

# STATES OF JERSEY

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**FIELDS Nos. 519, 520, 521, 524, 527 AND 528,  
WOODSIDE FARMS, LA HOCQUARDERIE, TRINITY:  
REPORT OF MRS. C.E. CANAVAN**

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**Presented to the States on 31st August 2004  
by the Environment and Public Services Committee**

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**STATES GREFFE**

On 12th August 2004, the Environment and Public Services Committee noted that Mrs. C.E. Canavan was due to submit her final report to the Committee by the end of August 2004. The Committee agreed that preservation of the independent status of the report was paramount. Accordingly it determined that, upon receipt, the said report should be submitted to the Greffier of the States without delay in order that it could be tabled in the States at the earliest possible opportunity. Furthermore, the Committee ordered that the said report be submitted to the Greffier of the States in an unedited format.

The report has accordingly been received by the Greffier of the States directly from Mrs. Canavan and published.

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## **Introduction**

### **1. The decision to establish an inquiry**

On 18th May 2004, Senator Philip Ozouf, President of the Environment and Public Services Committee, announced to the States that he had appointed me to investigate the circumstances surrounding an application made on behalf of Mr. Charles Philip Gallichan to create a reservoir in the corner of fields which he owned in Trinity and to level the fields to create more viable agricultural land. Although from a planning point of view there was only one application, there were 2 stages, the in principle stage and the development stage. For ease of reference in this report, the in principle application will be referred to as “the First Application” and the development application will be referred to as “the Second Application”.

The First Application was received by the Planning and Environment Department on 21st March 2003 and was an application for planning permission in principle for “Alterations to the levels in fields listed above (519, 520, 521, 524, 527 and 528 in Trinity) to achieve upgraded soil quality and manageability. Addition of new natural filling reservoir in the corner of field T519 for irrigation of all adjacent fields”. The in principle permit was issued on 25th September 2003 (Appendix 1).

The Second Application was received on 31st October 2003 and was an application for permission to develop land and for consent to “Form temporary access to field 527, culvert stream, form new natural filling reservoir and fill valley to raise fields 519, 520, 521, 524 and 528 to upgrade soil quality and manageability”. The development permit was issued, under delegated powers on 19th December 2003, with 10 conditions (Appendix 2).

In or about April 2004, as a result of building equipment being taken on to the fields, residents living in close proximity to the fields began raising queries with regard to the applications and the circumstances in which both permits had been granted.

Having considered the queries raised, the Environment and Public Services Committee decided that an independent person should be asked to conduct an inquiry into the circumstances surrounding the applications rather than carrying out its own internal investigation and it issued Terms of Reference (Appendix 3).

### **2. Methodology**

On 25th May 2004 an advertisement was placed in the Jersey Gazette advising of my appointment and of the fact that the inquiry would be held in public at a later date. Any person interested was invited to advise me in writing of their wish to be heard or, alternatively, to make written submissions.

A letter was sent out to any person who I believed at that time to have information which might be of assistance in the inquiry, requesting them to confirm whether or not they would be willing to attend. The letter made it clear that –

- no-one could be compelled to attend the inquiry;
- no-one could be compelled to answer any question he did not wish to answer;
- no oath would be administered to those agreeing to attend the inquiry; and
- although the proceedings would be taped, the tape recordings would only be for my benefit and use.

On 13th July, and 19th to 23rd July, 2004 those persons who had agreed or requested to be heard were given the opportunity to make submissions and to answer questions. The Terms of Reference required me to establish as accurately as possible, the facts regarding the events which occurred and, where appropriate, to comment on those events through the eyes of the participants and not with the approach of hindsight. The information included in

this report is provided from the documentation on the Department's file, oral and written submissions and replies to questions asked at the public hearings.

### 3. Definitions and references

In writing this report certain conventions have been adopted for consistency and ease of reading, as follows –

