

STATES OF JERSEY



WATERFRONT PLANNING APPLICATION: ZEPHYRUS SCHEME

**Lodged au Greffe on 6th January 2010
by the Deputy of St. Mary**

STATES GREFFE

PROPOSITION

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.

DEPUTY OF ST. MARY

REPORT

ABBREVIATIONS USED

CEMP	Construction Environmental Management Plan
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
P&E	Planning and Environment
SOS	Save our Shoreline
TTS	Transport and Technical Services

SUMMARY

1. Recent events have shown that there are serious problems concerning environmental protection in major projects on waterfront sites. These problems must be addressed before any further projects are given the go-ahead. This proposition is about learning the lessons of the past and applying them.
2. This Proposition aims to secure good governance and to protect the marine environment. It spells out what the Minister for P&E should do with respect to the next major planning application on the waterfront, namely the application for the proposed Zephyrus development¹. Without this proposition, good governance in the Island is dealt another blow, and our precious marine environment is threatened with further damage which could and should be avoided.

INTRODUCTION

Zephyrus and the need for extra caution

3. The Zephyrus development is the latest in a series of large-scale waterfront developments requiring deep excavations into contaminated land near to the sea: Radisson, La Collette EfW, Castle Quays I, and Zephyrus. These excavations and the subsequent construction phase are inherently problematic in that there is increased risk of serious pollution of the marine environment by making the pollutants which are undoubtedly present in the landfill more available to the sea-water as it permeates in and out.
4. One would expect, therefore, that the Minister would be extremely cautious in determining each application as it comes before him, in this case, Zephyrus. He should be eager to examine carefully the evidence, experience and knowledge gained from the previous developments and apply it to the latest scheme, particularly if the previous developments have had problems.
5. Now we know, and this report will show, that this is precisely the case. These previous developments have indeed had massive problems. The Radisson escaped scrutiny but the EfW project and Castle Quays I have thrown up the following –

¹ Zephyrus is the name for the proposed large development of flats to the north (but not adjacent to) the Radisson Hotel on the seafront. See Appendix 1 for location plan.

- (i) wholly inadequate Environmental Impact Statements (EIAs);
- (ii) defective Construction Environmental Management Plans (CEMPs);
- (iii) inadequate site management procedures;
- (iv) water pollution during construction, on the face of it breaking the Water Pollution (Jersey) Law 2000;
- (v) ongoing investigation, which has lasted over 8 months so far, into major breach or breaches of the Water Pollution Law at La Collette EfW site;
- (vi) dismissal of the project site manager² at La Collette EfW site, amid allegations that he took environmental protection too seriously;
- (vii) misleading statements, secrecy and lack of communication.

The need for this proposition

6. All this proposition asks is that the Minister takes full and proper account of these problems before determining the Zephyrus application. He must do this in order to carry out his duties with due care, and in order to properly determine this application within the spirit and the letter of the 2002 Planning Law. The proposition simply spells out what this means. These are very grave matters and they demand an adequate response.
7. The Planning and Building (Jersey) Law 2002 states (Article 19(1)): “The Minister in determining an application for planning permission shall take into account all material considerations.”
8. When faced with these serious matters, one may very well ask why the Minister did not agree to look closely at all these issues and issue his formal response to them before determining the Zephyrus application. In fact the Minister has refused to do this. In particular he has refused to respond formally in the agreed fashion³ to the Scrutiny review of the process which led to the EfW receiving permission, and of the resultant failings in the construction phase, before determining the Zephyrus application.
9. There are 3 points to note about this refusal. The first is that in so doing, the Minister is effectively disregarding a major review by a Scrutiny Panel which has taken just under a year, and involved a team of leading experts in EIAs who have been assisting the Panel. The second is that the Minister himself has, from his appearance at the Panel with his officers, a fair idea of how serious the issues are which will come to light when the report is published. And third, these failings have led to an ongoing investigation and to the dismissal of the project site manager.
10. In the light of these 3 considerations, is it not strange that the Minister has merely offered to “look at” the Scrutiny review before determining this application? One has to ask: what is the point of Scrutiny if this is how major reports are going to be treated?

² Working for Fichtner, consultants retained by TTS to manage the project.

³ i.e. – in accordance with the procedure newly agreed between the Chairmen’s Committee and the Council of Ministers in October 2009.

