

STATES OF JERSEY



ENERGY FROM WASTE FACILITY: PUBLIC INQUIRY

**Lodged au Greffe on 28th August 2008
by the Connétable of St. Helier**

STATES GREFFE

PROPOSITION

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

to request the Minister for Planning and Environment not to give final planning permission for the new Energy from Waste facility at La Collette II, St. Helier, as set out in sections 8 and 10.1 of the Report of the Transport and Technical Services Department dated 20th May 2008 accompanying P.72/2008, until a public inquiry has been held into the project.

CONNÉTABLE OF ST. HELIER

REPORT

When I first asked the Minister for Planning and Environment to agree to require a Public Inquiry to be held into the proposal by the Transport and Technical Services Department to build a replacement incinerator at La Collette before granting outline planning permission, the Minister replied to me in the following terms –

I have now received the advice from the Law Officers on the issue of whether a Public Inquiry is required for the Energy from Waste Planning Application. The arguments are complex but essentially a PI is not required. The key factor is that the States have already made a decision on the location. Also the States have already taken the decision to adopt the Solid Waste Strategy. The decision on whether to hold a PI is down to the Minister but the balance of factors in this case weigh against one in my opinion.

I disagree with the Minister's opinion for reasons set out below under the heading of public enquires, and I still believe that one is called for before this project receives full planning permission. It is a pity that my original request for the Minister to hold such an inquiry before his granting of outline planning permission was unsuccessful and outline permission granted in October 2007 – had the inquiry taken place the debate on the proposals contained in P.72/2008 could have taken place with full information available to members. As it was, the States were not able to debate the matter with full confidence the project was the best solution for Jersey in environmental and financial terms. It is particularly regrettable that the independent consultants employed by the Environment Scrutiny Panel to audit the incinerator project were refused access to certain documents which they believed were essential. Furthermore, the States were not supplied with the kind of thorough and comprehensive comments they might reasonably have expected from the Department of Health and Social Services, nor was any report presented by the Director of the Environment Department to the States before the debate.

Article 12(1) of the Planning and Building (Jersey) Law 2002 'Public inquiries' provides that a public inquiry may be held –

- (1) *This Article applies in respect of an application for planning permission where the Minister is satisfied that if the proposed development were to be carried out –*
 - (a) *the development would be likely to have a significant effect on the interests of the whole or a substantial part of the population of Jersey; or*
 - (b) *the development would be a departure (other than an insubstantial one) from the Island Plan.*

As far as meeting the requirements of sub-paragraph (1)(b) of the Article is concerned, it would seem that the incinerator project is a departure from the 2002 Island Plan, as at the time of the Plan, it was assumed that the replacement facility would be built in Bellozanne Valley –

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Two sites in Bellozanne Valley were initially considered for a new plant and, following public consultation with local residents in November 2001, a third and preferred site has been identified by the Public Services Committee. This is located within the existing waste management complex in the area presently occupied by refuse handling plant. That Committee's consultants have confirmed that the site is appropriately located and of sufficient size to accommodate the new plant. Accordingly, it is important that the site is safeguarded for the purpose.

Policy WM4 – Safeguarded Waste Site

A site for a new 'Energy from Waste' Plant is safeguarded in Bellozanne Valley, as shown on the Island Proposals Map, subject to a satisfactory Environmental Impact Assessment.

The decision to move the new plant to La Collette was made following an amendment to the 2005 Waste Strategy. It was influenced by a number of considerations including the possibility of the Island taking waste from Guernsey for incineration. In contrast to the prolonged, comprehensive and independently reviewed consultative process that produced the 2002 Island Plan, the amendment was a relatively late addition to the Waste Strategy, which for much of its development had remained consistent with the choice of Bellozanne as the preferred site.

There was, as a result, little public consultation carried out, and little attention paid to the fact that for a considerable period of time the States of Jersey had pursued a policy of buying up properties within an agreed nuisance zone around the various waste treatment plants in the valley. (The Public Services Committee of the day had already moved the composting site from Crabbé down to La Collette, a move which was later admitted to have been carried out without any consultation with the Parish of St. Helier, or residents and businesses that would be affected by odours and dust from the process, and which was, I think, carried out without planning permission, so perhaps it is not surprising to find the States taking a decision on moving the Island's waste treatment plant to the same area.)

If the Island Plan process is to remain the major tool of land-use planning in our Island and if Jersey is to continue to benefit from the application of its policies, especially in terms of preserving the Island's natural beauty, it is, I believe, important that due importance is given to the Plan. Granted the States have taken other decisions since 2002 in respect of waste disposal facilities, but none of them has been informed by the levels of public engagement that go into the development of the Island Plan.

