

STATES OF JERSEY

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FIELDS 519, 520, 521, 524, 527 AND 528, TRINITY – RESCINDMENT OF PLANNING PERMIT (P.74/2004): COMMENTS

**Presented to the States on 28th September 2004
by Health and Social Services Committee**

STATES GREFFE

REPORT

Background

This report contains the comments of the Health and Social Service Committee in response to P.74.2004, Rescindment of Planning Permit, brought by Senator P. Le Claire. P.74/2004 has been formally referred to the Environment and Public Services Committee and the Health and Social Services Committee for comments. Members will be aware that this planning permit has been the subject of considerable scrutiny. This report gives a health protection perspective on the scheme itself and the process that lead to its approval.

Consultation on the Planning Application

The Health Protection Department became aware of the first application to the Planning Department of Environment and Public Services when the item appeared on the Planning Publication List dated 28th March, 2003.

The descriptions included in the applications were for “Infill fields 520, 521, 528 and 527. Create new natural filling reservoir in fields 519 and 524 to irrigate adjacent fields”. Constraints listed in the application related to Water Pollution Safeguard Area and Countryside Zone.

Officers of the Health Protection Department requested copies of the application from the Planning Department as it seemed likely that Health Protection would wish to pass comment on any possible impact on human health.

The first request for scrutiny of the planning application was made on the 1st May, 2003. Further requests followed on the 16th May, 22nd May and 3rd June. The plans were not forthcoming and, after 60 days, noting the 8 week turn round time set by Planning for the processing of applications, the request was withdrawn from the “applications required” list. This is one of several cases around this time when Health Protection was not properly included in the consultation process. At no time were the plans submitted to the Health Protection Department in spite of several formal requests.

It seems that the application was not supported by an Environmental Impact Assessment or a Health Impact Assessment, yet there is a clear possibility that both human health effects and significant environmental impacts may arise from this development. Both health and environmental consequences have proven to be of concern to local residents.

In the available information – such as it was – there was no clear estimate of the volume of material to be imported to the site and without such basic information it would not have been possible to assess the true impact of the scheme in terms of traffic movements and on-site processing. Likewise there was no clear indication of the nature of the materials likely to be imported, making it difficult to assess the risk of local contamination and subsequent risks to the water catchment area.

Health Impact Assessment

Health Impact Assessment is a process by which a project, programme, policy or legislative proposal is assessed for its potential effects on health. The use of HIA ensures that health issues are not overlooked, that any negative impacts can be eliminated or mitigated and any positive impacts enhanced. HIA can aid authorities, particularly government departments with statutory functions, to protect, monitor and improve public health and so discharge their responsibilities.

HIA is based on a broad model of health, which incorporates personal, social, cultural, economic and environmental factors. It involves all relevant stakeholders – including the public and, where appropriate, vulnerable groups not usually involved in democratic or decision-making processes. This participatory approach means that decision-making takes account of the knowledge, experience and opinions of the people likely to be affected. Many jurisdictions, including the U.K., and Australia already have policies requiring HIA as part of the decision-making process.

Currently Jersey does not require HIA and, therefore, there is no formal or statutory way to ensure that projects, policies and legislation do not put the health and well-being of the community at risk. At present islanders have to rely on a somewhat haphazard processes of public administration to ensure that their interests are considered.

Had HIA been part of this proposal the concerns of local residents and other islanders, and the significance for their health, would have been properly considered. Beyond this particular proposal, proper consideration of health protection factors at an early stage of the planning process may reduce the burden of ill health on the Island and the call on health funding.

Health issues in this case

Nuisance – noise

Land filling operations close to residential or business premises can cause serious nuisance.

The activity requires the use of large mechanical equipment which is noisy – typically in excess of 90dB(A) at one metre distance from the equipment. Older plant can be expected to be noisier than new E.U. noise compliant plant. The handling and moving of large volumes of soil and aggregates such as stones, granites and builders rubble can generate significant noise particularly during tipping.