“Miss Baxter”	Refers to Miss Emma Baxter, Planning Officer
“the Committee”	means the Environment and Public Services Committee as duly constituted during the period from 21st March 2003 to 19th December 2003, that is – Deputy M.F. Dubras, President, Connétable A.S. Crowcroft, until 9th September 2003, Connétable P.F. Ozouf, Connétable D.J. Murphy, from 7th October 2003, Deputy R.C. Duhamel, Deputy M.A. Taylor, Deputy J.A. Hilton, Deputy J.B. Fox until 29th April 2003 when he was replaced by Deputy T.J. Le Main
“the Department”	means the Planning and Environment Department
“ESU”	means the Environmental Services Unit of the Department
“the fields”	means fields 519, 520, 521, 524, 527 and 528 in Trinity
“the First Application”	means the application for planning permission in principle received by the Department on 21st March 2003 and issued on 3rd October 2003
“Mr. Gallichai”	refers to Mr. Charles Philip Gallichan
“Mr. Gallichan, junior”	refers to Mr. Charles Edward Gallichan
“Mr. Le Gresley”	refers to Mr. Peter Le Gresley, Assistant Director of Development Control
“the Law”	means the Island Planning (Jersey) Law 1964 (as amended)
“Mr. Naishi”	refers to Mr. James M. Naish BA (Hons) Dip. Arch R.I.B.A of Naish Waddington Architects
“the new Law”	means the Planning and Building (Jersey) Law 2002
“the present Committee”	means Senator Philip F.C. Ozouf, (President), Deputy Jacqueline A. Hilton (Vice-President), Senator E.P. Vibert, Connétable P.F. Ozouf and Deputies M.A. Taylor, G.W.J. de Faye and J.J. Huet
“the relevant period”	means the period between 21st March 2003 and 19th December 2003
“the Second Application”	means the application for permission to develop received by the Department on 31st October 2003 and issued on 19th December 2003

“the Sub-Committee”	means Deputies Hilton, Taylor and Le Main
“Mr. Thorne”	refers to Mr. Peter Thorne, Director of Planning and Building Services
“Mr. Townsend”	refers to Mr. Andy Townsend, Principal Planner
“Mr. Waddington”	refers to Mr. Michael A. Waddington, BA (Hons) Dip. Arch R.I.B.A of Naish Waddington Architects

## **Background information**

### 1. Procedures and policies in place during the relevant period.

Mr. Thorne and Mr. Le Gresley gave background information with regard to the Department and very helpful detailed descriptions of the procedure adopted from the time an application is received by the Department. I was provided with a flow chart setting out the procedure (Appendix 4). Because the Terms of Reference required an investigation into the adequacy, sufficiency and integrity of the process which was followed, it is necessary to look at the procedure in detail.

Approximately 2,500 applications are received by the Department each year, all of which are dealt with by the ten development control officers. When an application is received it is immediately stamped with the received date and passed to an administration team. A member of the team checks that the application is broadly complete and that the correct fee has been paid. The application then goes through a more detailed technical examination by a screening officer, who checks, for example, that the plans are complete, that there are enough copies of the plan and so on. The screening officer identifies people to be consulted as part of the application process, referred to as “consultees”. The screening officer also ensures that the description accurately reflects the work that is proposed. The papers are then referred back to the administration team and a file is opened. The details of the application are put into the computer system which runs the applications and is used to generate letters and documents. The application is then officially validated.

Twice a week, a publication list, which is a list of all of the latest applications, is created and published, inter alia, in the J.E.P. There is no statutory obligation on the Department to publish these notices. An application is only re-advertised in the J.E.P. if, during the course of the process, there is a fundamental change to the nature of the application.

A receipt of the fee received is sent to the applicant together with an acknowledgment of receipt of the application itself, and letters are sent out to the consultees.

The file is then passed on to one of the 2 planning application teams. One of these teams deals with the rural areas and the other deals with the parishes of St. Helier, St. Saviour, St. Lawrence and St. Clement. The teams meet every morning in order to allocate the application to a case officer. The case officer will look at the application in detail and begin an initial assessment. He will correspond directly either with the applicant or his agent, requesting any further information required. The case officer will visit the site and once the replies from the consultees have been received, he will assess that information, together with any letters of representation received from members of the public, and arrive at a recommendation. This process takes several weeks. Once the case officer has made the recommendation, the application has a number of possible routes which are dealt with below.

Once a decision on the application has been made, the file is referred back to the administration team and the applicant, the consultees and any members of the public who have made representations, are informed of the decision.

The Department has, for a considerable number of years, offered a service, known as the “application for planning permission in principle”, which enables the applicant to obtain a degree of certainty as to whether or not he will be granted a permit to carry out the proposed development without incurring the cost of providing full details. As the name implies, it addresses the principles of the proposed work without going into the detail that would be

required for an application for permission to develop. The procedure for dealing with applications in principle and development permits is the same but the paperwork required from the applicant differs.

Each case officer will usually be dealing with between 35 and 40 applications at the same time. The Department follows guidelines issued in the United Kingdom with regard to the usual target time for an application to be dealt with which is eight weeks from the date of validation. Approximately 78 per cent of the applications received by the Department are dealt with within that period.