There was a second and consequential departure from the Island Plan in the 2005 decision in terms of the use of La Collette reclamation site which had been safeguarded as valuable land for the development of the Island's light industry, and for the relocation of 'bad neighbour' businesses from residential areas. Siting the waste disposal facility and its concomitant infrastructure at La Collette instead of on the existing safeguarded site in Bellozanne Valley means that there will be significantly less land available at La Collette, itself an area safeguarded in the Plan. The relevant section of the Plan is as follows –

IC7 Provision of Industrial Land

10.25 During the life of the 1987 Island Plan it has been difficult to ensure an adequate supply of new land and buildings due to a lack of information on the true level of demand. The new Island Plan will identify sufficient land to meet the estimated requirements for the first five years of the Plan and put in place criteria for bringing forward additional land, as the economy requires, in future years.

10.26 The light industrial and warehousing sector includes a diverse range of activities: manufacturing, storage, garage and workshops, distribution and transportation businesses. Most industrial activity that takes place in the Island can be described as light industry (for example, manufacturing and light engineering), storage or distribution.

10.27 The land-use requirements of industry present a particular challenge given the competing pressures on land in the Island. If sufficient land is not provided, however, the growth and development of the manufacturing, storage and distribution sectors of the economy will be stifled. Emerging industries will not be developed due to lack of premises. This will also restrict opportunities to relocate businesses from sites where they have a high impact on residential areas, or can release land for homes.

10.28 The requirements for industrial land over the Plan period will arise from: the relocation of businesses from their current locations, through expansion and improved operations; businesses which may be regarded as 'bad' or inappropriate neighbours, many of which occupy sites in areas subject to regeneration and environmental improvement; and the emergence of certain industries with particular land-use requirements, such as e-commerce, marine traders and the media.

It is anticipated that of these categories, the relocation of bad neighbours will give rise to the greatest demand for industrial land.

10.29 Information to try to define future requirements has come from consultation with the main commercial agents about outstanding requirements for sites and floor space of various sizes; and the estimated floor space associated with businesses seeking to relocate or included within the assessment of urban capacity as bad neighbours or sites with potential for other uses.

10.30 These sources reveal that there is a requirement for over 25,000 m² (270,000 sq. ft) of industrial floor space which remains unsatisfied (12.4 acres, 27.9 vergées or five hectares of land, at a normal ratio

of floorspace to site area of 1:2); demand includes small (50 to 250 m²/500 to 2,500 sq. ft), medium (250 to 600 m²/2,500 to 6,000 sq. ft) and large space users (up to 4,000 m²/40,000 sq. ft). The small business sector of light industrial units is particularly restricted in supply; and to assist in the relocation of businesses from the town centre as well as the release of land for housing, there may be a requirement for approximately 17.4 acres (39.2 vergées or seven hectares) of industrial land.

10.31 It is the policy of the Industries Committee to assist diversification of the economy and a strategy group has been formed to deal with 'emerging industries'. These include industries such as crafts, marine and aviation-related businesses, e-commerce, and media/film. The growth and development of these industries will lead to various requirements for floor space, in addition to those identified above.

10.32 The site requirements for the different types of users will vary. Purpose-built starter units or redundant agricultural buildings (as defined in Section Five – Countryside) could suit most small size occupiers. Larger users are likely to require specific sites developed for individual purposes. Most industry will require good road access, particularly for distribution businesses. Marine and aviation related industries mainly require locations close to St. Helier Harbour and Jersey Airport respectively. Certain types of employment uses may also be suitable within the town of St. Helier, provided that they are compatible with neighbouring uses, such as media/cultural industries.

10.33 All of this has identified a need to bring forward land for industrial use at La Collette 2. Other requirements for industry may be met by using redundant agricultural buildings for light industry and storage. Agricultural buildings will be particularly important in providing small workshops but the Committee is clear that not all redundant agricultural buildings will be suitable: they will have to comply with the policies in Section Five – Countryside (Policies C18 and C19).