11. In addition, the other matters – the investigation being prepared by his own Department into a major breach of the water Pollution Law at the La Collette site, the extraordinary events at Castle Quays I and La Collette and the question-marks surrounding the EIA for the proposed Zephyrus development need to be addressed properly and seen to be addressed properly before there is any question of Zephyrus going ahead.
12. With respect to good governance, in creating and administering the planning Laws and the Island Plan, the Minister and his Department have to be free of the suspicion of any bias or corruption. Good governance is the cornerstone of this, without it the system fails and public confidence vanishes. Procedures must be robust and fair and followed without fear or favour. And learning from past failures (and successes) must surely be part and parcel of the job.
13. And with respect to protection of the environment it is clear that the role of the Department is unique and cannot be compromised. If the Department fails in this responsibility, there is nowhere else to go. The Water Pollution (Jersey) Law 2000 and the Waste Management (Jersey) Law 2005 are both administered by the Minister's Department.
14. The bottom line is that the Minister seems not to be prepared to place enough importance on the 2 vital principles of good governance and the protection of the environment. And yet these 2 principles are absolutely fundamental to the work of the Minister and his Department and this is why I am asking the States to intervene to protect them.

PAST PROBLEMS AND THEIR RELEVANCE TODAY

(i) Wholly inadequate Environmental Impact Statements (EISAs)

15. An EIS' job, put very simply, is to define what risks are posed to the environment by a given project, in all its aspects, and then describe how those risks can be avoided or limited.

La Collette EfW EIS – scoping

16. Scoping is that part of the overall EIA process which determines which issues the EIS should look at. There is no legal requirement to carry out scoping, but it is customary to do it as it serves to focus subsequent work on what is relevant and important and enables topics agreed by stakeholders to be unimportant to be dealt with briefly. With big projects it is accepted best practice and the Minister has accepted that proper scoping should have been done for this EIS.
17. Scoping should be inclusive and should involve not only government agencies but also non-government stakeholders. In this way all relevant expertise can be taken advantage of, and all relevant interests can be addressed. All this is essential in achieving a comprehensive yet focused EIS which commands public acceptance.
18. In this EIS not one member of the local Ramsar Steering Group participated in the scoping exercise. Save Our Shoreline, Concern, the Société, the National Trust, the fishermen's organisations, and the Ramsar organisation itself, none took part. So this EIA excluded those who had worked hard for the Island to achieve Ramsar status, as well as all those who were most concerned and most knowledgeable.

19. In addition, the public hearings conducted by the Scrutiny Panel revealed astonishing confusion about the scoping exercise, which included the scoping being re-labelled as “pre-scoping”, in flat contradiction to the evidence of all the documents which clearly talk about “scoping” and an apology from officers for having misled the House.⁴

La Collette EfW EIS – impacts on the Ramsar site

20. The various possible impacts on the neighbouring Ramsar site were not adequately described in the EIS. For example, the impact of airborne pollution from the new incinerator is not described. “There would be no direct loss of habitat designated as RAMSAR site. The only potential impact on the RAMSAR site would be water pollution risk from the construction and operation of the new facility (see Section 16: Water Resources and Drainage)”.⁵
21. About this failure to describe the impact of airborne pollution on the Ramsar site, Dr. Stephan Funk wrote to me early last year in the following terms: “The EIS assesses air quality solely with respect to risk to humans. It is a well established fact that levels of toxicity of chemicals is not identical for all organism (sic) and varies greatly. Bio-accumulation of pollutants through the food chain is well documented and can cause disease. What might pose no risk for humans might be highly toxic to other organisms and vice versa. Thus, the conclusions for human health may or may not be extrapolated for the RAMSAR site. I am not a toxicologist and rely on expert opinion. However, the EIS does not provide such expertise as it did not provide data.”
22. This failure to provide adequate data to back up assertions or conclusions runs like a theme through the EIS review.
23. About water pollution from authorized discharges in operation, the EIS says this: “Discharged water would be **within the set conditions** for the existing consented discharge from the power station so there will be no significant change over the current situation and no specific mitigation for cooling water would be required.” (my emphasis).
24. These “set conditions” are not described so the reader can only assume that the marine environment is adequately protected by these conditions. In fact these “set conditions” are anything but set. There are no absolute values for pollutants within the existing discharge permit.⁶
25. About water pollution from contaminated fill the EIS says this: “The potential sources of pollution to coastal waters would be both during construction and operation of the site. The potential pathway is infiltration into the fill and then dispersal due to tidal movements affecting intrusion of water under the fill area. At the detailed design stage trial pits and boreholes would be included as part of the ground investigation in order to allow testing for contaminants and determine the exact nature and depth of the fill in the area of the proposed foundation works.” (EIS Volume 2, para. 16.3.1)
26. There was no testing for ground contamination as part of the EIS and no work whatsoever done on the possible impact of these contaminants on the marine