On 7th November 1995 the States adopted the States of Jersey (Amendment No. 5) (Jersey) Law 1996 and as a result of that amendment, the relevant Committee at the time approved the delegation of certain of its functions under the Law, the Public Health (Control of Buildings) (Jersey) Law 1956, as amended and the Building Bye-Laws (Jersey) Law 1996. Thus a scheme of delegated powers was introduced by that Committee and an internal procedures memorandum approved which outlined the circumstances in which delegated powers would be exercised. That memorandum or Delegation Code of Practice has changed from time to time since its inception. The text of the Code of Practice which was used during the relevant period is published as Appendix 5.

An Applications Sub-Committee was established to consider the majority of applications which fall beyond the powers delegated to the officers. Approximately 90 per cent of the applications received are dealt with at officer level. Deputy Maurice Dubras, President of the Committee during the relevant period, explained how he had widened the mandate of the Sub-Committee in December 2002/January 2003 after the fusion of the Planning and Environment Committee and the Public Services Committee. In choosing the individual members of his Sub-Committee he had tried to maintain a balance between experienced and new members of the States and he had attempted to maintain a link with other major Committees by choosing members who serve on those other Committees, for example, Deputy Taylor who also serves on the Economic Development Committee. The Sub-Committee deals with the majority of the remaining 10 per cent of the applications, with very few applications being referred to the full Committee. The delegated powers scheme enables all relatively minor or non-contentious applications to be dealt with by the case officer. Even if an application is substantial, provided that it is straight forward and in accordance with Committee policies and previous permissions, it does not have to be referred to the Sub-Committee. If the decision-making responsibility does not fall within the competence of the individual officer it is referred to the Director or Assistant Director of Planning. These officers also are empowered to take certain decisions without referral to the Sub-Committee. An application is referred to the Sub-Committee if it is deemed to be contentious, if written political representations have been made or if it is contrary to policy. An application will only be considered by a full Committee if recommended by the Sub-Committee.

A detailed application submitted after a permit in principle has been granted by a Sub-Committee is not usually referred back to that Sub-Committee provided that any concerns expressed or conditions attached by a Sub-Committee have been addressed.

Mr. Le Gresley stated that it was unusual for the Committee or a Sub-Committee not to follow the recommendations of the case officer. He estimated that only one in fifty recommendations would not be followed.

## 2. Can the in principle permit be overturned?

Article 7 of the Law provides that the Committee may revoke or modify any permission to develop land granted on an application, if it appears expedient to do so.

Mr. Thorne stated that, as an in principle application is not a statutory process, a permit could, in theory, be overturned or changed. However previous Committees had received legal advice that an in principle permission amounts to a commitment. It would be very unusual for an in principle permit to be overturned and would only occur if the decision was flawed in any way or if incorrect information had been provided or if it was shown that the officers had acted incorrectly.

Mr. Le Gresley said that the decision made on a development application would usually follow the decision made on the in principle application and would normally only be refused if the development application was fundamentally different from the in principle application.



Deputies Hilton, Taylor and Le Main all stated that their understanding was that the in principle permit granted in this case was subject to the concerns of ESU being addressed and if those concerns could not be addressed for any reason, the development could not proceed. The position remains the same today even though the development permit was issued on 19th December 2003. However although the present Committee could revoke the in principle decision if it deemed a revocation to be expedient, the provisions of Article 7(4) of the Law with regard to compensation would come into play.

In this report each of the applications is dealt with in turn. It is necessary to go into some detail in order to ascertain exactly what information had been provided to the Department from all sources at the various stages of both applications.