There is direct line of sight from many of the residential properties surrounding these fields. There will be no attenuation of noise from the tipping area or from the work involved in the construction of the reservoir, other than attenuation by distance.

The likely impact can be derived from a knowledge of the topography, type and numbers of plant and distances to nearby receptors. The use of U.K. Government document “BS 5228 Part 1 1997 Noise and Vibration Control on Construction and Open Sites”, would have enabled a competent consultant to provide the applicant with this most basic detail.

For residents close to this site, the largest impact is likely to be from traffic movement in and out, and the manoeuvring of vehicles on-site with the associated reversing beepers. There are residential properties bordering the land fill site and traffic must pass in close proximity to properties which front onto La Rue Guerdain.

The Statutory Nuisances (Jersey) Law 1999 provides a remedy for some noise from static plant and equipment operated on the site. However, it should be born in mind that as this is a business operation, “best practise” is invoked under the Law and this permits the possibility of significant residual noise emissions which will not be actionable. It is for the Planning Authority to consider these residual noise emissions when deciding on the issue of a permit.

Nuisance – dust and fume

Mechanical plant is very likely to be run on diesel and can cause significant fume – especially if old or poorly maintained. This could be important for neighbouring properties if the plant is operated close by or if there is significant traffic movement as can be expected here.

The movement of “inert” waste in trucks may also result in fugitive emissions from the load if it is not adequately sheeted, due to wind entrainment of dry material. This will result in the contamination of roadways and adjacent premises as on La Rue Guerdain.

Earth moving activities including tipping of spoil from dump trucks is also likely to create problems from dust particularly during dry and/or hot weather. This can be controlled by the careful depositing of material, use of water sprays, screening in the immediate vicinity and ensuring a good distance between source and any receptor. In this case, one property to the south has access across the application site and may be subject to considerable nuisance.

If crushing and screening operations are undertaken, and notwithstanding the requirement of paragraph 7 of the

Planning Permit, this may be an un-avoidable necessity to ensure both the safeness of the infill material and a compact composite fill, then there are likely to be significant issues around fugitive emissions of dust. It is recognised that such activities are polluting and E.U. directives invoked in the U.K. by environmental protection legislation require that all plant and equipment are authorised for use and dust emission is properly suppressed during operation.

No such control exists in Jersey, though the Statutory Nuisances (Jersey) Law 1999 provides a remedy when dust or fumes give rise to nuisance. Again, as this is a business operation, the law talks of “best practise” which may permit residual emissions which are not actionable under the law. Again, it is for the Planning authority to consider this residual emission when deciding whether to issue a permit.

It is clear that without the provision of the background information relating to potential human health impacts and nuisance, the Planning Sub-Committee could not have been in a position to properly consider these points.

Contamination – material for disposal

The imported fill material, mostly from construction and demolition sites, is likely to be “inert” waste. However, this is not an exact science and the site operator is at the mercy of dump clients who may deliberately conceal within the bulk of the dumped material other wastes which require special removal – possibly at exceptional cost, for example asbestos waste, contaminated land waste, timber preservatives, incinerator ash, paints or oils. Once intermixed with builders’ waste, it is almost impossible for any hazardous material to be identified and screened out until it is tipped and even then only if the tipping process is properly and continuously supervised. This application does not mention if the tipping will be confined to the owners’ own company or whether they will accept the waste of others. Such knowledge is crucial in understanding the supervision process required.

In this light, paragraph 7 of the permit appears to be problematic. It states “No crushing, processing or other activity relating to the material to be used as infill shall take place on this site. This permission allows only for the delivery and spreading of inert material in accordance with the agents (Naish Waddington Associates) letters dated 03/12/03 and 17/12/03.” Both of these letters commit to using only “inert” wastes, envisaged as mainly builders rubble, but the reference to no crushing, processing or other activity relating to the material occurs only on the permit. It appears that the permit itself may therefore actually prevent the safe sorting, monitoring and processing necessary to police the standard of the infill against accidental or unscrupulous contaminations.

