

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 3rd FEBRUARY 2010

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## **The Roll was called and the Dean led the Assembly in Prayer.**

### **PUBLIC BUSINESS – resumption**

#### **1. Climate Change: Copenhagen Conference - petition (P.206/2009) - resumption**

##### **The Bailiff:**

Very well then, we return to the debate on P.206. I call upon the Deputy of St. Mary to reply.

##### **1.1 Deputy D.J.A. Wimberley of St. Mary:**

I thank all the Members who took part in the debate and all who listened. It was, I think, an interesting and good debate. I will just pick up a few points and turn first to the sceptics. It is good to have this range of views, because it does allow me to come back to the important points that were raised by Senator Ferguson. There were 3 things I picked out from what she said and they are extremely important and I will be very brief in dealing with them. The first thing I picked out from what she said was the notion that somehow this is costly, that there is a negative economic impact, that there is additional expenditure. In fact, renewables constitute a market, a new avenue for economic activity. That is the first point. The second point is that a low carbon society is a low cost society. It costs less to insulate your house than it does to burn more fuel than you need and watch it go out of the walls and out through the windows. So the idea that there is additional expenditure involved here is untrue. The second issue that she raised was the matter of the numbers who signed the petition. The reason that climate change has not reached the level of awareness among our residents that perhaps it should have is that it has been off the radar. It has been left out of strategic policy debate. It has been left out, effectively, of the Island Plan. It is mentioned in the Island Plan, but as I said it is quite hard to find it. This systematically simply not mentioning it... it does not get a mention in the sustainable transport policy, although it is implicit in the direction of that policy. So because it is not mentioned, people are less aware than they should be. The third point is what she questions, of course, the science. I cannot rebut every single fantastical bit of detail picked out from here and there. It does raise, however, an important question about expertise and how you evaluate expertise. We are going to be faced with that in the cycle helmets debate. I see the good Deputy nodding. How do you evaluate the different approaches of the different researchers? I just want to make the simple point at this stage that the 2 situations, climate change and cycle helmets, are completely different. There is a consensus worldwide around climate change. The National Academy of Science of the 12 leading countries have all said the science is there, it is established. When you get government after government after government going down this route and setting up whole departments, like our own Department of Energy and Climate Change in Britain or like Obama who has just launched 150 billion dollars fund over 10 years to provide 5 million green jobs. They are not taking these decisions on a whim and a prayer. They are taking them because their advisers have looked carefully at all the information and at all the science and have come to a firm view. Professor Beddington, the Government Chief Scientific Adviser, is totally on-side in this debate about climate change, although the good Senator implied that he was not. He was just saying that there were other problems too, like food security, drought and water shortage and so on. But he is not a sceptic on climate change. Lord Stern, who wrote the Stern report together with a large team, devoted many pages to the economic analysis of the effects of climate change. He and his team reviewed the science. He said it is not in dispute. The government of the U.K. (United Kingdom) have accepted that view as have the governments of all major countries. So the debate is over in terms of the science. I just want to finally say that this is about protecting our people. It is about the Council of Ministers acknowledging and taking on board the results of Copenhagen. Deputy Le Fondré said what were the results? I did allude to them in my speech. I said quite clearly that the results were the consensus that has now been achieved around the science, the depth of the cuts that we need and the fact that we should move soon, not as and when. I want to close by referring to Deputy Duhamel's speech, the Assistant Minister for the Environment, which I thought was one of the best speeches I have heard from him. I did find it moving and I am not often moved in this

House. By referring Members to what is at stake here is our global conscience. It is about us being citizens of the world. That is really the nub and the point of this debate. I am just going to close with a quotation that was sent to me this morning in an email. This is a statement by the Apollo 9 astronaut, Rusty Schweickart, which picks up the image used yesterday by the good Assistant Minister: “We are not passengers on space ship earth. We are the crew. We are not residents on this planet. We are citizens. The difference in both cases is responsibility.” I commend the proposition to the House.

**The Bailiff:**

The appel is called for then in relation to the proposition of the Deputy of St. Mary. I invite Members to return to their seats. The Greffier will open the voting.

<b>POUR: 42</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of St. Peter		
Senator T.J. Le Main		Deputy J.A.N. Le Fondré (L)		
Senator B.E. Shenton		Deputy A.E. Jeune (B)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator A.J.D. Maclean				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				

## **2. Draft Banking (Depositors Compensation) (Amendment) (Jersey) Regulations 200- (P.207/2009)**

### **The Bailiff:**

We come next to the Draft Banking (Depositors Compensation) (Amendment) (Jersey) Regulations - P.207 - lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

### **The Greffier of the States:**

The Draft Banking (Depositors Compensation) (Amendment) (Jersey) Regulations 200-. The States, in pursuance of the Order in Council dated 28th March 1771, have made the following Regulations.

### **2.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

The Banking Business (Depositors Compensation) (Jersey) Regulations 2009 were approved by the States in November 2009 and immediately brought the D.C.S. (Depositor Compensation Scheme) into law in Jersey. Offences relating to the D.C.S. are described separately under the Banking (Depositors Compensation) (Jersey) Regulations 2009. This amendment will amend the Offences Regulations to inset a standard offence relating to the disclosure of restricted information. This offence was originally included in the draft principal D.C.S. Regulations, but the Law Officers advise that it would fit more appropriately in the Offences Regulations.

[9:45]

The draft amendment will therefore insert the contents of the previous Regulation 14 of the Depositor Compensation Scheme Regulation into the Offences Regulations. This will make it an offence to disclose information received under the D.C.S. without the consent of the person from whom the information was received, subject to certain specified exceptions. It is clearly desirable that the Board administering the D.C.S. should be able to share information freely with other safety net participants. So as an exception to the general restriction on disclosing information the Board will be able to pass relevant information to certain specified persons, namely to the Viscount, the Comptroller and Auditor General, the administrator of the failed bank, the Minister for Economic Development, the Jersey Financial Services Commission and also, where the purpose of the discussions is to assist the D.C.S. Board to discharge its functions or to investigate a suspected offence or for the purposes of criminal proceedings, to assist with any D.C.S. legal proceedings, to comply with a court order, to obtain advice on the performance of the Board and to co-operate with other D.C.S. schemes in foreign jurisdictions. There are further exceptions to the general restriction where the information being disclosed is already in the public domain or is in an anonymised or summary form from which no information specific to particular individuals could be ascertained. The penalty for the offence is imprisonment for up to 2 years and/or an unlimited fine. The Law Officers' Department has considered the proposed offence and confirmed that it is human rights compliant and that the proscribed penalty is consistent with similar existing offences. I propose the principles of the Regulations.

### **The Bailiff:**

Is that seconded? [**Seconded**] Does any Member wish to speak on the principles?

### **2.1.1 Deputy T.A. Vallois of St. Saviour:**

I would just like to ask the Minister, with regards to the offence whether this is similar to other jurisdictions and their D.C.S. schemes for offences such as this for a penalty of 2 years and whether

it is common practice in financial services for this type of offence for 2-year imprisonment and whether it complies with data protection laws currently in Jersey.

**2.1.2 Senator A.J.H. Maclean:**

Yes, I can confirm that my understanding is that the offences are similar to others in place. It is common practice to have this type of provision. Certainly it does meet best practice with regards to data protection. So, all those factors are in the affirmative. So I maintain proposition.

**The Bailiff:**

All those Members in favour of adopting the principles kindly show? Those against? The principles are adopted. Deputy Higgins, this falls within the purview of your Scrutiny Panel.

**Deputy M.R. Higgins of St. Helier (Chairman, Economic Affairs Scrutiny Panel):**

Yes, we have reviewed it and we are happy with it. Let it go forward.

**The Bailiff:**

Very well. There are only 2 Regulations, Minister, do you wish to propose them together?

**Senator A.J.H. Maclean:**

Yes, Sir.

**The Bailiff:**

Do you wish to say anything about them?

**2.2 Senator A.J.H. Maclean:**

No, just that they are very straight forward. Hopefully they are explained clearly, so I will take them *en bloc*.

**The Bailiff:**

Very well. Does any Member wish to speak on any of the individual Regulations?

**2.2.1 Deputy R.G. Le Hérissier of St. Saviour:**

Yes, very quickly. Why under 1(b) would there be a necessity to disclose information to a Minister? I do not see how he or she ends up in the loop of the process.

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

**2.2.2 Senator A.J.H. Maclean:**

That was quite simply in a position prior to the Board being put in place, the Minister would obviously take that role.

**The Bailiff:**

Very well. All those in favour of adopting Regulations 1 and 2 kindly show? Those against? The Regulations are adopted. Do you propose the Regulations in the Third Reading?

**Senator A.J.H. Maclean:**

Yes, Sir.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on Third Reading? The appel is called for in relation to the Regulations in Third Reading. Very well. I invite Members to return to their seats. The Greffier will open the voting.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

### **3. Draft Pharmacists and Pharmacy Technicians (Registration) (Jersey) Law 200-(P.209/2009)**

#### **The Bailiff:**

P.208 has been withdrawn, therefore the next matter on the Order Paper is the Draft Pharmacists and Pharmacy Technicians (Registration) (Jersey) Law - projet 209 - lodged by the Minister for Health and Social Services. I will ask the Greffier to read the citation.

#### **The Greffier of the States:**



Draft Pharmacists and Pharmacy Technicians (Registration) (Jersey) Law 200-. A Law to regulate the practice of pharmacy, to provide for the regulation of pharmacy technicians and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

### **3.1 Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):**

The Draft Pharmacists and Pharmacy Technicians (Registration) Law before Members today seeks to revise and update the necessary requirements, the registration of pharmacists in Jersey and also introduce the registration of pharmacy technicians. Registration of pharmacists is currently subject to the provisions of the Pharmacy and Poisons (Jersey) Law 1952. Registration in Jersey is currently gained following an application to the Royal Court, which satisfied the requirements in this 1952 Law. The basic requirement for registration is that the applicant must be registered as a pharmacist in Great Britain with the pharmacy regulator, currently the Royal Pharmaceutical Society of Great Britain, but soon to be the newly established General Pharmaceutical Council. The basic requirement will be maintained in the draft Law where the conditions for registration will be specified by Order. Currently under the 1952 Law there are no provisions to temporarily suspend a person's registration or impose conditions on their registration and therefore their practice as a pharmacist. Such provision, such as requiring a pharmacist to only practice under supervision of another pharmacist for a period of time may be considered necessary to protect the members of the public or thought to be necessary in the interests of the registrant. The only provision in the 1952 Law is cancellation of a person's registration by the Royal Court or on the motion of the Attorney General where the registrant's general practitioner registration has been cancelled or where the registrant has been found guilty of a criminal offence or such was his conduct, as in the opinion of the Royal Court, renders him unfit to be a pharmacist. There is no mechanism for a person to voluntarily remove themselves from the register. This limited ability to cancel a person's registration has resulted in the current register containing the names of pharmacists who first registered in the 1890s and are now deceased. The register has therefore become increasingly inaccurate and unreliable over the years. The draft Law, therefore, provides a more robust and flexible governance framework in relation to pharmacist registration and is consistent with recent changes in provision governing registration as a pharmacist in Great Britain. The specific provisions contained in the draft Law are detailed in the report accompanying the proposition. Over recent years the role of the pharmacy technician has increased and many of the functions previously undertaken by pharmacists are now safely and efficiently undertaken by appropriately trained pharmacy technicians. Examples of activities include the dispensing of prescriptions, the accuracy-checking of dispensed prescriptions which have been approved by a pharmacist to make sure they have been dispensed with what a doctor or dentist prescribed and the counselling of patients about their medicines. The registration of pharmacy technicians was introduced in Great Britain in 2007. It is considered desirable to introduce similar provisions in Jersey in order to ensure good governance arrangements exist in relation to the activities undertaken by pharmacy technicians with the same aim of future safeguarding for the public. Once registered, pharmacy technicians will be subject to mandatory C.B.T. (computer-based testing) requirements in order to keep them up to date and maintain their fitness to practice. The provisions governing registration of pharmacy technicians contained in the draft Law are similar to those for the pharmacy registration, with the basic requirement again being registered with the Great Britain Pharmacy Regulator. Once again they are consistent with the provisions governing registration of pharmacy technicians in Great Britain. In summary, the introduction of the Pharmacists and Pharmacy Technicians (Registration) (Jersey) Law will update and improve upon the provisions of a more than 50 year-old Pharmacy and Poisons Law. The new Law is considered to be essential to provide adequate registration and governance framework for pharmacists and pharmacy technicians working in a modern health care environment. I maintain the proposition.

**The Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on the proposition?

**3.1.1 Deputy R.G. Le Hérisier:**

Would the Minister outline whether or not alternatives were presented for appeals to a body intermediary between the Minister and the Royal Court or does it always have to be the Royal Court to which the appeal is made, given the enormous powers she will be taking upon herself as a result of this Law? Secondly, is there evidence, given the ominous tone that runs through the Law, that there is widespread abuse going on in certain ways with pharmacists and technicians? If so, what is the nature of this concern? Thirdly, but I will come to it under 17, the registration of technicians seems to be put in a very circular way.

**The Bailiff:**

Does any other Member wish to speak on the principles? Very well. I call upon the Minister to reply.

**3.1.2 The Deputy of Trinity:**

It is provided that the responsibility of registration of pharmacists is transferred from the Royal Court. It is felt that better because on advice the Minister will be able to maintain that register. Regarding abuse, I recall there has only been one incident in previous years. But, as I have said, there is no way of getting anybody off the register, so if a pharmacist has been dead for quite a few years, we do not know that unless we are informed. So by having to register each year we have a very much up to date register, which is important. I am sorry, but I cannot remember the third point.

**Deputy R.G. Le Hérisier:**

That is all right, I will come to that, but if I may have, in the words of the Deputy of St. Mary, a point of clarification. What happens if somebody is struck off the list in England, Scotland, Wales or Northern Ireland, how does that information ...

**The Bailiff:**

I am sorry, that is your second speech, Deputy. You had not raised that in your first one. You will have to raise that under one of the Articles. Yes, very well. All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. This matters falls within the Health, Social Security and Housing Security Panel. Senator Breckon, do you wish to refer to the matter?

**Senator A. Breckon (Chairman, Health, Social Security and Housing Security Panel):**

No, Sir.

**The Bailiff:**

Very well, then we will move on to the individual Articles. Do you wish to propose them in parts, Minister, in other words, Part 1 Articles 1 to 3 and we will proceed in that way?

**The Deputy of Trinity:**

I can do, Sir.

**The Bailiff:**

Very well, do you wish to now propose Articles 1 to 3?

**3.2 The Deputy of Trinity:**

Article 1 provides basic definitions used in the Law. Article 2 requires the Minister for Health and Social Services to keep a register of pharmacists and pharmacy technicians. Article 3 requires the Minister to make these registers available to the public for inspection. I maintain the Articles.

**The Bailiff:**

Are Articles 1 to 3 seconded? **[Seconded]** Does any Member wish to speak on any of Articles 1 to 3? Very well. All those in favour of adopting Articles 1 to 3 kindly show? I am sorry, Deputy Jeune, did you wish to speak?

**Deputy A.E. Jeune of St. Brelade:**

I am not sure if this is the right time or place to bring it up. Under Part 3 ...

**The Bailiff:**

No, no, I think we are only in Articles 1 to 3 at the moment, so Part 1. But if you are coming to Part 3, that is Articles 15 onwards, you can mention that at the appropriate time. All those in favour of adopting Articles 1 to 3 kindly show? Those against? Articles 1 to 3 are adopted. Do you then wish to take Part 2, Minister, that is Articles 4 to 14?

[10:00]

**3.3 The Deputy of Trinity:**

This is just registration of pharmacists. I would like to point out that registration of pharmacy technicians is mirrored in the first part, Part 2. But I shall go ahead with Part 2, registration of pharmacists. The provisions relating to the registration of pharmacists contained in Part 2, they are a separate Law in order to provide flexibility in case the provisions differ in future. Article 4 makes it an offence for a person to hold himself out as a pharmacist or pharmacy technician unless they are registered. Article 5 sets out how a person may apply for registration as a pharmacist. Article 6 sets out the circumstances when the Minister shall register a person as a pharmacist. Article 7 empowers the Minister to impose conditions on a person's registration as a pharmacist where it is thought necessary to protect the public or the interests of the registrant. Article 8 provides the Minister to issue a certificate to a registered pharmacist. Article 9 allows a registered pharmacist to apply to be removed from the relevant register. Article 10 sets out the circumstances in which the registration of a pharmacist shall or may be cancelled by the Minister. Registration can be cancelled if a registrant ceases to fulfil the requirements for registration. If this registration was obtained by fraudulent means or when a registrant fails to submit an annual return within 60 days of being requested to do so, registration may be cancelled. If a registrant has failed to comply with any condition imposed on the registration or where the registrant is convicted of an offence or has engaged in conduct of that kind in the opinion of the Minister, it makes the registrant unfit to be a pharmacist. Article 11 sets out the circumstances in which the registrant of a pharmacist shall be or may be suspended by the Minister. Registration must be suspended whenever a person's registration is suspended by their regulatory body in the U.K. Registration may be suspended where they appear to be on grounds for cancellation of registration pending the investigation of those grounds. Suspension may be only for a period of 3 months, but this is renewable by further decision of the Minister. Article 12 provides that where a person's registration has been cancelled and the Minister has directed that the person should not be re-registered within a specific period, the person may apply to have that direction amended. Article 13 describes a person's right of appeal against the decision of the Minister in respect of a person's registration as a pharmacist, also the power of the Royal Court on that appeal. Article 14 requires a registered pharmacist to make an annual return to the Minister in order to maintain their registration. I maintain the Articles.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on any of Articles 4 to 14? Deputy Le Hérissier?

**3.3.1 Deputy R.G. Le Hérissier:**

This could fall under several but, for example, under 6, could the Minister tell us the process by which a check is made to ensure a person has not been struck-off or there has not been an adverse

report made on them from another register, for example, in England, Scotland, Wales and Northern Ireland? Could she also identify where, if she were to use her cancellation or suspension ... I think it falls under this one. Could she identify a case that would lead to long-term suspension in her view?

### **3.3.2 Deputy A.E. Jeune:**

Under Part 2, 4(1)(b) a person shall not represent himself or herself as having any qualification or authority to practice as a pharmacist. Some people would have that qualification, but may not wish to be working in Jersey. This would prevent them, would it, from stating that they are a registered pharmacist? Would that be compliant with Human Rights Article 2?

#### **The Bailiff:**

Does any other Member wish to speak? Very well. I call upon the Minister to reply.

### **3.3.3 The Deputy of Trinity:**

With regard to being struck-off the register, as Deputy Le Hérissier said, it is only if someone comes to be suspended that they would be struck-off and the appeal process is there. I think in one of the Articles it says it is only for a 3-month period and then it can be reviewed. That is under Article 11. Checks will be made with the U.K. Pharmacist Regulator before registering a pharmacist locally. So they have to be registered in the U.K. If they are registered, like in Ireland first, they still have to go through the U.K. regulatory body before they will be accepted on this register. With that in mind, I would like to answer Deputy Jeune's question. They cannot be registered on the local list until we had made checks that they are registered on the U.K. regulatory body first. So it is like a double check. They would need to be upgraded or apply for registration update every year. That is important, so we know exactly which pharmacists there are on the Island, as I said before. The list goes back to the 1890s and there is no way of taking somebody off the list unless they let us know. I think that is very important to have a very active up to date list, so we know exactly who is practicing in Jersey.

#### **Deputy A.E. Jeune:**

If I may, my question was not quite answered, inasmuch as a person could well be a qualified registered pharmacist elsewhere, not particularly wishing to work in Jersey, but they would not be allowed to identify to anybody that they were in fact a qualified pharmacist. Similarly, to equate it with something else, if you were a registered doctor in the U.K. but not practising in Jersey or registered in Jersey, you would not be able to call yourself a doctor.

#### **The Deputy of Trinity:**

They still would have to be registered in the U.K. to be registered on the local list until the ... I am trying to get this right. You have to be registered in the U.K. If they wish still to practice over here, they are still a pharmacist in their own right, because they have been through pharmacy training, *et cetera*, to enable them to be on the U.K. pharmacist list in the U.K. first of all. If they wish to be on the Jersey list then they can be on the Jersey list, providing they are on the U.K. list first. Registrants are then allowed to practice in Jersey.

#### **The Bailiff:**

Very well. All those in favour of adopting the Articles contained in Part 2 of Articles 4 to 14 kindly show? Those against? Articles 4 to 14 are adopted. Do you wish then, Minister, to propose the Articles in Part 3, that is Articles 15 to 25? If any particular Member has a problem, they can take a vote separately. But do you wish to propose all the Articles?

#### **The Deputy of Trinity:**

Yes, please, Sir.

**The Bailiff:**

Very well, carry on.

**3.4 The Deputy of Trinity:**

Again, the provisions relating to the registration of pharmacy technicians are mirrored as in Part 2. They are separate in Law - that is important - to provide flexibility in case the provisions differ in the future. Article 15 makes it an offence for a person to hold himself or herself as a pharmacy technician unless they are registered. Article 16 sets out how a person may apply for registration as a pharmacy technician. Article 17 sets out the circumstances when the Minister should register a person as a pharmacy technician. Article 18 empowers the Minister to impose conditions on a person's registration as a pharmacy technician where it is thought necessary to protect the public or the interests of the registrant. Article 19 requires the Minister to issue a certificate to a registered pharmacy technician. Article 20 allows for a registered pharmacy technician to apply to be removed from the relevant register. Article 21 sets the circumstances of which the registration of a pharmacy technician shall or may be cancelled by the Minister. Registration should be cancelled if a registrant ceases to fulfil the requirements for registration. If the registration was obtained by fraudulent means or the registrant fails to submit an annual return within 60 days of being requested to do so, registration may be cancelled. If the registrant has failed to comply with any condition imposed on their registration or where the registrant is convicted of an offence or has engaged in the conduct of a kind that, in the opinion of the Minister, makes the registrant unfit to be a pharmacy technician. Article 22 sets the circumstances in which the registration of a pharmacy technician shall or may be suspended by the Minister. Registration must be suspended whenever a person's registration is suspended by their regulatory body. Registration may be suspended where there appear to be grounds for cancellation of registration pending the investigation of those grounds. Suspension may be only for a period of 3 months, but this is renewable by further decision of the Minister. Article 23 provides that where a person's registration has been cancelled and the Minister has directed that the person should not be re-registered within a specific period, the person may apply to have that direction amended. Article 24 describes a person's right of appeal against the decision of the Minister in respect of a person's registration as a pharmacy technician, also the power of the Royal Court on that appeal. Article 25 requires a registered pharmacist to make an annual return to the Minister in order to maintain their registration. I maintain the Articles.

**The Bailiff:**

Are Articles 15 to 25 seconded? **[Seconded]** Does any Member wish to speak on any of Articles? Deputy Le Hérisier?

**3.4.1 Deputy R.G. Le Hérisier:**

First of all, could the Minister outline the qualifications required, because Article 17 does not identify those, it simply says the "prescribed requirement" and refers people to another part of the Law which does not again define them? Secondly, given what we - the Island - has just been through and the Health Ministry in particular, I wonder if the Minister could talk about the powers of the professional bodies. When she says if she were to suspend somebody is that an absolute move or are we going to see what we have seen recently, all sorts of inquiries starting up with other bodies involved and so forth, to the extent that the whole thing just becomes a total confusion. I wonder if she could make it clear that when she suspends, say a pharmacy technician, that suspension holds and we are not going to get the intervention of other bodies or referrals to other bodies so that the decision starts looking very fragile, should we say.

**3.4.2 Deputy D.J. De Sousa of St. Helier:**

Just quickly as well, can the Minister please clarify the difference between a pharmacist and pharmacy technician, please?

### **3.4.3 Deputy A.E. Jeune:**

If I may, I come back again to 15(1)(b) and raise the same issues that I raised under the pharmacist registration to try and get the answer I am looking for regarding if somebody is qualified but not practicing in Jersey.

[10:15]

I do not know what a pharmacy technician is called, but let us call it that you would have the initials P.T. that you could use after your name. If you are in Jersey and you have a business card and it says P.T., because that is a qualification you hold, registered somewhere else, but you are not looking for work in Jersey, will they be prevented from doing that?

#### **The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

### **3.4.4 The Deputy of Trinity:**

The role of a pharmacy technician has been developed in the U.K. since 2007 and they see it as an important step to help with the role of the pharmacist. Yes, they do go through training. That training has to be continued. They have a body in their own right, I think, but it is also important that they are registered. It is important that they are registered in the U.K. body who oversee their registration to make sure they are competent, *et cetera*. It is the professional body. Nobody can be registered over here unless they have gone through the full remit of their own professional bodies in the U.K. To pick up the point from Deputy Le Hérissier, if there was a suspension, that suspension would go to the regulatory body in the U.K. The regulatory body will make further investigation. It would not be over here, it would be referred straight to the U.K. regulatory body. Suspension can be used as an interim measure while the U.K. regulatory body considers the case as a stopgap if there is any problem to the members of the public. But that suspension is only an interim one. It is referred straight up to their own U.K. regulatory body in the U.K. Trying to pick up from Deputy Jeune's point, they are registered in the U.K. What we are trying to do here is to put good governance in. This is a very old Law and it has not been updated since 1952. It is important especially with the introduction of pharmacy technicians, which is a new role. They go through their own training and continue professional development, which is important now for any professional body, so that they are regulated by all the regulatory bodies over here as well. I maintain those articles.