⁴ See Public Hearing 8th July, pages 5–8 (esp. pages 7–8); pages 16–17; pages 24–30 (esp. foot page 27 and page 28); and pages 41–48 (esp. foot pages 41 and 42).

⁵ EIS Volume 2, para. 10.3.2.

⁶ “**Panel representative:** But within the consent, are there actual chemical levels set?

Assistant Director, Environmental Protection: Not determinant levels, no.”(transcript of Public Hearing 8th July, page 39)

environment.⁷ Knowing the history of landfill in Jersey, this was completely irresponsible.

27. This way of proceeding, which actually avoids doing what an EIS should do, seems to have been based on two things, both of them inexcusable. The first is demonstrated by an entry in the Water Resources section of the Environmental Impact Summary Tables of the EIS: ‘Potential impact: “Release of contaminants from Made Ground” – Actual impact: “Anticipated to be low risk due to inert nature of fill”’ (EIS Volume 2, page 225). TTS and P&E together, the applicant and the regulator, went forward on the basis of the fiction that the site consisted of “inert fill” and in so doing put the marine environment of Jersey at risk.
28. The second was the pattern throughout the EIS of putting the potential problem off to be resolved later. “It is proposed that a “watching brief” for contaminated or hazardous materials should be adopted during the site development and construction phases.” (EIS Volume 2, para. 16.3.1). Note that in schizophrenic fashion, the fill is inert on page 225, but may contain contaminated or hazardous materials on page 215.
29. These are just a small selection of the points to be made about the failings of the EIS on the basis of which planning permission was given for the incinerator at La Collette. Members may very well have the full Scrutiny Panel Report by the time of the debate on this proposition – they will find it is indeed as bad as I have said here.⁸
30. Most worrying of all is the fact that the Chief Officer of P&E, in reply to a question at the Public Hearing in September, assured the Panel that in his view the EIS for the incinerator was perfectly sound.⁹ On its own, and in the light of the rest of this report, this statement should give the Minister cause for grave concern and food for thought.

Zephyrus EIS¹⁰

31. There appear to be serious problems with this EIS also, echoing those of the incinerator EIS.
32. On page 128 the EIS talks of groundwater flow being “influenced by tidal waters”. The EIS says that the groundwater quality is good. But there is no groundwater on the Zephyrus site.
33. Apparently the EIS does not take on board the issue of sea-water ingress to the site once excavated, despite the fact that this has occurred at both Castle Quays and La Collette. SOS claim that the mitigation methods set down for sea-water ingress are insufficient. They ask whether a discharge permit will be enforced in the event of sea-water entering the site and coming into contact with the pollutants that bare known to be in the site. If it is, how will it be managed? If not, why not?

⁷ **The Deputy of St. Mary:** So the summary of the position is that no investigation of ground contamination took place before the planning approval was given?

Principal Planner: That is right. (transcript of Public Hearing 8th July, page 21)

⁸ I have deliberately not looked at the draft of the Panel’s Report in writing this, using only existing sources.

⁹ **The Deputy of St. John:** In the opinion of the Department, is the submitted Environment Statement deficient in any way? This is a straightforward yes or no answer.

Chief Officer, Planning and Environment Department: No. (transcript page 12)

¹⁰ The comments in this section are based on the submission made by ‘Save Our Shoreline’ in response to the Zephyrus EIS. They were put under great time pressure by the Planning Department in preparing their submission, hopefully there are no mistakes.

34. The information on ground conditions includes results of samples but no information of when, where and how the samples were taken.