La Collette 2

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| 10.34 | The development framework for La Collette 2 includes the designation of an area for industry, storage and warehousing. The area designated for industrial purposes is indicated on the Town Proposals Map and comprises 21 acres/ 47 vergées. This potentially will provide for 40,000 m ² (430,000 sq. ft) of industrial, storage and distribution floor space. |
| 10.35 | There is a pressing need to release industrial land at La Collette 2 in the short term. Informal commitments have been made and land allocated. This is an obvious site for bad neighbour businesses, which will free-up valuable areas elsewhere. La Collette 2 may also be required to take uses relocated from elsewhere in the Harbour as the Port Master Plan is developed. |
| 10.36 | The first phase of industrial land at La Collette 2 may be available for occupation by 2005 and could be released progressively until completion of the filling of the site. Within the Plan period to 2011, as much as three quarters of the site (6.4 hectares (16 acres or 36 vergées)/32,000 m ² (323,000 sq. ft) of floor space) could be released. The first phase of available land should be identified for the existing commitments to companies and to provide for the needs of the larger industrial users, for whom there are limited alternatives. An area of the site could also be identified for purpose-built starter units for light industry. |

Policy IC7 – Provision of Industrial Land

Land comprising 21 acres/47 vergées is designated at La Collette 2 for industry, storage and warehousing. A development brief will be prepared for the site to ensure that development takes place in a co-ordinated manner and that proposals come forward that are satisfactory in terms of design, layout, landscaping, service infrastructure, access and parking. Proposals for other commercial uses, including retailing, will not normally be permitted on the site unless related and ancillary to the primary industrial, storage or warehousing use and provided they are in accordance with other principles and policies of the Plan.

I would argue, therefore, that the incinerator project as approved by the States departs from the Island Plan in two ways and for this reason alone a Public Inquiry into the application is called for.

The second grounds for a Public Inquiry in Article 12 of the Planning and Building (Jersey) Law 2002 is–

‘in respect of an application for planning permission where the Minister is satisfied that if the proposed development were to be carried out the development would be likely to have a significant effect on the interests of the whole or a substantial part of the population of the Island’

I find it difficult to imagine how the the incinerator project cannot but ‘have a significant effect on the interests of the whole or a substantial part of the population of the Island.’

Reason one: the proposed development will have an enormous visual impact on the approaches to St. Helier and the southern parishes. The montage provided in the colour brochure accompanying the Planning Application is completely misleading, and it is disingenuous for the writers to claim that the Island will benefit in aesthetic terms by only having one incinerator instead of two. The chimney at La Collette could be removed if the oil-fired electricity generating equipment becomes redundant – using it for the incinerator flue will mean it will continue to dominate the Island’s skyline for the next 3 decades. It is also the case that there are some waste treatment technologies that would require either no chimney or a much smaller one than presently exists at Bellozanne.

Much public opposition has been levelled at the Waterfront Hotel and there has been considerable debate about the visual impact of tall buildings on the St. Helier waterfront. This debate has yet to focus on the proposed incinerator, which will be clearly seen right the way along the coast from Noirmont to Le Hocq. It will be one of the first things seen by visitors arriving by sea. In particular, it will mean that the linear park stretching down from Fort Regent to La Collette will be unable to screen the light industrial activities from view. It is, therefore, entirely appropriate that the public are provided with an honest assessment of what the proposed development will actually look like, as would be provided during the course of a Public Inquiry into the application.

Reason two: the proposed development will impact negatively on the Island’s recycling efforts and commitments. The leaflet issued by the Transport and Technical Services Department says that this is not the case, but does not address the question – if the Island can successfully reduce the amount of waste it creates, and extract the majority of recyclables from the waste stream, what will there be left to burn? Both the Minister for Transport and Technical Services and the Chief Minister have stated on a number of occasions that people who think we can recycle more than the target figure agreed in the 2005 Waste Strategy and will, therefore, be able to make do with a smaller waste disposal facility or disposal facilities of a non-combusting type are living in cloud-cuckoo land.

However, during a recent hearing of the Environment Scrutiny Panel the Minister admitted that were a significant amount of the Island’s waste arisings to be diverted from the incinerator, and under certain circumstances, there might be a case for a smaller plant.

Further, the Minister admitted that his bid for the required budget for recycling initiatives had not been successful – ‘until more funds are available for recycling we are now severely restricted in how we can roll it from here’. Here we find evidence that the Department’s commitment to procuring a new incinerator is already taking precedence over their commitment to recycling. This is in stark contrast to the approach of Cardiff City Council whose recycling centre has been visited by members of Scrutiny. Here a major investment (albeit more than ten times less than the cost of the proposed incinerator) has been made in advanced kerbside collections of recyclables and in mechanised separation technology, so that the Council can see how much they can take out of the waste stream before they go down the incinerator route.

Reason three: the proposed development will have a significant economic impact on the Island. Aside from the enormous capital cost of the development, in excess of £100 million, there will be the ongoing revenue costs of running the plant, which will rise as the plant ages. We must add to these costs the ‘opportunity cost’ of the land occupied by the incinerator and its infrastructure i.e., the value that could be otherwise realised from this area of land, which has not been calculated, as far as I know.