#### **The Bailiff:**

Very well. All those in favour of adopting Regulations 15 and 25 kindly show? Those against? They are adopted. Minister, finally, do you propose Part 4, that is Articles 26 to 30?

### **3.5 The Deputy of Trinity:**

Article 26 makes an offence to make a false or misleading statement, provide false or misleading information, forge a document or use a forged document or forged identity in connection with registration as a pharmacist or pharmacy technician. Article 27 enables notices to be served by post under the Law. Article 28 provides for the consequential amendment of other enactments. Article 29 empowers the Minister by Order to prescribe any matters for the purposes of the Law. Article 30 provides that the Law shall come into force one month after it is registered.

#### **The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on Articles 26 to 30? Very well. All those in favour of adopting Regulations 26 and 30 kindly show? Those against? They are adopted. Do you propose the Bill in Third Reading, Minister?

### **3.6 The Deputy of Trinity:**

Yes, Sir.

**The Bailiff:**

Seconded? [Seconded] Does any Member wish to speak on Third Reading? Deputy Le Hérissier?

**3.6.1 Deputy R.G. Le Hérissier:**

Just to reconfirm my concern about the ... while we all realise that of course the last few days have, in a sense, given us ammunition for this. While we all realise the Minister or some person has to have strong powers in case there is abuse going on, I am worried about the rights of appeal, they do not ... again we have a situation where a person's livelihood could be taken away and they then have to basically go straight to the Royal Court and they may not have the wherewithal to do that. I would have liked some kind of intermediate step in order that that could be dealt with. I wonder if the Minister could outline what her department does. When they, for example, are getting information about a pharmacist or technician whose performance is causing cause for concern, what steps they take where it is not necessary to go for immediate suspension? The other thing I would like to ask, does this mean we all know about the row of applications which are kept behind the counter, so to speak, does this mean that persons who advise you about these things now have to be either pharmacists or pharmacy technicians? So the people one meets in pharmacies now will, on one sense or another, all be qualified or will there be a third brain, for example, or is it all now becoming much more controlled? The last thing, is what is the situation in Jersey that is going to other parts of the United Kingdom about the ability to opt out around issues like the "morning after" pill. What is the situation in Jersey with pharmacists in that regard? Do they have the right to opt out?

**The Bailiff:**

Are these not all points you should have raised when discussing the principles on the second reading? This is the Third Reading.

**Deputy R.G. Le Hérissier:**

I could have, Sir, but as the thing has become clearer and more focused ...

**The Bailiff:**

You mean as you thought about it.

**Deputy R.G. Le Hérissier:**

Yes.

**The Bailiff:**

Does any other Member wish to speak in Third Reading? Deputy Fox.

**3.6.2 Deputy J.B. Fox of St. Helier:**

Just a point of clarification, really, regarding the appeal to the Royal Court and the costs, *et cetera*.

**The Bailiff:**

That is another matter surely, Deputy, which should have been raised on the Second Reading. If Members are now having second thoughts and thinking of points they wished they had raised during Second Reading, that is not what Third Reading is for, so I am sorry. Sorry, Deputy? [Aside] Not as yet. I am sorry. I appreciate that Members like to have their questions answered but we have to have proper debates and the Second Reading is the time to raise these points. Very well, all those in favour of adopting the Bill in Third Reading kindly show? The appeal is called for in relation to the Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier				Deputy A.E. Jeune (B)
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

#### **4. Waterfront Planning Application: Zephyrus Scheme (P.1/2010)**

##### **The Bailiff:**

So we come next to the Waterfront Planning applications: Zephyrus Scheme - Projet 1/2010 - lodged by the Deputy of St. Mary and I will ask the Greffier to read the proposition.

##### **The Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Minister for Planning and Environment, before determining the application for the development known as 'Zephyrus' on the



Waterfront, shown on the drawing attached at Appendix 1, to – (a) present to the States his formal response to the Key Findings and Recommendations of the Report of the Environment Scrutiny Panel into the Environmental Impact Assessment process and any ongoing environmental issues, especially with respect to the Ramsar site, relating to the La Collette incinerator, which is to be presented to the States in due course, in accordance with the procedure newly agreed between the Chairmen's Committee and the Council of Ministers; (b) present to the States a formal appraisal of the Environmental Impact Statement provided with regard to the planning application for the proposed Zephyrus scheme in the light of the Panel's report; (c) present to the States a report concerning one or more alleged breaches at the La Collette incinerator site currently under investigation by the Department under the Water Pollution Law; (d) report clearly to the Assembly the lessons which have been learned from the events at La Collette and Castle Quays and the measures which he and his Department will enact in order to tackle all the issues which have come to light.

**Connétable D.J. Murphy of Grouville:**

The Constable of St. Peter, Deputy Hill and myself are directors of W.E.B. (Waterfront Enterprise Board) and we are advised that we should not take part in this debate.

**The Bailiff:**

If you take yourself out.

**Connétable M.K. Jackson of St. Brelade:**

Before the Deputy starts, could I just ask for a ruling with regard to information that was distributed to Members yesterday morning from the Deputy of St. Mary. Much of this information is, I suppose, part of an investigation which is being taken by the Water Regulator and I ask under Standing Orders, either 107 or 104(g), whether you would rule as to whether I should be responding to this information in the Chamber this morning or not, because I find it very difficult to take that independent view?

**The Bailiff:**

Well, I have not seen this material, I do not think, have I? But, what is quite clear is that this debate may not venture into areas which are the subject of investigation because clearly that would be possibly prejudicial to the investigation and to any proceedings which would follow. So, I think that Members must be very careful. They can refer to the fact that there is an investigation and a suspected infringement, as the Deputy has done in his report, but I do not think that Members should go into too much detail in any way that might prejudice that investigation or any court action that might follow from it.

**The Connétable of St. Brelade:**

I will therefore not be able to comment on the information that was distributed yesterday morning.

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

Could I make a point of order, Sir, under Standing Order 60, please?

**The Bailiff:**

Standing Order 60. Yes, you want to raise a point of order?

**4.1 The Deputy of St. John:**

It gives me no pleasure to have to request that the proposition does not go forward in its current format. There have been many errors in the Deputy's proposition and under the original P.1/2010 there were quite a number which I drew to the proposer's attention, and he said he would amend them. Unfortunately, in the re-print there are still amendments which need to be made but have not been. I also drew this to the proposer's attention and I will refer to page 13 of the re-issued

document where it is basically maligning the Chief Officer of Public Services, and I do not say that lightly. The Chief Officer of Public Services did not make these statements, it was a former Chief Officer and to have this recorded on local documents which are government documents - this one and the previous document - which have gone out worldwide... page 13 of the re-issued version, to have gone out worldwide on the internet and otherwise, I think is wrong.

**The Bailiff:**

Deputy, you are saying where it says the Chief Officer, Transport and Technical Services Department, that was not the Chief Officer of Transport and Technical Services?

**The Deputy of St. John:**

Correct, that is not the current Chief Officer and that is maligning the current Chief Officer. It is a former Chief Officer and I have drawn this to the Deputy's attention.

**The Bailiff:**

But he was the Chief Officer at the time he gave this evidence before the Scrutiny Panel?

**The Deputy of St. John:**

No, he was not.

**The Bailiff:**

He was not, okay.

**The Deputy of St. John:**

He had been elevated. He had been upgraded to another position across at another department and it is wrong to describe - in the first document that comes out in 2010 - where we have a Chief Officer, albeit he was acting until December, but at the time of this going to print there was an acting Chief Officer in place and I think it is wrong that this ... **[Interruption]** I am not giving way.

**The Bailiff:**

I just want to be clear. Was he the Chief Officer on 18th September 2009?

**The Deputy of St. John:**

No, he was not. He had not been the Chief Officer ...

**The Bailiff:**

Well, the person who said this: "No, I am sorry, you are making an assumption."

**The Deputy of St. John:**

He was not the Chief Officer. He had already been appointed to the Deputy Chief of ...

**The Bailiff:**

I see. Was he also still the Chief Officer or the Acting Chief Officer?

**The Deputy of St. John:**

No, and therefore that alone is maligning the current Chief Officer, because this document is out in the public domain, and if it is recorded as such, everything will be attributed to him in the future.

**The Bailiff:**

Just so I am clear, is the current Chief Officer, was he the Chief Officer on 18th September 2009?

**The Deputy of St. John:**

He was the Acting Chief Officer.

**The Bailiff:**

He was the Acting ...

[10:30]

**The Deputy of St. John:**

There had been a promotion in between and there was a 6-month period where he was acting and that is of real concern. It had been brought to the Deputy of St. Mary's attention by me and I asked him to correct this latest document because there were so many corrections and problems with the very first one. Secondly, he was asked not to mention the name of the adviser in a letter or an email, sent to him and he still mentions the name of the adviser. When you are asked not to do certain things by the chairman of a panel, it is for a Member to take note wherever possible, and I ask that before we deal with this on the floor of the Chamber, all the 'i's are dotted and the 't's are crossed in the right position because I do not believe we should be moving forward on this until everything has been put in place.

**The Bailiff:**

The adviser, you say, can you give me an example? What is the reference you are making there? You mentioned ...

**The Deputy of St. John:**

He had asked... if you look on the bottom of page 6 it refers to our adviser, Mr. McGuinness, and the Deputy had been asked in writing not to use his name in any ...

**The Bailiff:**

By whom? By that gentleman?

**The Deputy of St. John:**

Yes, he was forwarded a copy of the email from the offices of my panel, not to use his name in the report that he had issued, and he still has re-issued this, and I forwarded you a copy of that email earlier. I think it is wrong that when you are requested ... these people have got no right of reply in this Chamber and I think it is wrong to put things into the public domain when it is ... but in particular the ...

**The Bailiff:**

This is the adviser to the Scrutiny Panel?

**The Deputy of St. John:**

Correct.

**The Bailiff:**

Where he is quoting from advice that the adviser has given the Scrutiny Panel.

**The Deputy of St. John:**

He was, but he had agreed with me that he would remove those and he has not. It is very difficult. I know the Deputy's heart is in the right place, but at the same time we have to be correct when we put these documents out to the public domain.

**The Deputy of St. Mary:**

Perhaps I might be able to clarify? I think, in the interests of natural justice, I certainly should be able to respond to that. It is indeed unfortunate that these 2 errors remain in the document. Now, I was asked after the issue of P.1/2010 to ... it was pointed out to me that it was wrong to have the names of the adviser in the report and the names of people who gave evidence to the Scrutiny

hearings, because names should not be used. Now, the reason they were there was because I copied them direct from the transcripts and transcripts, although they give the names and the titles at the beginning of the transcript, when they go on... or certainly these transcripts, they use names throughout. Names are a lot shorter than the titles and I copied them, literally pasted them in when I used quotations from the hearings. Now I was apprised of this. I was told that these names were there and I was also told that it was inappropriate to quote and refer to a document from the adviser, his draft report in fact, in a report before he had finalised his draft report. So, I first asked the Greffe to remove all the names and with, for instance, the name of the adviser, one assumes they would do a search and replace and simply replace his name with his title, Adviser to the panel, or in fact I think I put Representative of the panel where it is a hearing. This particular instance, there is one instance on the bottom of the left-hand side somewhere, where his name appears. That, I am afraid, is not down to any lack of concern on my part that his name should not appear. It was an unfortunate error and the quotation from his report I removed in the re-issue, and indeed I also removed references to what the gist of some of the things he was saying about the environmental management plans, I removed those direct references to what the adviser said. In fact, he has not changed one jot or tittle of what he said and all those references will come back again, but the point is I did remove them. Now, the question of this unfortunate mistake about the... - just trying to find my copy of the report - on page 13 where we have: "At the hearing on September 18th", this is page 13 and then the answers are attributed to the Chief Officer, Transport and Technical Services Department, this is an error. When I sent my email asking the Greffe to change the references to the named individual, I suggested what they should put, although obviously it is not for me to tell them what to put, but I suggested that it should be, I think I said: "The Former Chief Officer, Transport and Technical Services, now the Deputy Chief Officer of the States" and clearly an error was made and it appears in this form. I regret the error. I do not know, frankly ... that is the situation that we have but I think that to say that the debate should not go ahead on the basis of one typographical error, is maybe slightly beyond what we should do. I do have a big red ring around it - caveat - and when I was going to come to this I was going to point out that mistake in the report as it appears. Not the Chief Officer, the former Chief Officer. In the original, the name was there and there could have been no ambiguity.

**The Bailiff:**

Can I just say this, Deputy? It is your report, not the Greffe's, so I think it is a bit unfortunate to blame the Greffe. **[Approbation]** It is the responsibility of Members to ensure that what is in their report is what they are expecting to see.

**Deputy S. Power of St. Brelade:**

Can I raise another legal issue?

**The Bailiff:**

Well, preferably not at this stage, Deputy, unless it is closely linked to this. I think we need to deal with this matter first.

**Deputy S. Power:**

When you have considered, Sir.

**The Bailiff:**

I think the position is that these clearly are 2 errors. The Deputy of St. Mary has accepted that. Deputy, I think, that the correct course on any view would be to have a reprint of this report without the errors made and that is the one that should go on the website so that the world is not misled as to who was making these comments. I do not think there is anything for the Chair to rule further. In other words, this was an error but you have sought to correct it, but the corrections were not, apparently, fully made. I think your remedy, Deputy of St. John, if you wish to pursue the matter, you think that it should not be debated until we have the report in exactly the form you would like,

is to make a proposition under Standing Order 87(2)(b) that we do not debate it today. I am not saying that is what you should do. It is entirely up to you.

**The Deputy of St. John:**

I believe we should do this correctly and therefore I would make a proposition that we do not debate this today under Standing Order 87(2)(b).

**The Bailiff:**

Yes, on the basis that you would want to have the report in its proper form.

**The Deputy of St. John:**

In its proper form because this has already gone out on the internet worldwide and that cannot be retracted, so we need the final document in the correct form, Sir and I make the proposition.

**The Bailiff:**

Very well, is that proposition seconded? **[Seconded]**

**4.1.1 The Connétable of St. Brelade:**

If I may, with your leave, comment in support of the Deputy for the reason which links into my initial remark regarding the information provided by the Deputy, and at present undergoing investigation by the Water Regulator, I certainly would have thought that it would be better order for that investigation to have been concluded before the States debate takes place so the full information can be brought before Members.

**The Bailiff:**

Can I just make it clear, Constable, that is a rather different point. I think the Deputy of St. John is only suggesting a deferral until the report is re-issued in the appropriate form and then the Deputy of St. Mary is free to bring it back and ask for it to be debated. That is very different to asking it be put it off until the investigation is complete which may be some time yet. So, at the moment the only proposition before us is that of the Deputy of St. John, which is just to defer it until the report is re-issued. The Constable of St. Helier.

**4.1.2 Connétable A.S. Crowcroft of St. Helier:**

It would be helpful, I think, if we had reassurance from the Minister for Planning and Environment that he was not going to take any immediate action on this matter in the meantime.

**The Bailiff:**

Can you assist on that, Senator?

**Senator F.E. Cohen:**

I cannot give any assurance. The position under the Planning Law is relatively simple. I have an obligation to determine planning applications when they are ready to be determined. This one is not quite ready yet, but it is very close and it would be up to the applicant to force me to make a determination through an application to the court. So, I cannot give undertaking that is requested.

**The Bailiff:**

Just so I can clarify the timing though, the Deputy is asking for this to be put off until the report is re-issued which presumably can be done today, so presumably it can then be debated at the next sitting possibly, of the Assembly. Are you saying you cannot hold it off until then?

**Senator F.E. Cohen:**

Sir, I can certainly hold it off until then.

#### **4.1.3 Deputy S. Pitman of St. Helier:**

I would just like to point out to Members that the author's own report, which is a public document, his name is actually in that report and it really is rather trivial. This is going to go out to the thousands and millions of people that the Deputy says that Deputy Wimberley's reports will go out to. It is a public document, the name is in there and it really is rather pathetic that this proposition has been brought.

#### **4.1.4 Deputy T.A. Vallois:**

I am a bit concerned, because on page 14 where they mention about the Chief Officer of Transport and Technical Services, underneath where the copy of the transcript is, it states: "The Chief Officer of T.T.S. at the relevant time, at no time in this exchange denies ..." so it clarifies that it was at that relevant time, even though the transcript is incorrect. Also, the point of the transcript being copied, if that is the case, are the transcripts on the internet for Scrutiny Panel anyway, because that way they have already been publicised, so this argument does not stack-up.

#### **4.1.5 Deputy T.M. Pitman of St. Helier:**

Just to repeat, we hear about pettiness from the Deputy of St. John; this is totally petty. Having the debate now will not change anything if this document has already gone out and people have seen it. What is going to be changed by us having the debate? We acknowledge there is a mistake, let us go ahead. It just makes the House look completely ridiculous. I really would suggest politely that the Deputy of St. John grows up.

#### **The Bailiff:**

Deputy, I think that is a little too strong.

#### **Deputy T.M. Pitman:**

Very sorry, Sir, then he should not be so petty.

#### **The Bailiff:**

We do not have to approve of his actions. That is not for us to say.

#### **Deputy T.M. Pitman:**

I certainly do not approve. Apologies, Sir.

#### **4.1.6 Senator P.F.C. Ozouf:**

Just for the good order of public business, we have a full agenda on 23rd February; we are here properly constituted. We know that there are errors in the report. We are ready to deal with this matter and I think the debate should proceed. If there is a clarification that needs to be subsequently issued, that can be organised through the good offices of the Greffe on the instruction of the Deputy of St. Mary.

#### **Senator J.L. Perchard:**

I have nothing to add to Senator Ozouf's previous contribution.

#### **4.1.7 Senator S.C. Ferguson:**

I think that the other of the third parties involved in this are entitled to have proper information brought to this House - reliable information - and I would ask the Deputy of St. John, if this proposition was being issued by his Scrutiny Panel, would he be happy with it?

#### **4.1.8 Deputy M. Tadier of St. Brelade:**

Sir, I have been wanting to speak. My light is obscured and I have been trying to jump up. I think I must agree in some ways with Senator Ozouf, in the sense that, first of all this proposition whether one likes the report or not, is in order. It has been approved by the relevant authorities and

it is in order, and I believe it has been said before that we vote on the proposition not on the report. Now, we have certainly had reports in the past which are full of holes, which may or may not contain inaccuracies. That, I believe, is still a moot point here. I think what we have seen today from the very long point of order from the Deputy of St. John who was granted a great indulgence - probably quite rightly - was a piece of classic political grandstanding. I would have thought that that goes without saying, nothing wrong with that and I am sure that the Deputy of St. John has done that fairly effectively today. But, the point I would be making is that presumably the Deputy of St. John knew about the deficiencies, or the alleged deficiencies in the document, before today and could have brought this up, or challenged the Deputy before, or even brought it to the attention of the Greffe. If, in fact, he thought that the document was not in keeping with Standing Orders but, no. It was chosen to make a political statement of it, in the Chamber and I believe that is unfortunate.

[10:45]

So, I think that what we need to do now is go ahead with the debate. If, in fact, Members think that there are deficiencies in the report, then these arguments can be taken on the floor of the House and it should be dealt with in that way, but I would encourage and urge the Deputy of St. Mary to let us go ahead with this debate today. Let us not have any attempt at cover-ups. If there are any facts that need to be established let us do them today on the floor of the House.

#### **4.1.9 Deputy P.V.F. Le Claire of St. Helier:**

I beg your pardon, I was trying to catch your attention as well. I am a new member of the Environment Scrutiny Panel, having been there once before. I returned in October and it is quite disappointing really that the chairman of the panel has to make this request this morning, because of the fact that, as a member of the panel the Deputy of St. Mary is obviously a valuable member of the team. He is also the vice-chairman of the panel itself, but I think in fairness to the Deputy of St. John, what he is doing is a responsible move, in making sure and making certain that the rest of the States Assembly, and the officers who have expressed concern about one of the panel's actions... basically standing up this morning and trying to demonstrate - quite rightly I believe - his leadership in pulling the panel together and making sure that we work within the code of practice. Having discussed this on the panel, I do not think this is a slight upon the Deputy of St. Mary in any way. But, I think what the Deputy of St. John is aiming to do, he is aiming to demonstrate to the States Assembly that this panel is willing to work together, will take cognizance of issues when they relate to errors in our procedure, and collectively we will work for the better of this Island. I am concerned that people would think otherwise, which is not the case. Therefore, I will be supporting the Deputy of St. John because I am trying to put across to States Members that collectively this is a valuable Scrutiny Panel that works collectively and takes on board the concerns of Ministers and their departments. I would personally, although I had indicated 5 minutes earlier to the chairman of P.P.C. (Privileges and Procedures Committee) that I was going ahead with the Natural Gas proposition, I would be willing to defer that if it would help, but in this instance, and to explain myself and to explain the rationale of the Deputy of St. John, I am going to support the proposition that this is delayed until the paper can be re-issued.

#### **The Bailiff:**

Very well, Deputy of St. Mary, I think you have already spoken, have you not?

#### **The Deputy of St. Mary:**

No, not on this debate, Sir.

#### **The Bailiff:**

Yes, you have. You gave a long explanation as to how the errors had arisen.

**The Deputy of St. Mary:**

I am sorry, that was before the proposition was made to defer this proposition.

**The Bailiff:**

Fair enough. Yes, carry on.

**4.1.10 The Deputy of St. Mary:**

The right comes out in the end, thank you. Just 2 points. One is my concern that Zephyrus, and a concern of the Constable of St. Helier, that the Minister for Planning and Environment give an assurance that the Zephyrus is not determined in the meantime. Now, I think I heard the Minister say yes, he would not determine in the meantime, and he is nodding, so for me that is a very valuable reassurance.

**The Bailiff:**

Just to be clear, Deputy, so there is no doubt, I think following clarification from me, it was provided that this matter came back at the next sitting. I think that was the undertaking he gave.

**The Deputy of St. Mary:**

Fine, yes, provided this comes back at the next sitting, and the only other thing I have to say is apologies that that was not remedied. Obviously, I must have seen the email and just not chased the Greffe to re-issue again and remove that name, but as someone has pointed out the original name is on the web anyway, in the form of a transcript and it is, as someone else pointed out, the name is explained immediately after the section of transcript quoted in my report. If someone is going to the trouble to read P.1/2010 because it is on the web, they will probably read it all. God bless them, and they will therefore pick up who it really is. That is all I have to say and I hope Members go ahead and we debate this today. Thank you.

**The Bailiff:**

Very well. I call upon **[Interruption]**..Deputy Southern and then I think we probably ought to go back to the Deputy of St. John.

**4.1.11 Deputy G.P. Southern of St. Helier:**

If I may, this is turning out to be quite an historic couple of days. I am agreeing with Senator Ozouf yet again. **[Laughter]** We are in danger of setting a very heavy precedent here, if any report comes with any error in it, for anybody to stand up and say: "We do not want to debate this. It has got an error in it." That would be a sad, sad day if we did that. As Senator Ozouf has said, we have the material in front of us. We know what we are talking about and we can bring this to debate, and we should bring this to debate rather than, as we do time and time again almost throughout history, put off things until tomorrow, until tomorrow, until tomorrow and end up meeting for a fortnight in July or December. Let us not do that again. Let us debate this today.

**The Bailiff:**

Very well. Deputy of St. John, do you wish to reply?

**4.1.12 The Deputy of St. John:**

Yes, I do. Can I inform Members that Scrutiny is evidence-based, and it is important that we use that philosophy when we come to this House. If we do not, we are going to get into all sorts of trouble, and I thank Deputy Ferguson for her comment in that area. It is not pettiness at all, because what we do here affects an awful lot of people. Whether we like it or not, it does. At the time of this report and proposition being printed, and going out into the public domain, our Scrutiny report had not been issued. Information was given out in the very first P.1/2010 which was taken from a confidential draft report which should never have happened. That was totally wrong. That was removed but still information that was drawn to the attention on the second re-issued document



to the Deputy of St. Mary has not been cleared up. I drew it to his attention well over a week ago when it was re-issued and I would have expected to have, at least today, an amended document on our desks which is the usual procedure. As for Deputy Tadier, I will treat those remarks with the contempt they deserve. Anything to do with the Deputy of St. Mary with the websites, I think we all know that once it is out there it is there for life. It will follow that person around for the rest of his life and the date that that was put on the website. It does not matter what comes after that, people will refer to that date that certain things happened. If something is produced a fortnight later, that date is not referred to, they will refer to the very first date. That will go as somebody's reference, *et cetera*, and as far as I am concerned we need to be correct in these documents. This is a government document, it is not a club or an association where errors can be made, this is a government document and goes out into the big wide world and it is recorded. Therefore, I maintain the proposition and ask for the appel.

**The Bailiff:**

Very well, the appel is called for then in relation to the proposition of the Deputy of St. John that debate on P.1 be deferred.