(ii) Defective Construction Environmental Management Plans (CEMPs)

La Collette

35. The CEMP takes on particular importance in a scenario where a lot of reliance is placed on it by an inadequate or barely adequate EIS.
36. In the case of La Collette, the many failings of the CEMP had a potentially serious impact on the marine environment, to what extent, we do not know.
37. These failings are not academic. They led to poorer outcomes. For example, there was an actual delay of three months in responding to the dewatering issue because things had not been thought through and documented in advance.
38. A possible breach of the water pollution law took place and is now the subject of a criminal investigation. The presence of the ash pits was omitted from the CEMP and yet of course they represented a major pollution risk and hazard in the construction phase. As was proved by events, when a subcontractor sliced through a membrane protecting the pits.
39. In the absence of adequate description of risks and possible impacts on receptors we simply do not know the extent of the environmental damage caused at La Collette. What we can say, however, is that with procedures and attitudes like this in place, there is a very real possibility of further incidents. These could be less serious, or could be even worse.

Castle Quays

40. The situation with the Castle Quays CEMP confirms the above and gives no comfort whatsoever. The reply to my Written Question to the Minister for P&E of 28th April 2009 talks of “groundwater” possibly “seeping” into the excavation, and if it did so, it would be allowed to “drain away naturally”. What is this “groundwater” and where does it drain away to? The CEMP at paragraph 3.8 makes clear that the term “groundwater” is actually used to mean sea-water. This is deception as groundwater is “water under the surface of the earth.”¹¹
41. The reply then states that “The CEMP requires that the Principal contractor will ensure that any water that may have come into contact with contaminated materials will be disposed of to the satisfaction of the States of Jersey.” Why does the CEMP say “may”? There are no measures stipulated within it to keep the sea from contact with pollutants in the landfill. Therefore the sea will come into contact with these pollutants.
42. The reply continues: “The contractor is therefore bound by the terms of the CEMP to be aware of the potential for waters to become polluted and to look out for any such occurrences.” “Look out for” – we are back in the La Collette

¹¹ See footnote 18, first paragraph.

world of the “watching brief” which demonstrably failed to protect the environment from harm. And how would this water be disposed of? Via a discharge permit?¹² The regulator apparently has no role and no desire to carry out water sampling and testing – in paragraph 4.2 entitled “Water Quality Monitoring” the only method listed for detecting the presence of contaminants in the pit water is “visual observation”.

43. The overall attitude of complacency and inaccuracy can be seen in the section entitled “History” in the Method Statement¹³ prepared by Dandara’s Health and Safety Manager and accepted, let us not forget, by the regulators in the Planning Department.
44. “A small proportion of waste was composed of residues from the Bellozanne municipal waste incinerator..... Assessments and reports on the make-up of the land conclude that although the bulk of fill materials is non-hazardous there may be the presence of contaminants within the area to be developed.”¹⁴
45. “Small proportion,” “non-hazardous” and “may be present” – all these phrases seem actually calculated to lessen the apparent risk and danger to the marine environment. Compare this to the fact that 6% of the site landfill material is incinerator ash from the burning of non-separated municipal waste, and that 6% of that vast volume of waste is many, many tons.¹⁵

(iii) Inadequate site management procedures

46. In the absence of rigorous statements of risks and impacts to receptors within Ramsar or the Bay of St. Aubin as part of the EIS, all the burden of protecting the environment is shifted onto the site management procedures along with the CEMPs.¹⁶
47. On a large site they must be comprehensive, updated, monitored, and the subject of full communication and adherence at all times. This is a tall order and requires attention to detail and willingness from all parties to follow them.
48. A full account will no doubt emerge at the trial, if a prosecution is brought, of how the La Collette site actually ran, and the weaknesses which have to be put right will be there for all to see and learn from.

¹² For the full fantastical reply see Appendix 2.

¹³ Reference CQ/CL 0001 revA.

¹⁴ Method Statement page 1.

¹⁵ Apologies, cannot give exact reference for this – it is from a 2004 technical report.

¹⁶ As this exchange from the Scrutiny hearing of 18th September shows:

“Panel representative: ‘It is stated there is a risk for pollution during both phases, construction and operation, just to get clarity on that. It then goes on to talk about mitigation without assessing what that risk is and what that impact is. Can you explain why?’

Managing Director, Babtie Fichtner Consultants: The purpose is we have identified it as a potential risk and, therefore, we say we are going to avoid it so that all our efforts are put in to controlling, to make sure the water discharge is not going to be a problem and similarly with the potential contamination. The same approach is taken. It may happen, therefore, let us avoid it happening and, therefore, the controls particularly through the contractor, and our supervision of the contractor, has been aimed to avoid any of this occurring.”