An alternative is that the necessary crushing, processing and sorting will be carried out at another site and then the material be re-transported to this site for disposal. The economics of such double handling would appear to be very unattractive, but, in any event, no such additional “processing” site to service this site has been identified in the furnished documentation. It goes without saying that were an alternative such site to be identified, the same HIA process as recommended in this report would need to be undertaken.

It is imperative therefore that before any consent for such processes be given, that appropriate procedures and policies are confirmed on how potentially contaminating material will be checked for, identified, removed to quarantine and subsequently disposed of. There does not appear to have been any such information included within the application, nor do the Planning Department appear to have required the production of such information. Failure to identify and segregate such material could result in the land having to be classified as contaminated, but more importantly any contaminants remaining in the dumped material which become mobile will be carried into the ground water flow – this in a catchment area from which water for human consumption is derived.

Contamination – ground water

The Health Protection Department is aware that the Environmental Services Unit submitted two responses, dated 8/4/03 and 10/12/03 to the Planning Department as part of the consultation process. Both refer to the potential impact of the scheme on the bio-diversity of the area and in particular the fact that the stream is part of the catchment for Grands Vaux reservoir, a source of water supply for human consumption. Both letters note, “Inadequate information has been provided to enable us to make a full assessment of the effect of the proposed development”. With the exception of a comment on the content of the material which should be “clean and inert”

and the statement on the permit that “no crushing, processing or other activity relating to processing of infill material” takes place on site, none of these documents make any meaningful reference to the wider environmental and potential human health impacts referred to above. The officers of the Health Protection Department are those with the relevant background experience and professional skills in this area of work. It is therefore deeply unsatisfactory that the Planning Sub-Committee were prevented from receiving appropriate advice concerning possible human health impacts of the proposed scheme.

The Health Protection Department has been informed by the Water Resources Unit that an officer of that department made an inspection of the application site with the applicant in September 2003. The Health Protection Department are led to believe that at no time during those discussions was there any indication that the material to be used on site as part of the infill process would be anything other than material excavated in order to create the reservoir. That a serious breakdown of communication occurred in this matter is further borne out by the initial unconcerned response of the Jersey New Waterworks Company dated 11th September 2003. Only when the process had moved on considerably, did the JNWW learn that building wastes were to be used as infill, and that if not monitored and policed correctly, this had the potential to cause future pollution.

Air quality

As well as fugitive emissions from loads, there will be particulate matter emission from diesel engines. Although their level is unlikely to result in the breach of any health standard, diesel fume is both noxious and intrusive for recipients at close proximity. The high banks of La Rue Guerdain would tend to focus any low level discharge from exhausts.

In addition to pollution from a concentration of heavy vehicle movements, unless extremely well managed, fugitive dust and particulate matter will inevitably become airborne from the site.

Regulatory matters

Tipping and movement of waste

There are at present no controls on the carriage or deposit of waste in Jersey. However the Waste Management Law has been passed by the States Assembly and is currently with the Privy Council for ratification. When the new Law comes in to effect, (and this will not be until the necessary staff are in post), all carriers of controlled or hazardous waste and controlled or hazardous waste site operators, will be required to be licensed by the Environment and Public Services Committee. Conditions will be set for the transport and storage of waste subject to certain exemptions. If they do not carry controlled or hazardous wastes, operators will not require licensing.

There is some debate over whether the disposal of “inert” waste will require licensing. If such material is not confirmed as controlled waste, licensing will not be required. As indicated above, the inability to prevent controlled or hazardous wastes such as asbestos or oils from being improperly deposited is real and therefore it might seem wiser to include “inert” waste and inert waste sites within a licensing regime as a precautionary measure. However such classification opens up the possibility of the site legitimately receiving the sorts of controlled waste we would not want to see deposited in a catchment area of water for public consumption. If human health is to be protected it may, therefore, be the case that no land in a water catchment area ever be permitted to become a dumping site.