**Deputy M. Tadier:**

Sorry, can I ask which Standing Order this refers to? I am trying to find it in my copy.

**The Bailiff:**

This is Standing Order 87(2)(b) where any Member can propose the matter be deferred. Very well, so I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 20</b>		<b>CONTRE: 26</b>		<b>ABSTAIN: 2</b>
Senator T.J. Le Main		Senator P.F. Routier		Senator F.E. Cohen
Senator B.E. Shenton		Senator P.F.C. Ozouf		Connétable of St. Mary
Senator S.C. Ferguson		Senator J.L. Perchard		
Senator A.J.D. Maclean		Senator A. Breckon		
Connétable of Trinity		Senator B.I. Le Marquand		
Connétable of St. Brelade		Connétable of St. Ouen		
Connétable of St. John		Connétable of St. Helier		
Connétable of St. Saviour		Deputy R.C. Duhamel (S)		
Connétable of St. Clement		Deputy of St. Martin		
Connétable of St. Peter		Deputy R.G. Le Hérisssier (S)		
Connétable of St. Lawrence		Deputy J.A. Martin (H)		
Deputy J.B. Fox (H)		Deputy G.P. Southern (H)		
Deputy of St. Ouen		Deputy of Grouville		
Deputy of St. Peter		Deputy J.A. Hilton (H)		
Deputy P.V.F. Le Claire (H)		Deputy S. Pitman (H)		
Deputy J.A.N. Le Fondré (L)		Deputy M. Tadier (B)		
Deputy of Trinity		Deputy A.E. Jeune (B)		
Deputy S.S.P.A. Power (B)		Deputy of St. Mary		
Deputy K.C. Lewis (S)		Deputy T.M. Pitman (H)		
Deputy of St. John		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		
		Deputy D. De Sousa (H)		
		Deputy J.M. Maçon (S)		

**Senator P.F.C. Ozouf:**

So the Deputy of St. John's point is not lost, would the Deputy undertake to re-issue the documents with the clarifications through the Greffe?

**The Bailiff:**

I think the Deputy of St. Mary had already indicated he would do that. Very well, then we proceed to the debate so ... Greffier, have you read the proposition?

**The Greffier of the States:**

Yes, I have.

**The Bailiff:**

Very well, I call upon the Deputy of St. Mary to propose the matter.

**4.2 The Deputy of St. Mary:**

I was expecting to have to defend the pictures but I was not expecting that. There is much at stake with this proposition. It is about 2 fundamental issues: good governance and the protection of our environment. Recent events and the detailed and thorough work of the Scrutiny Panel - and those are 2 separate things which we will come on to later - have shown that there are serious lessons to be learnt concerning environmental protection in major projects on waterfront sites. These problems are connected with issues of process and governance and these lessons must be applied before any further projects are given the go-ahead. I am going to dedicate this speech to the project site manager who is now without a job and without a home. We will cover the reasons and so on later and look at that but I just want to highlight his courage and his willingness to effectively blow the whistle. He has lost a lot and I think ...

**Senator P.F. Routier:**

May I just inquire whether this has any relation to the investigation and the potential court case that may happen? That is what I am a bit concerned about.

**The Bailiff:**

I think there is nothing wrong with what the Deputy has said so far.

**The Deputy of St. Mary:**

I move on; it was a dedication but I do think we need to recognise the emotional impacts of these things as well as the, if you like, political. The claim underlying this proposition is that there are serious problems concerning environmental protection so, clearly, much of this speech will concern the evidence for that statement; serious problems concerning environmental protection. All of that evidence comes from the work of the Scrutiny Panel. It is not my evidence; it is the evidence that we have received and the work of the panel and our adviser. It is important to learn the lessons of success. That went well. Why did it go well? Can we do it the same or better next time? I am sure managers of football teams or netball teams would be well aware of this. It is even more important to learn lessons when things go wrong. This is a difficult proposition to bring. What I am asking is that lessons be learnt and Members will see from what I am going to say the documents were not rigorous or robust, that good procedures were not established and followed and that this has had harmful results. I think when Members hear those words, they must be hearing the echoes of what we have been reading and learning about Verita. It was curious that my morning prayers yesterday focused on healing - healing between all people - and that is where my reading, so far as it goes - I have not read all the Verita Report - but I have dipped into it and the usual, read the summary and the addendum. It is an extremely interesting document because it covers the issues that are not specifically about what they were inquiring into but which were on the hearts of staff at the hospital and within Health. The 3 things that I picked out and I think are relevant is that Verita talk about culture: culture of being open, no blame, a feeling that one can make comments about performance without an atmosphere of you are going to get your butt kicked if you do.

**The Bailiff:**

Sorry, Deputy, I have to stop you, I am advised we are not quorate and we do not have an Usher either. Greffier, could you possibly step out and summon Members? Very well, I think we are now quorate. Yes, sorry, Deputy, please continue.

[11:00]

**The Deputy of St. Mary:**

I was going to say, it was a difficult proposition for me to bring; it is difficult to listen to, so we already have lost half our Members which is sad because if we are going to learn the lessons of Verita, we have to learn the lessons in this case as well. So Verita brought out, or rather the people speaking to them brought out - and Verita said it is not a final report; it is just an addendum - the culture, the issues around communication between members of staff and the openness around that, effective communication and procedures, and they write quite a lot about the Jersey way. I will not expand in detail on what they say about the Jersey way but it is basically about written codes - adherence to written codes - versus the handshake, and the assumption that it will be all right because we are both facing in the same direction; we both have the same goals. What Verita say in summary is: "Face these issues. Discuss them, they are not easy issues, and resolve them" and they suggest that further investigation should be done. So that is the first thing. Members will hear echoes in what I am saying of that and it is so important. Verita were investigating an unfortunate death at the hospital; this is about the protection of our environment and how we do it. There is a tension, before I get on to the evidence, in bringing a proposition like this and the reaction of the Ministers brings out this tension and I think it is important just to say a few words so that we do not get bogged-down in this later or that people do not muddy the waters, as it were. On the one hand this proposition can be read as an attack on Ministers, as undermining their authority and so on, and in politics it is a competitive world. I remember speaking when I was doing canvassing in Norwich and speaking to one of the candidates there and they said: "This is competitive. One person wins and the others lose at election time" and there is always that tension underneath. When something goes wrong, look for someone to blame and that was a point made by Verita, that systems also have to be looked at. But there is this temptation to look for someone and, in fact, that is not the spirit of this proposition; I am not trying to undermine or attack anybody. What is at stake is what is best for Jersey and I just wish the Ministers had accepted this proposition in the spirit that it was meant. I do beg the Ministers involved not to be defensive about this. I know, and I know personally, it is difficult to take criticism. It is hard. When you finally accept: "They said something right" you go away into a little corner but, please, dump the defensiveness, go through that natural reaction and be receptive to the changes that may be necessary. So to come back to the core of this proposition, it is about protection of the environment. Now, the environment for me and for many other Members here is non-negotiable. Our marine environment is valuable for its own sake. All kinds of marine plants, animals and birds co-exist in a great variety of habitats and, of course, especially on our precious Ramsar site. At a fundamental level, which was touched on by the Assistant Minister yesterday in the debate on climate change, the question arises: what right do we have as human beings to pollute and damage - in Gerald Durrell's memorable phrase - "the web of life" which surrounds us on this Island. So that is the fundamental, if you like; the deep, green position. Or we can look at marine environment in human-centred terms, even in economic terms. It has, as our adviser put it... he did not say "immense and irreplaceable value" - I said that - but he refers to it, the marine environment, as a provider of environmental services and he told us to make sure that we put sufficient value on those environmental services. Here are some: the tourism industry, the fishing sector and our own enjoyment of life as Island residents. It would be foolish indeed when you look at it in this way not to protect, to fail to protect, such an asset of such importance. To put it in immediate graspable terms, we, Jersey residents, want to swim safely in the sea. Our visitors also expect the same. We and they should be able to eat our oysters, our mussels, our bass, our mullet and our lobster without fear of being poisoned as we do so. That is the protection of the

environment and I was just making the point that it is important; it is non-negotiable; we have to go there. The second is governance; that is what this proposition is also about. Something has gone badly wrong - I will substantiate that in a moment - with the way that we do things. The question is, what are we going to do to ensure that we do things right in future? You can hear the echo with the discussions yesterday with the Minister about Verita. When are we going to address these issues? Are we going to do it next year? Are we going to do it some time? Or are we going to start now, learning the lessons now? That is what the proposition is about. It makes the Minister take the first steps to learning the lessons. I will now highlight the qualifications of the adviser team. You see, the work of the Environment Scrutiny Panel showed what the problems are and it was the work, not of a month or 3 months, but a year. The advisory team that we had... I think it is worth spelling out their credentials because this debate is about, fundamentally, who you believe. When we get on to the comments of the Minister for Transport and Technical Services, you will see that it is indeed about who we believe. So, I think it is worth just referencing the qualifications of our advisers and these are the people whose work is being dismissed. I will quote from their own report where they list their credentials, not, of course, mentioning any names. So the lead adviser who was the one who came to Jersey and did much of the work on question plans and interviewed officers in both departments is the lead adviser to the panel. He has strong links with the Ramsar Convention going back several years. He has represented the Society of Wetland Scientists on the Ramsar Scientific and Technical Review Panel since 2005. Prior to joining Bioscan he was head of Wetland Conservation at a U.K. based N.G.O. (Non-Governmental Organisation), the Wildfowl and Wetlands Trust, where he was responsible for the development, co-ordination and implementation of their strategic wetland conservation work. He has published extensively on a range of wetland issues in both the peer-reviewed and populist literature. If that is not enough, he has held strategic roles including President of the European Chapter of the Society of Wetland Scientists for 3 years from 2005 to 2008. He has represented that panel on the Ramsar Convention Scientific and Technical Review Panel and he sits on the Technical Advisory Group of the England Wetland Vision, and so it goes on. This guy knows what he is talking about and certainly in his discussions with us and in his work with us it was a real joy to work with someone like that. The second, if you like, member of the team, who, again, I will not name, is an independent consultant originally trained as an ecologist. He has worked for 25 years in national and international policy and law with bodies including the Ramsar Convention, the Biodiversity Convention, the Foundation for International Environmental Law and Development and U.N.E.S.C.O. (United Nations Educational, Scientific and Cultural Organisation) and so it goes on. I am leaving quite a lot of his experience out. The consultancy they used on chemical risk and so on - I do not know if I can mention them - it is an independent research and consultancy company established in 2005 by highly experienced chemical risk-assessors and then it lists some of the work they have done. They are 18 experienced professionals holding advanced degrees in many areas, including toxicology, biochemistry, hydrobiology, environment technology and statistics and they declare that they are all independent. I did dwell on that because this debate, when it gets to the nitty-gritty later on, will be about credibility and the work of the panel advised by people like that is credible. It is solid. In fact, when I think of the hours and hours of effort put in by the panel and by our adviser, who seemed to be working I do not know how many hours a day at times, I find it extraordinary that I have to bring this proposition at all. We, the panel, have brought forth a robust, strong report with recommendations that are based on the evidence and I just have to ask Members to ask themselves why are the Ministers not eager to learn? Why are they not grateful to the Scrutiny Panel for doing all this work, for poring over 200 documents the adviser went through? Two hundred documents. Double hearings with both the Ministerial and officer teams and one-on-one briefings with officer after officer. Where is the gratitude, where is the eagerness to learn? I must repeat, this proposition is not about politics, it is not about a vote of confidence in the Ministers, it is about what is good for the Island. So now I come to the detail of the case, if you like, of what the Scrutiny Panel report and what the adviser's report say and this is why the Minister for P. and E. (Planning and Environment) has to take note. I start with the Environmental Impact Statement. That is the first

document that the applicant produces, it is the key document in the process and the purpose of it ... I shall first of all tell Members what our key findings were about the E.I.S. (Environmental Impact Statement). The key findings are on page 9 of the Scrutiny Panel report S.R.1/2010. Finding 3: "The Environmental Statement failed to provide sufficient information in several key areas." Finding 4: "Planning and Environment identified shortcomings in the Environmental Statement, but failed to ensure that their own concerns were addressed fully." The third one, Finding 5, concerning the Environmental Statement: "The decision to grant permission placed a disproportionate reliance on post-determination mitigation and pollution control measures in order to protect the marine environment." So, the view of the panel, the considered findings of the panel based on the technical report by the advisers, was that the E.I.S. was deficient. A few points of detail, first of all; the scoping. The scoping is what really fundamentally underlies the success of the environmental statement. The scoping is where stakeholders, both statutory and non-government, talk together to find out what the E.S. (Environmental Statement) should look at and what it is legitimate to cover very briefly or to omit. You can see how important that is to set the agenda correctly for what the Environmental Statement should cover: scoping, which should be inclusive and participative which was not inclusive and not participative. Our finding was that no N.G.O.s - no N.G.O.s - were involved in the scoping. In particular, that, of course, includes the N.G.O.s who have a particular interest and a particular concern for our coastline and for Ramsar in particular.

[11:15]

It is little short of astonishing that these people were not involved in the process leading up to the E.I.S. The second area I want to cover briefly about the Environmental Statement is the impacts. Now, I have already pointed out that one of our key findings was inadequate information. Just a bit of detail on that: airborne pollution... and I refer Members to the adviser's report on page 14 and bullet point 8 in that paragraph, which is a very long paragraph: "There is no assessment of either construction or operational impacts regarding air quality implications for the Ramsar site." Now these are not my words, this is not Deputy Wimberley, this is the professional advisers: "While the overall assessment of air quality is relatively robust regarding impacts on human receptors ...", so that covers, if you like, the health impact of emissions from the incinerator compared to the old incinerator on humans: "... there is no assessment of the likely significant effects on the marine environment." Then he compares our own environmental statement here in Jersey for an incinerator built next to a Ramsar site to another E.S.: "In an E.S. produced by Babtje Fichtner for a similar E.f.W. (Energy from Waste) Plant in Nottinghamshire, it was considered necessary to assess the potential effects of emissions on protected nature conservation sites." The adviser writes: "... it is not possible to directly draw this conclusion [the conclusion is that there would not be any effect] as the evidence has not been presented within the E.S." It is very important in E.S. procedure that you state your evidence because only then can it be challenged. You cannot make assertions that there will be no impact, you have to show what your line of reasoning is and your evidence for saying that. Then other bodies with perhaps a closer interest in the matter or with technical advisers in the background, can challenge what you are saying in your E.S. but the evidence was not there. The second area is the nature of the fill and I refer to my own proposition, paragraph 26: "There was no testing for ground contamination as part of the E.I.S. and no work whatsoever done on the possible impact of these contaminants on the marine environment" and that was confirmed by the principal planner at P. and E. in a hearing. There was no testing of the contaminants in the fill. Indeed, the belief of the 2 departments was that the fill was inert and we read in my paragraph 27 of my report on page 7, I quote the Environmental Impact Summary Table and the potential impact from release of contaminants from Made Ground and I quote from the Summary Tables: "Anticipated to be low risk due to inert nature of fill." But they had not tested the fill, they had not looked to see what was there. They admitted in another paragraph somewhere else that there might very well be contaminants and that they would deal with these as they went along. We shall see

what that led to later. The third impact I want to highlight - and there are more but I am just highlighting the easiest to explain, really - is the matter of the discharge of permits for cooling water which we are told are within the set conditions. I refer now to the panel's report on page 19 about these set conditions: "Cooling Water 'Consent'. One clear potential impact on the Ramsar site is identified from the discharge of cooling water. This was referred to in early submissions to the panel from S.O.S. (Save Our Shoreline) and others. Repeated references are made in the E.S. to the 'existing outfall consent', which in fact applies to the arrangements for discharge of cooling water from operation of the neighbouring J.E.C. (Jersey Electric Company) power station." Then we come to the sentence: "However, no details of the consent [in terms of values or parameters] are presented in the E.S." No details of the consent. So, how can you evaluate what it means to say that the future discharges will be within an existing consent when you do not say what the existing consent is? It is the same problem as before. If you do not state clearly what you are saying and what the evidence is, it cannot be challenged and therefore the E.S. is inadequate. The third point about the Environmental Statement is the overall model which was used in creating this statement. The basic position of T.T.S. and, indeed, the regulator, it appears, was that there will be no impact. That was their starting assumption. There would be no impact so we do not need to describe it. We will avoid the impacts and therefore we do not need to go into detail. I can justify the statement that that is the way they were thinking with reference to the transcripts. But this is not how an E.S. should be done and I refer Members to page 16 of the Scrutiny Panel's report: "The purpose of an Environmental Impact Statement is to identify, describe and evaluate the likely significant effects of the proposed development." Not my words but the words of our adviser: "The purpose of an Environmental Statement is to identify, describe and evaluate the likely significant effects." What should be included, paragraph 1.3.1, page 16 of the Scrutiny Panel report: "What should be included in an E.S. ... normal requirements of an E.S. include: baseline information ..." That was missing, or it was old, too old, according to our adviser, to be of genuine use and it was not stated; it was merely referred to in any case: "... project description, prediction of impacts ..." this is what might happen, these are bad, how are we going to avoid them and then: "... details of mitigation." That is what an E.S. should have in it and on several counts did not. Moving on then from the Environmental Statement, the Zephyrus Environmental Statement I will tackle briefly because one of the elements of my proposition is that that E.I.S. is looked at and a report presented to the States just explaining that the lessons learnt from the Scrutiny Panel about Environmental Statements in general and how inadequate the work done on the Energy from Waste plant was, those lessons should be applied to Zephyrus. Save Our Shoreline highlighted 2 issues which, for me, are germane. One is mentioned in my report at paragraph 33 where they refer to the ingress of seawater. Now the E.I.S. for Zephyrus, according to Save Our Shoreline: "... does not take on board the issue of seawater ingress to the site once excavated" but that is precisely the point we are talking about: seawater coming into the site and later on we will come to this in more graphic detail: "... despite the fact that this has occurred at both Castle Quays and La Collette. S.O.S. claim that the mitigation methods set down for seawater ingress are insufficient. They ask whether a discharge permit will be enforced in the event of seawater entering the Zephyrus site and coming into contact with the pollutants that are known to be in the site. If it is, how will it be managed? If not, why not?" The questions remain and I do know that measures have been suggested at Zephyrus to ameliorate this question of seawater ingress but the point is we just want to know that the lessons have been learnt from the previous environmental statement. The second failure of the Zephyrus Environmental Statement is that they list samples have been taken of, I think, the groundwater, that is paragraph 34 in my own document. I will just have to look this up just to get this correct for the record. Yes, on ground conditions. The information on ground conditions depends on bore hole samples but the E.S. does not say where the samples came from and that is the sort of basic kind of level of failure, really, that shows that the E.S. is not robust enough; it is not up to scratch. The next important issue is the Construction Environmental Management Plan. What this plan does is it protects the environment as construction is taking place. Rather than use my own words which might be subject to challenge, I will use the words of the adviser in his report

on page 21. I am going to say C.E.M.P. (Construction Environmental Management Plan): “A good C.E.M.P. should detail all the project-specific mitigation measures required to ensure the environmental impact of a project is minimised.” Should detail all the project-specific mitigation measures: “The core of the C.E.M.P. should detail site-specific environmental actions to be adhered to and implemented pre construction, during construction and post construction.” So, site-specific environmental actions to be adhered to and implemented. On page 22 this is the adviser’s report 4.2.5: “It is also recommended that to be successful the C.E.M.P. should involve a number of parties during its implementation. Typically this will involve the project proponent [which in this case is T.T.S.], the principal consultants [in this case Babbie Fichtner], an appointed environmental co-ordinator or manager, a site clerk of works, construction operators ... the regulator and wider stakeholders.” So, everyone is inside the tent, everyone is talking to each other to make sure that the C.E.M.P. does its job. What happened? Our key finding, page 9 in the Scrutiny Panel report as regards the C.E.M.P. is Key Finding 7: “The C.E.M.P. is lacking in detail, based on generic rather than site-specific solutions, has not generated a wider dialogue and fails to demonstrably address concerns raised by P. and E.” So on all the essential counts of a C.E.M.P., the C.E.M.P. for the Energy from Waste plant was inadequate. The adviser continues at the foot of page 22: “The C.E.M.P. is clearly written as a prescriptive document for a contractor to implement and does not seek to be inclusive or cross-cutting in order to facilitate a dialogue between all interested parties. There is no sense of ownership by the applicant or their consultants. The emphasis of the document is clearly to pass the responsibility on to the contractor to deliver the appropriate environmental management on site. This is strongly at odds with recommended best practice.” I repeat that: “This is strongly at odds with recommended best practice.” You have to consult, it has to be owned by everyone, it is not a document created in an office and then imposed on the contractor: “The C.E.M.P. is primarily a generic document [and I am still quoting from the adviser]. Section J, Emissions to Water, does not include any specific references germane to the E.f.W. plant at La Collette and could be applied to a multitude of construction sites in a variety of locations.” So it was not site-specific, it was suggested by the adviser that it was generic, that it came off the shelf. The third point he makes is the C.E.M.P. clearly states that: “Minor amendments to the C.E.M.P. shall be made to a controlled copy by hand in red ink and dated.”

[11.30]

So the C.E.M.P. is a living document. When you come across things you amend the document, it is a moving, live document with people contributing and then noting down their decisions as to what to do or what they have done. The adviser continues: “Despite numerous requests to T. and T.S. as the project proponent, such a document has not been produced and the only document considered to represent the C.E.M.P. is the static document submitted with the reserved matters application.” It is important to spell this out. It is important for me to say that it is not Deputy Wimberley, it is the adviser and it is the panel that are saying these things, because when we come to T.T.S.’s comments we will find that they airily dismiss all this as some kind of figment of the imagination. It is not such a thing and I find it very hard to understand why they try to dismiss this kind of evidence. The failings in the C.E.M.P. created a situation where there could be a 3-month delay in dealing with an issue. I refer to our key finding, which is quicker than going into mountains of detail, Key Finding 9, page 9 in the Scrutiny report: “Potential environmental risks associated with the ingress of tidal water and the potential for the site to hold contaminated material were predicted for the construction phase of the project. However, it took more than 3 months from the date that water ingress was first encountered within the excavation [more than 3 months] to the production of a detailed method statement to deal with this issue. This is considered unacceptable.” So because of the deficiencies in the E.S. which said: “We will look at all this later; we will sort this out later”, then it was loaded on to the Management Plan, the Management Plan was not consulted and it was laid down and had failings within it and then we come to a 3-month delay in dealing with the biggest problem on the site. So that is the C.E.M.P. for the E.f.W. and it is not a pretty story and it

is about process; it is about writing a document in a collaborative way that does the business. Then we come to the C.E.M.P. for Castle Quays and this shows that the process of inadequate C.E.M.P.s rolls on and I refer to my report on page 11 and there Members can see a picture of seawater, feet deep on Castle Quays with little steel rods from the basement concrete pad sticking up out of the water. The whole site is full of seawater. Then I have a quote from the C.E.M.P. and I have put “sic” because, of course, it is not groundwater; it is seawater: “... although at high tides, groundwater (sic) may be present within the basement excavation”. Well, looking at that picture, it is not much of a may be: “The contractor is therefore bound by the terms of the C.E.M.P. to be aware of the potential for waters to become polluted and to look out for any such occurrences.” I rest my case on the picture and on the words of the C.E.M.P. It is not a matter of looking out; it was a matter of predicting it and saying what you were going to do to stop the possible pollution, either by tackling the issue of ingress or be absolutely certain that that water could not come into contact with the contaminants that may be there.

**Senator B.E. Shenton:**

Could I just ask, because I am not an expert in this field, how does he know that that is seawater and not rainwater? Did he test it or ... I am just asking the question.