49. However, the Scrutiny Hearings already revealed some shortcomings. Thus on 18th September we heard the following:

“Panel representative:

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?

Director, Waste Strategy Project:

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.”

(Transcript, page 41)

and

“The Connétable of St. Peter:

I think from my point of view, speaking on behalf of the Scrutiny Panel, our concern is that there appears to be or there could be a lack of process in dealing with incidents down there. That is our concern, process. We are delighted to hear that the department managed the incident with the ash pit and brought that to a successful conclusion, but the fact that there is no detail of that ever occurring within the suite of documents you have given us and the fact there are only 2 others shown coming via a particular company. Now we know there are a number of other subcontractors. Do they feed in their incidents through the main contractor or not? We do not know the answer to that. So are there then, from the Scrutiny Panel’s point of view, more incidents which are remaining either unreported or that are not being fed through to you in the final case so, therefore, they are not coming through to us? Our concern from a Scrutiny Panel is a matter of process.”

(Transcript, page 43)

and

“The Connétable of St. Peter:

I understand and thank you for that. However, I still remain perturbed because at the eleventh hour we have had 2 incidents produced. If there is a process which enforces that all incidents are reported then we should not have got these 2 incidents at the eleventh hour which go back to June.

Director, Waste Strategy Project:

Correct.”

(Transcript, page 49)

- (iv) Water pollution during construction: was the Water Pollution (Jersey) Law 2000 broken?**

50. A picture is worth a thousand words, so they say, so here is a picture of the Castle Quays site, taken on 27/03/2009 at 7.00 a.m. Exactly the same

conditions were observed, and documented by Save Our Shoreline at the La Collette site.



51. Compare this picture with these words of the Castle Quays CEMP:

“... although at high tides, groundwater (sic) may be present within the basement excavation” and “The contractor is therefore bound by the terms of the CEMP to be aware of the potential for waters to become polluted and to look out for any such occurrences.”

“may be present”. What sort of a document purporting to be the solid basis for a major construction project in a prime waterfront location with known environmental issues, could say: “may be present”? And as for “look out for such occurrences” – well, I leave the reaction to the reader.

The Water Pollution Law

52. The law is emphatic and clear. 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”¹⁷

¹⁷ More details from Written question 24th March to Minister for P&E: “Controlled waters’ include the territorial seas of the Island up to the 12 mile limit, coastal waters, as far as the highest tide, including bays and inlets, surface water including streams, brooks, reservoirs, etc. and groundwater, i.e. water under the surface of the earth.

In this Law, the definition of pollution is in line with modern European thinking and with the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic. Thus, pollution includes the introduction of substances or energy into controlled waters that cause or may cause a hazard to human health or water supplies, harm to any living resource or aquatic eco-system, damage to any amenity value or interference with any legitimate use

53. So, the excavations, by breaking up the landfill and enabling accelerated leaching of contaminants to sea, are legally highly problematic.

54. A discharge permit was required for La Collette pit waters whereas none was ever asked for or imposed at Castle Quays on a site acknowledged to be worse in terms of contamination.

55. The discharge permit never came into force at La Collette. The allegation is that the leachate was then pumped to sea illegally, and there is evidence to support this. (see next 2 sections below)

(v) Ongoing investigation, which has lasted over 8 months so far, into major breach or breaches of the Water Pollution Law at La Collette EfW site

56. Members may not be aware that there is a case file being prepared by Environmental Protection for a prosecution which may be brought with regard to a breach or breaches of the Water Pollution Law at La Collette.

57. This file relates certainly to an incident on 28th April, and maybe to other pollution incidents. The project site manager at the time (now sacked) wrote in an e-mail to TTS, Fichtner and the regulator on September 15th:

“I thank you for your suggestions and advice and can confirm that you have already received information in the form of e-mails, photographs, minutes of meetings, and my site diary.

However what you, the regulator and TTS 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.”

58. The project site manager at the time, who was sacked in July, has still not been interviewed, although he is a key witness in the case.

59. The above is all I can properly say as it only goes into the background of the preparation of the file. Nevertheless the long time lapse involved shows either that the incident(s) was/were extremely serious or that there has been inordinate delay in bringing this matter to a conclusion.

60. Either way, it is clear that there is a serious problem here, and that not to learn the lessons, whatever they are, before granting permission for another similar development is tempting fate.

of controlled waters. It also covers the introduction into controlled waters of a substance or energy that contributes to pollution, but which may not be the sole cause.