## **The First Application**

### 1. Chronology of events

1. On 21st March 2003 an application was received by the Department from Mr. Waddington, acting on behalf of Mr. Gallichan. The description of the application was for consent to the “Alteration to the levels in fields 519, 520, 521, 524, 527 and 528, in Trinity to achieve upgraded soil quality and manageability. Addition of new natural filling reservoir in the corner of field T5119, for irrigation of all adjacent fields”. Also enclosed with the application was a document entitled “Project Objectives” prepared by Mr. Gallichan or his son, a document showing details of rainfall in 2001, a site plan dated March 03 drawing number 001, a section A – A showing the proposed levelling of the fields, drawing number 0002 and a copy of the Ordnance Survey map of the area upon which several fields had been highlighted. (Appendix 6).
2. Miss Gabrielle Deane, a Planning Officer, screened the application and, as can be seen from the “Planning Screening Form” (Appendix 7) she amended the description to read “Infill fields 520, 521, 528 and 527. Create new natural filling reservoir in fields 519, to irrigate adjacent fields”.
3. After the application had been processed in the standard way, it was registered and Mr. Gallichan was notified of the registration and validation of the application by letter dated 26th March 2003. That letter contained the description as amended by Miss Deane.
4. On 26th March 2003 standard letters were sent to Mrs. S. Le Claire, Policy Manager of ESU, Mr. M. L. Mottée, Technical and Development Officer of the Agriculture and Fisheries Department and Mr. A. Rive of the Water Pollution section of the Public Services Department, all requesting observations on the “the enclosed plans” within a 2-week period. It is clear from information provided at the inquiry that enclosed with each of these letters were copies of the documents mentioned in paragraph 1 above.
5. Details of the First Application were published, inter alia, in the Jersey Evening Post on 2nd or 3rd April 2003 (Appendix 8).
6. Deputy Philip Rondel, the Deputy of St. John, contacted the Department by facsimile on 4th April 2003 as a result of concerns raised with him by residents, one of whom was a Roads Inspector in the Parish of Trinity. The residents were concerned that “any infill of this land with mulch from Crabbé may be contaminated with arsenic and the like, and could pollute the wells and boreholes”. The facsimile was headed “Woodside Trinity PP 2003/10659”. Although the reference number 10659 was incorrect, it was assumed by the Department that the letter referred to the First Application. Mr. Le Gresley replied to Deputy Rondel on 4th April 2003 explaining that, at that point in time, details of the content of the infill had not been provided with the application and that the matter was being pursued with the applicant.
7. Dr. H.P.L. Falla, the Chairman of the Development Applications Committee of “The National Trust for Jersey” sent a letter dated 7th April 2003 to the Department raising 3 concerns in respect of the application. A copy of that letter was sent to Mr. Waddington for his comments. Unless specifically stated to the contrary in this report, copies of all replies to the standard letters or other representations received by the Department with regard to both applications were copied to Mr. Waddington, Mr. Naish or to

Mr. Gallichan for comment.

8. Observations on the First Application were received from ESU in the form of a memorandum dated 8th April 2003 from Mrs. Le Claire (Appendix 9).
9. A publication entitled "Application of the Health & Safety at Work (Jersey) Law 1989 to farm reservoirs" was sent to the Department under cover a letter dated 9th April 2003 from Mrs. L. McGurty, a Health and Safety Inspector.
10. Mr. Gallichan, junior responded to the concerns raised by Dr. Falla in a letter dated 15th April 2003.
11. Observations on the application were sent by Ms. M. Fairfax, the Water Resources Officer in the Water Resources Section of the Department, in her memorandum dated 17th April 2003.
12. Mr. Le Mottée sent in his observations to the Department on 25th April 2003.
13. On 29th May 2003, Miss Emma Baxter, the Planning Officer who had been assigned to deal with the First Application, wrote to Mr. Waddington summarizing issues which had been raised by the various consultees and requesting further information to be provided before the First Application could be assessed. (Appendix 10).
14. On 30th May 2003 Mr. Waddington emailed Miss Baxter requesting an update with regard to the processing of the First Application. This e-mail appears to have crossed with Miss Baxter's letter of 29th May 2003.
15. Mr. Waddington replied on 14th July 2003 to Miss Baxter's letter dated 29th May 2003. (Appendix 11) Enclosed with this letter was a further site plan, drawing number 001 revision A. Miss Baxter did not respond to that letter and copies were not sent to any consultees. Both Mr. J. Pinel, the Countryside Manager at ESU, and Mrs. Le Claire stated that this was not unusual.
16. Miss Baxter compiled an Officer Committee Report on 3rd September 2003 and this was endorsed by Mr. Townsend on 4th September 2003. The report contained a recommendation to the Sub-Committee that the First Application should be refused (Appendix 12).
17. Mr. Waddington chased Miss Baxter by email on 3rd September 2003 for a reply to his letter dated 14th July 2003 and she advised him that the First Application was on the agenda for the next Sub-Committee meeting on 10th September 2003. Mr. Waddington emailed Miss Baxter on 4th September 2003 to enquire as to whether or not the First Application was recommended for approval by the planning officers.
18. A standard letter was sent to The Jersey New Waterworks Company Limited on 4th September 2003 requesting observations on the First Application within 2 weeks.
19. In an exchange of e-mails on 8th September 2003 between Mr. Waddington and Mr. Townsend Mr. Waddington was advised that the planning officers were recommending that the First Application be refused.
20. The Sub-Committee met on 10th September 2003 to consider the First Application and decided to conduct a site visit before considering it further. A copy of the minute of the meeting is at Appendix 13.
21. In a letter dated 11th September 2003, Mr. H.N. Snowden of The Jersey New Waterworks Company Limited confirmed that the company had no comments to make on the application.
22. The site visit to the fields was conducted on 25th September 2003. In attendance were the Sub-Committee, Miss Baxter, Mr. Townsend, Mr. Gallichan, Mr. Gallichan, junior, Mr. Waddington, Mrs. K. Tremellen-Frost (the Committee Clerk) and another member of the Department. During the site