**The Deputy of St. Mary:**

For that to be rainwater we would have to be living in Mauritius at the time of a monsoon and even then it could not, it would not, be that deep because it is 3 or 4 feet deep. In fact, it is deep enough for the whole of the pad to be buried and the rods to be sticking up out of it. So, Save Our Shoreline did an estimate of how many million gallons there are in there but I cannot remember the figure. So yes, it is certainly seawater. Now, the Department for Planning and Environment were asked in written questions whether water testing was done on that seawater; the answer was “no”. We are, however, told that yes, contaminants are in that site. I might be challenged on it so I will refer to this written question 6 on 21st September 2009 and the second paragraph of the answer where the Minister says that the materials in question, that is ash disposed along with general construction wastes within the fill at West of Albert - this is before they invented “ash coffins” above high water - this is in the time when they were spreading the ash and mixing it with the fill: “The materials in question would have historically been subject to tidal inflow and outflow prior to any excavations and the removal of these materials [that is the removal in the construction process in the course of making the pit] would therefore have constituted a net environmental benefit to the West of Albert area.” What that means is that the Minister is acknowledging that there is contamination in that excavation and that by removing it there has been an environmental gain. The problem with that is, of course, that we do not know if there is still contamination on the edges when the seawater came in before the removal was completed, so there is an admission there of the problem. So that is so much for C.E.M.P.s and I come now on to breaking the law which obviously follows from that picture of the sea coming in. Pollution does occur; it is occurring when the seawater comes in and goes out in the natural course of events because the infill sites on West of Albert and La Collette are not sealed from the sea. There is a question, of course, whether they should have been but they are not and the seawater coming in and out does leach out some of the contaminants that are there, we can only assume. Now the question, of course, that this raises, and I raise it in my report at paragraphs 52 onwards, is whether by breaking up the fill in the course of these various Waterfront projects the various contractors or developers are not breaking the law. I write that there is a problem because the law says, the Water Pollution Law, from my paragraph 52: “Article 17 of the Water Pollution (Jersey) Law 2000 says: ‘Any person who causes or knowingly permits the pollution of any controlled waters shall be guilty of an offence’.” It is absolutely clear. Any person who causes the pollution of any controlled waters. Now when you excavate and dig a great big hole in the Waterfront and therefore the sea has access to contaminants that it did not have access to before, you are creating a situation possibly of accelerated leaching of contaminants. I would have said it is fairly self-evident and what I say in my report is that this is a legally highly



problematic situation. I just find, again, that in the light of that it does behove this Assembly to take these issues very seriously and we will return to the issue of breaking the law; there is an ongoing investigation down at the E.f.W. site which we will come to later. No, I will say something to it now but not going into anywhere that might prejudice that inquiry. The overall facts are that that inquiry into the possible pollution incident or incidents at La Collette has been going on for 9 months. The main incident was at the end of April and there may be others - 9 months - and still the key witness has not been interviewed. He gave information under a caution that was issued on 2nd June and further information in the middle of July and in between those 2 events, he was fired. So, as I say, I am going to come back to the circumstances around that later in my speech. Of the final 2 things I wanted to refer to, one is site management, only briefly at this point because I will deal with most of this when I come to the comments of T.T.S. which were quite largely about this where they say that nothing went wrong and they dismissed the points about site management completely. But I just want to, at this point, refer to what it says in my report taken from the transcript about the recordkeeping and it was the exchange between the Constable of St. Peter and the Director of the Waste Strategy Project. I refer to paragraph 49 in my report and there the panel representative said: "That is an environmental incident that involved not just the regulator in mitigation. It was an environmental incident that should have been reported. Why was that not within the suite of reports submitted?" The Director of the Waste Strategy Project says: "I do not have the answer for that. We would need to check with the contractor as to why it was not... I must apologise for the late provision of that information." Then the Constable of St. Peter presses on this matter and asks why at the eleventh hour we have had 2 incidents produced to the panel and why was there not a process whereby the incidents get reported on time in a systematic way, why is it coming in at the last minute and the Director of the Waste Strategy Project accepts the criticism. I will not read all that out but the point is that the recordkeeping was faulty. Again, that sort of rings bells and is not really satisfactory but the details of this I will come to later in the speech when I deal with the T.T.S.'s comments. The final point I made about the real problems around this whole question is when I say in my point 7 of my paragraph 5 I think, that I refer to misleading statements, secrecy and lack of communication. I do qualify now, I must say, the word "secrecy", and I refer to page 47 of the Scrutiny Report, only by reducing it to unwillingness to give information in the proper manner. On page 47 of the Scrutiny Report we see Difficulties Obtaining Evidence. Under that the adviser's comment: "The Scrutiny Review process is an essential mechanism to facilitate open government and to call the Executive to account for its policies and decisions. However the following 2 observations are made regarding the process in relation to this review." These are the adviser's words: "There is evidence of obfuscation by T. and T.S. and an unwillingness to be proactive in providing information unless it was formally requested and identified in a precise form. This was especially the case in trying to identify the ongoing environmental management and mitigation procedures in operation at La Collette. This has delayed the review process and potentially compromised some of the conclusions." Not my words but the words of the adviser but I withdraw the "secrecy" but however there were problems with obtaining information and those problems were experienced by our officers and by our adviser. The lack of communication is evidenced in my report in paragraphs 70 and 71 if Members want to refer to it - if they are still alive - and those are about the fact that the incident which happened, or is alleged to have happened, although we will come later to the documentary evidence for this, at the E.f.W. site in April last year, at the time of writing, this incident has still not been reported to the Harbours authorities, to the coastal authorities or to Ramsar. So there is an unwillingness to give the information, get the information to the places where it should be and that chimes-in with the difficulty that we had in obtaining information. When I refer to being misled, and, of course, being misled makes the work of the panel more difficult, we were misled in 2 principal ways which I refer to.

[11:45]

The first was when the former Chief Officer of T.T.S. - and this is in my report - claimed that: "The site at La Collette is similar to other south-east coast sites that have been developed in the recent past." We pressed on this and he just carried on making this claim. We were all shaking our heads on the panel - and the adviser - because, of course, the land at La Collette is made up of fill. It is made up of what was claimed to be an earth fill but which we now know was contaminated and was not investigated. So the notion that with all the history that Jersey has of landfill, the notion that that site at La Collette was comparable to the site, for instance, underneath Victor Hugo, is, frankly, laughable. It just does not stack-up. The other claim that was made that was misleading was that there is no evidence of pollution. I refer Members to the controversial passage on page 13 with, of course, the caveat that the designation in there is wrong. It is not the current chief officer; it is the former chief officer who made these comments. The Constable of St. Peter was pressing about the concern, the public concern: "That there are potentially current contaminants somewhere down there." The former chief officer says: "I am sorry, you are making an assumption, you have no evidence, provide me with the evidence." So we turned the question on the questioner and he said: "You provide me with the evidence" and he said that 3 times: "You provide me with the evidence that there has been pollution down there." Well, later on, depending on rulings on going into camera and so on, Members will see that evidence. It is startling that we have to go there but it is all in the interests... and this is why I said at the outset, that it is a difficult proposition to bring but if we do not look problems in the eye, then they will come back to haunt us as we have seen, unfortunately, with the Verita Report. So, please, these are important matters. There is evidence and we need to go there and come back with a resolution moving forward to a place that is better. That brings me nicely on to the comments now of the Minister for Planning and Environment. I refer Members to P.1, the comments of Planning and Environment. Now it is a succinct report and the first claim I want to deal with is the claim that the Zephyrus application is not related to the E.f.W. situation. The Minister says in his paragraph 7 on page 2: "The Deputy is trying to link this planning application to the Scrutiny review undertaken of E.f.W. E.I.A. process. The Zephyrus application is not related, they are not by the same developer, and are for different types of development. The only link between the 2 is that they are both in coastal locations and are both subject to the E.I.A. process." That is not the only link between the 2. They are not just both somewhere near the coast and they are both big developments and they are different developments; one is a block of flats and the other is an incinerator. I am sorry, they are related, they are quite clearly related. They both involve digging a very big hole in fill that is contaminated; we know that it is contaminated, and we know that the sea will come in and out to those sites under the normal course of events. So they are clearly related and that is why I am bringing this proposition and if they were not related, then I would not be. The second point that Planning make is about this due process and the Minister referred to it in the mini debate we had about taking this proposition today. Again, he suggested that he could be put under pressure to determine sooner rather than later. That simply is not true. There is no legal constraint on the Minister to determine an application within a given timescale. I checked ...

**Senator F.E. Cohen:**

With respect, the Deputy has just suggested that something I have said is not true.

**The Deputy of St. Mary:**

I am not quite sure how to adjust that. The Minister has claimed on the radio that he is under a constraint which is embedded in the law that he has to determine this application. By using the word that he "has" to, he is implying, I believe, that there is some kind of constraint within the legal process of determining an application. Now, that is my interpretation of what he is inferring by saying that he "has" to determine within a certain timeframe. But I have looked at the law and searched the Planning and Building (Jersey) Law 2002 - and also read some of it - and the word "delay", the various searches I carried out, to make sure that there is no such legal constraint.

**The Greffier of the States (in the Chair):**

Well, Deputy, I hesitate to interrupt but the Minister will be able to respond in due course. I think he may be referring to matters such as court judgments as opposed to the law itself or expresses it in terms of the expectation to determine it.

**The Deputy of St. Mary:**

Yes, I am going to include that in a minute. The reference to due process on page 3 of his report at the top refers to - and I have had an email on this subject from his chief officer - the 13 weeks within which after the E.I.S. is received there is a standard, a performance standard that the department has in determining applications. Now that is fine for a department to have a performance standard, it would be like a hospital having a performance standard for taking in certain operations and doing them within a certain timeframe, but of course that is not in any way a legal constraint, it is a departmental advice to itself on what they would like to achieve. But clearly this is a major application on anybody's books, it is a major application with serious implications for our marine environment and so to claim implicitly or openly that there is a timeframe of 13 weeks and that due process is involved, in my view, cannot be maintained. The third point that the Minister makes is that he will respond to Scrutiny; at paragraph 8 he says that the issues will be responded to in full. I do not doubt that. I am sure the Minister will respond in full to our report but what I am seeking to do with this proposition is just add that little bit of now. I want and I hope Members will support me of course in this that the Zephyrus application just be delayed until the lessons that I have outlined - the weaknesses and the failings - have been taken on board, have been responded to, so that we can see and we can, if necessary, challenge P. and E.'s response, to make sure that it is robust, that they have taken these lessons on board. He says that he can accept part (a) which is nice, because right at the end he urges Members to reject part (a), so I think that is probably the final word on it, that the Minister does not want this proposition. He says at paragraph 10 - his paragraph 10: "that the Deputy is seeking..." Sorry, he says when writing about the Zephyrus E.I.A. that his department should do a review of that E.I.A. in the light of the process at La Collette: "The Deputy is seeking to discuss the E.I.A. for the Zephyrus scheme in the States Assembly." No, I am not seeking to discuss the E.I.A. for the Zephyrus scheme and the Minister does have rights in this regard. I am just seeking that we, the Members of the States on behalf of the public see a review of that E.S. in the light of the lessons learned from the failings of the previous E.S. at La Collette and if we do not do that then frankly we are failing the public. On the Water Pollution (Jersey) Law - his paragraph 11 - he confirms that there is an ongoing criminal investigation under the Water Pollution (Jersey) Law 2000 and says that details of the investigation cannot be shared at this time, and I will return to that later. That is all I would like to say about the Minister for P. and E.'s comments, and I now turn to the T.T.S. comments which are a very different kettle of fish and I must say, prefacing my remarks, that I was quite shocked by these comments - by the tone of some of the comments made in here - and I think that it is unfortunate that in the comments by a government department signed off by the Minister that we have comments like this made about a proposition of a Member. But leaving that aside, I will now deal with the substantive issues in these comments. If Members have the T.T.S. comments, P.1 Comments (2), the comments first of all say: "The Deputy's allegations are so full of inaccuracy and innuendos they are either simply untrue, totally inaccurate or concern small matters." To put some flesh on the bones of that initial blast we have: "The Deputy's statements about the E.I.A. process are not based on meaningful evidence" and a similar statement about my comments about the C.E.M.P. The trouble is that they are not my comments. It is not my evidence. It is the evidence that the panel gathered over a year of hard work, guided by an excellent adviser and endorsed in his report which he wrote as a professional. They are not my untrue inaccurate or small matters, they are the adviser's and the panel's untrue, inaccurate or minor matters. It is up to Members to decide whether they think there is a case that these 2 documents, which in my view are pretty solid, match what T.T.S. are claiming. He says that my motive is to undermine ... he says that my bringing this proposition and making these statements serves to unnecessarily undermine

public confidence. That is exactly the opposite of what this proposition is about. It is not about undermining public confidence, it is about creating public confidence in our institutions and in the way we do things. To suggest otherwise is ... I will just leave out any possible adjectives. That is the whole point, is it not? We saw it yesterday and we are seeing it today. It is how we approach these issues, difficult issues of governance and procedure and where they horribly go wrong. We do have to, I am afraid, look at these issues and resolve them in an open way, building the confidence and building the communication. I will now move on to the problems of La Collette: there are the comments page 3 where T.T.S. say that the Deputy alleges that the La Collette Energy from Waste facility has had massive problems with regard to pollution. That is a complete Aunt Sally. I have said no such thing and if Members will check what I say in my report I do not say that that facility has had massive problems with regard to pollution. It is that kind of misrepresentation that could almost be grounds for asking for the comments to be withdrawn, but we do not say that because it is just one of those things. I refer Members to my own report on page 3, paragraph 5. Now we know, and this report will show, that this is precisely the case, that is that previous developments have had problems. These previous developments have indeed had massive problems, that is what I say: "These previous developments have had massive problems" and the massive problems I then list, 1, 2, 3, 4, 5, 6, 7. One of them is the inadequate environmental statements, another is defective plans, another is the inadequate site management procedures and so on.

[12:00]

I nowhere say that there has been massive pollution. We do not know the extent of the pollution and that is on record. I move now on to the investigation without prejudicing, on their page 2 they say, on the third bullet point on page 2: "The Deputy does not accept that the management procedures implemented were adequate but they have proved to be very robust and to work successfully on site where there has been no consequential environmental damage." So T.T.S. are claiming that the processes done at E.f.W. have proved to be, that is a statement of fact, very robust and to work successfully and there has been no consequential environmental damage. That is the claim in their comments. They go on to say that they will not be drawn into further discussion about the alleged breaches of the Water Pollution (Jersey) Law 2000 except to point out that it is wholly inappropriate and improper for me to use information subject to investigation. They also repeat the claim about: "Did not cause any consequential environmental damage" on page 3. Now I leave the rebuttal of those statements to later because I am trying to package all the confidential elements into one part of the speech but I just put them on record now that those are the claims within the T.T.S. document that there has been no consequential pollution and that everything was robust and okay within the processes running the construction of the E.f.W. Now to go back to their comments about the E.I.S. and the scoping, they simply flatly deny that there was a problem with the E.I.S. and they flatly deny that there was a problem with the scoping, and I just refer Members to the key findings on page 9 of our document. I will not repeat them but it said the scoping was inadequate, there were no N.G.O.s and the E.S. was inadequate and I have covered the background of those statements. So it will be interesting to hear the Minister defend the flat denials in his document. They even, I think and my notes say, deny the 3-month delay. On page 5 of their document: "It is inaccurate to imply that there was a delay of 3 months due to any inadequacy of the C.E.M.P. but the finding of the panel who have looked at this for a year with a team of expert advisers says the opposite. There was a 3-month delay and that we consider this to be ... [I think the word is "unacceptable"]. This is considered unacceptable." So again we have T.T.S. and our report in flat contradiction and Members are going to have to make up their minds about not who is right and who is wrong. I think the issue is whether this whole body of evidence, which of course P. and E. and T.T.S. are familiar with in their own dealings as departments, whether this is worthy of a delay on the part of the P. and E. Minister in determining Zephyrus. I now come to the issue of the relationship between me and the Scrutiny Panel and the Scrutiny Report, which is referred to in

the comments. Rightly so, it is an area that obviously I have to clear up and on page 4 of their comments on the last paragraph, the Minister for T.T.S. says: "To pre-empt the publication of a formal Scrutiny Report of which the Deputy is himself party, with a Report and Proposition on which alleged facts are based, appears a poor approach and not in keeping with good scrutiny practice." Now I have said ... I have not said it but I am saying it now, that everything in my speech has come from our Scrutiny Report and our adviser and I have been careful not to quote myself but to quote people who know better. So this idea that somehow my report is off the wall is not true. When I wrote it I deliberately did not read the final draft of this, of our own Scrutiny Panel report, but I took all my evidence from the hearings that we had had where it is all documented, which is why I used quotations from the hearings extensively. I took my own knowledge from the various documents like the Environmental Statement itself, which I knew to be deficient; I took what various bodies had sent me, all the evidence that we had, in fact. So to suggest that somehow there is a conflict here is a little bit off the mark. The conflict lies only in that I decided to bring a proposition to request the P. and E. Minister to take on board these things before he determines the next major application. This was the point of difference between myself as a panel member and some of the rest of the panel. I asked for this to be a Scrutiny proposition and the panel decided that it would not be. So that is where we are. The reason for that is that ... well, maybe I need not go there, but that is just the way it is. I felt that it was appropriate to tie this down because I felt that these matters were so important that they could not be left to linger longer. So the errors of process are enough on their own. The errors of process that I have evidenced are enough on their own to make it right and proper for the House to ask the Minister to delay and to take on board these matters before he determines Zephyrus and indeed it is our duty. Now that would be true even if the errors in process had not produced major incidents. There are things going on and I do not know what it is. People are counting the number of people still here. But I mean I do accept that this is a tough proposition and there is a lot of evidence but that is the point, is it not? We are paid to take these decisions and sometimes they are tough and I am sorry if there is a lot of evidence, but we have also had Verita and I suspect Members have been looking at that, perhaps in preference to this, but it is a very similar case. There is a claim going the rounds, well in fact this was the claim made to the panel, that it is okay, the processes were designed to avoid impact and I quote from the Managing Director of Babtie Fichtner: "It would have been almost saying that our preferred approach is to allow the stuff to be released and identify that it will not really do any harm. We had a much better approach. Let us avoid the risk occurring by putting those controls on the contractor. Let us avoid the risk occurring." That brings me ... that clash between "let us avoid the risk occurring" and what happened brings me to the point of my speech where I would ask the Chair whether it might not be better to go into camera.

**The Greffier of the States (in the Chair):**

Well, it is not for the Chair to decide, Deputy, because you are fully entitled to propose under the Standing Orders that the Assembly go into camera. I assume Members would wish to know the reason why you wish to do that without disclosing the matters but give your general reasons and then it is a matter for the Assembly to vote or not to vote.

**4.3 The Deputy of St. Mary:**

Yes, Sir. Thank you for that guidance. We are faced with a bit of a problem here, and the reason that we need to go into camera is to look at the evidence about T.T.S.'s claims. T.T.S. claim that there has not been any environmental damage down at La Collette. There are issues around the case being prepared by the Environmental Regulator for onward transmission to the Attorney General about an alleged breach or breaches of the Water Pollution (Jersey) Law 2000 and we need, I feel, to look at the pictures which I circulated and the document I circulated yesterday which is a matter of public record. It is on Save Our Shoreline's website, but nevertheless it might be wise for us to be able to have a more open discussion within that framework of being able to look at what is said there, what the pictures mean and the facts around the dismissal of the site project

manager who was dismissed after talking to the Regulator for the first time, and he was dismissed in extraordinary circumstances which I am reluctant to go into in open session because of this prejudice issue. We are not *sub judice*, there is no case in a court but there is an investigation and it might be wise if we could go into this more openly by going into camera. So that is why I believe that we should. I am not clear obviously on the procedure.

**The Greffier of the States (in the Chair):**

That is all right, Deputy. I think we just need to clarify that and you are in the middle of your proposal speech. I think, in your remarks just now in regard to camera, you mention something along the lines of: “It would be helpful to have a discussion.” We are not in discussion mode, we are in debate mode and I think if the Assembly did agree to go into camera it is to allow you to continue your proposal speech in camera. The Chair may be prepared to allow one or 2 points of clarification but the debate does not open at that point unless you have finished your speech and we continue in camera with the debate. I think Members need to understand that. Now the proposal is made under Standing Order 81 that the Assembly continue in camera. Is that proposal seconded? **[Seconded]** Briefly does any Member wish to speak before we go to a vote on that matter?

**4.3.1 Senator P.F.C. Ozouf:**

Just for clarification, Standing Orders prevent us discussing matters which are subject to an investigation or *sub judice* matters, *et cetera*. Whether or not we are in camera does not make any difference, does it?

**The Greffier of the States (in the Chair):**

Maybe we should clarify what the Standing Order says. I think the Deputy of St. Mary was correct just now, the Standing Order prevents Members referring to any matters pending in any court.

**The Deputy of St. Mary:**

Could you refer us to the Standing Order for that, please?

**The Greffier of the States (in the Chair):**

Two Standing Orders of relevance, Standing Order 104(2)(g), which is the obligation on Members that Members shall not in a speech refer to a case pending in a court of law in such a way as might prejudice the case; and the power given to the Presiding Officer in Standing Order 107: “The Presiding Officer may direct that Members of the States shall not refer to matters relevant to any proceedings pending in any court.” Now clearly there is a discipline, Members, in this exercise in relation to the matters that may come before the court but the Standing Order itself is fairly narrowly worded in relation to pending court proceedings, not investigations as such. Members may wish to hear from the Attorney General possibly before deciding how to proceed. If he wishes to add anything. Is there a proposition to go into camera?

**4.3.2 The Connétable of St. Brelade:**

Essentially in fact I would appreciate a comment from the Attorney General in that I did mention to the Bailiff earlier on my concerns with regard to this and based on the papers that were put before Members yesterday morning I have a duty to respond and this does of course run into the investigation which is taking place, so I would want to reserve my position to be able to respond to anything the Deputy may put forward.

**4.3.3 Deputy R.G. Le Hérisier:**

I would like to hear from the learned Attorney General also. I have to say the proposer said at the beginning, which is a bit like a jury trial, we were going to deal with 2 versions of the truth and we had to decide upon which side we would come. That has been put before the public. He has interwoven various sorts of personal issues and allegations about probity and so forth in between apparently scientific arguments. I would have thought having got this far it is going to look very

strange to the public if we go into camera, as Senator Ozouf said, and start looking at evidence that is not yet tested, it appears, within a judicial or quasi-judicial context and we are going to hear this evidence because it is a matter of concern. My view is, without wishing to pre-empt the proposer's structure of his argument, there is enough scientific debate on both sides for us to make up our minds, and I would be very reluctant having set the ball running so to speak to revert to something where we are looking at untested evidence which centres around allegations of personal behaviour and so forth. It is just going to run off, I think.

[12:15]

**The Greffier of the States (in the Chair):**

Yes, Attorney General, if you can just assist the Assembly.

**Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

I am not sure that there is anything which I can say which will particularly assist the Assembly in this decision. I respectfully agree with the Chair's interpretation of the narrow ambit of Standing Orders and there is no matter that is currently technically *sub judice* within the terms of the Standing Order. I have not received a file for consideration as to whether or not to bring a prosecution, and that is the next process once the investigation is complete. That being said I would like, if I may, just to add this one further observation. I think Members are entirely mindful of the need to be very careful in anything that is said so that there is no risk that an investigation be prejudiced. As I cannot anticipate what will be said nor what the effect of that might be my caution is even more, I think, of concern to me and I think the concern boils down to this. At the end of this debate the Assembly will make a decision, it will take a vote, and there is a concern of course that that vote could be taken outside, in the public world, as an expression of an opinion in connection with matters that might be subject to investigation. Consequently I am concerned that those areas might be articulated but I cannot advise the Assembly that it is impossible to debate them if in camera.

**4.3.4 Deputy J.B. Fox:**

It is just on the in camera point. My concern is that on the odd previous occasion when we have gone into camera information that is in camera seems to be in the public domain very shortly afterwards. **[Approbation]** I say no more than that, but I will not be supporting in camera.

**4.3.5 Deputy M. Tadier:**

In seconding this, I am mindful that nobody likes going in camera, certainly myself. It is not something that I would enter into lightly, because I think government should be in the open, that is quite rightly so. I just wanted to point out that, whatever the result of this proposition, it would be bad form, I think, if Members did stand up afterwards and started criticising the Deputy of St. Mary because they did not like the information that he was giving out. That is all I want to say.

**4.3.6 The Deputy of St. John:**

I have concerns that this might be moving across. You asked for the information through the Scrutiny Panel and I am concerned that Members might be given some information today. If something is released prematurely and then the waters get muddied with that information, as this entire proposition is getting a little muddied... I would prefer that anything said is said in the open, so that it is recorded, and therefore we know exactly, when the file is passed to my panel, exactly what has been said in the Chamber. So therefore I do not think we should be going into... and this is no reflection at all on the proposer, but we should not be going into closed session.

**4.3.7 Deputy M.R. Higgins:**

First of all, I would just say that one of the frustrations I have found with being a Member of the States is how information is lacking, or we are prevented from getting information, or that we are

conflicted because we have got some knowledge of an area. It is really, really frustrating, and States Members are very often making decisions without having information. We have here an opportunity, and I agree that I do not like going into camera, I think it should all be out in the public, but I can understand the concerns of the Deputy of St. Mary. But I do think States Members should listen to what he has got to say, and be very careful afterwards, and obviously judge it. But I think we should at least have the information to make a proper decision, so therefore I am going to support the proposition that we go into camera.

**4.3.8 Deputy T.A. Vallois:**

I just need to understand, or clarify something here with regard to the information that will be provided in camera. Was that provided to the Deputy by a confidentiality agreement through Scrutiny, and if that is the case, then where does that stand? I mean, can that be released, and is that whole Scrutiny Panel in contempt, or ...? I do not understand whether that is possible or not.

**The Greffier of the States (in the Chair):**

I do not think it is a matter that calls for a ruling from the Chair, but if the Scrutiny Panel has had information in confidence, the Members are clearly bound to respect that confidence. Do you wish to reply briefly, Deputy?

