, the decision on currency hedging would be revisited by the TRD prior to contract close with a view to

[35] Deloitte's written submission to the Committee dated 1st June 2009, page 1.
[36] Ibid, page 3.
[37] Ibid, page 2.

considering risk mitigation at that point, although as indicated above we were never asked for further advice on this matter beyond that already outlined."[38]

4.18 It is perhaps surprising that advice was not requested by the Treasury from Deloitte given their understanding of the contract. Instead, the Treasury preferred to take generic advice from Royal London Asset Management, HSBC and Hewitt, as outlined below.

ROYAL LONDON ASSET MANAGEMENT

4.19 Royal London Asset Management were initially contacted on the afternoon of 29th October 2008, when they were informed that some of the money they were managing would be used to fund an incinerator, and that part of the funding would be in euros.

"Mr. J. Pope:
We were managing money in sterling and there were various options that were being looked at to raise those euros. We were given 3 options. Firstly, just raise the euros as they were required; secondly, they were looking at forward foreign exchange contracts; and, thirdly, buying the euros in one block and paying the euros as they were required by fixed payments to the contractor. We were asked whether we could help in any of those. The email said that option 1, just taking the exchange rate was probably not going to be pursued but could we help with the other 2 options. Our reply was, yes, we could help with the other options. We have the facilities to be able to offer that service but at no point did we advise on the suitability of those options for the situation." [39]

4.20 Royal London Asset Management was aware that there was a requirement to buy euros, but, as the managing director of their Guernsey office said: "the decision was not ours and we were not giving advice as to whether to do that"[40]. The company was never made aware of the advice contained in the report to the States which said that the exchange risk would be eliminated when the contract was signed[41].

4.21 Royal London Asset Management provided the Treasury with generic advice, but nothing specific to the funding of the payments of the incinerator.

"Senator B.E. Shenton:
... what you were saying is that you could help out on an execution only basis?

Mr. J. Pope:
Yes, exactly."[42]

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[38] Ibid, page 2.
[39] Transcript of hearing with Royal London Asset Management, page 5.
[40] Ibid, page 16.
[41] Ibid, page 17.
[42] Ibid, page 5.

4.22 The Treasury took only generic advice on this issue – albeit they argued that advice had been taken. The advice asked for and received was not specific in the context of hedging.

"Mr. P. Paul:
I think the use of the word "advice" in the report is probably used a little bit too liberally now that we have been called to this hearing. It was more that our opinion was being given as opposed to our advice was being given. As you say, it was generic."[43]

HEWITT

4.23 On 24th October 2008 the Head of Decision Support, Treasury and Resources, sent an e-mail to the States strategic investment adviser, Hewitt, asking what the best approach might be to making contract payments in euros. The e-mail outlined that one option would be to fix the exchange rate as at the date of signing, and that other options being considered were to deposit the full sum in a euro account or take a chance on the prevailing rates on the payment due dates[44].

4.24 The response given by Hewitt that the States would be ill advised to expose themselves to the risk of short-term currency exchange rate movements, and that the purchase of forward currency contracts would be the normal way of achieving certainty[45]; was described by Mr. D. Hager of Hewitt as "incredibly generic"[46], and was provided without possession of all the facts.

"Mr. D. Hager
Given I had not been involved in the contract it is difficult to give this sort of advice when you do not know who else has been advising in the same territory and you do not know all the facts."[47]

<u>KEY FINDING</u>

4.25 The Treasury never requested or secured specific advice on funding the payments for the energy from waste plant.

4.26 Hewitt's advice was not taken[48], and the exchange rate was not fixed. Instead, the approach eventually arrived at envisaged that all of the euros required would be purchased at 'a time of favourable rate' prior to January 2009 when the first payments in euros would be made[49].

4.27 Even if the companies asked to provide input had been aware of the requirement to eliminate exchange risk, the Committee believes that there was

[43] Ibid, page 6.
[44] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", page 37, paragraph 135.
[45] Ibid, page 70, paragraph 268.
[46] Transcript of hearing with Hewitt, page 3.
[47] Transcript of hearing with Hewitt, page 4.
[48] Ibid, page 4.
[49] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", page 82, paragraph 320.

a flaw in the initial policy outlined in P.73/2008 to fix the exchange rate on an arbitrary date.

Senator B.E. Shenton:
It is a bit like saying: "Buy me some Barclay's shares on 12th December at 2.00 p.m." and you do not know what on earth the risk is or what the price would be or anything else?

Mr. D. Hager:
… my guess is there was a wish – and I am only guessing here – by the States to fix the contract and somehow in the proposition it got to be the date of signing the contract, but they did not mean that really, I think. They meant they wanted the exchange rate risk taken out and did not perhaps accept or understand, or it was not made clear – I do not know – that there was a huge risk between saying: "Let us go ahead" in July and signing a contract some months later when all you were really arguing about is a number of minor contractual terms.""[50]

4.28 Work should have been undertaken earlier on in the project life-cycle in order to mitigate the foreign currency exchange risk.

4.29 ***"Mr. D. Hager:***
For me the lessons for the future are … how it is one can take into account exchange rates and projects at a much earlier phase, maybe even when the States has not agreed to go ahead, but one knows there is some likelihood of going ahead."[51]

TAKING ADVICE

4.30 It is evident that there was a lack of specific advice given in relation to how best to manage the foreign currency exchange risk, and that this led to mistakes being made.

"Connétable of St. Peter:
… It has almost been called death by management advice because we appear to have had several different financial experts advising either the steering group and then yourselves within Treasury, and coming up with different forms of advice. How much did that conflicting advice cause the doubt in the minds of the responsible officers, or the accounting officer in this particular instance, which stalled him from making that vital decision to hedge the funds?

Treasurer of the States:
Yes. Certainly, if one of these people had come out with a clear understanding that they are required to give unequivocal advice, I think that would have made it … it would have been … I am not saying it is the cause of what went wrong but it would have been less likely to happen."[52]

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[50] Transcript of hearing with Hewitt, page 7.
[51] Ibid, page 7.
[52] Transcript of hearing with the Treasurer of the States, page 21.

4.31 The advisers were not asked to provide specific foreign currency exchange advice, and didn't.

"Treasurer of the States:
Neither of the advisers specifically had mandates to do with foreign exchange, although Hewitts, to be fair, foreign exchanges were part of the investments we were dealing with so they did have expertise in these areas. To deal with this specific event was not in the particular mandate. I believe that they were expert in doing this and they were competent to do so."[53]

4.32 It is also apparent that the advice that was given was provided without complete understanding of the States as a client:

Mr. D. Hager
"…I am not in any sense wanting you to take risk, I am merely saying I do not know what your tolerance for risk is."[54]

4.33 One of the fundamental aspects of regulation is due diligence and the Public Accounts Committee is particularly concerned by the apparent lack of understanding between the States and Hewitt in this regard. The Committee feels that the adviser should have known the risk tolerance, and ideally the fact that the States had requested a "no risk" policy.[55]

"Senator B.E. Shenton:
You are giving advice here and by your own admission you do not know the risk to your client.

Mr. D. Hager:
You never know any client's risk tolerance how ever much you ask them. At the end of the day it can only be the client that takes the decision whether to run that risk or not. The adviser can advise, but at the end of the day I just do not know what is acceptable to any client. As I say, I can ask all the right questions, but it is extremely hard to know. You do the best job you can, but at the end of the day I just go back to my standard statement… Ask yourself the question: "Can you accept those tolerances?" If you can then you go ahead and you do not put a hedge out; if your view is you can do better than the position, do that.

Senator B.E. Shenton:
So the decision ultimately lies with the client which in this case is the Treasurer of the States of Jersey?

Mr. D. Hager:
It can only be, in my view, with the client. I am sorry, but that is the way I see it. It is not a question of me not asking enough questions; it is that I just cannot understand at the end of the day exactly the risk tolerance that person

[53] Ibid, page 26.
[54] Transcript of hearing with Hewitt, page 17.
[55] The States were of the understanding, when they approved P.73/2008, that the element of risk would be removed when the currency was hedged on the date of signing the contract.

has. He can tell me the best he can, but only really he can decide; I cannot decide."[56]

KEY FINDING	
4.34	States advisers do not have an in-depth profile of their client and are unaware of the level of risk the States is able to take or their preferred investment options.

4.35 The Committee is pleased to note that the foreign exchange issue is being considered at a higher level now, however it would wish to see more clarity in the engagement of Hewitt, especially the removal of the apparent indemnity[57].

INTERDEPARTMENTAL ADVICE

4.36 There also appears to be a weakness in the current system of procuring advice if that advice is given by another States department.

4.37 Where advice is given by an external provider there should be clearly defined engagement letters setting out exactly what advice is required. This was not done when Transport and Technical Services engaged the Treasury to handle the financial funding of the incinerator contract[58]. Nor, incidentally, was it done by Treasury when taking hedging advice – generic advice that was interpreted as specific advice.

"Connétable of St. Peter:
...From your point of view as the Accounting Officer at the time of the signature, were you aware of what was going on regarding the hedging element then or did you assume that was being dealt with by other parties?

Former Chief Officer, Transport and Technical Services:
... We knew it was being recommended. That was the recommendation of the professionals who were managing that element of it. If I draw a line as to exactly where responsibilities rest here, if I have a technical consultant, they advise me on technical matters. If I had a financial consultant, Deloittes, they advise me on financial matters that were very clearly defined. If I have a legal adviser they advise my legal matters. They are all under contract and they are all under very strict terms and conditions of contract and liability. In exactly the same way I would see the Treasury under those same terms and conditions although they were not formally engaged as consultants." [59]

4.38 As the former Chief Officer, Transport and Technical Services points out, had the Treasury advised that it was not able to undertake the management of the

[56] Transcript of hearing with Hewitt, page 18.
[57] Transcript of hearing with Hewitt, pages 17-18.
[58] At the meeting of the Funding Working Group on 7th August 2007 it was agreed that "the funding source risk … fell to Treasury and Resources", however formal letters of engagement were not entered into and, at the time, no foreign exchange risk was anticipated.
[59] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 5.

foreign currency exchange risk associated with the project, the outcome would have been rather different.

"Former Chief Officer, Transport and Technical Services:
…if I was sitting here in a different forum today where the Treasury had said they could not for whatever reason manage the funding element we in T.T.S. (Transport and Technical Services) would have appointed an investment adviser or extended a brief for one of the other advisers. Now if I was sitting here today in a different format, because we are still talking about the same subject, but it was very different, I would be looking at the P.I. (public indemnity) insurance of that adviser because clearly they had given me the wrong advice. I see no difference between how I classify the Treasurer and the Treasury giving me that advice as I would of employing a separate investment adviser."[60]

4.39 Once again, the problems return to ineffective project management and a failure to recognise the weaknesses which result.

4.40 The risk mitigants one would normally expect to see with inexperienced, unqualified, or junior staff do not appear to have been in place for the project. Specifically:

- the sourcing and receipt of professional advice was sought and the provision of alternative hedging strategies was identified;

- however, the responsibility for the conversion of this advice into a key paper fell upon the Head of Decision Support, Treasury and Resources, who had already advised of his lack of foreign currency management (27th October 2008)[61];

- Further, the incorporation of costs for the various options and identification of all types of instrument (including American versus European options) appears to have confused the decision making process, not taking into account of the potential additional costs of the euro moving significantly against sterling. There also appears to be no evidence of costs of the different hedging strategies being challenged.

4.41 The paper which the Head of Decision Support, Treasury and Resources, prepared relating to the alternative hedging strategies and discussed at the meeting on 6th November 2008 does not appear to have been checked prior to the presentation. Further, none of the assumptions appear to have been discussed.[62] For a key decision milestone it would be expected that this would have been run by at least the department head and also the project manager. Finally there appears to have been no validation of the advice received from both HSBC and Hewitt.

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[60] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 5.
[61] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", page 74, paragraph 284.
[62] Ibid, page 77, paragraph 295.

CONCLUSIONS

4.42 The Committee considers it normal market practice for advice to be given in relation to projects such as this. The States had suitable agreements in place for the provision of advice, and, had suitably qualified personnel been able to outline the requirement to the parties providing the advice, the downside risks would have been identified and addressed, avoiding the 'losses' incurred by having an uncovered exposure to euros.

4.43 The Committee would expect there to be three general groupings of market information to be sought and provided, to allow a formal hedging strategy to be put in place:

Macro Economic Advice

There is no apparent infrastructure in place to allow for an understanding of the macro economic situation and its impact on markets, economies and instrument volatility. This would have avoided the 'surprise' at the well flagged decline of sterling during the second half of 2008 and early 2009.

Foreign Exchange Advice

There is no specific arrangement in place with any party, be it Royal London Asset Management, Hewitt or HSBC, for the provision of foreign exchange advice. Under normal circumstances, any party with a major foreign currency exposure would be expected to have this in place. In the financial markets, names such as Hewitt and Royal London Asset Management are not normally associated with the provision of foreign exchange advice.

Foreign Exchange Market Views

As part of daily monitoring, there appears to be no mechanism in place to take feedback on the market views on currency movements, market events and announcements, and associated volatility. The Committee would have expected regular updates to be sought and obtained from either the States' cash managers or bankers.

RECOMMENDATIONS

4.44 Exchange rate considerations should be analysed, the appropriate policy put in place, and consideration given to the proper use of advisers, at a far earlier stage when managing projects in future, and before the project has been approved by the States.

4.45 Careful consideration should always be given to the appropriate time to sign up to high-worth contracts and to the possible financial consequences of variations in timetables.

4.46 States' advisers should be provided with an in-depth profile of the States as a client which outlines the level of risk the States is able to take and its preferred investment options.

4.47 Terms of engagement with Hewitt should be reviewed.

5. CURRENT POLICY

5.1 As a result of the failure to eliminate the exchange risk associated with the procurement of the energy from waste plant, the States appears to have embarked upon a policy of currency speculation that anticipates sterling will recover against the euro.

5.2 This has partly been possible because the reports accompanying P.72/2008 'Energy from waste facility: establishment and acceptance of tender' and P.73/2008, 'Energy from waste facility: funding', have no influence on the proposition itself:

"**Mr. W.D. Ogley:**
... the report itself was not decided upon by the States. The States did not adopt the report in total and I think the point has been made, therefore, that the statement about exchange risk was a statement of intent as opposed to a final decision. So, I just come back to that because you said the States proposition; indeed, it is not the States proposition."

5.3 The States' decision is held within the content of the proposition. The accompanying report is just the background information and cannot be relied on later as anything other than an indication of what was explained to members when they adopted the proposition.

5.4 Therefore, any intention to eliminate exchange risk, or otherwise, as outlined in the accompanying report, was never voted upon by the States, enabling the decision of the States to be enacted in whichever manner seemed appropriate at the time.