For example, if a contractor, when constructing the incinerator, caused a leak of oil to the sea that resulted in loss of marine life, then they may be guilty of an offence and subject to a fine and/or imprisonment. This is an offence of strict liability, which means that an intention to pollute is not a necessary ingredient of the offence.”

(vi) Dismissal of the project site manager at La Collette EfW site, amid allegations that he took environmental protection too seriously

61. In early July last year, the project site manager at La Collette EfW site who worked for Fichtner – consultants to TTS for managing the project – was dismissed. I am told that the official version of the reason he was sacked and his own version are somewhat different.
62. This serves to highlight, once again, that all is not well down on the Waterfront.

(vii) Misleading statements, secrecy and lack of communication

63. The Chief Officer of Planning and Environment wrote to a member of Save Our Shoreline in November asking her to have faith in his team: “I would ask that you let the environmental team do their job and to trust in our well qualified and experienced professionals.” But is this plea justified?
64. There is a mantra running through the La Collette EIS and subsequent statements that the site is made up of inert fill. We have seen (paragraphs 40, 41, 44 above) that the same tendency to downplay the seriousness of the contamination in these waterfront sites is also present at Castle Quays.
65. On 8th July 2009, 2½ months after the pollution incident which mainly led to the criminal investigation, and which involves contaminants in the fill, the regulator was telling the Scrutiny Panel that the area was full of inert fill. (Transcript, pages 18–19.)
66. At the hearing on September 18th there was this exchange:

“The Connétable of St. Peter:

I think just coming back again, John, with all due respect, the reclamation site, and I am talking about West and East of Albert, has become a sensitive area from the point of view that we know that there was on the west of Albert from incinerator waste so, therefore, the whole of that area of reclamation is a public concern, shall we say, that there are potentially current contaminants somewhere down there. This is why we need to

Former Chief Officer, Transport and Technical Services Department:¹⁸

No, I am sorry, you are making an assumption. You have no evidence. Provide me with the evidence.

The Connétable of St. Peter:

I think the fact that we have those people that are sitting in the back row that represent the S.O.S. (Save Our Shoreline), all these sort of people, that there is evidence out there to say there is a level of public concern.

Former Chief Officer, Transport and Technical Services Department:

Would you provide the evidence?

¹⁸ Now Deputy Chief Executive to the Council of Ministers

The Connétable of St. Peter:

No, no, I am saying to you there is evidence of public concern and they are sitting behind you today.

Former Chief Officer, Transport and Technical Services Department:

I know the evidence of public concern but I am asking for evidence that there is contamination.”

The Chief Officer of TTS at the relevant time at no time in this exchange denies that there was contamination in the fill, but he gives the impression there was none by demanding from the Scrutiny Panel evidence. Did he know nothing of the major incident which was causing a criminal investigation to take place and which is predicated on the existence of contamination?

67. Earlier in the 18th September Hearing, the former Chief Officer of TTS said, in making a comparison between the sites excavated along the Grève d’Azette coast and the La Collette site: “So, if it had not been deemed necessary for those sites, why is it deemed necessary for this site when there is no evidence to suggest that the material in this site is any different? In fact, if anything, the material from this site was better known because it had been monitored visually by an operator at every point of infill, whereas the material that was in the ground on other sites that could have been there for 100, however many years, was unknown at the point of excavation.” (Transcript, page 23.)
68. Again the point is not how dangerous or otherwise those other sites may have been to excavate (though none of them is known to have been a landfill site under the old regime of tipping) but the fact that attention is diverted away from the potential contamination within the site in question – namely, La Collette. Why not just answer the question as openly as possible?
69. Maybe there is some innocent explanation for the above paragraphs. But at the least they shed doubt on whether, taken with all the other issues, any planning permissions should go ahead for these potentially polluting sites until they are resolved.
70. No members of the Harbours team, nor the Marine and Coastal Officer, nor the Jersey Aquaculture Association, were informed of the pollution incident on 28th April 2009.
71. The list of failings is long: misleading statements made to Scrutiny; not informing key stakeholders of pollution incidents; seemingly wanting always to play down the seriousness of what is actually going on.