**4.3.9 The Deputy of St. Mary:**

Yes, it is a difficult issue. I have just been looking at my notes; it is possible to cover some of the ground - most of it - without going into camera. I just wanted to put it there as a choice, because it may be that people may wish to make comments in reply, or follow up in ways that might be considered to be preferable to be in camera. I personally, as people have said, do not really like going into camera. We went into camera on the Plémont debate, and rightly so, to get the information that could not be public knowledge about prices, although even in that case, I am not sure that going in camera was necessary. I think one point that needs to be made, and this will apply whether or not we go into camera, is that all the media coverage of Haut de la Garenne was ruled by the judge not to prejudice the trial of the 2 men when they appealed. They appealed on the ground of media prejudice, and it was ruled that even in that case, with massive media publicity, that it had not prejudiced the trial, that a judge or jury can make up their mind, can look at the evidence in front of them, if and when there is a court case. There certainly is no court case at the moment, it is not about personal behaviour, it is about us being able to assess the issues. So I leave it with Members.

**The Greffier of the States (in the Chair):**

You maintain your proposition?

**The Deputy of St. Mary:**

I maintain my proposition just to have guidance.

**The Greffier of the States (in the Chair):**

The appel is called for. Members in their designated seats. The Greffier will open the voting for or against the proposition that the Assembly move into camera.

<b>POUR: 11</b>		<b>CONTRE: 21</b>		<b>ABSTAIN: 0</b>
Senator J.L. Perchard		Senator P.F.C. Ozouf		
Senator A. Breckon		Senator T.J. Le Main		
Connétable of St. Brelade		Senator F.E. Cohen		
Connétable of St. Mary		Senator S.C. Ferguson		
Deputy J.A. Martin (H)		Connétable of St. Ouen		
Deputy of St. Ouen		Connétable of Trinity		
Deputy S. Pitman (H)		Connétable of St. Lawrence		
Deputy M. Tadier (B)		Deputy R.C. Duhamel (S)		



Deputy of St. Mary		Deputy of St. Martin		
Deputy T.M. Pitman (H)		Deputy R.G. Le Hérisier (S)		
Deputy M.R. Higgins (H)		Deputy J.B. Fox (H)		
		Deputy J.A. Hilton (H)		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy D. De Sousa (H)		
		Deputy J.M. Maçon (S)		

**The Greffier of the States (in the Chair):**

Very well. Deputy, you must continue your proposal speech within the parameters of Standing Orders, in public.

**4.4 The Deputy of St. Mary:**

Yes. I think it was important to ask that question about in camera, and I hope that we do not, later on this debate, suddenly find that: “Oh, this is secret” and: “That cannot be said” and so on, because we have refused that opportunity. So there are 2 matters here, one is the dismissal of the Project Site Manager, and the other is the pollution incident itself. All I will do is give an outline of the chronology of that dismissal. On 2nd June 2009 ...

**The Greffier of the States (in the Chair):**

Could I just clarify, Deputy, for my own understanding, and I think for Members’ benefit, which particular paragraph of your proposition will these matters be relevant for? The dismissal of the site manager; I am struggling to see where in the proposition this relates to (a), (b), (c) or (d)? Is it (c)?

**The Deputy of St. Mary:**

Yes, there are 2 areas, I suppose. One is the general point about the importance of what happened at La Collette, and because the circumstances surrounding what happened at La Collette are as they were, that shows that these issues are not only important process-wise, but have led to real consequences. Part of that discussion is about the dismissal, because that bears on the sort of evidence - or lack of it - that is available. Specifically, apart from that overarching concern, there is paragraph (c), which calls on the Minister to present a report concerning the alleged breaches at the La Collette incinerator site that are currently under investigation, which would include consideration of the dismissal.

**The Greffier of the States (in the Chair):**

Thank you.

**The Deputy of St. Mary:**

It is easiest to do it this way round because it does put it in context. The Site Project Manager was cautioned on 2nd June. I just have to refer to a document which I have to find, I am sorry.

**Senator T.J. Le Main:**

Could the Deputy clarify who this person was employed by? Was it the States?

**The Deputy of St. Mary:**

Yes, I can clarify that. He was employed by Babtie Fichtner, the consultants of T.T.S. T.T.S. are not running this contract, if you like, directly, although as the client, they are involved, of course, at every stage. But they have consultants to project manage, check on specifications, and make sure...

**Senator T.J. Le Main:**

So he was dismissed by T.T.S.?

**The Deputy of St. Mary:**

He was dismissed by Babtie Fichtner. He was working for the consultants, and he was dismissed by Babtie Fichtner. So, yes, on 2nd June 2009, he provided information ... sorry, the caution was administered on 2nd June by the Environmental Regulator - the Environmental Protection Officer - and he provided information under that caution, I do not know exactly the date, but presumably some time after 2nd June. On 6th July, he went away on a course and was fired; when he came back there was no job. I will not go into the detail around that, because of possible confidentiality issues, but the behaviour of Babtie Fichtner at that time was, shall we say, less than proper, that is all I will say. He gave further information on 15th July, in a telephone conversation, to the Regulator. Then on 15th September there is an email where he says to the Regulator - and I think this is a public document - that: "What the Regulator and T.T.S. do not have is my interpretation of the information." Now the information is, basically ...

**The Connétable of St. Lawrence:**

I wonder if the Deputy would give way. He keeps referring to the Regulator, and I am not sure, maybe other Members are not sure, exactly who the Regulator in this case is.

**The Deputy of St. Mary:**

Thank you. The Regulator is the Environmental Regulator, whose job is to enforce environmental laws, including the Water Pollution Law, and he works within the Department for Planning and Environment, they are the department of environmental compliance or whatever, to control pollution and to monitor the laws and make sure they are enforced. So he is conducting the investigation into this whole matter of the pollution incident at La Collette, or the alleged pollution incident. So on 15th September, the Site Project Manager offers to the Regulator, and I quote: "My interpretation of this information." That is the information, basically, that Members have in the photographs and commentary that I circulated yesterday. "What the Regulator and T.T.S. do not have is my interpretation of this information, events on site from January to June this year, and my evaluation of the attitude and performance of all parties concerned. I can therefore confirm that the incident on 28th April was, in my opinion, not an isolated incident, and believe that the information mentioned above will demonstrate this." He also says that ... So there is an offer of further information, he wants to meet the Regulator, and he has always said that when he meets the Regulator he wants to have a member of Scrutiny present. Now you can criticise the level of trust that that indicates, but we are talking about someone who is effectively whistle-blowing, and therefore he does not want just a one on one, he wants to guarantee that someone from Scrutiny is there as well, so that we too know what he has said.

[12:30]

That question of there has to be another person receiving information comes up again in more recent emails, where he is happy to send a written statement to the Environmental Regulator, who has asked for it. He said: "I will send a written statement, a further statement, a sworn statement signed by my solicitor" and so on, to the Regulator. But again, my interpretation of why this has not happened - and it is my interpretation - is that he is probably not happy to send that document unless it also goes to Scrutiny. I have the evidence for that here, but I think I cannot quote it. But the point is that there is an issue of ... you have the main witness, the person whose photographs that I circulated ... those are his photographs and his commentary, and he has not been interviewed.

He has not been interviewed, and we are now 9 months in, and it just sheds a strange light on the pictures that you have.

**Senator F.E. Cohen:**

I think we need to be a little careful of this area, whether this particular individual has or has not been interviewed, there may be good reason for that.

**The Deputy of St. Mary:**

That is true. All these issues around the nature of the ... the reason for the dismissal, why the delay, and so on, are germane to this debate because they show that there is an issue around process, and around the consequences of the failings of process at La Collette. So I refer Members to the actual pictures, and I do not think there are real issues around this, because anybody can go to jerseyinperil.com and see them for themselves. So I would just like to take Members through the pictures which I circulated yesterday: "Additional information circulated by the Deputy of St. Mary", and just highlight some of what the Site Project Manager is saying. This is pretty well his words. On page 2, we read in the second paragraph, that: "The water discharge permit was needed for this project and was requested by the contractor. Save Our Shoreline made strong representation that the permit should not be approved, no discharge of leachate should occur within the Ramsar area. The application for the permit was subsequently withdrawn with no explanation." So that is a Save Our Shoreline commentary, and they say that they explain why they release this information now. On page 3 we come to quotations from the Site Project Manager, and if I could explain what I think was happening down there, there is a picture there on page 3 of the site, and you can see there is quite a lot of water - not rainwater, but seawater - in the site, making it quite difficult to do any work. The workaround, the method of dealing with this ... They had a problem, that water is, as you can see, fairly dirty, it also has unknown contaminants possibly, in it. So that is a problem, and you cannot just pump the problem to sea under the law, you cannot do that. So what CSBC (consortium of contractors) came - and it is on the second and third lines on page 3: "The intention of the contractor, as described in their R.A.M.S. (risk assessment and method statement), was to pump seawater from the extract wells sub-surface, before it entered the excavation." In other words, they made special holes in the bottom of the excavation, so that when the seawater came in they could suck it up before it reached the surface, as you can see in the picture. Then, it would be pumped over the sheet piles, which you can see at the back of the picture, and discharged into a further well that had been dug - and there is a picture of that later on - which had been dug on the other side of the sheet pile curtain, and so on, out to sea. So that was the idea, to get rid of the seawater, as it came in, but before it reached the excavation, by pumping it away, effectively, from underground. Then he writes, on the fourth line of that page 3: "This was tried on a number of occasions and proven to be unsuccessful, due to the discharge wells being flooded with the incoming tide, so the water that was being pumped from the extract wells had nowhere to go." So the well on the far side of those piles at the back of the picture, was already full of water, and you could not pump anything into it, with the result that the water coming up under the excavation ended up in the excavation. He goes on, the first line of page 3, second paragraph: "I have copies of emails questioning the methodology for this activity, but as was usually the case, my questions were never fully answered, or ignored." He then goes on to spell out the paperwork failings down on the site: "The habitual late submission of these and similar documents caused me many problems when trying to get an acceptable methodology in place before work commenced. Fichtner frequently instructed me not to stop the contractors just because of paperwork not being in place, so I was continuously battling against the contractors starting activities which were not adequately planned or supervised." This is the Site Project Manager saying that activities were being started by the contractor which were not adequately planned or supervised. That goes back to the E.S. being faulty and the C.E.M.P. being faulty. Because you have faulty papers and documents all the way up to the construction, you end up with a situation where you have not planned for the eventualities that occur. "I also have records of minutes of meetings where my

dissatisfaction over the late submission of documents has been recorded.” So going on to the next page, if Members are willing, page 4, the fourth sentence on the top paragraph: “This was common knowledge”, and it is another technical issue about water coming into the excavation, and taking out pollutants, down the fill, along the edge of the culvert, which was acting like a French drain and facilitated the quick and easy emptying of the tidal water, and he says: “This was common knowledge, and although I raised my concerns, was the case until such time the sheet pile curtain was in satisfactory condition.” So, in other words, the water was coming in, the water was going out, and until the sheet piles were done, were ready - and I saw them being banged in myself - until they were ready, then the seawater was going in and out, taking with it whatever it took with it. On the second paragraph, page 4: “On a weekly basis, I asked the contractors why the settlement tanks were not being used to demonstrate to the E.P.O., [that is, the Regulator] that water could be treated as they suggested in their discharge consent application. To be honest, the entire system was undersized and useless for the purposes it was intended. This was brought to their attention by me and also recorded in minutes which I have available. Because they could not get rid of the water held within the excavation they proceeded to use less scrupulous methods to empty the excavation.” On page 4 there is a picture of direct pumping from the excavation straight to sea. We have, and remember, we are talking about breaches of the water pollution law, page 4, last paragraph, second line: “This was in contravention of agreements made between the Regulator and the contractor.” The direct pumping out to sea was in contravention of the agreements made. There is a photograph on page 5 which explains the point I think someone made, or somebody’s eyebrows went up, there is the extract, the well outside the sheet pile into which the water was attempted to be pumped, although they did not succeed. On page 6, and I am grateful to the Greffe for printing these out so well, you can see the discolouration in the sea as a result of this pumping, that is the sea being discoloured. Now, I know that there is an argument about whether that was due to the pumping, but frankly, it was the same day at the same time, so I think it is consequential. The Site Project Manager says: “The photograph does not show the full extent of the pollution. I instructed CSBC to stop work immediately and told the safety officer to arrange for samples to be taken of the sea. This (i.e. the discolouration of the sea) had not been observed before on site, and I am convinced this was due to the pumping of very dirty water from the bottom of the excavation.” I will leave it there, although there are details on pages 10 and 11 of the tanks and the way that they were not connected to the hydro-carbon separator as they should have been at one point in the construction phase. Now, I went into detail about that, showing the photos of an event that never happened; according to T.T.S. comments: that never happened, there was not any consequential pollution. I am not saying how bad it was, I am not saying what the effect was, but there clearly was pollution, and we are being asked to believe that nothing happened, that I am making it up, that the process failings, which I have already said would be enough for us to make sure that the Minister for Planning and Environment does delay. They would be enough on their own, but there has been consequential pollution. This proposition is not about whether W.E.B. should get planning permission, or Zephyrus, and it is not about whether we like Zephyrus, and think it would be a carbuncle or a jewel, and it is not about whether we like the Minister for Planning and Environment, although I personally have quite a soft spot for the Minister for Planning and Environment. But it is not about that, and it is not about confidence and so on, and it is not a political tool. I have said it before, and I have to repeat it as I get to the end: it is about whether we do the right thing for the Island. It is about whether this House is willing to protect our environment, the environment we live in, which we depend on, the air we breathe, the soil and the sea, which we swim in and from which our food comes, not to mention our duty to the other forms of life which we share the planet with. It is about whether the Minister is willing to listen to legitimate concerns, to the evidence. Will he engage with the issues of process, as the Minister for Health and Social Services promised to do yesterday. Will he listen properly to Scrutiny, or have we been sitting there for a year in vain? Will he learn from mistakes? This is a touchstone issue, I am sorry it has been so long, and I really appreciate the fact that some of you are still here [Laughter] and that people have gone and then come back. I am sorry it was long, but the fact is,

there is a lot of stuff and I do think that it is quite appropriate that this is the first proposition of the year. It is about governance, it is about whether the public can see that we are prepared to put our own house in order and to take this next decision on the Waterfront in the right way, to learn the lessons, to have an E.S. that is valid, to make sure that the lessons of the failings of the C.E.M.P. and the E.S. have been taken into account in a way that States Members are happy, and know that these lessons have been taken on board and will be applied. I move the proposition.

**The Greffier of the States (in the Chair):**

The proposition is seconded. **[Seconded]**

#### **LUNCHEON ADJOURNMENT PROPOSED**

**The Greffier of the States (in the Chair):**

The adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

[12:44]

#### **LUNCHEON ADJOURNMENT**

[14:16]

#### **PUBLIC BUSINESS – resumption**

**The Greffier of the States (in the chair):**

The debate opens on the proposition of the Deputy of St. Mary. Does any Member wish to speak?

##### **4.4.1 The Connétable of St. Brelade:**

If I may, at this juncture, once again request that the House go into camera at whatever juncture it wishes, so that I can respond to the allegations made by the Deputy of St. Mary with regard to the engineering consultant. I think it would be impossible for me to do otherwise and in fairness to various other parties involved, I think is the only way this can be dealt with.

**The Greffier of the States (in the Chair):**

Once again, it is a matter for you, Constable, are you formally making that proposal at this stage? Do you wish to speak now or do you wish to do it now?

**The Connétable of St. Brelade:**

I think I can speak first and then come into camera later on if that is felt to be, maybe, more appropriate. I am quite happy with that.

**The Greffier of the States (in the Chair):**

Very well, do you wish to speak now?

**The Connétable of St. Brelade:**

Alright. I shall find my bit of paper and continue. The Deputy's allegations regarding the Energy from Waste facility environmental management processes are dealt with in detail in my response to P.1, and in my response, secondly, to the Environment Scrutiny Panel's report on the Energy from Waste project and Ramsar. The review is a planning process which has been issued to States Members. However, the nature of the allegations made concerning my department's development of the Energy from Waste facility, within the Deputy of St. Mary's proposition, needs to be countered and I will, if I may, beg Members' patience to let me do so. Suffice to say, the allegations made by the Deputy are either incorrect, inaccurate or, in fact, concern small matters blown entirely out of proportion. The Deputy appears to be seeking to undermine public confidence in what I consider is proving to be a successful development of a crucial new piece of

state-of-the-art infrastructure for the Island. With regards to the specific allegations made, the Deputy's statements about the environmental impact assessment process are not based on meaningful evidence. The environmental impact assessment prepared in my department runs to over 600 pages and, in fact, cost £256,000 to prepare. My department's environmental impact assessment complied with all relevant Jersey standards, a fact accepted even by the Environment Scrutiny Panel's consultant. The areas the Deputy highlights are comprehensively refuted in my detailed response, so I do not intend to dwell on these any further. The statements made about the Construction Environmental Management Plan indicate a lack of understanding of the purpose of this document on the part of the Deputy and it is to set the framework of environmental control on the site. This document also reflects the form of contract adopted which prescribes the standards to be achieved and allows for the flexibility for the contractor in how he chooses to implement the construction to meet those standards. So far the contractor has followed these requirements rigorously and the Deputy gives no meaningful evidence of this not being followed or any evidence of environmental damage to my knowledge. The Deputy does not accept that the management processes implemented were adequate, but they have proved very robust and to work successfully on site, where there has been neither consequential environmental damage despite minor errors being made by subcontractors... and the discovery of some unforeseen contamination on site. The Deputy makes serious allegations about an investigation being conducted by the Regulator of the Water Pollution Law. Given the ongoing investigation of this alleged incident, I cannot be drawn further into the discussion except to point out that it is inappropriate and improper for the Deputy of St. Mary to use information subject to the investigation of the report, and that may prejudice the outcome of the investigation. At this juncture, as I mentioned earlier on, I feel that I would prefer the House to go into camera so that I can refute the suggestions made by the Deputy earlier on. I am aware that I have parliamentary privilege here but I think, in the interests of good order and to enable me to enlighten Members fully, I would prefer for the House to go in order and could I, therefore, so propose a stage for my speech?

**The Bailiff:**

You are proposing to go in to camera?

**4.5 The Connétable of St. Brelade:**

Indeed.

**The Bailiff:**

Is that seconded? **[Seconded]** Very well, then, if no Member wishes to speak on that, we will go straight to the vote. Do you call for the appél as to whether to go into camera?

**The Connétable of St. Brelade:**

Yes, please, Sir.

**4.5.1 Senator J.L. Perchard:**

Sir, before we do vote, is it in order to take 2 propositions on the same subject during the same debate? How many times will we debate going into camera during this debate? I fear that this could happen again when the Minister for P. and E. speaks. I do think that the Constable can manage this and win the day quite comfortably by staying in open session and I would urge the House not to support his request for going in camera. **[Approbation]**

**The Bailiff:**

I think there is another point, if I may, just from the Chair, this will only be part of the debate going into camera. The Assembly voted against going into camera, as I understand it, when the Deputy of St. Mary was speaking. He, therefore, presumably felt inhibited in going into all the level of detail which he might have wished to do if had been able to go in camera. If you now go into camera when the Constable is speaking, he will have, possibly, an opportunity to go into more

detail which was denied to the Deputy of St. Mary. Now, these are points for Members, but I think from the Chair, it is right to remind Members of this, because going into camera is an unusual thing and, particularly if it is only for part of a debate, it gives an advantage to those who are speaking in that time. Nevertheless, it is ultimately a matter for Members.

#### **4.5.2 The Deputy of St. John:**

The Minister for T.T.S. only has one chance to speak. The proposer of the proposition has 2 chances to speak; he can always sweep up, and possibly in camera, when he comes to speak if that be the case, where the Minister, in fact, does not have 2 bites at the cherry.

#### **The Bailiff:**

Indeed; these are all matters for Members. Deputy Le Claire, do you wish to say anything?

#### **4.5.3 Deputy P.V.F. Le Claire:**

Very briefly; I brought an amendment to the States Strategic Plan, that the States be more open and accountable and move forwards to do that wherever and whenever possible. It does strike me as being unfair that the Deputy of St. Mary is unable to go into camera to discuss things, and I am confident that the Minister for Transport and Technical Services can make his case without having to divulge sensitive information to the satisfaction of Members. So, unfortunately, I will not be supporting going into camera.

#### **The Bailiff:**

Deputy Shona Pitman, do you wish to speak?

#### **4.5.4 Deputy S. Pitman:**

The Minister has just said that the Deputy of St. Mary has undermined public confidence, and then he proposes to go into camera to explain why. To me, that does not bode well. If we are to go into camera and he is to explain why, it will undermine public confidence in his justifications.

#### **4.5.5 Deputy M. Tadier:**

Very briefly, just following on from your direction, Sir, which I thought was very sage ...

#### **The Bailiff:**

That is a change, Deputy. **[Laughter]**

#### **Deputy M. Tadier:**

My opinion may be a change, but I am sure that your opinion is always sage, Sir. But the point I want to make is similar; if there were allegations made, as has been said by the Minister for Transport and Technical Services, made in the Deputy's speech; those allegations were made not in camera, so they were made in public. Any allegations in the document which may or may not be correct have also been made in public, so I do not see how going into camera is necessary, because surely, to refute allegations which were made in public, then that same information on the counter side should also be able to be made in public. That just stands to reason for me, unless I am missing something, so I think the whole debate about whether we should be going in camera for this particular part of the debate is an unnecessary one, so I would ask Members to reject it.

#### **4.5.6 Connétable J. Gallichan of St. Mary:**

I believe I did vote to go into camera this morning because the Deputy of St. Mary said he had things that he felt he could best say that way. Having said that, we made a sound decision to not go into camera, but still the Deputy of St. Mary was able, without being too specific, to allude to certain things, and also, encompassing in his speech, references to an individual who is not a Member of the States, who is not an officer, who has no right of reply. Certain things that he said, in my opinion and listening to his speech very carefully, would give a certain weight to the

circumstances surrounding that individual. I do not think it is fair that publicly his details are disclosed and debated, yet at the same time the Deputy of St. Mary has put me, I think, in an impossible situation, where he has made a reference to something which has pricked my interest, which has given me cause for concern, and yet I know that to understand the situation fully I will need to know more about that individual and have more details surrounding the terms of his employment and the way he left it. So, with regret, I think we do need to hear what the Minister has to say if it is relevant to that and the only way we are going to hear that without (a) prejudicing any particular inquiry and (b) doing an injustice to a member of the public, is to go into camera and to hear what is said. I feel I have been put in this position and the only way to respond to it is to listen without damage to that individual, so I will be supporting a move to go into camera.

**The Bailiff:**

Very well, so then the proposition is to go into camera. Has the appel been called for? Yes. I invite Members to return to their seats. If you want to go into camera you vote pour, if you do not, you vote contre and the Greffier will open the voting.

<b>POUR: 20</b>		<b>CONTRE: 21</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator J.L. Perchard		Senator F.E. Cohen
Senator P.F.C. Ozouf		Senator B.I. Le Marquand		
Senator T.J. Le Main		Connétable of St. Ouen		
Senator A. Breckon		Connétable of St. Helier		
Senator S.C. Ferguson		Connétable of St. Lawrence		
Connétable of Trinity		Deputy R.C. Duhamel (S)		
Connétable of St. Brelade		Deputy of St. Martin		
Connétable of St. John		Deputy R.G. Le Hérisssier (S)		
Connétable of St. Clement		Deputy J.A. Martin (H)		
Connétable of St. Mary		Deputy G.P. Southern (H)		
Deputy J.B. Fox (H)		Deputy P.V.F. Le Claire (H)		
Deputy of St. Ouen		Deputy S.S.P.A. Power (B)		
Deputy of Grouville		Deputy S. Pitman (H)		
Deputy of St. Peter		Deputy M. Tadier (B)		
Deputy J.A. Hilton (H)		Deputy A.E. Jeune (B)		
Deputy of Trinity		Deputy of St. Mary		
Deputy K.C. Lewis (S)		Deputy T.A. Vallois (S)		
Deputy of St. John		Deputy M.R. Higgins (H)		
Deputy A.T. Dupré (C)		Deputy A.K.F. Green (H)		
Deputy E.J. Noel (L)		Deputy D. De Sousa (H)		
		Deputy J.M. Maçon (S)		

**The Bailiff:**

Connétable, can you carry on with your speech.

**4.6 The Connétable of St. Brelade:**

The allegation made about the reason for the dismissal of a site supervisor has been comprehensively refuted by his former employer, who nonetheless praised the supervisor for his conduct of environmental management onsite. I have the following excerpt from a letter from the Managing Director of Fichtner Consulting Engineers Limited, who were the former employer of the site supervisor, which will be of interest to States Members. They state: “We therefore confirm that the only reason for the replacement of the former site supervisor was his inability to develop the working relationships required on site. We also point out that in his communications with us, the former site supervisor is requesting some additional compensation (this reinforces our views that the former site supervisor has no real issues but is seeking to push us into making some additional financial payment to him). We very much regret the necessity to air our reasons and



criticisms of the former supervisor in public but we have been forced to take this step by the threatened actions of a disgruntled ex-employee.”