5.5 An e-mail sent by Hewitt to the Head of Decision Support on 15th December 2008 appears to encourage the Treasury to speculate on the exchange rate using taxpayers' money, rather than to eliminate risk:

"*...my inclination would be to take a chance on the exchange rate and not translate all the necessary future payments from sterling into euros at this time."*[63]

5.6 On 17th December 2008, a policy was agreed by which euros would be acquired as and when needed to meet payments under the contract, save that if the exchange rate passed various 'triggers' the opportunity would be taken to buy euros in advance of the contractual requirement[64].

5.7 A revised policy for scheduled euro payments was drawn up by Hewitt on 9th April 2009 and approved by the Treasury Investment Sub Committee on 14th April 2009[65]. Under both the original and revised policies, the Treasury Department appears to have given itself a remit to speculate on currency by not mitigating the downside risk.

[63] Transcript of hearing with Hewitt, page 8.
[64] Report of the C&AG entitled "Energy from waste plant: management of foreign currency exchange risks", page 89, paragraph 353.
[65] The revised policy on scheduled euro payments is included at Appendix D.

"Treasurer of the States:
If the euro rate goes down, then it will end up costing us money."[66]

5.8 The Committee has serious concerns regarding the current strategy as it does not guard against a drop in the exchange rate.

"Senator B.E. Shenton:
Going back to the strategy it seems to say we will deal with it if it hits €1.05 so, as I said, what will you do if the rate hits €1.05? You will have another meeting?

Treasurer of the States:
We will seek the advice of our investment advisers. So far the strategy has been more successful than just locking out on 17th December, which would have been our alternative.

Senator B.E. Shenton:
Well, I agree with you that sterling has strengthened against the euro over recent weeks. That may continue, it may not, who knows, but the strategy at the moment is if it hits €1.05, panic. Is that what the strategy is at the moment?

Treasurer of the States:
No, we would seek further advice at that time."[67]

5.9 This is not considered by the Committee to be an effective risk management strategy.

"Senator B.E. Shenton:
We have got this chunk of money unhedged at the moment, so can you just reiterate what the strategy is in the department and whether this has the full political backing now, because obviously concerning the previous policy there was a lack of political input there?

Treasurer of the States:
Yes. On advice from Hewitts, we have this stepped strategy now which is to get the best result we can for the States. The revised strategy is we have purchased 5 million euros at €1.15. We will purchase another 5 million euros when the rate is €1.15; 5 million euros at €1.175; 5 million euros at €1.20 and the balance at €1.25; and at each step we will review the strategy."[68]

5.10 The Committee considers that one of the basic rules of investment is that you do not cut your profits and run your losses – the approach currently adopted by the Treasury.

5.11 Measured against the cost of acting in the spot market in mid December 2008, it is clear that the current policy has realised substantial financial benefits as there has been an improvement in the sterling rate against the euro. However,

[66] Transcript of hearing with the Treasurer of the States, page 33.
[67] Transcript of hearing with the Treasurer of the States, page 34.
[68] Ibid, page 41.

the Committee notes that it could easily have shifted the other way, increasing the loss substantially.

5.12 One strategy would have been to have a rise in stop loss, which would have provided the States with a level of certainty. This point has since been accepted by Hewitt:

"Mr. D. Hager:
...I accept that moving forward without cover brings a chance of a worse outcome, but it does seem to me that on the balance of probabilities that it is a risk worth taking providing, of course, you can afford to take that risk and that is what this is all about. If you cannot afford to take the risk you take it all out at the spot rate."[69]

5.13 A fundamental issue is that the Treasurer, while admitting to a lack of expertise in his Department[70], has permitted a policy of un-hedged currency exposure which continues to this date, as a material portion of the contract is still un-hedged.

5.14 This is a situation which Hewitt is content with:

"Senator B.E. Shenton:
…are you comfortable with that?

Mr. D. Hager:
It comes back to the issue that it is not my capital at risk. I am merely saying to you if you do not have the capital at risk behind that contract and you cannot tolerate this sterling fluctuation you have to go into the market and do something. ...There is no doubt if you do not want any more sterling fluctuation, you want to know what the sterling cost is then the best thing to do is go straight on the spot market and buy all the euros we need; not take any more risk at all. I am not in any sense wanting you to take risk, I am merely saying I do not know what your tolerance for risk is, but as the sums get smaller the overall fluctuation obviously, for the total project, gets smaller."[71]

5.15 Senator P.F.C. Ozouf, Minister for Treasury and Resources, has also stated that he is happy with the current approach[72].

5.16 However, the Committee considers the policy to be one of rate aspiration and not one of risk management. To have 'upward only' trigger points for the purchase of euros, albeit one that is periodically reviewed, still leaves the States fully exposed to downward movements in the sterling/euro exchange rate on what the Committee is advised is €33.5 million, or 44% of the €75.7 million cost of the euro portion of the project.

[69] Transcript of hearing with Hewitt, page 9.
[70] Transcript of hearing with the Treasurer of the States, page 9.
[71] Transcript of hearing with Hewitt, page 17.
[72] Transcript of hearing with Senator P.F.C. Ozouf, page 16.

KEY FINDINGS

5.17 The current strategy employed by Treasury and Resources, and supported by the Minister, to manage the ongoing currency exchange risks in relation to the funding process for the procurement of the energy from waste plant, does not sufficiently guard against further strengthening of the euro and further substantial losses.

CONTRACT PAYMENTS

5.18 As at 17th July 2009, the following euros had been purchased, at a mean average exchange rate of 1.101:

Schedule of Euros Purchased to 17 July 2009		
Date	**Amount €**	**Exchange Rate**
17/12/2008	2,974,918	1.076
17/12/2008	6,818,149	1.076
17/12/2008	6,818,149	1.076
17/12/2008	375,459	1.076
28/01/2009	3,409,075	1.067
28/01/2009	6,818,149	1.067
10/02/2009	5,000,000	1.150
27/05/2009	5,000,000	1.150
11/06/2009	5,000,000	1.175
TOTAL	**42,213,899**	

5.18 As at 17th July 2009, payments totalling €28,385,010 had been made:

Schedule of Euro Payments to 17 July 2009	
Date	**Amount €**
29/12/2008	2,974,918
29/12/2008	6,818,149
29/12/2008	6,818,149
29/12/2008	375,459
04/02/2009	3,409,075
04/02/2009	6,818,149
25/02/2009	1,051,285
08/06/2009	119,826
TOTAL	**28,385,010**

5.19 Euro payments over the course of the contract will total €75,690,671. Of those, payments totalling €47,305,661 remained outstanding as at 17th July 2009:

Schedule of payments outstanding under the contract	
Date	**Amount €**
June 2009	675,826
August 2009	675,826
October 2009	10,227,224
November 2009	119,826
December 2009	3,519,835
January 2010	110,760
February 2010	3,409,075
March 2010	6,884,606
April 2010	88,608
May 2010	3,409,075
July 2010	88,342
August 2010	3,409,075
September 2010	2,270,720
October 2010	2,727,260
November 2010	3,484,167
March 2011	2,420,904
June 2011	2,079,996
June 2012	1,704,536
TOTAL	**47,305,661**

CONCLUSIONS

5.20 It has become apparent that the decision of the States to eliminate risk has been over-ridden and a policy of currency speculation has taken its place.

5.21 The Committee struggles to understand the rationale of this approach, particularly given the political and public relation sensitivities surrounding any such project, but especially one where the lack of appropriate risk management is already so high profile.

5.22 The first priority the Committee would wish to see would be for the overall cost of the project to be managed. The next issue is to consider what the consequences are of the different approaches to hedging, given different outcomes in the average prevailing exchange rate on payment dates.

5.23 The Committee would make the case that decisions on risk management should not be made by the States (or indeed any corporate) based on either expectation or forecast of exchange rates. This is tantamount to speculation on the foreign exchange markets, something which should not be core to the States' role. Therefore some form of hedging to insure the cost of the project would seem to be an appropriate approach, protecting both the reputation and economic interests of all involved.

5.24 In the current context the Committee considers that, having been criticised for not fixing the cost, to do so now and risk the rate improving in the future could well be seen as two badly-timed decisions as opposed to one.

5.25 The Committee can therefore see a rationale for a policy that:

1. protects (or fixes) the worst case cost of the project, based on an agreed floor level if sterling suddenly weakens;

2. allows full, or partial, participation in favourable exchange rate movements.

5.26 The Committee does not see how the current policy meets objective one, as if the exchange rate falls there is no protection available. Arguably objective 2 is being met, but this is very much a secondary consideration.

5.27 The only way in which the Committee sees the policy as providing protection is that it is being periodically reviewed, but, as everyone is acutely aware, exchange rates can move a long way in a very short time, and just a 10% fall in the rate equates to significant change to the overall cost.

<u>KEY FINDING</u>

5.28 The current policy does not meet the objectives as the Committee understands them and the risk is still not being appropriately managed, despite the focus in this area over the past few months.

RECOMMENDATIONS

5.29 The Privileges and Procedures Committee and Council of Ministers are requested to ensure that, going forward, reports and propositions are structured so that key undertakings are clearly stated and are binding.

5.30 The Treasury and Resources Department should include a stop loss in its policy on the ongoing management of currency exchange risks with regard to the funding process for the procurement of the energy from waste plant.

6. ACCOUNTABILITY

6.1 The apparent lack of effective project management with regard to financing the purchase of the energy from waste plant begs the question of who was accountable.

6.2 A dictionary definition of the term 'accountability' is:

> *"The state of being accountable; liability to be called on to render an account; the obligation to bear the consequences for failure to perform as expected; accountableness."*

6.3 The phrase: *"the obligation to bear the consequences for failure to perform as expected"* is the definition of accountability as perceived by the Public Accounts Committee. Compare this with the Chief Minister's definition:

> *"**Senator B.E. Shenton:***
> *You have used the word "accountability" a lot. What does accountability actually mean?*
>
> ***Senator T.A. Le Sueur:***
> *I suppose you could say the person with whom the buck stops. It is the person who takes responsibility for carrying out decisions made by the States or the Minister.*
>
> ***Senator B.E. Shenton:***
> *The person where the buck stops that is responsibility. What is accountability?*
>
> ***Senator T.A. Le Sueur:***
> *Accountability is being able to demonstrate how that work has been carried out."*[73]

6.4 The Chief Minister appears not to understand the true meaning of accountability, but confuses the word with responsibility. Accountability is not where the buck stops and it is not the ability to demonstrate whether the work has been carried out.

6.5 The preamble to the States of Jersey Law 2005 states that "Jersey wishes to enhance and promote democratic, accountable and responsive governance". It is with regard to this statement that the Committee considers that someone should be held accountable for the mistakes made in relation to financing this project.

THE STATES

6.6 The States were responsible for approving P.72/2008 'Energy from waste facility: establishment and acceptance of tender' and P.73/2008, 'Energy from waste facility: funding.'

[73] Transcript of hearing with the Chief Minister, page 15.

6.7 The report accompanying P.72/2008 indicates a total capital cost of £106.31 million, and includes the following statement:

"10.2 This cost is exclusive of fluctuations in currency during, and any delay beyond the six month period from 30th April 2008, during which the Preferred Bidder's tender is fixed. Allowance has been made within the funding for the project for appropriate contingencies to deal with these possibilities."

6.8 During the States' debate on P.73/2008, no mention was made of the management of the foreign currency exchange risks[74], even though the statements in the report accompanying the proposition could be interpreted as being conflicting:

"3.2 This exchange risk will be eliminated upon the signing of the contract with the preferred bidder at which time the euro/sterling rate will be deemed to freeze for the purposes of the contract payments. All contract payments will be made in Sterling.

3.3 The Treasury has conducted a sensitivity analysis of the currency exposure and obtained expert advice on anticipated currency fluctuations. As with all States capital projects the Treasury will monitor and manage the fluctuations risk. The cost of any currency fluctuations will be met from the Capital Projects Reserve Vote in the event this increases the cost of the project."

6.9 The Committee believes that the States Assembly should be ready to question the detail of reports accompanying propositions and to clarify statements made therein.

<u>KEY FINDING</u>

6.10 The States Assembly did not question or give full consideration to the risks associated with the management of foreign currency exchange when agreeing the funding for the energy from waste plant.

MINISTER FOR TREASURY AND RESOURCES

6.11 At the time the contract for the energy from waste plant was signed on 14th November 2008, the then Minister for Treasury and Resources, Senator T.A. Le Sueur, was apparently unaware of the exchange rate risks that the States had been left exposed to following the failure of the Treasury to eliminate the risk.

"Senator B.E. Shenton:
When did you first become aware that there was a problem with regard to the currency hedging issue?

[74] States of Jersey Official Report, 9th July 2009.

Senator T.A. Le Sueur:
Some time early in December."[75]

6.12 Once aware of the problem, Senator Le Sueur took the view that this was an internal matter, even though it might make a material difference on the cost of a States decision:

"Senator T.A. Le Sueur:
I was concerned not so much that the problem had come about; I was just concerned that a policy which should have been implemented had not been implemented…

…The ultimate responsibility for ensuring the policy is acted upon must remain with the accounting officer of the Treasury, which is the States Treasurer."[76]

6.13 In accordance with Article 28 of the Public Finances (Jersey) Law 2005, the Treasurer is "responsible to the Minister for the supervision of the administration of this Law and of the public finances of Jersey." As far as Senator Le Sueur was concerned, the Treasurer of the States was directly accountable to the States through the Minister.

6.14 As corporation sole[77], the former Minister for Treasury and Resources could have been expected to take a greater interest in the financing of the project following the meeting held on 6th November 2008 regarding the rising costs of the contract[78]. As, in accordance with Article 26(6) of the States of Jersey Law 2005, "The senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction."

6.15 The matter only became a political priority when Senator P.F.C. Ozouf was appointed Minister for Treasury and Resources and became aware of the exchange risks:

"Senator B.E. Shenton:
When did you first become aware that there was a problem with regard to the currency hedging issue?

*"**Senator P.F.C. Ozouf:***
I think it was within a matter of hours of me being appointed as Treasury Minister that I became aware, because of direct communication with the Treasurer, that there was an exposure to an exchange rate risk which was not envisaged by, I think, any Minister previously and certainly not by the decision of the States which did indicate that the exchange rate would have been eliminated."[79]

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[75] Transcript of the hearing with the Chief Minister, page 2.
[76] Ibid, page 3.
[77] In accordance with Article 26(1) of the States of Jersey Law 2005, "each Minister shall be a corporation sole".
[78] See paragraph 3.14 of this report.
[79] Transcript of the hearing with the Minister for Treasury and Resources, page 2.

6.16 The Committee is concerned that the exchange rate risk became a high priority at this point, but had not been previously.