Reason four: the proposed development could prejudice the future development of La Collette. There are currently a number of studies being carried out on this area, notably by the ‘East of Albert’ group which is examining the long-term requirements of the harbour and marine traders, as well as the potential for regenerating Commercial Buildings. A draft Mineral Strategy exists but, as far as I know, has not been completed, while the

work on the potential hazards of the ‘fuel farm’ is ongoing – and may be influenced by changes in Health and Safety requirements following the Buncefield explosion, and, as recently as March this year an explosion at a waste oil storage depot on the Isle of Grain led to the pollution of a site of special interest in the Medway. Surely a proper masterplan for the area should have been prepared by a competent architect before decisions of this magnitude are taken?

Reason five: the proposed development borders the Island’s RAMSAR site, or marine national park. When La Collette was chosen as the site for the new waste disposal plant little attention appears to have been paid to the fact that five years earlier the Island had designated the intertidal areas bordering La Collette as a ‘RAMSAR site’. The Island Plan is clear about the importance of this area and sets out a clear policy framework:

M6 Marine Sites of Special Interest

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| 7.28 | <i>Several of the inter-tidal areas have been recognised as being of national and international importance for their cultural, scientific and visual characteristics and require a special degree of protection and/or type of management.</i> |
| 7.29 | <i>The south-east coast, including bays and inter-tidal reefs, is an internationally important marine area already confirmed as a Ramsar site. A Ramsar site is a wetland of international importance especially as a waterfowl habitat, designated under international convention. Waterfowl are defined as birds ecologically dependent on wetlands. The Ramsar site extends from La Collette around the coast to Gorey Pier and in a south-easterly direction.</i> |
| 7.30 | <i>The Ramsar site could be promoted as a part of a potential Jersey Marine Reserve with appropriate interpretation. Similarly, Les Écréhous and Le Plateau des Minquiers have been identified as potential Ramsar sites or as part of a Marine Park (see Figure 7.1).</i> |
| 7.31 | <i>The St. Ouen’s Bay Planning Framework considers that this part of the marine environment is of sufficient value to merit future protection. Scientific information is required to confirm this.</i> |
| 7.32 | <i>In view of the above, areas of the marine environment that are of exceptional merit and distinction should be given protection by designation as Sites of Special Interest. Policy M6 should be read in conjunction with Policy G11.</i> |

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| Policy M6 – Marine Sites of Special Interest | |
| <i>The Planning & Environment Department will safeguard and help manage the most valuable marine environments by designating them as Sites of Special Interest.</i> | |
| <i>Development proposals affecting these environments will be considered under the provisions of Policy G11.</i> | |
| <i>Those sites of international importance for waterfowl will be notified for designation as Ramsar sites. The Planning & Environment Department will consider the designation of these special areas as a Jersey Marine National Park to highlight their importance and the need for sustainable management.</i> | |
| <i>The Planning & Environment Department will consult with other Committees, agencies and stakeholders in the course of designating Marine Sites of Special Interest.</i> | |

Although the area covered by the incinerator project does not extend into the RAMSAR site, there is a risk that the latter will be prejudiced by the development.

Reason six: the proposed development, if undertaken with no further opportunity for the public to meaningfully influence the States’ decision in 2005, will by reason of its various significant impacts, damage further the relationship between the States and the public of Jersey. Few Islanders, today, have any real idea what this building will look like or how it will affect their lives. If the Council of Ministers is serious about ‘reconnecting’ the States with the public it ought not to oppose this opportunity for a Public Inquiry.

Arguments against the holding of a public inquiry into the incinerator project are likely to include the following –

- 1 *the Island has already chosen to build a waste disposal facility at La Collette as part of the debate on the Waste Strategy in 2005, and, in subsequent debates on the subject, and should not, therefore, reconsider its decision*

What if the decisions taken in 2005 – such as basing the size of incinerator on a recycling target of 32%, and on the assumption of steady growth in waste arisings – were wrong? The United Kingdom has recently revised its Waste Strategy and while it still includes ‘energy recovery’, it places far greater emphasis on waste prevention, re-use and recycling, and, most importantly, states that economic growth should be decoupled from growth in waste arisings. There has been an enormous growth in public awareness about the effects of greenhouse gases on climate change, and there is a growing desire by individuals to ‘do their bit to save the planet.’ Few would find this desire satisfied by seeing recyclable materials going to incineration.