[14:30]

States Members will have received my response to the Scrutiny Panel’s report in the Energy from Waste and Ramsar review of the planning process before the State. I am pleased to accept all of the panel’s recommendations which relate to my department and which refer to improving public information, openness and procedures, all of which are welcomed. However, the findings of the Scrutiny consultant employed by the panel to review the planning process cannot be accepted. This is because they do not represent a balanced, accurate or meaningful consideration of the evidence provided of good environmental management by my department. I would urge those States Members with any specific concerns about any aspect of the planning process relating to the Energy from Waste Facility to review my department’s detailed response, but for all States Members and the public’s benefit, I wish to make clear the following matters. The La Collette site has been the location for land reclamation on the Island and for disposal of inert waste for many years and environmental standards have improved every year since the site was constructed and I am sure will continue to improve. Sealed and lined pits for the storage of incinerator ash have been employed since October 1995. These are developed and managed in accordance with best practice and approximately £200,000 per year is spent doing so. I want to make absolutely clear that no ash has been encountered in the inert fill excavated for the Energy from Waste facility as has been misreported in the media. Superficial damage to the top lining of an ash pit was caused by a subcontractor in March 2009 while excavating an electricity cable trench, but the relevant Environmental Regulator was on site on the day and confirmed that no environmental damage had resulted. I saw myself the painstaking repair work done by my own departmental staff that followed, in full consultation and to the satisfaction of the Regulator, and so it is distressing that the allegation of ash release keeps being raised by misinformed sources. There are some particular points referred to in the Deputy’s speech which I feel obliged to remark upon and I think that I can pick several out, but I do not want to stretch this out for Members more than necessary. I think one or 2 issues do come up and one is the reference to tension with Ministers. I have no tension with any Member of this House or particularly the Scrutiny Panel and I have worked during the previous term with Scrutiny, I understand how it works and I am determined that Scrutiny does give value to the public and enhances the process of government. I think it is fair to say that this is happening. Any tensions are really, I think, due to the performance of the Deputy for St. Mary, who is trying to run a parallel scrutiny course, which my department finds extremely difficult to deal with; not only difficult but also costly in terms of dedicating officer time. So, we have here a P.1 proposition, to which I issued a response before the issue of the Scrutiny Report and it is quite difficult to understand how the Deputy can draw the 2 together and expect not to have a robust response from my department. The Deputy refers to the importance of the marine environment; I 100 per cent concur with his thoughts there. I live and operate near the marine environment and would not prejudice that in any way. The staff that the department employ are environmentalists themselves, in fact, the project manager is a qualified environmentalist and I suggest that his qualifications actually are in excess of those of the consultants employed by the Scrutiny Panel. The Deputy mentioned there a qualification; I understand that it was only the wetlands specialist who, in fact, attended on site in Jersey during the Scrutiny Report. The Deputy also mentions the deficiency of the E.I. assessment. I think, going back, I would be inclined to agree; there is always room for improvement and I am happy to say that any future works ought to consider different ways of working and how we can improve the situation of what we have done in the past. But we cannot change what has been done in the past. My department acted within the regulations available at the time and in the right and proper way and I cannot really see how that argument can be demolished. The Deputy refers to the airborne effects on the Ramsar site. My information is that the airborne effects on the Ramsar site are not considered meriting an enormous amount of expenditure -

because this is what we are talking about - because of the enormous flushing of the tide twice a day. The Deputy also mentions the discharge consent which will be, I am sure, alluded to by the Minister for Planning and Environment when he speaks, which is yet to be received. I think it must also be taken on board by members that T.T.S. are not the only organisation discharging into that area and Members may be aware that, I think last Friday, I was given some photographs with what appears to be water discoloration and it is surprising to note that in those photographs, which were taken at 4.00 p.m. last Friday afternoon, there was not a soul working on the Energy from Waste site; so maybe that is something that should be addressed by others. In terms of ingress of seawater into the site, we have always worked closely with the Regulator to ensure that we are acting properly and within the constraints within which we are bound to operate. I think it must also be understood that that site has been a reclamation site for some 20 years, the tide has been going in and out of it twice a day for that period and any water that finds itself in there is thoroughly filtered by the formation of the rock when it goes out. I have with me analysis of water taken from that site at the times of alleged incidents and the water in the site, I think, was purer than the water outside at sea. I am not sure if the Deputy fully understands and, maybe for Members' benefit, the design-and-build contract which is being undertaken there is a system whereby the contractor is designing and building the project. We have little to do with that, apart from the supervisory role, and that does have an effect on the management plan. It is up to the contractor to manage the management plan and this is what they do. The real problem, I think, as the Deputy alludes to a real problem being, shall we say, the relationship with the department. I suggest that the real problem is more confined to the Deputy of St. Mary who does not understand the affect that his communications are having, certainly on my officers, which is really quite profound. I would far rather, from a departmental point of view, if he worked through the Scrutiny Panel in the right and recognised manner and, I think, far more benefit would be derived, not only to him but also the general public. There is an allusion to secrecy and an unwillingness to give information. I have no difficulty in standing here, taking the blame for anything and also putting forward any information which Members want, but we have to be clear what Members want; sometimes there is an expectation that we come out with all sorts of information, which is going to cost an awful lot to draw out of the department and prove to be of no benefit whatsoever. I am keen that my department is always fully open to whatever Members would like to have. So, I refute any accusations of obfuscation. There is reference to pollution incidents. There have been no pollution incidents from my department and there is no evidence to support this. There is suggestion that the Scrutiny Panel has been misled. The former Chief Officer of my department alluded in an interview at the panel that the site was not dissimilar to other south coast sites and the Deputy made great play of this. The site is similar to other south coast sites. There is infill in other south coast sites and I suggest that when those were built similar investigations were done in those areas. There are an awful lot of infill sites around the Island, in fact, several in St. Ouen's Bay along the coast were used as dumps years past and I think this needs to be considered. La Collette is not contaminated. The knowledge that went into the infill in La Collette is quite considerable and, as I suggested before, I would not say that that is the case for Castle Quays, which is a completely different issue and I have no doubt the Minister for Planning will refer to that later. There is absolutely no evidence of pollution whatsoever. The evidence put forward yesterday morning by the Deputy, I have to say, is questionable and I think is put forward for motives which maybe the Deputy has been naïve to, and I suspect the Save Our Shoreline group have been naïve to as well. I think Members will have read into what I said earlier the actual situation which pertains. I am very keen that public confidence is not undermined. The evidence and comments I have made are given with considerable knowledge of the site; my officers keep me briefed on a regular basis to what goes on down there and make regular visits. I know what goes on and if I have any doubts in my mind, I am the first to ask. I think the Deputy alluded to an obvious presumption of massive problems down there. This is certainly not the case and I can only suggest that the Deputy wishes to make political capital of this at the expense of my department and I am quite honestly fed up with having to be the "fall guy", shall we say, on this and consider the Deputy needs to look to his motives in a slightly more closer way. I am keen, as I

indicated before, to continue a good relationship with Scrutiny. The Scrutiny full responses will be coming up in due course and Members can look at those and draw findings from that. There is always room to improve any situation, which I am fully prepared to understand. I would never try and cover anything up which, shall we say, would lead to any sort of impropriety in my department and look forward to the project being completed at an early stage to the benefit of the Island. In summary, I would ask the States Members present here today to reject this proposition, because the elements concerning my department's Energy from Waste Facility are not dealt with fairly or accurately and do not reflect the careful management of environmental impact which has been put in place in delivering this vital piece of infrastructure for Jersey.

**The Bailiff:**

I am sorry. I am just going to raise with you Standing Order 104(2)(c). You must not impute improper motives directly or by innuendo to another Member. You are, of course, entitled to be as forceful as you wish in connection with the wisdom or otherwise of the points made against you, but you are not entitled to question the Member's motives, so I must ask you to withdraw that.

**The Connétable of St. Brelade:**

I am happy to withdraw that and I think that underlying this, the Deputy's motives and mine are probably very similar.

**The Bailiff:**

Very well, does any other Member wish to speak?

**4.6.1 Senator F.E. Cohen:**

My comments are restricted largely to the planning aspects of this matter. I, firstly, would like to begin by saying that I do respect the Scrutiny process. I have always sought to engage with Scrutiny in the best way I possibly can. Where possible, I have always shared all documents with Scrutiny, sometimes on the basis of confidentiality, but I have always instructed officers to withhold no documents and ensure that Scrutiny is fully informed. In fact, my relationship with Scrutiny is so good that the previous chairman ended up as my Assistant Minister. The proposition would effectively remove from the Minister for Planning and Environment some of the decision-making process in terms of determining a planning application and I think that that would be a fundamentally dangerous move.

[14:45]

Whatever you think of the competence of the Minister for Planning and Environment, the test should be his competence, not whether the States as an Assembly should be making planning decisions. If we go down the route of States Members making planning decisions as a 53 Member planning application panel or board, I think we will be heading for great difficulty and I would caution Members in that respect. But before I respond to the points raised by the Deputy of St. Mary in his proposition, I would like to explain to Members what the Zephyrus planning application is and the process that is being undertaken. The planning application known as Zephyrus was submitted to the Planning and Environment Department on 3rd August 2009 and the applicant is the Waterfront Enterprise Board. The scheme is for 59 residential apartments in 5 buildings of a maximum height of 6 floors; with ground floor commercial space and underground parking and storage and, as I said, it has a maximum height of 6 floors. It is located on the Waterfront on a site in near proximity to the delightful Radisson Hotel and will sit between the Esplanade Quarter development and the hotel. It is a scheme designed by Hopkins Architects. The department decided, upon receipt of the application and following further decisions with the applicant, that the scheme required an environmental impact assessment to be carried out. The environmental impact statement was received on 20th October 2009. This statement covers issues including traffic and transport, air quality, community and socio-economics, noise and vibration,

wind, micro-climate, daylight and sunlight, water resources, ground conditions, waste and telecommunications. This proposition is requesting me to delay consideration of this application until I have formally presented my response to the States on the Scrutiny review of the Energy from Waste Scheme and its E.I.A. and the other issues which the Scrutiny Panel have considered. However, as I previously stated, the Minister for Planning and Environment is responsible for the discharge in the proper manner of the Planning Law. I simply cannot give such an undertaking as I have an obligation to determine planning applications submitted in a reasonable time and not to unreasonably delay. That does not mean that I cannot take into account the views of States Members or, indeed, the views of the House, but I cannot unreasonably delay. There is case law and general practice applicable in this respect and, therefore, I have no option other than to determine this application reasonably promptly once all relevant issues have been considered. I will, of course, take into account all the issues in the Environment Scrutiny Report that I consider reasonable and relevant to the current application. Furthermore, if I were to approve the application, I would require that no work can commence until I am satisfied that any contamination of the land in the area is to be mitigated to the appropriate international high environmental standards. The consideration of this application and its environmental impact statement has been carried out by qualified planning officers, environmental protection staff including water and waste specialists, environmental policy specialists, ecology experts, among others, and consultations carried out with many third parties external to the States and the public. It would undoubtedly set a most unsatisfactory precedent if I were to formally link this planning application to the Scrutiny Review undertaken of the Energy from Waste E.I.A. process and the review of other environmental and construction issues on the La Collette site. Furthermore, if I did, it would be likely subject to legal challenge. I would simply not be discharging my duties appropriately if I were to delay unreasonably determination of this application for reasons outside the specific planning process. I will be responding to the recent Scrutiny Report and, indeed, my office is already in the process of preparing this report. While I have already said that my department disagrees with some of the findings of that report, I have given a firm commitment to implement as many of the report's recommendations as are possible within the constraints of our resources and, over time, perhaps to implement the vast majority of those recommendations. I am more than happy to accept any representation of the Deputy of St. Mary or, indeed, any other Member wishes to make in relation to the Zephyrus application. In addition, you will be most welcome to make a representation when I determine the application in public. Furthermore, I am able to condition any consent to cover relevant issues raised in representations or, indeed, I may refuse the application. The Deputy is also requesting that I report issues pertaining to a current criminal investigation into an alleged pollution incident to this House. I can confirm that there is an ongoing criminal investigation into an alleged breach of the Water Pollution Law 2000, however, this does not mean that I am accepting at this stage that there is a case to answer and, of course, that would not be my decision. My officers are bound by strict protocols when carrying out criminal investigations. To ensure that a fair outcome is achieved, they must be carried out having regard to all appropriate rules of evidence, police procedures and human rights obligations. I give my assurance to the Deputy and to all States Members that we will be bringing this to a conclusion as soon as it is possible and in a manner that ensures the correct outcome for Jersey's environment. Once a conclusion is reached, I will be pleased to promptly update Members. I, therefore, urge Members not to support this proposition but to allow me to follow the procedures of the Planning Law and to allow me to safeguard the environment by appropriate conditions and monitoring.

#### **4.6.2 Deputy R.C. Duhamel:**

I find the proposition to be a bit of a muddle and I will explain to Members why. I think the Deputy of St. Mary is right to have been concerned, as indeed, the Environment Scrutiny Panel had been, with issues concerning the La Collette site and the building of the Energy from Waste plant. But to take those concerns and to run them into a statement which asks this House to request the Minister for Planning and Environment to defer from making comments or decisions on a live

planning application on the basis of that work, is really going too far. In fact, I am surprised that the proposition has come forward in this form at all, because in reading the recommendations from the Environment Scrutiny Panel, in particular on page 11, it quite clearly says, under recommendation 4, that every new project should be independently assessed on its own merits. Analogies drawn from prior local experience may be used to provide comparative information but must not be considered as a substitute for comprehensive site-specific studies and evaluations. So that, if you read between the lines or need it to be translated, means that for any particular site, in particular those that do require environmental impact assessments, that work must be undertaken for each particular site, drawing any lessons from any previous sites which inform the process but do not substitute for the process. So, with that in mind, I thought I would take another opportunity to look at the environmental impact statement that has been drawn up for the Zephyrus project, because the proposition is not to make any particular statements at this point in time about the Scrutiny Report on what did or did not happen down at La Collette, but specifically to use some of that information to ask the Minister to desist from making his planning decisions, when he is in a position to do so. The inference there is that perhaps the Minister for Planning and Environment has not learned from any of the lessons that may or may not have come out of any other particular site appraisal and he is not going to learn by his mistakes - if mistakes have been made. In that case, I would have thought that perhaps a better way forward might have been for the Deputy of St. Mary to have come forward and brought forward - if he did not have the confidence in the Minister for Planning and Environment in carrying out his duties or the department for delivering sensible reports that can be relied upon in the environmental terms and under the law - a vote of no confidence, because for me this is what really underlies the linking together of 2 quite separate issues. But he has not done that. So I am left with a small element of the report which condemns the existing environmental impact statement for the Zephyrus project on 3 grounds, or maybe 4. So, on page 7 of the Deputy of St. Mary's report, it states under 31: "There appear to be serious problems with the C.I.S. (community impact statement) also [the one for Zephyrus], echoing those of the incinerator E.I.S. On page 128 the E.I.S. talks of ground water flow being influenced by tidal waters. The E.I.S. says that the ground water quality is good, but there is no ground water on the Zephyrus site." It is quite clear that the Deputy of St. Mary does not understand the term "ground water". There are surface waters and ground waters, and ground waters are waters that are running beneath the surface and that includes seawater intrusion waters and inundation waters in the general sense. He goes on in his report to state that: "Apparently the E.I.S. does not take on board the issue of seawater ingress to the site once excavated, despite the fact that this has occurred at both Castle Quays and La Collette." He then goes on to state that S.O.S. claim that the mitigation methods set down for the seawater ingress are insufficient. They asked whether a discharge permit will be enforced in the event of seawater entering the site and coming into contact with pollutants that are known to be in the site. If it is, how will it be managed; if not, why not? Now I think, in producing a report, it is not helpful, in my mind - and we have had the same comments from the Deputy of St. Mary in his early days - to make both statements which refer to other documents and then not to have those other documents clearly referred to or reprinted so that States Members can rely upon the contents and to come to sensible conclusions based on whatever is written in those documents. This is poor practice in terms of democracy and our parliamentary responsibilities. So, I think one really should be in a position, as I have put myself into, of reading what it says in the E.I.S. and with my Assistant Minister for the Environment hat on, I am satisfied that what has been referred to in negative terms is, in actual fact, at least neutral and, if not, positive or in reverse. The E.I.S. does state that they recognise that the site is close to an important marine area; a marine protection zone. It states that there are potential problems with the site, in terms of the deposition of ash and other materials that T.T.S. and others put into the site when it was being constructed. It goes further to state that the recommended building technique will be to provide a second piling wall, which, in non-jargon terms, means that the site is going to be severed, if you like, from the existing natural ground conditions as far as is possible and it goes further to say that there will be a reliance on turning the whole of the site into a tankered area. So, in essence, there is

a recognition within the report that has been done for the E.I.S. for the Zephyrus project by the experts who have been consulted, to admit that there is seawater inundation to the site, as indeed there is surface water inundation, when it rains and whatever, and measures have been taken to engineer the situation to minimise the intrusion of those waters, the mixing of those waters with any particular nasties or polluting aspects of the ash within the site and to ensure, as far as possible, that any groundwater that remains within the site is dealt with in the correct way, so that it does not contaminate, as far as is possible, the important marine area that is on its boundary. So, I think, as far as I am concerned, page 7 really paints a quite different picture. I think it is unfortunate to paint that picture on the back of something else that has happened several hundred yards on the other side of the Island, or the other side of the town. It is fundamentally wrong. It is not good science; it is maybe good politics, but it is not a very good argument, in my book. What is more important is whether or not I have the confidence in the process and the procedures; whether those processes and procedures are robust enough to ensure that our natural environment is protected as far as possible.

[15:00]

From what I have read within the E.I.S., I think as the first stage... and the document that I am reading at the moment is the first stage, because we have to have further reports done and construction management plans done, to ensure that if there are any further problems that come to light when the construction phase is taking place, if indeed permissions are given to go ahead, then those problems are dealt with in the right manner. On that basis, I think the comments that the Minister for Planning and Environment and his department have put together ... I wholly endorse those. I think there will be a report written, quite rightly, on the Scrutiny Panel's report, as to what has happened or has not happened in terms of environmental impact statements and assessment for the Energy from Waste site at La Collette. But I think the issue as to whether or not adequate or inadequate environmental impact statements have been made for the Zephyrus site, I am in no doubt that they are sufficient, they are adequate and certainly the second phase of the process will guarantee, as far as is possible, that the pollutants within the site are eliminated from the site and, as far as possible, not to the detriment of any of the surrounding waters. One small point just to finish off. There are elements of pollution within the site but Members must not be misled as to the suggested homogeneity of the ash deposition across the La Collette site in total. In the early days when we were beginning the reclamation site, the procedures in terms of ensuring that the environment was protected as far as possible were not perhaps as enhanced as they are today and it is quite clear from studies that have been undertaken by various bodies through the Waterfront Enterprise Board and others there are zonings within the La Collette site which show categorically that some parts of the site are more polluted than others. It is also good to note at this particular point in time that the site that the Zephyrus project is proposing to be built upon is in a lesser polluted area than the Albert housing development was. As long as efforts are made, and this is what the building plan suggests, to cut off and exclude the ingress of any other waters that might come from a more polluted and flow to a lesser polluted area, and indeed to cover any pollutants that are inside the area which is going to be contained as far as possible, I think the proposed environmental impact assessment plan is adequate for the job. I will, if the proposition to build is given permission, continue to take an interest in the environmental side and indeed the House has my assurance that should there be any issues that I think the developers are trying to cut corners or to find ways to go ahead and bring about a more economic way of building or whatever, which does not pay adequate and due attention to the environment then I will put my weight certainly behind any of the departmental officers in order to ensure that those processes are undertaken to the satisfaction of myself and the Minister for Planning and Environment. As I say, it is a bit of a shame that Members have not had the opportunity to read the environmental impact assessment programme for the Zephyrus project because this really is what the debate today is all about. We are being asked to instruct the Minister not to make a decision as yet until we all see it. We could

have all asked for it, in fact the Scrutiny Panel could have photocopied copies and let us all have the relevant passages but they have chosen not to do that, I do not why. It certainly would have helped with some of the negative arguments. The other things that are being asked for, I think, are accounted for. So, on the whole, I think I will not be supporting the Deputy of St. Mary's proposal in full. I do accept that there will be a formal response by the department of the findings around the Scrutiny Panel's report on La Collette but I do not think that we should set the precedent that any previous report on any environment impact assessment for any other site should be used to hold up or to bias particular developments in a way that is not acceptable to previous developments. I am happy with the process. Thank you.

#### **4.6.3 Senator B.I. Le Marquand:**

On a number of occasions recently I have been very concerned that this Assembly was being asked to consider a matter which directly affected a current planning application. That was the position in relation to the Plémont debate and was one of the reasons why I voted against the proposition. That is very clearly the position here. In my view these debates send very bad precedents. When the Minister for Planning and Environment or the Planning Applications Panel sit to determine a matter, they must do so in accordance with law and correct procedure and planning principles. They are under a legal duty to consider matters as quickly as reasonably possible, and to consider all relevant matters and only relevant matters. The problem in this case with this proposition is that it asks the Minister to delay making a decision until the determination of other matters which are simply, in the main, not relevant to this application. This is a different site some distance away with different ground conditions. The only connection I can see is that they both border the sea. So, we are being asked to request the Minister for Planning and Environment to act unlawfully by taking into account matters which are not relevant to the current application and by delaying determination of the application in a manner which is simply not proper. This simply cannot be right. We cannot reasonably ask a Minister to act improperly and unlawfully. That puts the Minister in an unfair, indeed in an impossible, position. But even if these matters were relevant to the application, which in the main in my view they are not, I would still not be able to support the proposition because it would be inviting this Assembly to usurp the planning functions of the Minister. That is simply not right in law or otherwise. It is not right in law and it is very bad micromanagement by the Assembly. The suggestion is that the Minister, by virtue of paragraphs (b) and (d) of the proposition, provide this House with information. Presumably that is so that the House can make the planning decision or strongly advise him on how he should act in relation to that. This is simply a very wrong approach and for these reasons I will have to vote against the proposition.

#### **4.6.4 Deputy P.V.F. Le Claire:**

I spoke today to the Minister for Planning and Environment and also the Chairman of the Planning Applications Panel about my position both on Scrutiny, Environment Scrutiny, and the Planning Applications Panel, and took a sounding from the States Greffier as to the process for resignation from the Planning Applications Panel due to what is probably a conflict being now on the Environment Scrutiny Panel. Having indicated my intention to resign from the Planning Applications Panel, I am going to write to you, Sir, in the near future to set out the reasons why. In doing so, though, I stand today because I have put forward some propositions in the recent weeks, including one to split the Minister for Planning and Environment into 2, although he managed to do that to some degree with his Assistant Manager, because I think there are issues about protecting the environment and I think that it is only right that what the Deputy of St. Mary is asking the Minister to do is done by the Minister for Planning and Environment and I have no doubt the Minister for Planning and Environment will do what is being asked of him. But having listened carefully to the arguments and the points made earlier by Deputy Duhamel and, most recently, Senator Le Marquand it does strike me that these 2 issues have been used somewhat as a political football. I think that it really is more important for us to remember that we are in scrutiny to better

the process not to mess it up further. I think in trying to support the Deputy of St. Mary today Members will be messing the process up. This one development is not about protecting the environment, this proposition is not protecting the environment, this one proposition is about Scrutiny working in parallel to a private Member's interests in relation to his concerns about a particular area. I know I have been accused of that myself in the past, it is a very difficult line to tread when you are looking at things that affect your constituents or the environment or a thing that you like or love, such as what happened when I was doing the compost review, *et cetera*. But the top and tail of it all is that I had a peculiar hobby as a child, I used to like collecting board games and various games taught me that there are rules to follow, and the best way to enjoy any kind of process with other people is to ensure that the rules are set fairly down for everybody but you also allow that person their turn. The Environment Scrutiny Panel has conducted its review, something that I joined late in the day but tried to catch up with and we have tabled our Scrutiny findings. It is now the turn of the Minister for Transport and Technical Services and the Minister for Planning and Environment to roll their dice and have their turn. The Minister for Transport and Technical Services has quickly and thoroughly tabled his thoughts and his views and his officers' opinions of our review and the Minister for Planning and Environment no doubt will, in the very near future, have his turn and table his view together with that of his Assistant Minister. There is no way a functioning democracy can work if it is all going to be Scrutiny's turn or if it is all going to be the Executive's turn. The Deputy of St. Mary is championing the environment and he may have concerns about this development but I suspect the grander concern is the processes that are in place, or which are not in place in the panel's view, to protect the environment in relation to matters that affect the environment, particularly the marine environment. That is a debate for another occasion, that is a debate in my view where we do separate the powers of Planning and Environment completely, that we do install perhaps an independent regulator, that we do remove, wherever possible, the conflicts of interest. I am sorry to say the Deputy of St. Mary has got this one completely wrong. It is a shot in the foot for Scrutiny. His actions have been ... I regret to say his actions have done us no favours. In trying to support the environment one must remember that humans are an important part of the environment. There are woeful accommodation standards in this Island, there is a great need for us to develop good quality accommodation while taking into account how we build and where we build and what we build upon. We certainly cannot build upon good government and Scrutiny's last 3 years of its infancy to its toddler stage by supporting the Deputy's proposition today. I regretfully cannot support his proposition.