6.17 With regard to who was accountable, Senator P.F.C. Ozouf felt the matter could have been better defined:

"Senator P.F.C. Ozouf:
For the avoidance of any doubt, we have set up a Public Finances Law and we now have the legal definition of accounting officer and accounting officers are ultimately responsible in the same way that a Minister cannot shift the responsibility on to an Assistant Minister. The department, read "accounting officer."

The Connétable of St. Helier:
Which this case was the Chief Executive of T.T.S. not the Treasurer. Is that right?"

Senator P.F.C. Ozouf:
There are real issues and I heard the evidence that the Treasurer gave you on ... there are some clear issues falling between 2 departmental stools there. That is absolutely clear and certainly corrective action going forward is that there should be absolute clarity of whose responsibility it is in terms of a particular capital project. On this occasion it is quite clear that there was a shared responsibility. I offer no criticism to the accounting officer of T.T.S. for this matter because clearly I think, as far as the exchange rate issues were concerned, that fell within the remit of the Treasury and Resources Department. But going forward there is a lesson that where there is a shared responsibility there needs to be absolute clarity for the avoidance of doubt."[80]

6.18 Senator Ozouf is critical of a serious flaw in the very structure of managerial responsibility within the civil service. And it is the ultimate responsibility of the Chief Executive of the States, and the Chief Minister politically, to ensure robust and professional structures are in place.

THE CHIEF EXECUTIVE

6.19 The Chief Executive felt he had a very clear role to play in respect of the energy from waste plant project.

"Chief Executive:
I personally think my role is very clear in this. My job as Chief Executive is to ensure that the proper arrangements are in place to manage the contract properly through all the stages of its growth, feasibility, planning, decision making, implementation. My job is to ensure that those management arrangements are in place, that the arrangements comply with the requirements set by the States through its financial directions and States decisions."[81]

[80] Transcript of hearing with the Minister for Treasury and Resources, pages 8 – 9.
[81] Ibid, page 2.

6.20 The job of the Chief Executive is to ensure that senior staff have the necessary ability to carry out their role in a professional and efficient manner. The responsibility for hedging the contract was, in the opinion of the Chief Executive, very clear:

"Chief Executive:
So I am very clear the responsibility rested with the Treasury and with the Treasurer, in that it was an operational matter, it was not a political matter or political decision and that report made it very clear to the States and to everyone involved who was responsible."[82]

6.21 Yet it is perhaps surprising that the Chief Executive did not take a greater interest in a project of this size and importance. He states:

"Chief Executive:
I think my role as Chief Executive is to ensure, as I have said, that the project is then properly managed, allocated and structured."[83]

6.22 It could be argued that the project, by the very failure to undertake the euro hedging, was not properly managed, and it draws questions in relation to overall management structure and accountability.

6.23 There is a fundamental difference of opinion in respect of the Chief Executive's concept of interaction with the Treasurer and the legal responsibilities as set out under the Public Finances (Jersey) Law 2005.

"Mr. K. Keen:
...In Article 30 it says that the Treasurer may not be directed on how the function of the office of Treasurer is to be carried out ... would it be fair to say that the monitoring of the Treasurer is different to almost any other of your officers? ... From what I can see, you are not mentioned in the Public Finance Law.

Chief Executive:
Under the Public Finance Law I have no role. You are absolutely right. It is very clear that that is the Treasurer's role. I do not regard that as meaning that the monitoring and my responsibility in relation to the Treasury is any different to that of most other chief officers because most other chief officers will have specific roles and responsibilities under specific pieces of legislation that I will have no responsibility for, and nor should I."[84]

6.24 The Committee was concerned to note that the Chief Executive did not believe he needed to be involved on such a large project.

[82] Transcript of hearing with the Chief Executive, page 2.
[83] Ibid, page 3.
[84] Transcript of hearing with the States of Jersey Chief Executive, pages 7 – 8.

6.25 However, it is difficult to place liability with the Chief Executive due to a structure that has clear lines of responsibility leading directly to the Treasurer of the States.[85]

"Senator B.E. Shenton:
Because ultimately under the Public Finance Law the Treasurer ... does not report to you.

Chief Executive:
No.

Senator B.E. Shenton:
The responsibility for this was with him, 100 per cent with him.

Chief Executive:
Yes."[86]

6.26 The Chief Executive is reliant on the abilities of his Chief Officers and other senior staff. The Public Accounts Committee has concerns in respect of the expertise within the Treasury and it appears that the Chief Executive shares these:

"Senator B.E. Shenton:
Are you confident as the Chief Executive that we have enough experience and expertise within the Treasury Department? ... Are you happy that we do have the expertise within Treasury given these failings?

Chief Executive:
No. No.

Senator B.E. Shenton:
You are not happy that we have the expertise?

Chief Executive:
Well, it is quite clear, as the report says, these failures have occurred. Part of it is lack of experience, as was made clear."[87]

CHIEF OFFICER, TRANSPORT AND TECHNICAL SERVICES

6.27 The former Chief Officer of Transport and Technical Services is clear in his mind where responsibility lay:

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[85] The Treasurer's job description states: "Reports to Chief Executive to the Council of Ministers and accountable to the Minister in respect of policy direction for the Ministry". The Chief Executive determines the Treasurer's performance objectives, and is responsible for the Treasurer's performance review and appraisals. The Treasurer has advised the Committee that he believes the Public Finances Law to be consistent with this. He said: "The Section in the Public Finances Law is there specifically to prevent anyone seeking to instruct or influence me either to follow poor financial practice, or to not report financial malpractice".

[86] Transcript of hearing with the States of Jersey Chief Executive, pages 9 – 10.

[87] Transcript of hearing with the States of Jersey Chief Executive, page 10.

"Now, I am absolutely clear that the responsibility for funding this project rested with the Treasurer, the responsibility for managing the contract, all aspects of it, including managing the expenditure on the contract, rest clearly with the Chief Officer for Transport and Technical Services. Now, in my opinion, that is absolute clarity. There is no question about it."[88]

6.28 However, the Treasurer believes ultimate responsibility lay with the former Chief Officer of Transport and Technical Services:

Treasurer of the States:
"…if you read it under the law the accounting officer is responsible for the revenue and capital spend of their department."[89]

"So, the accounting officer for this project was clearly the Chief Officer of Transport and Technical Services and that is responsibility for all risks to do with that project. Now, I accept that a currency risk is an important issue and it ... will not be within the expertise of the Chief Officer of that department. So, what you do in those circumstances as accounting officer is bring in expertise to deal with those issues. Clearly, professional accounting advisers were brought in to deal with it and we also had Treasury advisers in there, so they were advising him on those issues." [90]

6.30 The Treasurer subsequently made the following clarification:

Treasurer of the States:
"I do not believe ultimate responsibility for hedging lay with the Chief Officer of Transport and Technical Services, nor did I say this. This quote has been taken out of context. The point I was making, immediately before this quote, and as acknowledged elsewhere in the Public Accounts Committee report, is that lack of clarity on responsibilities, such as the existence of the energy from waste Funding Group, was a contributing factor in what went wrong.

"The Chief Officer, Transport and Technical Services, was, and still is, the accounting officer for the energy from waste plant project, However, I also said in the hearing: "There certainly were mistakes made on this and…the Treasury has to take some responsibility for those things." Also later in the hearing I said: "I have to accept that by that time, because of the statement in that report, the responsibility was moving across to the Treasury." Senator Shenton: "What date was that? 11th July". Mr. I. Black: "Yes, it did."

"Hence I clearly stated that responsibility for hedging issues rested with the Treasury."[91]

6.31 When advised that the Treasurer did not feel it was within his remit to be involved in the financing of the project, the former Chief Officer, Transport and Technical Services, said:

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[88] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 2.
[89] Ibid, page 13.
[90] Transcript of hearing with the Treasurer of the States, page 13.
[91] Written submission of the Treasurer of the States in relation to the content of the Committee's draft report.

"Former Chief Officer, Transport and Technical Services:
If that was the case then he should have made that very clear when his officers took responsibility for it on 21st August 2007. He did not."[92]

TREASURER OF THE STATES

6.32 The Treasurer of the States holds an exceedingly important position as he is responsible for managing the finances of the Island in a professional manner.

6.33 The Committee examined the role of the Treasurer, as set out in the Public Finances (Jersey) Law 2005, with particular regard to the following Articles:

"2 Functions of the Minister

The Minister must ensure that the public finances of Jersey are regulated, controlled and supervised in accordance with this Law and that the provisions of this Law are otherwise duly complied with."

"28 Establishment of the office of Treasurer of the States

(3) It is the responsibility of the Treasurer to ensure the proper stewardship and administration of the public finances of Jersey and, in particular –

(a) to set financial management standards for their administration and for monitoring compliance with those standards;

(b) to ensure that professional practices are adhered to in their administration;

(c) to advise on the key strategic controls that are necessary to secure their sound financial management;

(d) to ensure that financial information is available to enable accurate and timely monitoring of their administration, and to advise on the appropriation and budget process for each financial year."

6.34 It is important to note that role of Treasurer is exceptional in that the personal responsibilities of the post-holder are defined in law in this way. The Law seems to indicate that the Minister for Treasury and Resources has a responsibility to monitor the Treasurer, and the statement on internal control in the 2007 accounts indicates that the Chief Executive has responsibility for ensuring an efficient system of internal control.

[92] Transcript of hearing with the former Chief Officer, Transport and Technical Services, page 2.

6.35 These responsibilities are also reinforced through Objective 4, paragraph (v) of the Treasury and Resources Department's section of the Annual Business Plan 2009, which reads as follows:

"Central authority and responsibility of the Treasurer of the States as corporate head of finance strengthened, with all finance officers and accounting staff recognizing their direct responsibility and accountability to the Treasurer."

6.36 The Treasurer has an extremely wide mandate, and the current post-holder sees himself primarily as a strategic manager. As he states, "obviously I cannot do everything."[93] It is important that the department is run in a highly efficient way and it is of some concern to the Committee that the problems being experienced with regard to the management of foreign currency exchange risks on such a high-worth project were not picked up at the time by those at a higher management level.

6.36 Now that these matters have been identified however, the Chief Executive has advised that they are being addressed.

6.37 The present Treasury Minister accepts that the failing lies within his own department:

*"**Senator P.F.C. Ozouf:***
The C&AG's report is clear that there has been a failing within the Treasury Department in terms of implementing, what ... was clear to be, a clear political decision."[94]

6.38 Senator Ozouf stated that the Treasurer was aware of the problem in relation to the currency exchange risk, the politicians having made a decision that the exposure should be eliminated.[95]

"Senator P.F.C. Ozouf:
...I would repeat very clearly that this was an issue of officer implementation. Even until a number of days after my tenure as Treasury Minister, I would not be expected to make decisions which were clearly a matter for officer implementation."[96]

6.39 The Ministers have given a clear message during the Committee's investigations that this is a matter of implementation – implementation by the senior civil servants who are remunerated to implement policy.

"Connétable of St. Helier:
...a day before the signing, people were aware there was a problem but the signing took place the following day and there was a related Ministerial Decision ... by the Treasury and Resources Minister approving the necessary budget and giving delegated authority to you to approve the actual sum

[93] Transcript of hearing with the Treasurer of the States, page 3.
[94] Transcript of hearing with the Minister for Treasury and Resources, page 3.
[95] Ibid, page 4.
[96] Ibid, page 12.

required. Did you feel uncomfortable with that position you were being placed in, in the sense that the Public Finances Law does not allow an accounting officer, which I appreciate you were not on this project ... but it does not allow a civil servant to spend money that the States have not approved. Did you feel that this was a …

Treasurer of the States:
No. Admittedly, this was all done under huge pressure but what happened here is normal process."[97]

STAFFING

6.40 The Treasurer of the States appears to have concerns over the abilities of the staff within his department:

"Senator B.E. Shenton:
Given the size of the contract and the size of the possible liability to the States, did you not think it wise to take more of a hands-on approach yourself?

Treasurer of the States:
Clearly, with the benefit of hindsight, yes, it might have been, but at the time I believed that I had competent officers dealing with this."[98]

6.41 The Treasurer also raised concerns regarding staffing levels within the department:

Treasurer of the States:
"We are that tightly staffed that we have one person who dealt with this. When they left, we were exposed in that we did not have anybody with any expertise so I think there comes a point where you just must increase basic capacity."[99]

6.42 It was interesting to note that the Chief Minister was willing to take some responsibility for the under-resourcing of the Treasury Department during his tenure:

"Senator B.E. Shenton:
… When you say under-resourced, when the word comes into your mind, do you think of more people or do you think of more qualified people, more efficient people? You could be under-resourced because you have got the wrong people as opposed to not enough people. Which one is it?

Senator T.A. Le Sueur:
I think it is that the senior management team had a shortage of numbers. If there were greater numbers you could probably also have a greater variety of expertise within that number. I point out that the Treasury in the time when I was Minister, the previous 3 years and before then, had gone through some fairly massive changes with things like moving to G.A.A.P. (Generally

[97] Transcript of hearing with the Treasurer of the States, page 51.
[98] Ibid, page 9.
[99] Ibid, page 54.

Accepted Accounting Principles) accounting and the whole of fiscal strategy and implementation of the goods and services tax, set against the backdrop of reduced numbers.

Senator B.E. Shenton:
Where does responsibility for that lie?

Senator T.A. Le Sueur:
Responsibility for that lies initially with the Minister to ensure that there are sufficient resources and further to the States for setting a business plan which allows departments to be adequately resourced. You may not have been as well aware as some of your colleagues of the pressures of fundamental spending reviews which have tended to transfer resources away from the central departments towards the social departments of Health, Society Security, Home Affairs and Education. That has reached a level now where the pendulum has possibly swung a bit too far and I think that is one of the reasons why in last year's business plan there was an amendment to give additional resource to the Chief Minister's Department, and indirectly to Treasury as well, to strengthen that level of support at a senior level."[100]

6.43 The Committee has concerns regarding the level of expertise within, and organisation of, the Treasury Department.

6.44 However, it is the job of the management to manage – not to make excuses. The Treasurer of the States was aware that there were weaknesses in his department yet failed to take responsibility for filling these gaps, or take a more hands-on approach until the gaps were filled.

"Connétable of St. Peter:
... do you consider looking back that you were competent to carry out all those tasks at the same time, given the outcome as we see it today?

Treasurer of the States:
I could not, I cannot, carry out all these tasks at the same time, which is the point I make. I must rely on my senior managers to do it."[101]

CONCLUSIONS

6.45 At the start of its investigations, the Committee had expected accountability for the mistakes made in relation to financing this project to be clear to all involved. However, this has not been the case.