THE ROLE OF THE MINISTER

Our expectations of the Minister

72. We expect the Minister to be impartial and to have robust and fair processes with regard to planning applications and appeals. He or she has to hold the balance, weighing up all the evidence in a particular case and striving to decide in the best interests of the Island as a whole. These best interests

include the protection of our wonderful environment, on which we all, in fact, depend. In fact he has a particular duty to the environment, which has no other champion.

The hesitations of the Minister in this case

73. There are 3 arguments the Minister holds up for refusing to take the time to respond formally to the Scrutiny Panel Report into La Collette and to consider the other matters raised in this proposition.
74. The first is “unnecessary delay” He has written to me: “I am bound by law to treat each application on its merits and I cannot unduly delay decisions on any applications.” Firstly I do not find this provision in the 2002 Planning Law, where delay is not mentioned, and secondly, the need for the Minister to engage with and resolve the matters referred to in this Report has its own importance to which the Minister should pay due attention.
75. The second is that “the sites are different”. He wrote to me: “The applicant will probably feel that the planning application for the Zephyrus Scheme is not directly linked to the planning decision on the Energy from Waste Plant as the sites are different.” In fact there are many similarities between the La Collette, Castle Quays and Zephyrus sites, the main difference being that the west of Albert sites are more polluted than La Collette and therefore require even more careful handling. That is the whole point of this proposition – learn the lessons before it is too late and yet more avoidable pollution of our seas occurs.
76. The third is the belief that the investigation will only reveal lessons to be learned for the defendants. This is certainly not my reading of the situation. Clearly as the matter is under investigation, my freedom to show that there is more than one side to this story is limited.

CONCLUSION

77. As things stand, going forward there are no guarantees that our precious marine environment, with all that it means for our well-being and for our economy, and the idea of good governance can be protected.
78. SOS write in their submission to the Zephyrus application; “To enable us to fully assess the adequacy of the EIS in its approach to dealing with the exaction and disposal of contaminated land and the associated problems with tidal inflow we need access to the incident record of these sites (i.e. La Collette and Castle Quays).” I would suggest that exactly the same applies to the Minister. He needs to have this information fully evaluated before giving another permit.
79. TTS and their consultant Fichtner have taken the approach on the project to avoid impact on the Ramsar site. (Footnote reference) However the implementation via the CEMP and the working practices on site suggest that impacts have not been avoided.¹⁹
80. Taking all the serious problems from the recent past together, The Minister should pause and see just how great the risks are, and submit to the requests made in this proposition with good grace.

Financial and manpower statement

81. The financial and manpower implications of this proposition are limited. The response requested in paragraph (a) of the proposition has to be provided to the States in any case. A close look at the EIS provided for the Zephyrus application, involving the writing of a report, would in any case be required. This proposition adds the requirement to incorporate the Environment Scrutiny Panel’s findings and recommendations into this appraisal. Again, taking on board the findings of the Panel is a process which would happen in any event. Paragraph (d) is a precautionary paragraph to cover the situation where the Department’s responses to (a) and (b) do not actually include what is requested in (d), namely a spelling-out of what the Department will actually do in terms of the way it works, in response to the matters covered in this report and proposition. Again, this is the normal work of the Department, to follow new developments in the fields in which they are operating, in this case, the findings of a States body – the Scrutiny Panel. Paragraph (c) is a specific new piece of work to ensure, once again, that lessons are learned. I would expect this to be done within the normal workload of the Department. There is a separate question of whether the Department is adequately resourced for its responsibilities, but that is not my concern in writing this note.