The Planning Sub-Committee does not appear to have been made aware of these practical and regulatory issues pertaining to human health which would have been of material importance in the decision making process.

The operator making this application is known to the Health Protection Department and has been the subject of informal action due to the manner in which he conducts his operation. The Department has had to take issue over the inadequate sheeting of vehicles carrying mixed “inert” and contaminated waste and the illegal deposit of contaminated waste on a site not owned by him when the material should have been deposited at the ash pits at La Collette. This resulted in formal action by the Waterfront Enterprise Board. Such a history does not promote a sense of reassurance that this site, in an environmentally important area for water provision, will be managed with

the stringency required.

Contaminated land

The Assistant Director, Health Protection, is chairman of the States Officers Contaminated Land Review Group which is developing a strategy for contaminated land in the island. He also chairs the officer's joint States Consultees Group looking at individual development proposals where contaminated land may be involved. Neither of these planning applications were seen or consulted on by either of those groups.

In addition to the waste material being dumped into the site, the operation itself will pose pollution risks. Static plant at the site will require fuelling and the provision of a fuel store, for example a gasoline tank, is common at these type of sites. The siting of such facilities and the type and design of tank, which should be bunded or double skinned, are important if fuel spillages are to be avoided. Such spills are highly mobile and there is a risk of fuel being carried into the nearby watercourse and the water catchment area.

There is a real potential for this activity to result in the contamination of the land and water catchment area. If so, the land may have to feature on a future contaminated land register. As explained above, in practice it is extremely difficult to actually police and monitor what goes into these type of land filling operations.

Overview

The decision made by the Planning Sub-Committee appears to have been taken without there being available to its members the information necessary in order for them to take into account possible human health impacts and wider environmental contamination. Nor do they seem have had sufficient information to enable them to have a complete understanding of the issues which would arise in the event of a decision to allow the scheme, nor the consequential compliance requirements of the Planning Law.

The Health Protection Department were never consulted on the proposal nor were its recommendations sought on the potential ramifications of a decision to grant the permit. This was despite several requests from Health Protection to Planning for details of the application. Likewise, the States Officers Contaminated Land Review Group were similarly not consulted on the proposal. Furthermore, the Planning Department failed to provide the Health Protection Department with information which would have enabled its officers to make a complete and comprehensive assessment of the health issues. It would appear they also failed to require the applicant to provide the necessary evidence, in support of the application, that would have demonstrated adequate solutions to the potential health and environmental impacts intrinsic to such an industrial land filling operation.

Noise and dust are recognised as major concerns when appraising land-fill operations, both from activities on site and the movement of traffic into and out of the area. Dumping operations will inevitably require the screening and crushing of materials in order to ensure a safe, non-polluting and stable fill from homogenous materials. Many such processes lead to mini recycling operations extending the time period for filling and increased traffic volumes using the site. Screening and crushing activities are recognised as creating significant problems and in the U.K. are required to be authorised under the Environmental Protection Act. Notwithstanding the requirement of paragraph 7 of the permit, some such activities would appear to be unavoidable if the land filling operation is to be managed correctly.

The type of operation proposed for the land fill scheme will additionally pose a risk to a water catchment area from which water for human consumption is derived. This risk may persist many years after the scheme is completed.

Recommendations

1. On the basis of the above analysis, the decision of the Planning Sub-Committee is unsafe and its decision to permit the application should be revoked at the earliest opportunity.

2. It is important that health and environmental impacts are fully assessed and appropriate policies and procedures are confirmed *before* any consent is given to this type of development.
3. Full co-operation between States departments in areas of shared responsibilities should be automatic and no information relevant to the duties of one department should be withheld by another department. Information should be shared in a co-operative and timely manner.
4. Where lay-people, such as politicians, are involved in the decision making process, officers should be proactive in assisting them in gaining a clear understanding of all relevant factors.
5. Health Impact Assessment should be incorporated into States policies as a routine component of decision-making.