6.46 When the Committee met with the Treasurer of the States he said:

"…the accounting officer for the energy from waste scheme was the Chief Officer of Transport and Technical Services and yes, you are quite right, he appointed a project manager that was ultimately responsible for co-ordinating

[100] Transcript of hearing with the Chief Minister, page 20.
[101] Transcript of hearing with the Treasurer of the States, page 11.

all aspects of the project. One of the aspects of the project was the financing aspects, and there was a group set up to deal with that."[102]

6.47 It would appear that the lines of responsibility for the project were not clearly defined, and the Treasurer has acknowledged that this led to some confusion:

*"**Treasurer of the States:***
There certainly were mistakes made on this and what is quite clear is that, at the end of the day, the Treasury has to take some responsibility for those things. The point I am trying to make is that we started off on this game not clear who was responsible. At some point, it shifted over and I think that was one of the reasons it went wrong. I think I am accountable for delivery of the Treasury's business plan. If you look in the Treasury's Business Plan for 2008, which is all my major projects, you will not see anything in there about energy from waste and currency issues and that is not surprising because when we wrote that business plan, there was not supposed to be a currency risk in the energy from waste project." [103]

6.48 Despite this, the Chief Executive and Chief Minister place the blame for the failure to eliminate the exchange risks with the Treasurer of the States:

"Chief Executive:
I am very clear the responsibility rested with the Treasury and with the Treasurer."[104]

"Senator T.A. Le Sueur:
The Treasury has overall financial responsibility for the project."[105]

6.49 There is no doubt in the mind of the Chief Executive where accountability and responsibility lies:

"Senator B.E. Shenton:
When we interviewed the Chief Officer of Treasury, he said basically that his remit was so wide that he could not be responsible for everything ... Chief Officers have to, surely, take full responsibility of everything that happens within their department.

Chief Executive:
They do. There is no doubt about that. If you are a Chief Officer in a department with responsibility, you accept that responsibility and you are accountable for it.

Senator B.E. Shenton:
Now with the knowledge that you have a Chief Officer that obviously believes that his department remit is too wide for him personally, do you intend to have a look at that?

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[102] Ibid, page 15.
[103] Ibid, page 16.
[104] Transcript of hearing with the States of Jersey Chief Executive, page 2.
[105] Transcript of hearing with the Chief Minister, page 5.

Chief Executive:
Yes. That is already in hand."[106]

6.50 The Public Accounts Committee is concerned with what internal disciplinary action may or may not have taken place, and notes the wide remit of the Treasury and Resources Department, which should be addressed.

6.51 Senior roles demand persons of a calibre to not only be able to undertake these roles, but also to be able and willing to accept responsibility and be accountable.

6.52 The Chief Minister confirmed that the responsibility to implement the hedging policy lay 100% with the Treasurer:

*"**Senator T.A. Le Sueur:***
The Treasurer as accounting officer has an obligation to deliver the policy which we have asked his department to enact and to be accountable for that and I would presume, at least in the first instance, he would do that through the Treasury Minister."[107]

6.53 Indeed, his opinion was that this was a fairy simple transaction – a straightforward operational matter:

"Senator T.A. Le Sueur:
I may be naïve but I would have thought that a simple matter of converting sterling to euros or euros to sterling was an operational matter and probably a fairly straightforward operational matter."[108]

6.54 It is of grave concern that there was insufficient and ineffective managerial co-ordination of the contract and a silo mentality appeared to be operating. This weakness in managerial control is only just being addressed:

Treasurer of the States:
"We need to work these things through but I think clearly one of the learning points from this is to have a policy upfront and be quite clear where responsibility lies so that those people can make sure they have ratings for that.

Senator B.E. Shenton:
Are you saying that no one had picked up the ball and taken full responsibility for hedging the euro contract?

Treasurer of the States:
There certainly were mistakes made on this and what is quite clear is that, at the end of the day, the Treasury has to take some responsibility for those things. The point I am trying to make is that we started off on this game not clear who was responsible. At some point, it shifted over and I think that was one of the reasons it went wrong. I think I am accountable for delivery of the

[106] Ibid, page 12.
[107] Transcript of hearing with the Chief Minister, page 4.
[108] Ibid, page 4.

Treasury's business plan. If you look in the Treasury's Business Plan for 2008, which is all my major projects, you will not see anything in there about energy from waste and currency issues and that is not surprising because when we wrote that business plan, there was not supposed to be a currency risk in the energy from waste project." [109]

6.55 This statement is interesting on two counts:

(1) that it was "not clear who was responsible" draws in wider issues of the structure of management of the role of the Chief Executive of the States to co-ordinate matters;

(2) Treasury has to take "some responsibility."

6.56 The Committee also noted that the job description of the Treasurer of the States includes the requirement to "provide effective internal audit and risk management initiatives to ensure proper management of financial resources and the achievement of value for money."

6.57 Given the evidence received, the Committee has serious concerns about the management and operation of the Treasury function. The Committee also believes the department is not organised in a manner that allows the Treasurer to effectively manage all areas of operation.

<u>KEY FINDING</u>

6.58 The Committee is concerned that the Treasurer does not appear to have a sufficient balance between day to day accounting matters and the strategic requirements of his role, such as monitoring the funding of the largest ever capital project undertaken by the States of Jersey. *(See 6.57)*

6.59 This concern is echoed by the Comptroller and Auditor General in his report entitled: 'Financial Management in the States: review June 2009' (R.C 72/2009 refers):

"It is clear from oral evidence given over several years by the Treasurer of the States to the Public Accounts Committee that in his view the Treasurer is responsible for making information available to the States and that others were responsible for interpreting and acting on that information. In other words, the Department's view had not progressed beyond the first level of financial management."[110]

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[109] Transcript of the hearing with the Treasurer of the States, page 15.

[110] Report of the C&AG entitled "Energy from waste Plant: management of foreign currency exchange risks", page 6, footnote 4.

RECOMMENDATIONS

6.61 The role of Treasurer of the States should be reviewed, with defined responsibility given in respect of overall financial control and responsibility.

6.62 The Treasurer should receive appropriate sanction for any failure in relation to the financial management of this project.

7. GOING FORWARD

FINANCIAL DIRECTION 3.8

7.1 As a result of the problems arising from the process of funding the energy from waste plant, a new Financial Direction has been drawn up. Financial Direction No. 3.8 "Management of foreign currency transactions" is a welcome step in the right direction; however, it fails to deal with some fundamental basic flaws highlighted by the failure to hedge the Euro, such as the overlap of accounting officers (e.g. Treasury/Property Holdings/Transport and Technical Services, etc.).

7.2 Under the new Financial Direction the Treasury Investment Sub-Committee is "responsible" for the decision to hedge whilst the Treasurer is responsible for the hedging arrangements. This implies that ultimate responsibility for the Treasury Investment Sub-Committee does not lie with the Treasurer – yet it surely does, as detailed in Section 4 of Financial Direction 3.5:

> *"4.2 The Treasury Investment Sub Committee is responsible for deciding whether to hedge foreign currency transactions.*
>
> *4.3 The Treasurer is responsible for entering into hedging arrangements in accordance with this Direction and the decisions of the Treasury Investment Sub Committee."*

7.3 It would therefore appear that the direct responsibility for the Investment Sub-Committee is not clear.

7.4 One lesson that should have been learnt is that clear roles of accountability must be in place; however work still needs to be carried out in this regard.

7.5 One grave past weakness has been the mistake of wrapping up generic advice as specific advice. Financial Directions should ensure that the correct advice is received, advice specific to the actual currency problems to be addressed.

RECOMMENDATION

7.6 Financial Direction 5.1, which deals with the engagement and use of consultants, should include an instruction to ensure that those giving advice are qualified to do so, and are provided with a clear brief regarding the type of advice being sought.

EXPOSURE MANAGEMENT

7.7 The key to ensuring that the problems experienced with regard to the management of the energy from waste plant funding process are not repeated is the introduction of a matching strategy with regard to exposure management.

7.8 As part of this review, the Committee also gave consideration to the annual remuneration of €7 million received by the States for aviation services.[111] The below table details the receipt of income in euros by the Airport to 1st February 2009 –

Date received in bank	£ amount	€ amount	Exchange Rate
02/15/08	1,069,698.00	1,441,632.00	1.348
02/19/08	131,974.85	178,179.25	1.350
05/13/08	1,138,999.76	1,441,632.00	1.266
06/09/08	141,154.44	178,179.25	1.262
08/08/08	1,126,275.00	1,441,632.00	1.280
11/07/08	284,631.39	356,358.50	1.252
01/02/09	1,361,571.59	1,441,632.00	1.059
TOTAL	**5,254,305.03**	**6,479,245.00**	

The amounts above show the € sum due per the Financial Protocol and the amount credited to the Airport. The rate is a straight calculation based on these figures.

KEY FINDING

7.9 At the same time as euros were being purchased to fund the energy from waste plant, the euros received as part of the French air traffic agreement were being exchanged into pounds sterling.

7.10 This raised questions regarding communication and co-operation throughout the States.

"Senator B.E. Shenton:
…You receive a substantial amount of euros in each year as part of the air traffic control facility. Now, my understanding is these euros are put in the accounts at the exchange rate at a certain time and then the States just takes a risk with regard to what the rate is when the money is received.

Treasurer of the States:
Yes, the airport, of course, is a trading committee that works on a semi-standalone basis with its own finance director. This has been made clear again in the C&AG's report that traditionally exchange issues have been dealt with by departments and the policy, as I understand it, of the airport has been to receive these euros and convert them on receipt."[112]

RECOMMENDATION

7.11 A strategy should be in place to ensure that euros received by the States, such as airport landing fees, are used to fund the States' euro liabilities in other projects.

[111] See Appendix E.
[112] Transcript of hearing with the Treasurer of the States, pages 6-7.

7.12 Further, it is unclear as to whether the cash received via the airport, and seemingly managed by the trading committee, is actually processed via the Treasury Department. The Public Accounts Committee is pleased to note that, after this point was highlighted, action has been taken to ensure that euros are retained in a separate bank account.

7.13 There is no clear process followed to monitor the remaining currency exposure and likely currency moves, other than a daily review of sterling/euro rates. Rates continue to be volatile, for example, the Bank of England's increase in quantitative easing in May 2009 provided a further weakening of sterling and reversal of the gains that had been seen until that point.

7.14 The lack of expensive monitoring market data services in the States Treasury[113] can be easily mitigated by the reliance on either an advice provider, or the States' bankers, however it is still unclear if this has been addressed and formalised in a suitable agreement.

HEDGING STRATEGY

7.16 The Committee wishes to emphasize that the downside risk of the current hedging strategy should not be underestimated. The total un-hedged exposure to the euro in respect of all future payments as at 31st July 2009 was €33.5 million. The triggers put in place have originated from Hewitt, are applied on discussion with what the Treasury Department would be comfortable with, and have no apparent link to market fundamentals such as moving day averages, key support levels, etc.

KEY FINDING

7.17 There still appear to be no formal mandates in place for the ongoing provision of professional foreign exchange advice.

7.18 It would normally be expected that a committee meet regularly, probably on a weekly basis, to review the latest rates and forecasts, input from the market and recent events and review of the macro economic situation. This committee should include the advisers and bankers, together with Treasury staff, all of whom should be suitably qualified to formulate a strategy. It would be good practice to include an assessment of risk, provided by a professional risk manager such as Hewitt.

7.19 It is essential to ensure those providing advice in future are qualified, both in the specific provision of foreign exchange, and also with respect of operating in the Jersey jurisdiction, and are properly engaged with a set of clear guidelines.

KEY FINDING

7.20 A similar incident could occur on future projects, as the Treasury does not appear to have a robust enough policy for the management of foreign currency exchange risks going forward.

[113] Transcript of hearing with the Treasurer of the States, page 46.

RECOMMENDATION

7.21 Financial Direction 3.8 should be strengthened to outline clear roles of accountability; to include advice specific to actual currency problems that may need to be addressed; and to outline procedures covering the appointment of advisers.

8. APPENDIX A – Panel membership and terms of reference

8.1 It is the job of the Public Accounts Committee to ensure the States provides value for money.

8.2 The Committee is chaired by Senator Ben Shenton and works alongside the C&AG to assess whether public funds are being applied for the purpose the States intended in a manner that avoids extravagance and waste.

8.3 **The Committee comprises the following members:**
Senator Ben Shenton (Chairman)
Connétable John M. Refault (Vice Chairman)
Senator Alan Breckon
Connétable Simon Crowcroft
Deputy Tracey Vallois
Mr. Alexander Fearn
Mr. Kevin Keen
Mr. Martin P. Magee
Mr. Patrick J.D. Ryan

8.4 Throughout the year, the Committee examines reports produced by the C&AG, and if members identify any areas that need further investigation, will conduct its own review, holding public hearings where necessary and reporting its findings to the States.

8.5 On 23rd March 2009, the Comptroller and Auditor General (C&AG) published a report entitled: 'Energy from waste plant: management of foreign currency exchange risks'.

8.6 The report identified the problems encountered in managing the currency risks arising from the funding process surrounding the procurement of the plant, which the C&AG felt had been exacerbated by the lack of sufficient staff with the appropriate skills and experience within the Treasury and Resources Department, as well as failures in basic administrative practice.

8.7 The Committee initiated a review of the report of the C&AG conducted in relation to the following terms of reference:

1. To review the report of the Comptroller and Auditor General entitled: 'Energy from waste plant – management of foreign currency exchange risks,' presented to the States on 23rd March 2009 (R.24/2009 refers).

2. To establish whether –

   (a) the currency exposure disclosed to the States in P.73/2008, which led to the cost of the procurement being higher than the cost originally indicated to the States, could have been avoided;

   (b) the total project cost of the energy from waste plant could have been reduced had there been sufficient staff with appropriate skills and experience within the Treasury and Resources Department and had failures not occurred in basic administrative practice; and

(c) procedures could be implemented within the States to ensure the effective management of foreign currency exchange risks in future.

3. To examine any further issues relating to the topic that may arise in the course of the review and which the Committee considers relevant.

9. APPENDIX B – Chronology

December 2002

PricewaterhouseCoopers' report "Procurement options for Bellozanne energy from waste plant" advised a design and build procurement strategy.

29th June 2004

The States approved, by 35 votes to 10, the "States Strategic Plan 2005 to 2010", as amended (P.81/2004 refers), which included a commitment that the Environment and Public Services Committee would introduce a comprehensive liquid and solid waste policy.

10th May 2005

The "Solid waste Strategy" was lodged 'au Greffe' by the Environment and Public Services Committee (P.95/2005 refers).

13th July 2005

The States adopted the "Solid waste Strategy", as amended, by 40 votes to 2, and agreed that the Environment and Public Services Committee be charged to investigate fully alternative and conventional technologies to provide the final disposal route for the residual waste remaining following the implementation of the systems and facilities agreed for the recycling and composting of waste, and charged the then Committee to recommend a preferred solution for a replacement of the Bellozanne incinerator to the States with an accompanying cost/benefit analysis, environmental and health impact assessment no later than December 2008.