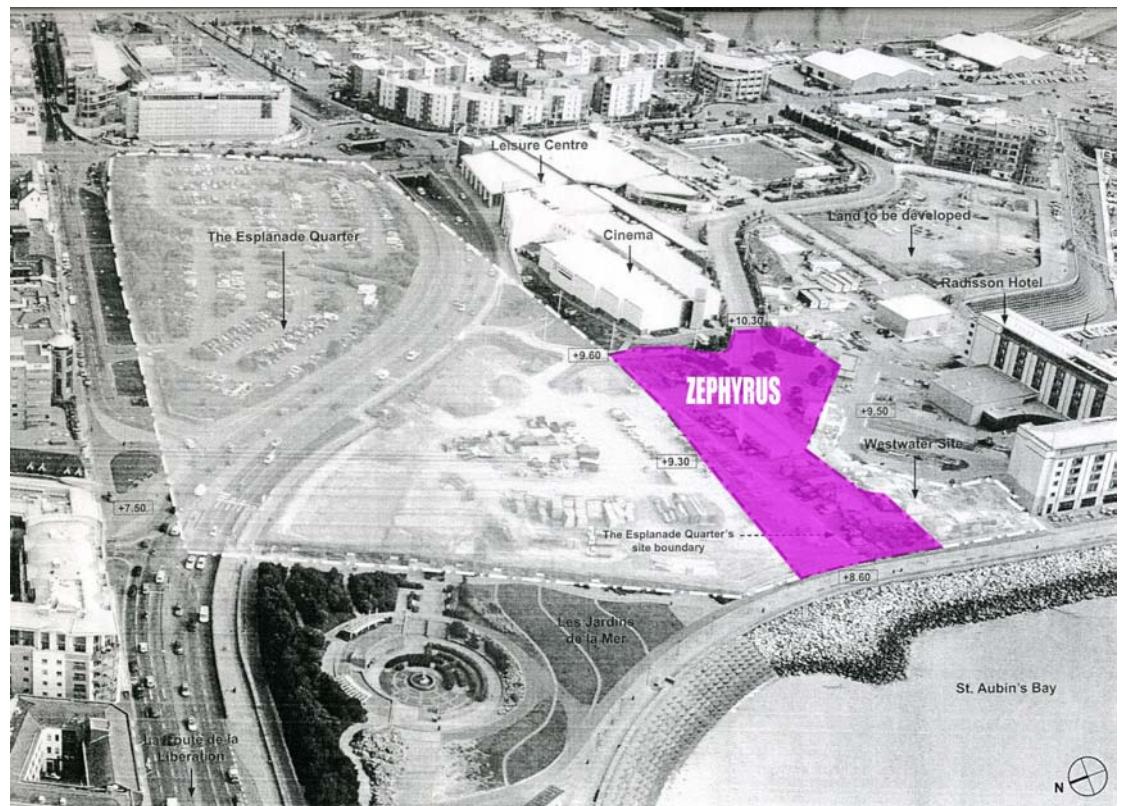
¹⁹ For example:

Managing Director, Babtie Fichtner Consultants:

“The general approach taken was there is a Ramsar site there, let us avoid wherever possible and show where there is some slight impact that it is insignificant. Within the Environmental Statement we have to show that and that was the approach taken with the consultations; avoid any significant impact on the Ramsar site.” (transcript of Public hearing September 18th with TTS, page 13).

APPENDIX 1

Location picture of the Zephyrus development



APPENDIX 2

1240/5(4448)

WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT BY THE DEPUTY OF ST. MARY ANSWER TO BE TABLED ON TUESDAY 28th APRIL 2009

Question

“Would the Minister inform the Assembly whether tests have been carried out on the sea-water which has been flooding the excavation pit at the Castle Quays site on the higher tides, and if so, would he give the Assembly full details of the chemical composition of this water, any variations in the test results and the causes of these variations?”

Answer

Environmental Protection staff have not carried out tests on sea-water in the Castle Quays site because, to date, there has been no requirement to do so.

Prior to any works commencing on site, and in accordance with Condition 1 of their planning permission, the developer produced a *Construction Environmental Management Plan (CEMP)*. This CEMP, which was submitted to the Department after significant negotiation establishes that whilst it is likely that groundwater will be present in the excavation, these waters will not require controlled discharge.

This is because, as the CEMP states, if groundwater were to seep into the excavation, work would cease in order to allow the water to drain away naturally. In addition, it notes that the construction of the basement floor slab is timed to avoid high tides and that any surface water drainage from the site will be connected, by gravity, into the existing public sewer in Rue de L'Eau.

The CEMP requires that the Principal contractor will ensure that any water that may have come into contact with contaminated materials will be disposed of to the satisfaction of the States of Jersey. The contractor is therefore bound by the terms of the CEMP to be aware of the potential for waters to become polluted and to look out for any such occurrences.

Disposal methods may, in these instances be to Foul sewer, the receipt of which is the responsibility of TTS, or if the waters are capable of cleaning to strict standards imposed by discharge consent conditions, to controlled waters. If therefore, at any point, the developer requires to discharge, he is bound by the terms of the CEMP and The Water Pollution (Jersey) Law 2000 to consult Environmental Protection and, before any controlled discharges would be allowed, a permit must be applied for and granted. During this process the applicant and the regulator would take samples of the waters as part of the determination process.