#### **4.6.5 Connétable K.P. Vibert of St. Ouen:**

Last Friday a parishioner of mine came to visit me in my office and I cannot find any other words to describe her other than a true blue conservationist. I admit she came to talk to me about Plémont but as our deliberations went on we moved on to this particular proposition and the Scrutiny report which she had just recently read through.

[15:15]

I think she raised a very important point. Because she said to me, and I say again this lady is very much conservation-minded: "How do I decide which expert is correct? Obviously the Scrutiny Committee and the Deputy of St. Mary have received highly qualified expert advice from people who are going to give them advice on the direction that they wanted to go in. Similarly the Ministers will have received highly qualified advice from people who would support the way the Minister wanted to go in. Now, how do I know who is giving the correct advice?" I think that is very much the situation that we are in here today. I think that ... and I do not want in any way to trivialise the Deputy of St. Mary's proposition but I feel that his proposition today is going to muddy if not contaminate the waters. We have a planning system and I think tampering with it will only lead us to making even worse decisions than some of the ones that we believe have already been made. If the Deputy of St. Mary wanted to change the system he should have brought a



proposition which changed the planning system, not this particular proposition today, and I cannot support it.

#### **4.6.6 Senator P.F.C. Ozouf:**

Just very briefly, I echo the remarks that have been said by Senator Le Marquand and others. Both the Ministers for Planning and Environment and for T.T.S. have expressed their thanks and appreciation for the Environment Scrutiny Panel for the work that they have done and they have accepted that there are ... and they have also explained their determination to improve the E.I.A. process as a result of their work. So a positive piece of work has been done by the panel. In fact I think that it is a case that most of the matters which the Deputy of St. Mary has requested in his proposition that can be accepted are accepted by the Ministers for T.T.S. and for Planning and Development. The difficulty is, as other Members have said, what this Assembly cannot do is to request the Minister to do what he cannot legally do, which is to not determine the application in the manner which the Deputy of St. Mary asks. So on a slightly lighter note, I hope that the Deputy and you will forgive me that during the Deputy of St. Mary's 2 hours of debate on this I tried to find out whether there was anything meaningful in the word Zephyrus for this debate. It might interest Members to know that Zephyrus was the God of the West Wind. I do not know which wind the Deputy of St. Mary prefers, perhaps he is the north wind, the cold wind; the west wind is the refreshing positive wind, Zephyrus is the gentlest wind. He was also a husband of his sister Iris, the Rainbow Goddess. There are other relationships which I will not go into. **[Laughter]** I do not want to offend Senator Le Marquand so I will not go into. Anyway I hope that the wind is blowing in the correct direction in terms of what this Assembly needs to do. The Deputy of St. Mary cares passionately about the environment, he wants to improve standards. We have had a debate on it but this Assembly cannot instruct the Minister for Planning and Environment to do something which legally he cannot. On that basis I urge Members to reject the proposition.

#### **4.6.7 The Deputy of St. John:**

It would be remiss of me if I did not put on record that I still believe the proposition is flawed and that it refers to a current C.E.O. (Chief Executive Officer) of T.T.S. when in fact it was a former C.E.O. of that department. That said, the House have ruled it is okay to put the erroneous information into the public domain. This must be, in my mind, against data protection because the reissued P.1/2010 is also incorrect. That is standing, it is has gone worldwide and it has been there since the day it was put out. Moving on to the proposition, the Minister for Planning and Environment I am sure has taken on the serious concerns that have been raised by the proposition of the Deputy of St. Mary. I had some concerns myself, maybe because certain other Members of the House, with other interests, were putting pressure on P. and E. or the Minister to get this site passed. We saw what happened with the comfort zone, if you read our Scrutiny report we refer to a comfort zone where 2 departments work very closely, i.e. Planning and Environment and T.T.S. over the site at the Energy from Waste plant, and we referred to that. It was a comfort zone. This worried me somewhat, just in the back of mind it niggled me, that this comfort factor between 2 States departments might play a part - being W.E.B. and Planning and Environment, W.E.B. being a wholly-owned company of the States of Jersey. But I believe that Senator Cohen is above all of that and he gave me a guarantee that nothing would happen on the Zephyrus site until he had, in fact, sight of our report. I can confirm that the Minister has kept to his word all the way through. He has given us documents we needed for scrutiny and the like, and everything he has said in the 12 months that I have been back, or 13 months, in the House he has ... I have never had cause to doubt the Senator. He gave me an undertaking which I passed on to my panel and we were prepared to accept it. I am sorry that the Deputy of St. Mary could not accept that undertaking, for whatever reason. It is for himself and his conscience to decide. Listening to the Assistant Minister, or should I call him the Minister for the Environment because in my book that is what he is, and his background, having worked with him over many, many years and know full well that the Minister for Planning and Environment has got a super right-hand man who will not let him sully the Island

of Jersey in any way when it comes to environmental matters: his heart and soul are in the Island and doing in what is right for our children and our grandchildren. That alone, when he spoke, gave me a lot more additional confidence than I already had an abundance of in the Minister. He gave me all the encouragement I needed because when I heard the Minister speaking and he said that he did not need basically 53 planning officers or a committee of 53 for the planning, he has the responsibility on his shoulders to do the job, not for 53 of us to be looking at planning applications. We put our trust in the Minister at the time of him being elected 13 months ago for a further term and if the Deputy of St. Mary is not happy then a vote of no confidence would be the way forward. It is not for us to take over the Ministerial responsibility and become a planning panel of 53. With the 2 Ministers there - the Environment and the Planning Minister, and obviously their Planning Application Panel - I am more than happy to support them in deciding the Zephyrus application and I would suggest that the Member for St. Mary, Deputy Wimberley, submits his information ... if he has any concerns attends on the Minister and the Planning Applications Panel, whichever is going to be reviewing the application, or possibly both, and gives them all his concerns and makes sure that they are well recorded because I believe that that is the correct way forward. The Ministers for both T.T.S. and Planning and Environment have taken on board a great many of our recommendations on the Energy from Waste Strategy Ramsar report and I am sure we will see a lot more coming from them in the future. It is a matter of a working relationship that we must build on. We must not have a relationship, as has been described, I think, by the Minister for T.T.S., of running 2 Scrutiny Panels alongside each other. It is impossible to work in that way. You must work with the information that you are given. It is for us to do our research and make sure that we are thorough and I believe our report has been thorough on the Energy from Waste plant. Yes, there are areas, because of a criminal investigation, we have not been able to go into but there will be a follow up report of which I am sure before the term of office of this particular House is up, we will have a second report out to make sure certain areas have been covered. But that said, I am happy not to support the proposition but to support the Minister and give him the confidence that I know he deserves in deciding this Zephyrus application.

#### **4.6.8 Deputy M. Tadier:**

It is very brief and I wanted to stick to a single point which is fairly narrow, although I must say I am surprised to hear that Deputy of St. John is not supporting this proposition given that he seconded it, but I guess he has had time to change his mind.

#### **The Deputy of St. John:**

On a point of order, it was to get the thing seconded so that Members could retire for lunch.  
**[Laughter]**

#### **Deputy M. Tadier:**

I am not sure that was a point of order but I am glad of the clarification. Okay, so the point I want to make, there has been something made of the fact that although there was a Scrutiny Panel review which was only released on 26th January, in parallel there had been a proposition which had been submitted alongside. I think initially my eyebrows were raised but in looking into it further I think the Deputy has been very clever in doing that because what it has done is force the 2 departments to give a response before they had the findings to which they could respond and tailor their answers to. So I think if only for that reason - but there are other reasons - it is a very good thing to have done and I would be interested to see how those pan out. That is all that I wanted to say.

#### **4.6.9 The Connétable of St. Helier:**

I am very grateful to the Deputy of St. Mary for raising concerns about things going on way out of his Parish. It is not the first time he has shown a particular interest in what happens in town and perhaps he is planning a move into the urban Parishes. I think that although he has been criticised for some of the things that he said, and I did manage to sit through most of his speech, a lot of what

he said I thought was extremely important and I think it will repay at leisure going over and looking into some of the things he said about the environment and how across the page from the proposition there is the phrase Zephyrus and the need for extra caution. I could not agree more. I think the more work that goes on at La Collette right up against our Ramsar site, the more members of the public - and I would hope the States - are becoming convinced of the need for extra caution. Many of us believe that the siting of the incinerator right next to the Ramsar site was a terrible mistake. But there is no point in going over that, that has happened and equally the mistakes that the Deputy has highlighted that he feels happened or may still be happening in the construction of that is not really a matter for today and there is, perhaps, a logical problem that some Members have referred to, trying to stop this application from moving forward because of what is happening across the reclamation site over at the incinerator as I persist in calling it. As a person who was on Planning for many years I too have a problem with the proposition, in fact if one were to delete the first paragraph, which is the request to the Minister for Planning and Environment, and simply ask the Minister to bring forward these various responses and reports, I do not think many Members would object. I think we want to have a formal response to the Environment Scrutiny Panel's report. We want ... in particular (b) is important. We want a formal appraisal of the environmental impact statement. That has really got to be gotten right, and I do not agree, I think it may have been the Minister for Transport and Technical Services who said it, that the environmental impact statements were perfectly put together. I remember when we were looking at the La Collette one that it was not. It did not include, for example, the full cross-section of the population that it was supposed to and that was admitted by those who put it together. I do not believe item (c) is a problem once that investigation has taken place, it is certainly the biggest problem in this proposition because it suggests the Minister for Planning and Environment may have to wait months or even years before determining the application. So (c) really is a problem, I think, for Members.

[15:30]

Finally (d), surely no one will have a problem in asking the Minister for Planning to tell us what lessons have been learned from the events at La Collette, unless he is saying that no lessons have been learnt, and I do not think that is very likely. So, as I say, I think much of what the Deputy of St. Mary has said was valuable and will repay further investigation. Having been involved with Deputy Le Claire in the failed attempts to get the former Minister for T.T.S. to abate and mitigate the effects of the compost site, I share the frustration that Back-Benchers have when they try to get something done of an environmental nature and they find they have ... the Council of Ministers will be lined up against them saying: "No, our experts say we are doing it fine and you cannot prove there is any danger being presented." There really is a responsibility on the part of the States, particularly now we have adopted a strategic plan which has got a much stronger commitment to environmental best practice than it had before it was amended. It really is important that the States adopts a precautionary principle when it comes to major capital projects built on the seaside and particularly on the side of a Ramsar site. I do not join in the criticism of the Deputy, I think he has done us a service, with the Environmental Scrutiny Panel we effectively have the belt and braces of comments to the States. I will leave Members to speculate which is the belt and which are the braces. But while supporting the Deputy in what he is doing, while welcoming the involvement of, in particular, Save Our Shoreline and the work they have done in really monitoring and watching very carefully what is going on down there. Goodness knows what would have happened if they had not been. So I welcome his work, I welcome their work but for the reasons I said I will not be able to support the proposition.

#### **4.6.10 Deputy S. Power:**

I promise Members that I will not be speaking for one hour and 51 minutes, more like 5 to 6 minutes. It is not that I do not recognise the amount of work that the Deputy of St. Mary has put

into this. I think he puts an extraordinary amount of work into some of the research that he does with the reports and propositions he brings to the States and he is to be congratulated on that. But I would also like to congratulate Deputy Duhamel for his speech because I thought it was a very lucid and thorough speech it was needed to be said, and I think the Deputy of St. John has clearly marked out where he is as the chairman of the Environment Scrutiny Panel. I was speaking to my neighbour to my right, the Constable of St. Lawrence, just before the lunch break and we back-tracked a bit as to where all this has come from and it came from the decision by the States first of all to build a new E.f.W. plant and, secondly, to choose to base this plant down at La Collette rather than Bellozanne. Whatever the rights and wrongs are of the decision to build a new E.f.W. plant or the rights and wrongs of choosing La Collette versus Bellozanne, we are where we are. We are where we are. It is clear to me that these large engineering projects, when you base them on the Waterfront or when you base them close to the Waterfront - the beach - that they do encounter engineering problems of their own and the problems that we have seen in this project. In previous projects such as the Elizabeth Marina, the Albert Marina, and very, very recently the completion last year of a large office building adjacent to the old abattoir where even though it was engineered as a tanked basement car park it flooded and, even though the flooding was designed out of it, there was a grey stage in the finishing of the basement where the contractors and the engineers were fighting the tide for weeks and weeks and weeks and the basement flooded. Transfer that over to La Collette and we have obviously seen both the Deputy of St. Mary and the Minister for Transport and Technical Services has said there has been ingress of salt water, there has been ingress of seawater on to the site but there has been egress as well. I would say that in my observation, having been in Jersey since 1982 and having seen the West of Albert development, the Elizabeth Terminal development and now the La Collette development, there has been ingress and egress of salt water on all these reclamation sites, for the past 20-odd years. Now, I do not particularly want to say that I want to subscribe to a particular school of thought but my layman's view, with limited civil engineering, would suggest to me that if the big spring tides that we have in Jersey twice a month for the last 20-odd years have been ingressing and egressing they have had, to some extent, a flushing effect on what you might call deposits on those reclamation sites. I would believe also that the flushing effect that these big tides have had have mitigated some of what is referred to as toxic waste or ash or anything else that has gone down there. This is just my interpretation as Joe Non-Civil Engineering Citizen. So I do believe that the big tides have had a mitigating effect in flushing what we have dumped down there over the years. I do not think the problem is as ... I personally do not believe that the problem is as big as the Deputy of St. Mary makes out. So I have to say that I will not be supporting this proposition. I started by saying we are where we are and I think we have to realise that this engineering project at La Collette is a third to 40 per cent complete and I think that when the next Waterfront project takes place, whether it is over by the much-loved Radisson or anywhere else, that a large lesson will have been learnt from this project as to how to tighten-up the bulkheading, the waterproofing of the site and whatever. But I would say that the next project, wherever it does start on the Waterfront, it is very, very hard to fight a 39 foot spring tide and they do come in with regular occurrence in March and September, and we cannot tell the tide to not come in because we are building a hole in the ground. If you remember your days of sand castles on the beach, if you dig a hole in the beach the hole fills up with water. It is not quite that simple but when you dig a large hole on the Waterfront with these big tides you are going to have water ingress. So I think what the Deputy of St. Mary refers to in terms of the flushing effect and the egress, in my view, may not be quite as serious as he makes out. Thank you.

#### **4.6.11 Deputy K.C. Lewis:**

We have an excellent Scrutiny Panel that provides the checks and balances for the department. The panel are robust but fair. The chairman, the Deputy of St. John, is an old hand and, if I may say so, is nobody's fool. Indeed recent reports on the issues surrounding the Ramsar treatment have made recommendations which my colleague, the Minister, has accepted in full, and which we will address within the next environment impact assessment we undertake. Please bear in mind that the

Energy from Waste plant environment impact assessment must be among the most comprehensive ever undertaken in Jersey and was one of the first. It is robust and has stood up well to a very detailed challenge from the Environment Scrutiny Panel. The problem we face today is the approach that the Deputy of St. Mary has taken to the entire process. He has developed this proposition based on exaggerated evidence and innuendo. It is based upon opinion rather than actuality. The Deputy of St. Mary is attempting to inform government by Google. The T.T.S. officers working down at La Collette are chartered engineers and they are the best. The Deputy of St. Mary has decided that the department is guilty of every sort of environmental transgression and believes that we should be on trial to prove our innocence. Since the Deputy came into government I have had a sneaking admiration for him for his passion that he shows for environmental issues, but the matter of research is one that I would question him on. The Deputy has undertaken a trial by media usurping his own more balanced Scrutiny Panel recommendations to focus on minor and well managed pollution events or misinterpretation of records to blow these out of all proportion with no regard for the reputation of good government he professes to be guarding. Since taking over T.T.S. and the Minister inviting me to be his assistant, I said from day one that we would have a completely open T.T.S. Department and I personally have organised many tours of all the T.T.S. establishments. In fact if I do any more tours I will have qualified as a Blue Badge Guide. Very shortly I will be organising more tours of the new Energy from Waste plant to which States Members will be invited. The Deputy has utilised information from a disgruntled ex-employee. The Deputy assumes that all information provided from third parties is correct if it meets his agenda and any information provided by my department is false. Transport and Technical Services has been accused by the Deputy of a wholly inadequate environmental impact statement. Not true. My department has spent £256,000 on an environmental impact assessment which contains over 600 pages of detailed information identifying the key environmental impacts. A defective construction environmental management plan; not true. The construction environmental management plan developed prior to planning approval has proved very robust and has been rigorously followed by the contractor on site. Inadequate site management procedures; not true. The project is effectively managed and progressing successfully at a high pace. My experience from my many site visits is that the site is clean, tidy and operating in an efficient and well co-ordinated manner. Water pollution during construction: this allegation is currently under formal investigation and it is outrageous for the Deputy to draw inferences or make allegations before the investigation has been completed. We maintain that no damage to the environment has resulted from any action we have taken. Dismissal of the former site supervisor due to taking environmental issues seriously; not true. As the Minister has made clear the dismissal of the site supervisor was not related to issues of whistle blowing on environmental issues. Misleading statements, secrecy and lack of communication; not true. Both the Minister and I have previously been on Scrutiny Panels in the recent past and we fully support an open and collaborative approach with all States Members. No delays or withholding of information occurred as a result of my department. The Deputy of St. Mary shows a lack of respect for my department, the Minister for Planning and Environment's investigations, the Scrutiny process and this House. On a final note I would like to speak up for the officers involved in this. Officers within my department deal with many issues on a daily basis at Transport and Technical Services to protect our environment by providing essential services and maintaining operating infrastructures. The officers are professional and take environmental issues very seriously. The officers live here, we live here, our families live here, there is no way in the world we would do anything to jeopardise our families. I do not believe that any one of them are motivated to cause pollution or treat environmental considerations with anything other than high importance. The insinuations of the Deputy of St. Mary are frankly insulting and grossly unfair. I urge Members to wholeheartedly reject this proposition and stop the Deputy riding roughshod over due process for his own political ends.

**Deputy M. Tadier:**

A point of clarification. The Deputy said that the Deputy was trying to reform our system of government by Google. Now, that seems ambiguous to me. What did he mean by that? Is he implying that we have a system of government by Google or was he trying to reform the system of government using Google, and can he explain what he means?

[15:45]

**Deputy K.C. Lewis:**

That a lot of the Deputy's evidence comes by googling various sites that he has mentioned during his speech and, as I mentioned previously, all our officers are chartered engineers and have worked on this project for many years and are of the highest quality.

**Deputy M. Tadier:**

Further clarification, how does the Assistant Minister know that the Deputy googles all of his information?

**Deputy K.C. Lewis:**

I think the Deputy has made that point in the past and the Deputy has alluded to many websites he has been looking at.

**4.6.12 Senator A. Breckon:**

Just a few comments. Like others I would like to congratulate the Deputy of St. Mary, he has certainly done a lot of work on this and I was particularly impressed by the photographs. What they show in one or 2 of them is a hole in the ground with some water in it. I have heard of 300 page reports and things like that; the question is what is that water, who is monitoring it? I thought when somebody was speaking, I remember years ago in the potato season there used to be a process called "Stop-digging" and that was so that we did not oversupply the market. I just wonder who has the power to tell the contractor to stop digging and let us have a look this: "What are you doing there?" and I have not heard any Minister or otherwise tell me who that is. Because it is a very effective tool ... as with a building site, they are not famed for their self-regulation and they have thrown up problems over the years, building and construction sites. But who can do that? Has anybody done that? Said: "Stop now, I want to monitor everything that is here. You can all leave, you can all go, I am suspending work on this site until this is investigated." That would be a very effective process in getting the people to put their hands up and tell you what was going on. Now, we know that the site is tidal, we know that the site the Deputy of St. Mary is talking about is tidal, and the question that perhaps people are asking is: "If this has happened once will it happen again?" I think what he is trying to do, perhaps in a long-winded way, is bring this to our attention and say: "Well, perhaps if we have not been as effective in monitoring and doing something if there was a problem in the past, then maybe, just maybe, we should be in the future." The contractor can produce the reports that they want but we are not going to be on the site 24 hours a day, as the tide comes in and out, to see what is happening. Who is? I have heard of a number of people either working for somebody or working for somebody else but I am not comfortable in where this monitoring process is. It is okay taking samples of something that is going in and out but who is saying: "No, stop." We cannot stop the tide obviously but then precautions should have been taken and maybe they have not. I think this is the sincerity of what the Deputy of St. Mary is saying. The other thing I would say, with respect to the Minister for Planning and Environment and others involved, sometimes perhaps there is a public perception that some people can do anything and other people cannot change the knobs on the back gate. It would seem the bigger the better the more impressive, yes, get on with it and we will step back. There is, I must say, that public perception and that is something that we must deal with because if these things are to be allowed and the reports need to be produced, then I am not quite sure that the Deputy of St. Mary has got the terminology right to do this because I believe some of this information will be there and it will appear. But I would like to think that it was proactive and if there are problems somebody could

say: "Right, that is it, this site is closed." It does happen in other areas and I believe it is very effective. I am still not sure which way to vote on this because I am sure something is required that does have a sanction on the contractor, that is very effective, the embarrassment of course is this is our job, one of these. It is our job and, again, where we are with this self-regulation? How transparent is that if we are regulating ourselves, in effect? Is it that independent? Are we just getting on with it or are we doing the right things that comply with various conventions and practices and other things? Again, I just close by saying that I think the Deputy of St. Mary has done this now as a service by bringing this to our attention and if nothing else, what it does it is a warning signal for anybody else who was doing coastal developments that are affected by the tide, that they must ... and I think there has been other instances that have not been reported where they must play by the rules for obvious reasons.

#### **4.6.13 Deputy M.R. Higgins:**

I have been listening to the debate intently while it has been going on. There are 2 main observations that I have got. The first one is the Deputy of St. Mary has, as usual, put forward a well researched argument in support of his case. He is, in my opinion, one of the more capable Members in this House of ploughing through large amounts of complex data and forensically taking apart arguments and finding their weaknesses. That is the first thing. He has done his homework, he has been working very, very well and I respect him for that. The second observation I have got is I am appalled at the character assassination that has been used by some of the Ministers and Assistant Ministers in the House this afternoon. It is becoming more and more typical of this House that when people start questioning and start examining in detail what many people outside this House think are scandalous activities or mis-management of departments, that the responsible people concerned then turn on the questioners. So really that is what I am going to say about that. As far as the argument is concerned I shall listen to the closing argument and then decide but I am appalled at some of the things I have heard this afternoon.

#### **The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Deputy of St. Mary to reply.

#### **4.6.14 The Deputy of St. Mary:**

If I find the correct notes this will be shorter so do give me just a moment to find where I am. Yes, that was a good debate. I just want to pick out a few salient issues collapsing what various people have said as best I can because it is a difficult subject. Now, the first point is the 2 linked points about the Minister and whether this House should be requesting him in the matter of determining an application because the proposition says that we request him to delay determination until (a), (b), (c) and (d). Ministers, Senator Ozouf and the Minister for Planning and Environment, have questioned this on 2 grounds and maybe other speakers too, I am collapsing what people have said. There are 2 arguments, one is that the Minister as the Minister for Planning and Environment has the power, either himself or through delegated bodies like the Planning Applications Panel to determine applications and that we cannot allow this House to become a P.A.P. (Planning Applications Panel) of 53 members. Well, that is not my intention, that is not ... I see the chairman thinking this might be fun to have a Planning Applications Panel of 53. But clearly that is not my intention, it is not in the proposition and it is not what this is about. So, if the proposition goes through, this House will not end up determining applications, so I just wanted to scotch that argument. It is not relevant. The second issue around the House requesting the Minister to delay, or the second issue I am going to deal with now, is that - and in Senator Ozouf's words if I can quote him - "This House cannot request the Minister to do what he cannot legally do." As I said in my opening remarks, we are not asking him to act in any way illegally, there are no legal constraints on the time he takes. His comments do cite one case and I am sure if there were more cases there would have been more cases cited but they do cite one case where an applicant obtained an order from a court that an application be determined by a certain date on the ground of

unreasonable delay. So there are 2 steps there. One the applicant had to prove unreasonable delay presumably and, secondly, what happened was not an immediate determination but an instruction to the Minister to determine by a certain date. That is what I read from the comments of the Minister for P. and E., and he has not risen to correct me so I think that is more or less right. The question is, of course, whether we are asking him to delay unreasonably and I would say clearly not. One of his obligations under the law, and he referred to it himself, is to consider ... is to take into account when determining all material considerations. All material considerations. It is simply the goal of this proposition to put into those material considerations past experience on absolutely comparable sites and past experience about the quality of environmental statements and the quality of the actual construction process. So that is what I am asking Members to support. There is nothing illegal, we are not becoming a planning panel and those issues do not apply. The third thing I want to address is this issue which has been mentioned by a number of Members about trying to drive a wedge between myself and Scrutiny and find this very odd and also inappropriate. There are 2 things to say about it. The first is that it is absurd to suggest that there is a division between myself and Scrutiny on this because everything I have said comes from the 2 Scrutiny reports. By the way, the Assistant Minister for T.T.S. - through the Chair - was somehow misled into thinking that this proposition had something to do with research on Google. I do not recollect using Google once to prepare for this debate, because it is all in our adviser's report, our own report and transcript after transcript. I did not go googling but I did have to obviously look at transcripts. The other point to make about this allegation, this trying to politicise this issue in a way by alluding to this division, is that it is an unfortunate defensive reaction. It is trying to bring a political slant into something that surely should be free of that. God forbid if we go down the route of looking at matters that are important to environmental protection, or indeed matters as we saw yesterday of patient safety, and we put up these defensive barriers from the word go, it is not appropriate and it will not lead to the right results. The next thing I need to say is that the Assistant Minister for the Environment raised points about the E.I.S. for Zephyrus. I have 2 things to say about that, one is that ... if I can just find my notes of what he said ... yes, he said that the Zephyrus application is a site close to the marine zone and that there are potential problems. That is exactly right. I now know from Save Our Shoreline, they received an email close to Christmas - the day before Christmas - saying that some extra work had been done and would Save Our Shoreline like to come and see it. They then found that there is a proposal on the table to build a retaining wall before construction starts to keep out the sea water.