28th June 2006

The States approved by 32 votes to 13, with one abstention, the "Solid waste Strategy: locations for proposed facilities" (P.45/2006 refers), and agreed that technologies for the final disposal route for the residual waste to replace the existing Bellozanne plant should be located at La Collette II reclamation site, subject to Environmental Impact Assessment and Planning approval.

8th December 2006

The waste Strategy Steering Group, which had been established to advise the Minister on the implementation of the procurement process, approved a shortlist of 4 companies and 3 reserves who had formally expressed an interest in the procurement.

9th January 2007

An outline planning application for an energy from waste facility was submitted to the Planning Department.

21st August 2007

First meeting of the Funding Working Sub-Group, established to consider arrangements for financing the proposed energy from waste facility. The Funding Working Group was set up to deal with funding issue identified in 2005 when the States approved the project in principle, and reported to the Project Board which was responsible for managing the project and the procurement.

19th October 2007

Planning permission for the erection of an energy from waste plant in the location, and of the scale, indicated in planning application PP/2007/0050, was granted.

1st November 2007

Tenders were issued to the 4 short-listed companies.

29th February 2008

Three bids were received, including one from CNIM, who submitted a bid as a joint venture together with Spie Batignolles/Camerons. The tender received from the CNIM joint venture was confirmed as being compliant and was progressed to detailed evaluation.

19th May 2008

The CNIM consortium was appointed as the preferred bidder by Ministerial Decision.

20th May 2008

The proposition entitled ‘Energy from waste facility: establishment and acceptance of tender’ was lodged ‘au Greffe’ by the Minister for Transport and Technical Services (P.72/2008 refers).

The proposition entitled ‘Energy from waste facility: funding’ was lodged ‘au Greffe’ by the Minister for Treasury and Resources (P.73/2008 refers).

9th July 2008

Members voted by 30 votes to 21, with 2 abstentions, to approve the proposition entitled ‘Energy from waste facility: establishment and acceptance of tender’ (P.72/2008 refers). In adopting the proposition, the States –

(a) approved the preferred solution for the replacement of the Bellozanne incinerator of an energy from waste facility, as set out in sections 8 and 10.1 of the Report of the Transport and Technical Services Department dated 20th May 2008;

(b) authorised the Minister for Transport and Technical Services to accept the tender of the preferred bidder subject to the approval of the transfer from the Consolidated Fund of the necessary capital expenditure.

Members voted by 34 votes to 14, with one abstention, to approve the proposition entitled ‘Energy from waste facility: funding’ (P.73/2008 refers) and agreed, in accordance with Article 11(8) of the Public Finances (Jersey) Law 2005, to amend the expenditure approval for 2008 approved by the States on 18th September 2007 in respect of the Transport and Technical Services Department head of expenditure, to permit the withdrawal of an additional £102,810,000 from the consolidated fund for its capital expenditure in order to fund the provision of the preferred solution for the replacement of the Bellozanne incinerator of an energy from waste facility.

28th August 2008

‘Energy from waste facility: public inquiry’ was lodged ‘au Greffe’ by the Connétable of St. Helier (P.136/2008 refers), and the Minister for Transport and Technical Services presented comments on the proposition on 16th September 2008 (P.136/2008 Com. refers). The proposition was later withdrawn.

4th September 2008

“Committee of inquiry: energy from waste plant procurement process” was lodged ‘au Greffe’ by Deputy G.C.L. Baudains of St. Clement (P.139/2008 refers), and the Minister for Transport and Technical Services presented comments on the proposition on 14th October 2008 by (P.139/2008 Com. refers). The proposition was later withdrawn.

23rd October 2008

The Minister for Planning and Environment approved reserved matters in relation to the new energy from waste facility regarding the siting of the building, its design and external appearance, and associated landscaping and enabling works.

12th November 2008

The Minister for Transport and Technical Services signed the Ministerial Decision entitled ‘Energy from waste facility: budget transfers and Jersey Electricity Company contract award’ (MD-TR-2008-0125 refers), and thereby:

(i) approved the award of the Engineering Procurement and Construction Contract for the La Collette energy from waste facility to CSBC (Jersey) Limited;[114]

(ii) approved the Jersey Electricity Company (JEC) Agreement with that company for essential related services;

(iii) approved the revised energy from waste Project Budget and requested the Minister for Treasury and Resources to approve the transfer funds estimated at £5.701 million from the Capital Risk Reserve to the Project Budget held by TTSD. The actual sum to be determined once the exchange rate position has been finalised; and

[114] CSBC (Jersey) Limited is a Special Purpose Vehicle set up to deliver the contract.

(iv) delegated authority to the Chief Officer for Transport and Technical Services and the Director of Finance for the approval of milestone payments under the EPC contract, for payments under the JEC agreement, and procurement of remaining enabling works, project management and decommissioning works identified within the approved project budget.

14th November 2008

The contract was signed for the procurement of the energy from waste plant.

17th December 2008

Treasury and Resources Department agreed the detailed policy for the purchase of euros.

A total of €16,986,675 purchased by the Treasury.

20th March 2009

Publication of the report of the C&AG entitled: 'Energy from waste plant: management of foreign currency exchange risks'.

20th January 2009

Proposition entitled 'Energy from waste facility: rescindment' lodged 'au Greffe' by the Deputy of St. Mary (P.8/2009 refers) requesting the rescindment of the States' decision purchase an energy from waste plant (P.72/2008 refers), and the cancellation of the Engineering Procurement and Construction Contract entered into by the Transport and Technical Services Department on 14th November 2008 with CSBC (Jersey) Limited. The proposition also asked the States to agree that the Minister for Transport and Technical Services should suggest alternative options for dealing with the Island's Solid waste in an "environmentally sound, publicly acceptable and cost-effective way"[115].

28th January 2009

A total of €10,227,224 purchased by the Treasury.

10th February 2009

€5,000,000 purchased by the Treasury.

25th February 2009

The States rejected the proposition of the Deputy of St. Mary entitled 'Energy from waste facility: rescindment' (P.8.2009) by 17 votes to 35.

[115] P.8/2009, "Energy from waste facility: rescindment", page 1.

14th April 2009

Revised policy for the purchase of euros approved by the Treasury Investment Sub Committee.

27th May 2009

€5,000,000 purchased by the Treasury at an exchange rate of 1.5.

11th June 2009

€5,000,000 purchased by the Treasury.

29th June 2009

Draft Financial Direction 3.8 approved by the Treasury Investment Sub Committee, and issued.

10. APPENDIX C – Financial Direction 3.8

MANAGEMENT OF FOREIGN CURRENCY TRANSACTIONS

FINANCIAL DIRECTION NO. 3.8

States of Jersey

June 2009

States of Jersey

CONTENTS

SUMMARY AND OBJECTIVE

1.1 This financial direction has been issued under Article 34 of the Public Finances (Jersey) Law 2005 (hereafter referred to as the Law).

1.2 The purpose of this financial direction is to provide mandatory requirements and guidance regarding the planning and undertaking of financial transactions in any foreign currency.

1.3 The States has receipts and payments in foreign currency, which are both regular and occasional in nature. This direction sets out the principles for the management of these cash flows.

1.4 The aim of this policy is to insulate the States, as far as practical, from the material adverse impact of foreign exchange movements on its receipts and payments.

1.5 The policy is also designed to aggregate the overall impact of various expenditure and income so that these can be offset against each other and the net cash flows appropriately managed.

1.6 Foreign exchange movements can be favourable and unfavourable, and on small transactions, will have a negligible impact on the States' finances. This policy on hedging is therefore focussed on larger transactions.

1.7 The policy detailed in this direction has a number of advantages:

(a) it reduces the vulnerability of the States to sudden weakness in Sterling as some currency balances are held

(b) it reduces transaction costs over the immediate conversion method for each transaction

(c) there is some diversification of cash holdings between currencies.

1.8 It is also important to note that the States will make gains and losses on foreign currency in the normal course of business which will be reported in the States accounts.

1.9 Specifically, the Direction includes mandatory requirements in relation to:-

- Payments
- Receipts
- Cash Management

1.10 Mandatory requirements are included in section 5.

1.11 Section 6 provides more detailed guidance and general context.

1.12 Further information and advice can be obtained from departmental Finance Directors initially, then if necessary the Treasurer of the States or his staff.

APPLIES TO

2.1 This financial direction applies to all States funded bodies as defined in Part 1 of the Public Finances (Jersey) Law 2005.

EFFECTIVE DATE

3.1 This financial direction is effective from 30th June 2009.

RESPONSIBILITIES

4.1 The Accounting Officer of each department is responsible for ensuring that this financial direction is complied with. Accounting officers are responsible for all income and expenditure within their department.

4.2 The Treasury Investment Sub Committee is responsible for deciding whether to hedge foreign currency transactions.

4.3 The Treasurer is responsible for entering into hedging arrangements in accordance with this Direction and the decisions of the Treasury Investment Sub Committee.

MANDATORY DIRECTIONS

Planned Receipts and Payments

5.1 Accounting Officers must submit details of planned foreign currency receipts and payments in excess of £100,000 to the Treasury as part of the annual business planning cycle, in which the relevant income and expenditure estimate is included.

5.2 The Treasurer will prepare an Aggregated Foreign Currency Cash Flow for consideration by the Treasury Investment Sub Committee.

5.3 The Treasury Investment Sub Committee will consider and decide on hedging arrangements for the following year.

5.4 The Treasurer will be responsible for implementing hedging arrangements as decided by the Treasury Investment Sub Committee.

5.5 The Treasurer will be responsible for informing Accounting Officers of hedging arrangements.

Unplanned Foreign Currency Receipts and Payments

5.6 Accounting Officers should inform the Treasurer, in writing, as soon as they become aware of any unplanned foreign currency receipts or payments greater than £100,000.

5.7 The Treasurer will be responsible for:

5.8.1 If hedging is an appropriate option, referring such receipts / payments to the Treasury Investment Sub Committee, who will decide upon appropriate hedging arrangements; or

5.8.2 Requiring the receipt / payment to be translated into sterling on the day of receipt/payment; or

5.8.3 Requiring the receipt/payment to be paid into/from a Treasury Foreign Currency Account.

Minor Foreign Currency Receipts and Payments

5.8 Where relatively small foreign currency transactions occur (i.e. less than £100,000) the transaction will not routinely be hedged.

5.9 The Accounting Officer need not inform the Treasurer in advance of this type of foreign currency expenditure.

Cash Management

5.10 The Treasurer will maintain foreign currency accounts in US Dollars and Euros.

5.11 All un-hedged transactions in US Dollars or Euros will be processed through these accounts.

5.12 Un-hedged transactions in other currencies will be translated at the time of the transaction.

5.13 The Treasurer will monitor the balances on the foreign currency accounts and report them to the Treasury Investment Sub Committee at least annually.

5.14 The Treasury Investment Sub Committee will consider the level of foreign currency holdings and the timing of translation to sterling.

GUIDANCE

6.1 This section is intended to provide a general context and more detailed guidance on how the mandatory requirements should be followed.

6.2 The general principles of the Direction are that :

- Foreign currency receipts and payments will be matched where possible
- Where not possible, hedging will be considered
- The Treasurer will hold cash balances in Euros and US Dollars; minor transactions will be dealt with through these accounts

Planned Foreign Currency Receipts and Payments

6.3 For the purposes of managing foreign currency transactions, planned income and expenditure will be classified between:

(a) **major** (planned receipts or payments totalling £100,000 or more).

(b) **minor** (planned receipts or payments expenditure totalling less than £100,000)

6.4 The Accounting Officer is responsible for determining the classification and taking the appropriate course of action with regard to managing that income/expenditure.

6.5 All major foreign currency cash flows must be notified to the Treasurer as part of the annual business planning cycle. Planned foreign currency receipts and payments must be notified alongside the business plan submission containing the relevant expenditure approvals and income estimates.

6.6 Regardless of the amount, the Accounting Officer is responsible for ensuring that all foreign currency payments are clearly identified as such when requesting payment to be processed by the Treasury.

6.7 Whether hedged or not the sterling cost of planned expenditure may be different to that originally planned due to movements in exchange rates between preparing budgets, gaining approvals, and implementing hedging arrangements or making payments.

6.8 The Accounting Officer remains solely responsible for ensuring that sufficient approvals are in place relating to the income / expenditure and its total sterling value.

Unplanned Foreign Currency Receipts and Payments

6.9 Accounting Officers should inform the Treasurer, in writing, as soon as they become aware of any unplanned foreign currency receipts or payments greater than £100,000.

6.10 The Treasurer will be responsible for either:

6.8.1 If hedging is an appropriate option, referring such receipts / payments to the Treasury Investment Sub Committee, who will consider appropriate hedging arrangements; or

6.8.2 Requiring the receipt / payment to be translated into sterling on the day of receipt/payment; or

6.8.3 Requiring the receipt/payment to be paid into/from a Treasury Foreign Currency Account.

6.11 The Treasurer will inform the Accounting Officer of the appropriate action required.

6.12 The Accounting Officer remains solely responsible for the expenditure and its total sterling value.

Minor Foreign Currency Expenditure

6.13 Where relatively small foreign currency transactions occur (i.e. less than £100,000) the transaction will not routinely be hedged.

6.14 The Accounting Officer need not inform the Treasurer in advance of this type of foreign currency expenditure.

6.15 Minor receipts and payments in Euros and US Dollars will be processed through foreign currency accounts.

6.16 Minor transactions in other currencies will be translated at the time of the transaction.

Cash Management

6.17 The States receives some regular receipts in foreign currencies.

6.18 The first type of foreign exchange receipt is the Channel Island Control Zone where over €1million is received each quarter.

6.19 The second relates to the European Union Savings Directive where sums are received in the first calendar quarter of each year and then 75% is paid away at the end second calendar quarter. The net sums will vary but in 2008 sums retained by the States were €0.5m and $1.2m.

6.20 A third area is criminal and drug fund confiscations. These are generally unpredictable and could occur in any currency. These funds become States income when a court confiscation order is made and the sums involved can vary substantially according to the type and nature of crime involved.

6.21 Relatively small foreign currency cash receipts otherwise occur in the normal course of business. Overall, these receipts are likely to be small in comparison with the States' income.

6.22 The States make a number of low value foreign currency payments in the normal course of its business.

6.23 On occasion, the States make larger value foreign currency payments usually relating to specific projects.

6.24 Given the expected income and likely expenditure, the Treasurer will maintain foreign currency accounts in US Dollars and Euros.