2 *the cost of incinerator plants has increased several fold and, therefore, the longer the Island delays in placing an order, the more expensive it will be*

If, as an outcome of a the work being done by the Environment Scrutiny Panel and other bodies, the Island’s Waste Strategy is revised to include higher recycling targets and other measures to promote waste prevention and minimisation, it is possible that the size of the current application could be considered excessive. A smaller plant would occupy a smaller footprint, have less visual impact and cost less to build, run and repair. Developments in waste treatment technology may also meant that Jersey could have the option of choosing to be in the vanguard (as it used to be) in the field of waste treatment, rather than embracing old technology.

3 *the current incinerator is ‘probably the dirtiest in Europe’ and must be replaced without further delay*

The brochure accompanying the Planning Application, with its pictures of children flying kites and families on the beach, states that the new incinerator will be ‘clean’. There is no doubt that it will be much cleaner than the present incinerator, but we should remember that it will still produce some toxic gases, will still generate toxic fly ash, not all of which can be recycled and which will therefore need to be landfilled in engineered pits, and will still be an emitter of CO₂.

It is indeed important that the existing incinerator is replaced but we need to be sure we have the right solution, both the right technology and the right size of treatment plant. We need to know that the solution is economically sustainable – the recent Hearing by the Environment Scrutiny Panel showed that there is currently a mismatch between the funding of the incinerator and of recycling centres. In the meantime it is worth noting that the Department of Transport and Technical Services has made great progress in taking out some of the most polluting items from the waste stream. A recent visit to the recycling centre at Bellozanne impressed the Environment Scrutiny Panel with clear evidence that items such as computers, televisions and other electronic equipment are no longer being incinerated. The more plastics and rubber that can be removed from the waste stream now, the less polluting the emissions from Bellozanne chimney will be.

I would hope that the Minister for Transport and Technical Services would delay implementing the States’ decision in respect of P.72/2008 until this matter can be debated. If the holding of a public inquiry were to be approved by the Minister of Planning and Environment and/or by the States, I would hope that it could be achieved within a relatively short period, certainly by the Spring of next year. The scope of the inquiry would be up to the Minister to determine; however, I would hope that it would encompass all relevant planning, health, ecological and land use issues; it should further include a review of the Environmental Impact Assessment (EIA) already carried out. The Minister would do well do note the comments in the Executive Summary (Stage 2 HIA), paragraph 10 –

‘There is always a necessary compromise between brevity and rigour in any study; in this case the time and resources available prevented a wider range of methods being used. There was also a reliance on the timely access to data from other sources, e.g., the detailed planning application, the preferred bidder, construction traffic management strategy, and organisational stakeholders. Related to this it was not possible to validate the quality of data from other assessments and so their reliability. Finally, although the Delphi surveys provided a good geographical spread across Jersey and were well represented by both men and women, *the views of younger people were under-represented as were the views of people from different ethnic minority groups*’ (my emphasis).

Quite what some of the above caveats mean will be up to the Minister, and the Inspector appointed by him, to

determine – clearly, one of the pieces of information that could not have been available to the consultants carrying out the EIA was the transport policy, as this long overdue strategic document has yet to be presented to the States for debate.

It may be that such an inquiry would find in favour of the project; if it did not, the Department would have to go back to the drawing board. There is ample evidence that there are more environmentally-friendly ways of disposing of the Island's waste which would also be much less costly to the taxpayer than the approved incinerator project.

It must be emphasised that efforts to remove the most environmentally damaging elements in the waste stream from the current, failing incinerator, as well as efforts to reduce the overall levels of waste requiring disposal by the incinerator, must be redoubled in the months ahead. I do not believe that the holding of a public inquiry into the project should be an excuse for further delay on the part of the Transport and Technical Services Department in cleaning up the emissions from the Bellozanne plant, nor for further delay on the part of the Health Protection team in fulfilling its duties as regulator.

In conclusion, I believe that there is sufficient public interest in the holding of a public inquiry before the final planning application for a large incinerator on Jersey's south coast is determined. I believe that the project fulfils the requirements of the Planning and Building (Jersey) Law 2002 and that the Minister for Planning and Environment should be requested to hold a Public Inquiry before the final planning permission is given.

Financial and manpower implications

There are no significant manpower implications should this proposition be accepted. The cost of a public inquiry is difficult to forecast as the Island has not held one before. The recently completed 'Williamson Report' cost £50,000. I am advised that a public inquiry is likely to run into five figures in order to cover the remuneration and disbursements of the independent planning inspector, the preparation of relevant documents and the holding of public hearings, but that this should not exceed £100,000.