[16:00]

Now, that is a new development and it is to be welcomed and it may very well be part of the spin-off from the work of the Scrutiny Panel. I firmly believe that and I totally concur also with what the Constable of St. Helier said in his praise for Save Our Shoreline and the fact that without them...

**Senator F.E. Cohen:**

If the Deputy would allow me I think the Deputy is referring to the sea cap piling proposal which was covered in detail in the environmental statement and I would refer him to volume 2, pages 13 and 14. Thank you.

**The Deputy of St. Mary:**

I thank the Minister for that intervention. The words used were that there would be "a probable piling wall" and, of course, probable is not actual. We now know that there is a firm proposal on the table that Save Our Shoreline have seen of an actual proposal to do this piling. The other thing that the Assistant Minister said was that any remaining ground water, i.e. sea water that manages to get around this wall, as it did at La Collette - it got around the piling - would be dealt with in the correct way. In the correct way. That is one of the nubs of this proposition. What assurance can



this House have that the processes and the attitudes are right for a robust protection of the environment? Deputy Le Claire referred to a possible separation, a possible new independence for the regulator, and that issue of whether the ground water will indeed, if it gets in, be dealt with in the correct way is what is at stake, whether we learn the lessons from the defective environmental statement and the defective processes which I referred to in my opening speech. A vote of no confidence was referred to by a number of Members in the Minister, I have no intention of a vote of no confidence in the Minister. That is simply muddying the waters. It is not about that, it is about improving the process. It is not about stop making him do illegal things either; it is about simply making sure that past experience is learnt from. Now, I come to the extraordinary comments of the Assistant Minister for T.T.S. and indeed the Minister. They were similar so I may not refer specifically to the Minister. But the Minister said that my statements had been comprehensively refuted in what his comments said, and it simply is a matter of whether the House accepts a one-line reputation or whether they accept our Scrutiny report. It is really a matter for Members. But it is very odd, the Assistant Minister said that the panel's work was fair but Deputy Wimberley's work was unfair, or certainly by implication that is what he ... well, you said the panel is fair and you contrasted that with the work of the Deputy.

**The Bailiff:**

Through the Chair, please, Deputy.

**The Deputy of St. Mary:**

Sorry, I did lose it then. That is simply pure nonsense because, as I have said, everything in my speech was taken from the work that we did over a whole year in Scrutiny. It is very, very sad, and it is an important issue for this House if Scrutiny is regarded in that way. You sit there for a year, you interview people, you have expert advisers, who were expert and who did not have, by the way, an agenda in advance. We did not choose them because they had an agenda in advance, we chose them because they were expert. Then you find that the work of the panel is effectively rubbished by saying that somehow Deputy Wimberley has an agenda. That is the exact opposite of the truth. It gets very personal. What is the matter about this? Are these issues not important in themselves? So I will not go further with that line of thinking. Now, the Assistant Minister, what he said substantively, he said that the claim in my proposition that the E.I.S. was wholly inadequate was false, that the C.E.M.P. was defective and that there were inadequate site management procedures was simply untrue. All those things are substantiated in the Scrutiny Panel's work and I have gone into that in my opening speech and I will not do it again. I do not need to; the facts have been laid out in front of Members. He says there has been no environmental damage. Members need only look at the pictures that I circulated to see that something happened that probably caused environmental damage. We do not know how much and any imputation that I am saying that there has been a massive pollution is simply, again, untrue. He said there has been - and I am referring to the Assistant Minister but it was the same gist from the Minister - no withholding of information. Exactly the same applies, the finding of the Scrutiny Panel and the adviser was that there had been difficulties with getting information in a timely and simple fashion. This is not any gripe about the department or individuals, I just cannot understand why we are not eager to learn from what happened, to learn from what Scrutiny found out and to apply those lessons. In coming up to the conclusion, I want to refer to the Assistant Minister's speech which, once again, had interesting things to say. He said something which was exactly the nub of this whole debate. In the very opening words of what he said, he said the proposition is a bit of a muddle, which of course is not the chairman that I am referring to. But then he said it was correct and I think he was referring to the panel and to the fact that we took up this issue and that we devoted so much time to it. He said it was correct to be concerned about this matter. He then said that it was right to take these concerns and act on them. Amen to that, that is exactly what this proposition is asking Members to support. That not only do we do our research after concerns but that we then act on the research, that we ask the Minister in this case to take it on board and to react appropriately before he

determines the application. I just now want to remind Members of the terms of the proposition, bearing in mind what the Constable of St. Helier wisely said about the different paragraphs ... and you will have to excuse while I find the proposition. Has anyone got a copy handy? Thanks very much. So the proposition, just to remind Members, is to request the Minister for P. and E. before determining the application for the development known as Zephyrus on the Waterfront. That is the nub, is it not? Do we learn now, do we take these things on board now or do we leave it until later? The first one, (a) is that we ask him to present to the States his formal response to the key findings and recommendations of the Scrutiny Panel's report before in accordance with the procedure and I personally have no difficulty with that and I cannot see how 6 weeks, or 3 months in the case of a longer report, can affect the issue; (b) is to present to the States a formal appraisal of the environmental impact statement for Zephyrus in the light of the findings of the panel on the deficiencies of the environmental statement for the incinerator; and (c) is to present to the States a report about the file being prepared about the pollution incident at La Collette. Now, I accept the point that the Constable wisely made that that third one is possibly a long wait and it may be that Members will react differently to that from (a) and (b). Then (d) is simply a wrap-up in case the lessons have not been clearly spelt out in (a), (b) and (c). So I do ask for the proposition to be put separately in separate paragraphs and I move for the appel. Thank you all for listening.

**Deputy R.C. Duhamel:**

On a point of order, is it possible to take the proposition in 4 parts as the Deputy of St. Mary has intended because the actual request to the House is to request the Minister for Planning and Environment before determining the application to do specific things. The essence of the proposition is that the Minister will or will not determine the application not whether or not (a), (b), (c) or (d) apply.

**The Bailiff:**

I think my own view is that it is possible to take them separately. There are 4 different things that the Deputy of St. Mary is asking the Minister to do before he reaches his decision. It is up to the States, it seems to me, if they want to to say: "We do think he should do (a)" or: "We do not think he should be asked to do (b)."

**Deputy R.C. Duhamel:**

Does that mean then that should any one of the 4 be voted upon then the request of the proposition is carried? Or do all 4 have to be voted on and agreed by a majority of the House before the proposition is carried?

**The Bailiff:**

No, the first bit is to request the Minister before determining the application and then it is a question of which 4 documents. So the Minister would have been requested to defer making his application until one or 2 or 3 or 4 of these things had happened, depending on how the Assembly voted. Now, whether he would be able to wait that long is a matter then for him but that would be the request from the Assembly. So the appel is called for in relation to each of these matters. So the first vote for the Assembly will be paragraph (a) which is the presentation of the response to the Environmental Scrutiny Panel. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 16</b>		<b>CONTRE: 28</b>		<b>ABSTAIN: 1</b>
Senator B.E. Shenton		Senator P.F. Routier		Senator F.E. Cohen
Senator A. Breckon		Senator P.F.C. Ozouf		
Connétable of St. Helier		Senator T.J. Le Main		
Deputy of St. Martin		Senator S.C. Ferguson		
Deputy R.G. Le Hérisssier (S)		Senator A.J.D. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		

Deputy G.P. Southern (H)		Connétable of St. Ouen		
Deputy of Grouville		Connétable of Trinity		
Deputy S. Pitman (H)		Connétable of St. Brelade		
Deputy of St. John		Connétable of St. Saviour		
Deputy M. Tadier (B)		Connétable of St. Clement		
Deputy of St. Mary		Connétable of St. Lawrence		
Deputy T.M. Pitman (H)		Connétable of St. Mary		
Deputy M.R. Higgins (H)		Deputy R.C. Duhamel (S)		
Deputy D. De Sousa (H)		Deputy J.B. Fox (H)		
Deputy J.M. Maçon (S)		Deputy of St. Ouen		
		Deputy of St. Peter		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		

**The Bailiff:**

Very well then, the Greffier will reset the machine. We then come to paragraph (b) which is the formal appraisal of the environmental impact statement. The Greffier will open the voting.

<b>POUR: 15</b>		<b>CONTRE: 29</b>		<b>ABSTAIN: 1</b>
Senator B.E. Shenton		Senator P.F. Routier		Senator F.E. Cohen
Senator A. Breckon		Senator P.F.C. Ozouf		
Connétable of St. Helier		Senator T.J. Le Main		
Deputy of St. Martin		Senator S.C. Ferguson		
Deputy J.A. Martin (H)		Senator A.J.D. Maclean		
Deputy G.P. Southern (H)		Senator B.I. Le Marquand		
Deputy of Grouville		Connétable of St. Ouen		
Deputy S. Pitman (H)		Connétable of Trinity		
Deputy M. Tadier (B)		Connétable of St. Brelade		
Deputy of St. Mary		Connétable of St. Saviour		
Deputy T.M. Pitman (H)		Connétable of St. Clement		
Deputy M.R. Higgins (H)		Connétable of St. Lawrence		
Deputy A.K.F. Green (H)		Connétable of St. Mary		
Deputy D. De Sousa (H)		Deputy R.C. Duhamel (S)		
Deputy J.M. Maçon (S)		Deputy R.G. Le Hérisier (S)		
		Deputy J.B. Fox (H)		
		Deputy of St. Ouen		
		Deputy of St. Peter		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		

		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		

**The Bailiff:**

Very well then, the Greffier will reset the machine. We then come to paragraph (c) which is the report concerning alleged breaches. The Greffier will open the voting.

<b>POUR: 14</b>		<b>CONTRE: 29</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator P.F.C. Ozouf		Senator F.E. Cohen
Senator A. Breckon		Senator T.J. Le Main		
Deputy of St. Martin		Senator B.E. Shenton		
Deputy R.G. Le Hérisssier (S)		Senator A.J.D. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Connétable of St. Ouen		
Deputy of Grouville		Connétable of St. Helier		
Deputy S. Pitman (H)		Connétable of Trinity		
Deputy M. Tadier (B)		Connétable of St. Brelade		
Deputy of St. Mary		Connétable of St. Saviour		
Deputy T.M. Pitman (H)		Connétable of St. Clement		
Deputy T.A. Vallois (S)		Connétable of St. Lawrence		
Deputy M.R. Higgins (H)		Connétable of St. Mary		
Deputy D. De Sousa (H)		Deputy R.C. Duhamel (S)		
		Deputy J.B. Fox (H)		
		Deputy of St. Ouen		
		Deputy of St. Peter		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		

**The Bailiff:**

Then finally paragraph (d) and the Greffier will open the voting.

<b>POUR: 16</b>		<b>CONTRE: 27</b>		<b>ABSTAIN: 1</b>
Senator A. Breckon		Senator P.F. Routier		Senator F.E. Cohen
Connétable of St. Helier		Senator P.F.C. Ozouf		
Deputy of St. Martin		Senator T.J. Le Main		
Deputy R.G. Le Hérisssier (S)		Senator B.E. Shenton		
Deputy J.A. Martin (H)		Senator S.C. Ferguson		
Deputy G.P. Southern (H)		Senator A.J.D. Maclean		
Deputy of Grouville		Senator B.I. Le Marquand		
Deputy S. Pitman (H)		Connétable of St. Ouen		
Deputy M. Tadier (B)		Connétable of Trinity		
Deputy of St. Mary		Connétable of St. Brelade		
Deputy T.M. Pitman (H)		Connétable of St. Saviour		

Deputy T.A. Vallois (S)		Connétable of St. Clement		
Deputy M.R. Higgins (H)		Connétable of St. Lawrence		
Deputy A.K.F. Green (H)		Connétable of St. Mary		
Deputy D. De Sousa (H)		Deputy R.C. Duhamel (S)		
Deputy J.M. Maçon (S)		Deputy J.B. Fox (H)		
		Deputy of St. Ouen		
		Deputy of St. Peter		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		

[16:15]

## STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

### The Bailiff:

Very well, that concludes that matter. The Minister for Housing has asked leave to make a statement and I have given leave for him to do so.

### 5. The Minister for Housing - statement rescinding his Ministerial decision on the Single Qualified Property Classification

#### 5.1 Senator T.J. Le Main (The Minister for Housing):

I just want to make it quite clear that in my response to the Assembly concerning rescinding my decision I said I was unwilling to give that assurance in the States at that point as I firstly needed to consult and discuss the controversial subject matter with my Assistant Minister, the Chief Minister, Senator Ozouf and officers. As you are aware the new migration policy is so important for the new States and to promote more equity in living and working Jersey. I totally respect and understand the concerns raised yesterday and the Assembly is supreme over any one person or Minister or department. I certainly will make a decision to the concerns raised by Members. But please allow me to discuss this subject matter with other Ministers, because as Minister for Housing I am only applying the Housing Laws. The Migration Policy is in the realm of the Chief Minister. I hope this may allay any concerns Members may have, as I intend to co-operate and work towards having an equitable society; and I fully intend to work in co-operation with all Members to bring this new migration policy to a satisfactory conclusion. Once I have just discussed this subject matter I will come back to Members with a decision that satisfies everyone and moves us all forward. But in the meantime I have suspended my decision.

#### Deputy P.V.F. Le Claire:

May I ask that you not start the clock yet and preface this with the question I was not allowed to ask yesterday of Her Majesty ...?

### The Bailiff:

I think I have got to start the clock, Deputy, but ...

#### 5.1.1 Deputy P.V.F. Le Claire:

It is guidance from Her Majesty's Attorney General. As I said yesterday, at the time you ruled that it was not before this debate because we were not going to withdraw permission that has been

given. But I made the point that during the Work Permit debate, the advice I received was that retrospective decisions upon people that had already established themselves may be contrary to the Human Rights Law, and I wonder what affect now, having suspended this decision, it will have or possibly have? It may possibly have affect upon peoples who may have made decisions over the last period of a couple of weeks or whatever, and may have purchased houses or flats or whatever; and I wondered if there are people that have made decision in that respect, what the position is?

**The Bailiff:**

Again, I think, Deputy, if I may, the Minister has announced that he is suspending his decision. It is really for him to take advice from the Attorney General. That is his decision. You now have 10 minutes in which to ask him questions. If the Attorney General subsequently advises him that this was a bad thing to do because it might affect somebody's rights, well, I am sure the Attorney General will advise the Minister.

**Deputy P.V.F. Le Claire:**

My question then, Sir, with respect, is will the Minister seek that advice and share with Members as soon as possible?

**Senator T.J. Le Main:**

I will do.

**Deputy P.V.F. Le Claire:**

I do not want to appear naïve, but can I ask what the Minister means when he says he has suspended his decision? What does he mean?

**Senator T.J. Le Main:**

I made the decision this morning on the advice of officers that I could suspend my decision.

**Deputy G.P. Southern:**

He will not act on it.

**The Bailiff:**

I think the Members are seeking a little clarification as to what that means. [Laughter]

**Deputy G.P. Southern:**

Does he know?

**Senator T.J. Le Main:**

I do not think there is any Member in this House who does not know what I am talking about, for sure; but the decision was that I made a Ministerial decision and I am suspending that Ministerial decision.

**The Bailiff:**

If I can just seek clarification perhaps from the Chair, does that mean therefore that we are back to (a) to (h) and (a) to (j) being separate categories for the moment?

**Senator T.J. Le Main:**

Yes, Sir, at the moment.

**5.1.2 Deputy D.J. De Sousa:**

Now that this has been suspended, will the Minister come back to the House before implementing if he decides to re-enact? Will he come back to the House before he does so?

**Senator T.J. Le Main:**

In view of the feelings of the Assembly yesterday, and I respect that very much, I have full intention of having the full support of this Assembly in any future reclassification of property; and I intend to come back. Obviously, I need to have further discussions, legally and otherwise to advise me that the issue is as highlighted in the Report and Proposition of Senator Shenton. I fully intend to come back to the Assembly.

**5.1.3 Deputy G.P. Southern:**

I can think of lots of things that should be suspended. But, will the Minister take the opportunity of apologising to the House for misleading the House yesterday in his statement when he said that P.25 of 2005 contained a clear instruction for him to pursue a single qualified property class when it manifestly did not in the proposition; and even in the section 5.1 where it talked about streamlining the process, there was no mention of a single qualified property class. Will he withdraw his statement that he was under a clear instruction from P.25 to do so?

**Senator T.J. Le Main:**

No, I will not do that. The issue is that it is quite clear that the advice given to me was it was within my legal framework as Minister for Housing to do what had been happening over a number of years, and I have nothing to apologise for. If the Assembly ... quite obviously some Members are unhappy with my decision, then I accept that. But I am very willing to accept and I am very willing to come back and seek the full approval or otherwise of this Assembly. But there is nothing to apologise for, and in fact I expected Deputy Southern to ask that question.

**5.1.4 Deputy G.P. Southern:**

A supplementary if I may. It is not a question of being legally responsible or legally empowered to do the action that he did, but the Minister made the statement yesterday that he was under clear instruction from P.25 to do so, when it is manifestly clear that he was not, and that is misleading the House.

**Senator T.J. Le Main:**

No, I was not misleading the House and I disagree with that, and I stick to what I said yesterday.

**5.1.5 Senator B.E. Shenton:**

Will the Minister give an assurance to the House that the decision will remain suspended until my proposition seeking the rescindment of the decision has been debated by the Assembly?

**Senator T.J. Le Main:**

Yes, I give a categorical assurance that I am going to work with Senator Shenton and other Members and if necessary ... it may not be necessary for Senator Shenton to bring his proposition to the House. It may very well be that I will come back with something for debate on the issue. So the issue is I am prepared to work and I am prepared to suspend any decision until it comes back to the Assembly.

**5.1.6 The Deputy of St. John:**

I did not think you would get to me. Could the Minister tell us if the decision was made when he was off-Island in Tenerife, and if so how did he transmit it to his officers?

**Senator T.J. Le Main:**

I just take that with a pinch of salt. At least there was more sun there than in St. John.

**5.1.7 Senator S.C. Ferguson:**

I am a little confused on this. Can the Senator tell us who advised him that it was within his powers to do this?

**Senator T.J. Le Main:**

My Assistant Minister and myself have been working on this policy with officers and other departments for approximately 3 years, and the advice was given that as it was within the powers and within the realms of the proposition of P.25 of 2005, the Minister go away and simplify the classification prior to going back with the Migration Policy. In fact not one States Member, as I said yesterday, ever came back and made a comment or otherwise on the Migration Policy Part 2.

**Senator S.C. Ferguson:**

No, he has not answered the question. He has obfuscated it somewhat. I said: "Who gave him the advice?" I asked specifically.

**The Bailiff:**

To the extent that you are seeking advice in individual civil servants that has long held not to be appropriate, it is the Minister's decision.

**Senator S.C. Ferguson:**

Yes, I appreciate that. I just wondered whether it was the Housing Department, the Population Office or where?

**Senator T.J. Le Main:**

The Senator should really well know that every Minister has advice from officers and from other departments before coming to any decision, and the Population Office, obviously, gives my Assistant Minister and me advice which we have to follow or we do not have to follow. In this case I followed advice.

**5.1.8 Deputy M.R. Higgins:**

I thought my original question has been answered. Can I just follow through on this actual advice, because the Senator has just told us that he had legal advice on P.25. It was not just officer advice; he said before that "legal advice". Can he just confirm he had legal advice?

**Senator T.J. Le Main:**

I did not say legal advice. I said I may have to get legal advice.

**Deputy M.R. Higgins:**

Thank you. That is much clearer.

**5.1.9 Deputy M. Tadier:**

In the statement the Minister refers to having a more equitable society. So will the Minister undertake to regularise the inherent discrimination that is present in the non-qualified sector when he brings the proposition back to the House?

**Senator T.J. Le Main:**

That question is ... **[Laughter]** I cannot see that the subject matter brought up by the Deputy has any bearing on what I said in my statement this afternoon.

**The Bailiff:**

Your answer then is: "No."

**Senator T.J. Le Main:**

No.

**5.1.10 Deputy M. Tadier:**



Obviously the Senator has made a statement, and in that statement he talks about equality, so I think it is a valid question. But a supplementary in that case: does the Minister acknowledge that non-locals who work in industries which might not be nursing but in shops, are also essential workers, and will he extend the (j) category to those individuals?

**Senator T.J. Le Main:**

Absolutely not.

**5.1.11 The Connétable of St. Mary:**

Perhaps a little lighter, but yesterday the Minister's statement perplexed me. Today I am merely intrigued. Will the Minister undertake to share with his fellow Ministers how to come back with a decision that satisfies everyone?

**Senator T.J. Le Main:**

Well, I do work with my Ministers, and in fact my decision went to the Council of Ministers when I was in Tenerife sunning myself on 14th January, and I work and am a team-player within my team of the Council of Ministers.

**5.1.12 Deputy A.K.F. Green of St. Helier:**

In retrospect, does the Minister think if he has been working on this for 3 years, it was wise to release the decision when he was out of the Island?

**5.1.13 Deputy J.A. Martin of St. Helier:**

Would the Minister undertake as in P.25 which did say not to bring this back to the House unless it is the full migration policy, i.e., the licence in the working and everything else - not piecemeal, which is I think the main concern of the House yesterday? If people understood the full Migration Policy, that is what we are seeking: a full debate on the full migration, and it will be through the Chief Minister, not Housing. Does he agree?

**Senator T.J. Le Main:**

I do not disagree with that, but I am surprised that the Deputy and others who are now very critical of what we are trying to do, have not responded to the migration consultation document. Now, where were all the Members who are now popping-up off their chairs when we are seeking help and advice and assistance from Members? Not one States Member has put a submission in writing to the Population Office. We are out on our own. It is very well criticising the work we are trying to do. We need assistance from Members and it is time that they got involved a bit more.

**The Bailiff:**

Very well. That concludes questions to the Minister.

## **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**6. The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):**

Taking as a basis as starting point, the lavender sheet, the business for 23rd February will be as stated with the addition of P.12, the Single qualified property classification: rescindment of decision and debate in the name of Senator Shenton. Then ...

**The Bailiff:**

I am so sorry, Constable, I have not announced that one yet. Senator, you do wish to lodge that one, do you?

[16:30]

**Senator B.E. Shenton:**

Most certainly, Sir.

**The Bailiff:**

Very well. Then I can inform Members that Senator Shenton has lodged Projet 12, Single qualified property classification: rescindment decision and debate, because that is formally there before you..

**The Connétable of St. Mary:**

I had a premonition of it being lodged. Then P.197, the Committee of Inquiry: confidential files held by States of Jersey Police on States Members and others is moved to 9th March. The rest of that session is the same. On 9th March Members will note that P.4, the Compulsory wearing of cycle helmets is the first item of business in response to a specific request to take that first on that day. Then we have the addition P.197 as I have said, the Committee of Inquiry. Then over the page we have the next new sitting on 20th April, we have P.201 which is moved from the present sitting: the Strategy for dealing with Young Offenders: establishment of working group in the name of Deputy Trevor Pitman.

**The Bailiff:**

Very well. Does any Member wish to say anything about Future Business? Do Members agree then that we adopt the future business as set out there and as amended by the chairman?

**The Connétable of St. Mary:**

If I may, I have just been asked how many days it is envisaged this will take. I would hope that we would encompass that business within 2 days.

**The Bailiff:**

Two days.

**Deputy M. Tadier:**

Can I ask something of the Deputy Chief Minister? It is something in relation to what Senator Le Main said. I did send an email to the Greffier but it is not within his remit. I understand that there are lots of consultations going on at the moment, and I think that is partly why Members are finding it difficult to know when the deadlines are. I would ask if, on the one side Scrutiny, but also the Chief Minister's Department, could circulate what consultations are going at the moment, when they will finish, and if and how Members can submit evidence to those. That would be very helpful, and certainly, because I would like to do that but we all have very full agendas. So, if the Deputy Chief Minister could undertake to do that I think that would help with the whole process.

**Senator P.F.C. Ozouf:**

We will do what we can. I take that comment on board. There are a number of consultations and if we can assist, then we will clearly set out that to Members. I will deal with that.

**The Bailiff:**

Very well. If there is no other matter that concludes the Assembly's business. We will reconvene on 23rd February.

**ADJOURNMENT**

[16:32]