6.25 The reason is that if some balances are held in Euros and US Dollars then most normal foreign currency transactions will be able to be met by the use of one of these currencies and that since there is an element of foreign currency in receipts and payments for the States, it is sensible for the Treasurer to hold some overseas currency balances in addition to holding the main balances in Sterling.

6.26 Unless hedged, any receipts in Euros and US Dollars would be maintained in the overseas currency of receipt and not immediately translated to Sterling.

6.27 Any minor foreign currency payments would, unless hedged, and subject to sufficient balances being available, be paid from these foreign currency accounts.

6.28 Other currency receipts, unless hedged, will be changed into Sterling upon receipt, unless the Treasurer believes that such currencies are likely to be needed for payments in the near future.

6.29 Other currency payments, not hedged, will be translated from sterling into the relevant currency prior to the payment being made.

6.30 The Treasurer will monitor the balances on the foreign currency accounts and report them to the Treasury Investment Sub Committee at least annually.

6.31 The Treasury Investment Sub Committee will consider the level of foreign currency holdings and the timing of translation to sterling.

Hedging

6.32 The Treasury Investment Sub Committee will be responsible for deciding on hedging arrangements.

6.33 The Treasurer will be responsible for implementing the decisions of the Treasury Investment Sub Committee.

6.34 The Treasurer will prepare annually an aggregated foreign currency cash flow forecast; the Sub Committee will consider this when deciding on hedging arrangements.

6.35 The simplest form of hedging is the matching of States foreign currency receipts and payments.

6.36 Where this is not possible or desirable, currency can be hedged by two basic methods:

6.37 The first is to buy currency forward. This is a contract which sets the exchange rate now for purchase at a later date. The contract does not in itself require any immediate payment, but most banks will need a Sterling cash deposit or other collateral.

6.38 The second method is to purchase overseas currency at the current rate and hold the overseas currency until required.

6.39 In addition, the purchase of a currency option can be used as a method of hedging. A currency option may only be purchased if funding is identified from an approved Head of Expenditure to meet the cost of the option.

6.40 The Treasury Investment Sub Committee will determine the most appropriate form(s) of hedging based on individual and aggregated planned cash flows.

6.41 Where unplanned receipts or payments occur, the Sub Committee ma consider individual hedging arrangements relating to that particular cash flow.

6.42 The Treasurer may only enter into a hedging arrangement where there ar sufficient sterling funds available to meet the cost of the transaction.

Accounting and Budgeting

6.43 Accounting for foreign currency transactions will be undertaken in accordanc with the Jersey Financial Reporting Manual.

6.44 The Treasurer will inform Finance Directors of the exchange rate to be used i budgeting foreign currency income and expenditure as part of the busines planning process.

6.45 The exchange rate applied to un-hedged foreign currency transactions for th purposes of calculating the relevant sterling cost to the relevant budget will b determined by the Treasurer by reference to exchange rates and the State accounting policies.

6.46 This policy provides an effective method for managing foreign currenc transactions. It will, however, result in the reporting of gains and losses o foreign exchange in the States accounts.

DEFINITIONS

Accounting officer – a person holding the post of, or acting as, the chief officer or head of a department.

Treasury Investment Sub Committee – a committee appointed by the Minister for Treasury and Resources.

SELF CERTIFICATION TICK LIST

	Yes	No	N/A
Has the Accounting Officer notified the Treasurer of potential foreign currency receipts and payments in the business planning process (**5.1and 5.2**)?			
Has the Treasury Investment Sub Committee decided upon appropriate hedging arrangements for the following year (**5.4**)?			
Has the Treasurer put appropriate hedging arrangements in place (**5.5**)?			
Is the Treasurer maintaining foreign currency accounts in US Dollars and Euros (**5.11**)?			
Are un-hedged foreign currency receipts and payments (US Dollars and Euros) paid into/from the appropriate foreign currency account (**5.12**)?			

11. APPENDIX D – Revised policy for scheduled euro payments

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States of Jersey Treasury & Resources Department
Date: 9 April 2009
Prepared for: Ian Black
Prepared by: David Hager

Review of Policy for Scheduled Euro Payments

Introduction

The policy for scheduled Euro payments for the Energy for Waste Plant was set out in a paper dated 17 December 2008. This paper aims to review the initial operation of the policy since December 2008, to consider whether any changes are needed in the existing policy and to look at the possibility of introducing currency options into the policy.

We understand that sufficient Euros are now held to meet all payments prior to 12 October 2009, and hence for the purposes of this review will assume that the exposure to the States is for the remaining payments after that date.

Experience with the Euro

Since formulating the policy, the Euro has exhibited considerable volatility, but lower volatility than in the period immediately prior to 17 December 2008. Whilst the current rate of €1.11 = £1 is not that dissimilar to the rate at the time the policy was formulated, the Euro has tried to test, but did not penetrate, the €1 = £1 rate, but for most of the period has traded in a range of €1.05 = £1 to €1.13 = £1. For a brief period, the Euro/Pound exchange rate did exceed €1.15 = £1 and therefore benefit was gained from the first trigger point of €5m under the December 2008 policy.

Considerations for review

With an exchange rate broadly similar to that at the time the policy was agreed in December 2008, the main difference in considering the future policy between the conditions in December and those now are that there are no payments for the next 6 months which need to be made using the spot market. This means that there is more breathing space in the policy to see if the triggers of €1.20 = £1 and €1.25 = £1 are met.

The spot rate alternative

It would be possible to buy sufficient Euros at the current spot rate to provide Sterling cost certainty for the remainder of the project. This could be done by the use of forward exchange transactions or alternatively accumulating the Euros in a bank deposit. The only uncertainty in the latter method is the amount of interest which may be earned on the Euros during the period until the payments are actually required. The difficulty with this policy remains as in December 2008 that it crystallises a high Sterling cost. Whilst we understand that it is the policy of the States to provide as much Sterling certainty as possible, the cost of doing so may be more than the States wishes to pay.

Should the triggers be changed?

The case for changing the triggers would be if there was a belief that the chances of hitting the triggers were low or that the triggers were unrealistic. Furthermore, the longer the Euro trades beneath €1.15 = £1, then the lower the probability for reaching the €1.20 and the €1.25 rates in sufficient time to have a material impact on the finances of the project.

dph 893 SOJ.doc

States of Jersey Treasury & Resources Department
Page 2
9 April 2009

Given there is six months before the next requirement for Euro payments, and the fact that it is only a 8% rise to hit the next trigger, there is a reasonable case for leaving matters as they stand. An alternative would be to buy say a further €5m if the rate hit €1.15 = £1 and perhaps a further €5m at €1.175 = £1. The payments due in October 2009 comprise 2 payments of just over €10m in aggregate and it may be optimistic to expect the rate to go to €1.20 = £1 before this time. However, in doing this, the average overall rate at which the deal would be done would decrease (assuming the other triggers were hit). It is a tough call to decide whether to do this or not, but the current policy is heavily loaded towards the €1.25 = £1 payment and it may be optimistic to expect to hit this at an early date, particularly from current rates.

The use of currency options

The current policy does not provide any cap on the total cost if Sterling should become very weak against the Euro. This was a clear problem with the policy which was known about at the time it was formulated, but the policy did state that the Department may consider the use of currency options in the review process, but that at December 2008 had no intention to include these in the trigger process.

The problem whenever currency options have been looked at, either in May 2008 or in November/December 2008 was the high outlay which needs to be paid to cut off the downside risk.
We set out below indicative option premiums as at 8 April 2009, based on a spot rate of €1.1063 = £1, and a sum of €1m of exposure.

Right to Buy Euros at

Maturity	€1.11 = £1	€1.05 = £1	€1.00 = £1
3 months	3.11%	1.23%	0.53%
6 months	4.35%	2.32%	1.31%
12 months	6.02%	3.91%	2.63%
24 months	8.30%	6.13%	4.65%

It can be seen that to protect sums at the current exchange rates requires an option premium of over 4% for 6 months cover and 8.3% for 2 year cover. The premium rates do fall sharply if protection is taken out at €1.05 = £1 or €1 = £1 but the rates remain substantial for the longer terms.

Given that the overall current policy is to trigger conversion at €1.20 = £1 or €1.25 = £1, it makes little sense to pay between 4% and 8% for options premiums on top of the current policy to avoid the downside. It would just be simpler to buy all the required units in the spot market today at €1.11 = £1, since there is no certainty that the trigger will be reached and even if they were the financial position is only slightly better, after paying for the options premiums, than using the current spot price for all the outstanding payments. In summary therefore, the options route looks an expensive solution to cutting downside risk, and if downside exposure needs to be minimised then it would probably be simpler to purchase Euros at the current spot rate for part or all of the outstanding amount.

dph 893 SOJ.doc

States of Jersey Treasury & Resources Department
Page 3
9 April 2009

Conclusions

Our recommendation is that the triggers for the October 2009 payments should be introduced to incorporate €5m triggers at €1.15 = £1 and at €1.175 = £1. Apart from this, our recommendation would be to continue with the €1.20 = £1 and €1.25 = £1 triggers for the present, and to look again at the policy in three months time.

dph 893 SOJ.doc

12. APPENDIX E – Project brief

Transport and Technical Services Department
Waste Strategy Projects
<u>Energy from Waste Project</u>

<u>Project Brief</u>

This Project Brief sets out how the Energy from Waste Project proposes to comply with requirements within Financial Direction 5.6 Control of Capital Expenditure.

Financial Direction 5.6 Ref:	Demonstration of Compliance
2.3	The Energy from Waste (EfW) Project is required to be in accordance with Financial Direction No. 5.6 as it: • initially had an estimated out-turn of £75.5 million (December 2004 costs) • will create a recognisable asset.
2.5	The EfW Project will be financed through an alternative States funding source – namely through a Sovereign Bond or borrowing – paid back at a rate from the States capital funds at an equivalent rate to £7 million per annum with effect from 2008.
5.1.2 / 4	The relevant Head of Expenditure is Q0000C2657 as modified by MD-T-2007-0109. It is noted that the loan is likely to be via a loan or private finance agreement.
5.1.3	The project was authorised by approval of the States of Proposition P.95/2005 on 13 July 2005 in which the then Environment and Public Services Committee were charged with: *(v) to investigate fully alternative and conventional technologies to provide the final disposal route for the residual waste remaining following the implementation of the systems and facilities as set out in (previous) paragraphs (above) and to recommend a preferred solution for a replacement of the Bellozanne incinerator to the States with an accompanying cost/benefit analysis, environmental and health impact assessment no later than December 2008.* And the then Policy and Resources Committee were charged with: *To propose the inclusion of a funding strategy for the capital projects identified in (v) above within the States Business Plan 2006-2010 by, if necessary, re-prioritising or deleting existing projects, or identifying additional sources of funds.*

The States then approved proposition P.45/2006 on 28th June 2006 that it be:

"agreed that any such technologies for the final disposal route for the residual waste to replace the existing Bellozanne Plant should be located at La Collette II reclamation site, immediately to the south of the Jersey Electricity Company Power Station".

Project Management Structure

5.3 The following clarification of roles within the Project is being followed to align the project governance with the Office of Government Commerce (OGC) Construction (Achieving Excellence) model used within the EfW Project Governance. This model has been introduced to ensure integration of processes across the project lifecycle given the scale and importance of the EfW Project. The alignment does not alter the lines of responsibility required within financial directions. Details of the OGC Construction (Achieving Excellence) Model are available from: http://www.ogc.gov.uk/ppm_documents_construction.asp

Project Management Structure role:	**OGC Business Excellence Model role:**	**Role titles:**
Sponsoring Minister	Investment Decision Maker	Minister of Transport
Project Sponsor	Senior Responsible Owner	Chief Officer – Transport and Technical Services
Project Manager	Project Sponsor	Director – Waste Strategy Projects
Lead Professional	Project Manager	EfW Project Technical Consultant
Project Management Group	Project Board	See below.

Project Management Group

5.4.7 An EfW Project Management Group or Project Board has been appointed in accordance with the financial directions. The composition of the Project Management Group is as follows:

Project Board	**Chair/Project Sponsor**	**Chief Officer – Transport and Technical Services**
	Client representative/ Design Champion	Director – Waste Management
	Project Manager	Director – Waste Strategy Projects
	Lead Professional	EfW Project Technical Consultant
	Corporate Capital Unit Representative	Assistant Director Finance and Strategy
	Independent	–

Attempts have been made to identify a suitable independent for the Project Management Group on the advice of the Auditor General. No suitable candidate has yet been identified.

5.4.8 The Project Management Group will meet in accordance with the requirements of the financial direction. A sub-group of the Project Management Group shall form the Client Team (see below) in accordance with the OGC Construction (Achieving Excellence) model. The Client Team will meet on a weekly basis and will be chaired by the Project Sponsor or Project Manager. All members of the Project Team will be invited to attend the Client Team.

5.4.12 **Waste Strategy Steering Group**

In addition, the Waste Strategy Steering Group (WSSG) has been appointed to provide appropriate political guidance to the Solid Waste Strategy Projects implementation team which includes the EfW Project.

The WSSG includes the following political and independent representatives:

Minister for Transport and Technical Services
Assistant Minister for Transport and Technical Services
Minister for Health and Social Services
Assistant Minister for Treasury and Resources
Connétable of Trinity

Chief Officer of Transport and Technical Services
Director of Waste Management
Director of Waste Strategy Projects
EfW Project Lead Consultant
Assistant Director of Property Services (Finance and Strategy)
Assistant Director of Public Health
Principle Planner – Planning Policy
Assistant Director – Environmental Protection

5.4.23 **Design team**

A Design Team has been appointed to deliver the project. This is termed the Integrated Project Team in accordance with the OGC Construction (Achieving Excellence) model.

The Integrated Project Team comprises of two elements:

The Client Team - this comprises the membership of the Project Management Group plus other client representatives and meets on a weekly basis.

The Integrated Supply Team – this comprises the wider supply team of consultants and contractors required for delivery of the project and representatives of the Client Team.

5.2.25 **Consultants and Contractors**

The following **consultants** are required for delivery of the EfW Project:

	Role	**Appointee**
Lead Professional	Technical Consultant/ Project Manager/ Clerk of Works	Babtie Fichtner Limited
	Legal Consultant	Eversheds LLP
	Financial Consultant	Deloitte LLP
	Insurance Consultant	Rossborough/HSBC Insurance Brokers Limited
	Health and Safety Construction Design and Management Coordinator	Jacobs plc
	Asbestos Adviser/ Analyst	Normandie Analytical Services Limited
	Hazard Adviser (La Collette Hazard Review Group Adviser)	Atkins Limited
	Design Adviser (Planning and Environment Minister Appointment)	Hopkins Architects Limited
	Jersey Law Adviser	Carey Olsen
	Health Impact Assessment Consultant (Public Health appointment)	IMPACT Limited (Liverpool John Brookes University)

It is envisaged that the following **contractors** will be required for the delivery of the EfW Project:

	Role	**Appointee**
Lead Contractor	Engineering Procurement and Construction (EPC) Contractor (Process Plant Technology Provider)	Tbc
	Engineering Procurement and Construction (EPC) Civil Sub-Contractor	Tbc
	Enabling Works Contractor (Roads package)	Tbc
	Enabling Works Contractor (Compensatory and Relocation Works package)	Tbc
	Asbestos removal contractor	Tbc

Various other specialist sub-contractors including architect, landscape architect, quantity surveyor, structural, mechanical, civil and electrical engineer, health and safety consultants etc. will also be required.

5.4.32 The Client Design Team will regularly review the listings of consultants held by the Corporate Capital Unit to determine their suitability for use on the project.

5.4.38 The requirements in relation to licensing of non-local consultants under the Regulations of Undertaking Law will be followed on the project. In-house delivery will be considered for the project wherever the States provide a relevant service.

5.4.39 The States Chief Quantity Surveyor will be notified where further consultants are required.

5.4.52 The specialist nature of the works means that the following consultants have been appointed through approved bespoke Jersey forms of agreement:

Eversheds LLP
Rossborough/HSBC Insurance Brokers Limited
Deloitte LLP
Normandie Analytical Services Limited
Carey Olsen
IMPACT Limited (Liverpool John Brookes University)

5.5.1 **Project Management**

The EfW Project will be managed in accordance with the OGC Construction (Achieving Excellence) Model. A bespoke project management technique will be employed by the Lead Professional during the Project to deliver the project within the OGC Construction (Achieving Excellence) Model framework.

5.4.23 **Project Definition**

The Project Definition/Objective is:

"to investigate fully alternative and conventional technologies to provide the final disposal route for the residual waste remaining following the implementation of the (other Solid Waste Strategy 2005) systems and facilities and to recommend a preferred solution for a replacement of the Bellozanne incinerator to the States with an accompanying cost/benefit analysis, environmental and health impact assessment no later than December 2008; and agreed that any such technologies for the final disposal route for the residual waste to replace the existing Bellozanne Plant should be located at La Collette II reclamation site, immediately to the south of the Jersey Electricity Company Power Station"

This will involve the following high level key milestone outputs to be undertaken by the Integrated Project Team prior to States consideration of the recommended preferred solution:

Key Milestone	Target Date
Site identified in Island Plan	June 2006
Environmental Impact Assessment completed	December 2006
Health Impact Assessment completed	March 2007
Enabling works defined	July 2007
Outline planning consent obtained	October 2007
Contract specification and agreement developed	November 2007
Compliant tender process completed	February 2008
Cost/benefit analysis completed	May 2008
Detailed design defined	May 2008
States approval obtained	July 2008

If the preferred solution is approved, the Integrated Project Team will be required to implement the outcomes of the States following submission of this recommendation. This is likely to involve the following high level key milestones:

Key Milestone	Target Date
Preferred partner appointed	July 2008
Detailed Planning consent obtained	August 2008
Enabling works package implemented	September 2008
Planning requirements implemented	September 2008
Construction completed	March 2011
Performance tests completed	May 2012

The Project will therefore also involve preparation works for the above milestones to ensure a seamless delivery of the project assuming a positive outcome to the initial recommendation.

5.5.5 The Project will be managed in accordance with the financial directions, Departmental guidance and the OGC Business Excellence Model - Project Organisation roles and responsibilities document. Any changes to these roles will be clearly defined within a amendment to this Project Brief which will be maintained throughout the project.

5.5.6 **Project Stakeholders**

The key project stakeholders include:

External	All residents and businesses of the States of Jersey
	Neighbouring occupiers and uses adjacent to the proposed plant.
	Land occupiers directly or indirectly affected by the proposed plant.
Internal	The Waste Management Directorate (the Client and future operator)
	Treasury and Resources (value for money)

Other specific stakeholder groups include:

External	Residents and businesses with potential environmental impacts from the development,
	Residents and businesses with potential health impacts from the development.
	Businesses, visitors, tourists and other users and potential users of the La Collette area.
Internal	States departments with interests in the development (specific interests such as Property Holdings, Harbours, Health and Social Services, Social Security, Planning and Environment).

The Project Stakeholders will be defined within a Project **Communications Plan** which will be maintained throughout the project. The Communications Plan will include any communications, consultation and research requirements for the project and an indication of the targeted stakeholders and the required outcomes.

5.5.4 **Performance Measures**

The following key performance measures will be defined as determining project success:

Performance Indicator	**How defined**	**Measured by**
i. The project meets the requirements of the Solid Waste Strategy approved 13 July 2005.	Report and Proposition	States Members
ii. The project meets the requirements of the States approved proposition P.95/2005.	Report and Proposition	States Members
iii. The project is considered to be an affordable cost and offers value for money at each key decision point: Prior to States approval: 1. Procurement Strategy (Feasibility) 2. Investment Decision (States approval) 3. Outline Design (Outline Planning Consent) 4. Detailed Design (Detailed Planning Consent) Following States approval: 5. Readiness for Service (Take-over) 6. Benefits Evaluation (Lessons learned report)	Project Budget (CAPEX and OPEX) whole life costs	Ministerial Decision or States approval WSSG review at each key decision point

iv. The project achieves a high quality design (build quality, functionality and impact).	Against defined design quality indicators within the Project **Design Brief**.	Planning and Environment – Independent Design Review.
v. The project as been managed in accordance with corporate requirements, financial regulations and delivers value for money.	Internal Audit review at stages and in a manner required by the Comptroller & Auditor General.	Principal Auditor/ Comptroller & Auditor General.
vi. The project has been managed in accordance with best health and safety practice.	In accordance with Construction Design and Management 2007 requirements.	TTSD Health and Safety Officer and/ or Director of Health and Safety.
vii. The project has incorporated sustainability assessments at all key stages and has achieved the most sustainable outcome.	Against the OGC Construction (Achieving Excellence) requirements.	Environment Forum/ Independent Client Adviser
viii. The project has met the defined contractual and operational key performance indicator outputs.	Against the defined Contract **Performance Specification.**	Project Manager

5.5.5 Project Management Plan

A Project **Plan** will be maintained through the project. Elements of the Project Plan, including the programme timetable, risk and value management work will be consulted upon with key stakeholders in accordance with the OGC Construction (Achieving Excellence) model. However, the project is controversial in nature and it is not considered possible to obtain buy-in from all stakeholders at all stages of the process.

Plan Element	Description
Risk and Value Management	The Project Plan will employ the risk and value management framework in accordance with the OGC Construction (Achieving Excellence) model. A Project **Risk Register** will be maintained throughout the project and will be reviewed and updated on a minimum of a quarterly basis.
Programme	A Project **Programme** (timetable) will be maintained and updated on a monthly basis.

Whole Life Cycle Costing	A Project **Resource Plan** will be maintained throughout the Project setting out the planned and actual expenditure on a minimum of monthly basis **(Cost Plan)** in accordance with financial and project requirements and other resource requirements required for the project.
Performance Management	The **Performance Indicators** within this Project Brief will be maintained throughout the Project. This will set out key performance indicators to be achieved by the project at each of the key milestones including design quality, sustainability, health and safety, value management and risk management indicators.
Stakeholder Engagement	A Project **Communications Plan** will be maintained throughout the Project and will be updated on an annual basis.
Quality Management	**Quality standards and measures** will be defined throughout the Project indicating how quality will be managed throughout the Project.

5.5.6 **Project Control**

The **Integrated Project Team** will work to formal written agendas and issue action points on a weekly basis. Formal decisions on the Project will be retained in the Project Filing (Configuration) system.

An **Issue resolution process** will be maintained throughout the Project to enable all Integrated Project Team members to raise issues and for these to be managed or escalated appropriately.

A **Project Plan Summary** will be produced on a monthly basis to summarise progress within the project plan in an accessible way for all Project members and stakeholders where appropriate.

5.6 Project Planning and Authorisations

The Project planning cycle will be in alignment with the OGC Construction (Achieving Excellence) model project lifecycle. This defines a number of additional key decision stages to that outlined within the financial regulations. For clarity, the equivalence of the stages to the FR 5.6 requirements is set out below:

FR 5.6 Requirement		**OGC Decision point**	**Gateway**
		Strategic Assessment	Gateway 0
5.6.4	Initial Project Assessment	Business Justification	Gateway 1
5.6.12	Feasibility Study	Procurement Strategy	Gateway 2
		Outline Design	Decision Point 1

5.6.22	Design Stage	Detailed Design	Decision Point 2
5.7	Placement of Contract	Investment Decision	Gateway 3
5.8 – 5.10	Construction	Readiness for Service	Gateway 4
	Contract Completion	Benefits Evaluation	Gateway 5

5.6.4 **Initial Project Assessment**

The following description summarises the Initial Project Assessment outcomes resulting from the Strategic Assessment and Business Justification carried out by the Project.

<u>Defining the requirement</u>

The requirement (OGC – Strategic Assessment) for the EfW Project is set out in the Solid Waste Management Strategy (section 5.0) which received States approval on 13 July 2006.

This requirement for the Project was qualified during the States (OGC Business Justification) debate to become: *to investigate fully alternative and conventional technologies to provide the final disposal route for the residual waste remaining following the implementation of the systems and facilities as set out in paragraphs (above) and to recommend a preferred solution for a replacement of the Bellozanne incinerator to the States with an accompanying cost/benefit analysis, environmental and health impact assessment no later than December 2008.*

The States debate also identified a requirement for the funding of the Project.

<u>Feasible options</u>

The Solid Waste Strategy (section 5.3) includes a review of the feasible waste treatment and disposal options open to the States of Jersey. Following the States debate, the Project also committed to prepare a report (Babtie Fichtner – Solid Waste Strategy Technology Review October 2005) reviewing the technologies available to the States that have been evaluated.

Following the approval of the Solid Waste Strategy, feasibility reviews of the available site locations were conducted. The feasibility reviews resulted from the need to identify a preferred site location for the proposed plant. These reviews led to the States considering a proposition from the Minister for Transport and Technical Services on 28 June 2006 for the identification of the preferred site.

<u>High level risk analysis</u>

A high level risk analysis for the Project was conducted in the form of a workshop conducted between 29th and 30th March 2006 facilitated by Turner and Townsend Management Solutions. The output from the workshop is a Workshop Report – May 2006.

A **High Level Risk Register** resulted from the workshop which will be maintained throughout the Project and updated with key risks from the Project **Risk Log** on a monthly basis.

<u>Project Management</u>

The Chief Officer for Transport and Technical Services performs the role of Project Sponsor (OGC equivalent Senior Responsible Owner) on the EfW Project.

The Director of Waste Strategy Projects performs the role of Project Manager (OGC equivalent Project Sponsor) on the EfW Project.

The Project recognised the need to appoint a Lead Consultant (OGC equivalent Project Manager) early in the project assessment stage. A tendering exercise was conducted between August and October 2005 and Babtie Fichtner were appointed as Technical Consultant on 18 October 2005.

In addition, to the Waste Strategy Projects Director, the Waste Strategy Project Team includes a Principal Engineer to coordinate the Site Development work-stream.

It is recognised that additional project management support, internal and external to the Design Team, will be required as the project progresses and these requirements will be confirmed at each key decision stage.

<u>Project Management Organisation</u>

The EfW Project is divided into two broad work-streams.

The **Engineering Procurement Construction (EPC) Contract** work-stream involves the letting of a turn-key design and build contract to develop the waste treatment plant and associated infrastructure. This work-stream includes an operational transfer package that will enable the mobilisation of the new plant and decommissioning of the existing Bellozanne operations. This work-stream also includes a package addressing the proposed interfaces with the Jersey Electricity Company Power Station.

The **Enabling Works** work-stream involves the enabling works required to facilitate the EPC contract on site. These works fall into three broad categories; road works required to enable the chosen site to be accessed, landscaping works to enable shielding of the site and relocation and compensatory works to clear the site of existing uses and relocate these elsewhere on the La Collette II site or as required.

Project Outline Cost Plan

An initial cost estimate of the EfW Project was included within the Financial Appraisal section 8.0 of the Solid Waste Strategy. This cost plan (based on December 2004 budget equivalents) was considered to be accurate to within + or - 30% of the eventual total project cost allowing for a 5% factoring increase per annum to account for inflationary and construction cost increases. This estimate was subject to unforeseeable external factors such as changes in the waste disposal technology market, external cost influences on civil construction costs and changes in the financial structure within Jersey as detailed in section 8.1.3 of the Strategy. The initial cost estimate is as follows:

Cost Item	**2004 Cost**
Development of Solid Waste Strategy and Project Planning	£2 million
Bulky Waste Facility relocation and site preparation works.	£3 million
Enabling works (electrical upgrading, grid connection, and demolition of Bellozanne)	£6.5 million
Cost of new EfW Plant (equipment and construction)	£62 million
Project Management Costs (during and after construction)	£2 million
Total Project costs	**£75.5 million**

This project estimate will be maintained and updated at all key stages of the project.

5.6.9 CPRP Approval

Approval for the feasibility stage was addressed through the States approval of the Solid Waste Strategy.

5.6.12 Feasibility Study Requirements

The Feasibility Study Team will be the Client Team.

5.6.14 Sensitivity Analysis

A full sensitivity analysis on the cost plan has been conducted to develop a **Risk Adjusted Cost Plan** for the Project. This Cost Plan also considers whole life cycle costs.

Risk assessment

The Project **Risk Register** is being maintained for the Project.

Organisation and Project Management

An updated version of this Project Brief defining any changes in **governance or** the proposed project management arrangements will be maintained throughout the project.

<u>Physical boundaries and site limitations</u>

The site development parameters have been defined and have been consulted upon with the planning authorities prior to submission of the outline planning permission.

<u>Site investigations.</u>

Site investigations carried out on the project thus far include:

- Bellozanne Chimney Condition survey
- JEC Chimney condition survey
- JEC Sea Water culvert condition survey
- JEC Cooling Water System condition survey
- Amplus initial site investigation
- Geo-technics EPC site investigation
- Geo-technics Enabling Works site investigation
- JEC Turbine condition survey
- Normandie Asbestos (ground condition) survey
- Ecological base line survey
- Traffic assessment
- Environmental Impact Assessment
- Health Impact Assessment

I certify that, to the best of my knowledge, the information within this Project Brief is complete and fully representative of my Department’s requirements:

....Chief Officer

13. APPENDIX F – CMB Terms of Reference

Endorsed by the Council of Ministers on 27th November 2008

Terms of Reference –

(a) to advise the Council of Ministers –
on strategic plans and business plans
on major strategies and policies, and

(b) to provide corporate leadership to the organisation in delivering the policies and services decided by the States, the Council of Ministers and Ministers.

To be delivered by –

(i) ensuring that reports to the Council of Ministers on major plans, policies or cross-cutting issues have been fully reviewed to ensure that the appropriate professional advice has been included and that as far as possible the implications for the public and for all departments have been considered and reported.

(ii) ensuring effective and efficient allocation and management of resources, in line with policy goals and services.

(iii) creating effective corporate working and partnerships to ensure that service delivery is focussed on meeting the needs of the public rather than protecting the interests of individual departments.

(iv) monitoring and improving performance and accountability.

(v) protecting and enhancing the organisation's reputation for professionalism, effectiveness, integrity and efficiency.

(vi) communicating the States purpose, policy goals and vision to staff and other stakeholders.

(vii) undertaking regular future scanning to identify major issues which could impact on the States or which need to be planned for.

14. APPENDIX G – Deloitte brief

PART B – FINANCIAL ADVISER BRIEF

B1. GENERAL

B1.1 The Minister for Transport and Technical Services wishes to appoint suitably qualified and experienced financial advisers to provide financial advice and other such support as is required throughout the remainder of the EfW Project procurement process and to provide funding advice for the Treasury and Resources Department independently from the Energy from Waste Project.

B1.2 Potential advisers should note the strategy and timetable outlined in Part A of this document.

B1.3 Financial advisers will be expected to work pro-actively with the Minister for Transport and Technical Services' programme team and Energy from Waste Project Funding Sub-Group as well as its Technical and Legal Advisers.

B1.4 The Minister for Transport and Technical Services will work closely with the advisers and will seek to maximise opportunities for skills transfer from the advisers to its own staff. This will be a key role in the partnership approach to delivery of the programme.

B1.5 The appointed adviser will not be able to accept other auditing appointments with the Minister for Transport and Technical Services relating to the projects under consideration within this appointment and must declare interest to the Minister for Transport and Technical Services in the event of any potential conflict arising. Failure to do so will be considered a breach of contract.

B1.6 It is intended that in addition to the Minister for Transport and Technical Services, the Minister for Treasury and Resources will also be entitled to rely on the financial advice provided by the appointed adviser.

B2. FINANCIAL SERVICES

B2.1 The Minister for Transport and Technical Services envisages that the successful Financial Advisers will provide at least the following services to enable the Minister for Transport and Technical Services to achieve the required objectives for the procurement of the Energy from Waste Plant:

i) To provide ongoing financial and commercial advice on the procurement approach and ensure compliance with appropriate legislation and regulations liaising with legal and technical advisers where necessary.

ii) To develop, from the technical input model and proposed funding arrangements, an appropriate financial model to identify, model and track the whole life cost affordability implications of the project for the Minister for Transport and Technical Services.

iii) To review for approval the financial status of the short-listed bidders for the Energy from Waste contract advising upon the contractual surety, warranties and bonding structure that would be required in each case.

iv)	To structure and draft appropriate sections of the contract documentation and evaluation process to ensure clear and consistent financial coordination between the specification, contract agreement, invitation to tender and evaluation process.
v)	To structure and draft appropriate payment and financial clauses of the ITT documentation in conjunction with the Minister for Transport and Technical Services' legal advisers who will have overall responsibility for the production of the EfW Project EPC Contract Agreement.
vi)	To advise on commercial elements of the EPC Contract not covered by the legal or technical advisers.
vii)	To assist the Minister for Transport and Technical Services in the preparation of ITT evaluation criteria and evaluation reports to enable a bidder to be selected as the preferred bidder. To advise on appropriate financial requirements for the appointment of a reserve bidder.
viii)	To refine financial and commercial drafting to produce revised contract documentation following the initial ITT stage to reflect positions reached with the preferred bidder.
ix)	To assist the Minister for Transport and Technical Services in the preparation of financial information and reports during final negotiations.
x)	To assist the Minister for Transport and Technical Services in negotiations with bidders at appropriate stages of the procurement process as required.
xi)	To monitor the commercial position and sensitivity analysis consequent on shifts in risk apportionments as the programme develops throughout the procurement process.
xii)	To regularly review and update the Minister for Transport and Technical Services financial position as the programme progresses to closure and review and advise on the Value for Money of the programme as it develops.
xiii)	To develop pro-forma financial models for the programme as required to assess bidders' financial models throughout the procurement process, liaising fully with the Minister for Transport and Technical Services' legal and technical advisers.
xiv)	To provide advice, in conjunction with the Minister for Transport and Technical Services' legal advisers, on taxation (including the proposed Goods and Services Tax).
xv)	To assist the Minister for Transport and Technical Services in the procurement process including addressing any other key financial and commercial issues.

xvi) To attend / join and participate at meetings with the Minister for Transport and Technical Services as required (anticipated to be held on a weekly cycle). Invitation will be dependent on the business to be discussed.

xvii) To attend and participate at clarification meetings with bidders at the ITT, Preferred Bidder and Final Negotiation stages.

xviii) To attend and participate at negotiation meetings as required.

xix) To attend and present at officer and States member and Scrutiny briefings as required.

xx) To liaise with the Minister for Transport and Technical Services' external and internal auditors, legal and financial advisers as required throughout the procurement process and produce such reports necessary to ensure sign off of the programme at contract close.

xxi) To continuously and pro-actively support the Minister for Transport and Technical Services and advisers to allow programme timescales to be achieved.

xxii) To ensure that proper financial advice is provided to the Minister for Transport and Technical Services to enable him to take a robust decision on the proposed scheme.

xxiii) To assist with appropriate skills transfer to the Minister for Transport and Technical Services' programme team.

xxiv) To provide such other financial advice in relation to the programme as is required.

In addition, the appointed financial adviser will be required:

xxv) To investigate and advise the Minister for Transport and Technical Services and the Minister for Treasury and Resources Department on the most appropriate (best value for money) funding source for the Energy from Waste project and other similar projects that may require external funding, contributing to the EfW Project Board Funding Sub-Group and negotiating with funders, as required.

xxvi) To progress the development, approval and securing of the chosen funding source in cooperation with nominated representatives from the Treasury and Resources Department.

xxvii) To develop appropriate accounting treatments for the proposed funding source, evaluation and contractual arrangements, including review of payment and phasing arrangements.

15. APPENDIX H – Deloitte written submission

Deloitte.

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Senator B E Shenton
Chairman, Public Accounts Committee
States Greffe
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1 June 2009

Your ref: 512(2)

Dear Senator

Review of the report of the Comptroller and Auditor General entitled: 'Energy from Waste Plant - management of foreign currency exchange risk'

Further to your letter dated 23 April 2009, you have requested that we provide a written response to your questions in respect of the above review. Our responses are provided below.

Point 1 – "the nature of advice provided by Deloitte to the Funding Group for the Energy from Waste Plant"

We were engaged by the Transport and Technical Services Department ("TTSD") of the States of Jersey to provide financial advice for the procurement of an Energy from Waste facility ("EFW") and our initial scope of work was as set out in the document 'EFW – Brief for Financial Adviser – final – 18.09.07.pdf', part B2, included as appendix 1. The initial scope, as requested by and agreed with TTSD was advice relating to the procurement of the EFW and advice relating to how the EFW could be funded.

Although advice on currency hedging was not included in the initial scope of our work, as a result of a request from George Butler, the then Strategic Investment Manager, Treasury & Resources Department ("TRD"), the scope of our work was extended to include advice on the options for currency hedging. This advice took the form of discussion during TTSD meetings and an email to George Butler dated 25 March 2008. The full text of our advice is contained in the report of the Comptroller & Auditor General, page 24.

Deloitte.

After the departure of George Butler from the TRD we were not asked to provide any further advice relating to currency hedging. As is clear from the report of the Comptroller & Auditor General, the TRD sought advice from other organisations in relation to currency hedging.

In relation to the issues we specifically advised the Funding Group on, these comprised:

1. Advice on the appropriate method of funding for the Energy from Waste Plant (e.g. from reserves, bank funding, PFI etc…). This took the form of a briefing note dated 22 April 2008 and discussion during TTSD meetings.

2. Advice on the options for currency hedging, as noted above.

Point 2 – "the identification of foreign currency risk was a significant matter in the process of the procurement and advice given by Deloitte – please briefly summarise Deloitte's recommendations to reduce this risk"

At the time of our advice regarding currency hedging, neither bidder was offering a fixed price in sterling from the time of preferred bidder appointment. We identified the options for hedging (as outlined below in Point 4) and our advice was incorporated in the Strategic Investment Manager's report to the TRD on the issue. TRD decided not to take any action at that time. We were informed by George Butler that the decision would be revisited in the period leading up to contract close, at which point TRD would review the options again and make a decision as to whether to hedge the risk. We understand that the options were revisited but received no further requests for advice on the matter.

Point 3 – "whether Deloitte factored into the assessment of the successful contract that all exchange rate risk would be passed to the Jersey taxpayer, and whether this was acceptable risk"

In our evaluation of the bidders we noted that neither bidder was offering a fixed price in sterling from the time of preferred bidder appointment. We therefore factored into our evaluation the impact that a potential change in exchange rates would have on each bidders price (as outlined in our evaluation report of 9 July 2008 and discussed in more detail in Point 5). The purpose of this analysis was, however, to assist in the decision of selecting the preferred bidder rather than hedging against the risk. We understood that subsequent to the appointment of the preferred bidder, the decision on currency hedging would be revisited by the TRD prior to contract close with a view to considering risk mitigation at that point, although as indicated above we were never asked for further advice on this matter beyond that already outlined.

Point 4 – "information on options on hedging provided by Deloitte in relation to the procurement"

As a result of the request noted above in Point 1, on Tuesday 25th March 2008 we sent an email to George Butler containing information on the options for currency hedging. These options can be summarised as follows:

Deloitte.

- Transfer an amount equal to the expected euro element of the contract into a Euro account; or

- Obtain an option to purchase Euros equal to the contract amount at a point in the future.

Point 5 – "the findings of Deloitte's Evaluation Report, dated 9th July 2008, in the context of subsequent developments"

Our Evaluation Report dated 9 July 2008 was prepared in order to assist TTSD in undertaking a financial evaluation of the bids submitted to TTSD in connection with the project. In relation to currency, the report contained figures which indicated the amount of each bid that was denominated in Euros. In accordance with the evaluation methodology agreed with TTSD we looked at a number of sensitivities. These included the impact on capital expenditure for each bidder of a downside exchange rate sensitivity at a rate provided by TTSD of 1.15 Euros to the Pound. At the point the bids were received, the exchange rate was 1.273 Euro/Pound.

Point 6 – "whether communication between Deloitte and the States of Jersey is clear and effective"

We consider that there was clear communication between us and the States of Jersey.

Point 7 – "details of advice given to the States of Jersey Treasury and concerns raised, if any, that the contract had not been hedged on the signing of the contract"

We were not made aware that the contract had not been hedged on signing and provided no advice in this respect.

Point 8 – "Total costs for the advice given"

For the scope of work provided, as set out in Appendix 1, our bills, including expenses but excluding VAT, in respect of this project totalled £81,267.20 and covered the period 1 December 2007 to 15 November 2008.

I trust the above is helpful for the purposes of your review, if you have any queries relating to our response then please contact Phil Lobb on +44 (0)207 303 6508, or at the address above.

Yours faithfully

Phil Lobb
For Deloitte LLP

16. APPENDIX I – Evidence considered

Annual Business Plan 2009 as amended (P.113/2008), lodged au Greffe by the Chief Minister on 15th July 2008.

Deloitte written submission, 1st June 2009.

Draft Financial Direction 5.6, "The Control of Capital Expenditure", January 2006.

Energy from waste facility: budget transfers and Jersey Electricity Company contract award, Ministerial Decision MD-TR-2008-0125.

Energy from waste facility: establishment and acceptance of tender (P.72/2008), lodged 'au Greffe' on 20th May 2008 by the Minister for Transport and Technical Services.

Energy from waste facility: funding (P.73/2008), lodged 'au Greffe' on 20th May 2008 by the Minister for Treasury and Resources.

Energy from waste facility: public inquiry (P.136/2008), lodged 'au Greffe' on 4th September 2008 by Deputy G.C.L. Baudains of St. Clement.

Energy from waste facility: rescindment (P.8/2009), lodged 'au Greffe' on 20th January 2009 by the Deputy of St. Mary.

Jersey Financial Services Commission, Financial Services (Jersey) Law 1998, Codes of Practice for Investment Business.

Job descriptions and grades – Treasurer, Deputy Treasurer, Head of Decision Support.

Management of foreign currency transactions: Draft Financial Direction No. 3.8, May 2009.

Procurement options for Bellozanne energy from waste plant, PricewaterhouseCoopers, December 2002.

Report of the Comptroller & Auditor General entitled: 'Energy from waste plant: management of foreign currency exchange risks'.

Review of Policy for Scheduled Euro Payments, prepared by Hewitt , 9th April 2009.

Solid waste Strategy: locations for proposed facilities (P.45/2006), lodged 'au Greffe' on 11th April 2006 by the Minister for Transport and Technical Services.

Solid waste Strategy (P.95/2005), lodged 'au Greffe' by the Environment and Public Services Committee on 10th May 2005.

States of Jersey Official Report, 9th July 2008.

States Strategic Plan 2005 to 2010 (P.81/2004), lodged 'au Greffe' on 4th May 2004 by the Policy and Resources Committee.

Submission to the Public Accounts Committee by Deputy D.J.A. Wimberley, dated 24th July 2009.

Transcript of hearing with the Treasurer of the States, 20th April 2009.

Transcript of hearing with Mr. P. Paul and Mr. J. Pope of Royal London Asset Management, 20th April 2009 (inclusive of additional comments forwarded upon sight of transcript).

Transcript of hearing with Senator P.F.C. Ozouf, Minister for Treasury and Resources, 20th April 2009.

Transcript of hearing with Hewitt , 24th April 2009.

Transcript of hearing with States of Jersey Deputy Chief Executive and former Chief Officer, Transport and Technical Services, 11th May 2009.

Transcript of hearing with the States of Jersey Chief Executive, 11th May 2009.

Transcript of hearing with Senator T.A. Le Sueur, Chief Minister, 13th July 2009.

Transport and Technical Services Department, waste Strategy Projects, energy from waste Project, Project Brief, February 2008.

Written submission of Hewitt in relation to the content of the Committee’s draft report.

Written submission of Senator P.F.C. Ozouf in relation to the content of the Committee’s draft report.

Written submission of the former Chief Officer, Transport and Technical Services, in relation to the content of the Committee’s draft report.

Written submission of the Chief Minister in relation to the content of the Committee’s draft report.

Written submission of the Treasurer of the States in relation to the content of the Committee’s draft report.