meeting Mr. Gallichan produced an additional report which he had prepared entitled “Planning Application to safeguard the agricultural viability of fields at La Guerdainerie and related areas” (Appendix 14).

23. Upon returning to the Department offices after the site visit, the Sub-Committee “decided that it would give in principle permission subject to the application satisfying any demands of the Environmental Services Unit”. A copy of the minute of that meeting is at Appendix 15.

24. Mr. Waddington was advised, by email on 25th September, 2003, of the Sub-Committee’s decision.

25. The permit was issued on 2nd October 2003.

2. The description, purposes and objectives of the First Application

The purpose of this section of the report is to ascertain how the project, which was the subject of the First Application, was portrayed and the reasons given by Mr. Gallichan and his agent for the need for project to be given approval. The method to be used for execution of the project will be dealt with elsewhere.

(i) The information provided by Mr. Gallichan and Mr. Waddington with regard to the project can be found in Appendix 16.

(ii) Summary of Mr. Gallichan’s evidence with regard to the description, purpose and objectives of the project

1. Mr. Gallichan clarified the position with regard to a previous application to create a reservoir in the fields which had been granted by the Department in 1977. A water storage area had been created in the dip of the fields by the creation of 3 small terraced reservoirs. Over time the banks between each section had eroded and collapsed and the reservoirs had silted up. The reason why it was decided not to create a new reservoir in the same place was that he was now farming more land in the area, a greater volume of water was required and an “in ground reservoir” would be easier and cheaper to create than a reservoir with a dam. Three previous reservoirs which he had created at other sites were all in ground reservoirs, one of which was smaller than the reservoir proposed in the First Application, one was a similar size and one was much larger.

2. The project had been triggered by the acquisition or rental of additional land in the area and the increasing commitment to the production of the highest quality not only of potatoes but also of other crops including onions, swedes and daffodil bulbs. The ability to irrigate the crops on a more regular basis would add 15 per cent to the yield.

3. He explained that the quality of the land in fields 519, 520 and 524 was very poor because it is predominantly clay and very difficult to work.

4. He did not really become involved in the First Application until he learned that the Sub-Committee was proposing to visit the site and that he would be permitted to give a presentation to the Sub-Committee. He had put a great deal of time and effort into the preparation of the document which was presented to the Sub-Committee at the site meeting as he had been trying to answer as many questions as he could anticipate. The document was meant to put forward the case from the point of view of the farming business – it was not meant to be a technical document. He and his son had put everything they could think of into the document to try and explain what they wanted to do and the reasons why they wanted to do it.

5. He had not misled the Sub-Committee by strongly putting forward the agricultural case – if he had meant to mislead he would not have compiled the document.

6. With regard to the description and address of the site of the fields, he agreed that he had seen and signed the First Application form. He did not recall discussing these at all with Mr. Waddington. Mr. Waddington had compiled the information in the form as “that was his job”. There was absolutely no

foundation to the comments made that the description and the address on the First Application form were meant to mislead or were intended deliberately to try and ensure that people did not know where the location of the fields was.

7. The report prepared for the Sub-Committee referred to the fields being at La Guerdainerie because that is the name he and his son use to identify that block of fields rather than referring to field numbers.

(iii) Summary of Mr. Waddington's evidence with regard to the description, purpose and objectives of the project

1. Mr. Waddington had not been involved in this type of project before and he was keen that the document entitled "Project Objectives" was submitted with the First Application so that the Department was clear as to the intended objectives of the project. The document was intended to clarify his brief.

2. There was no reason why, in his description of the purpose of the First Application, he mentioned the levelling of the fields first and then the creation of the reservoir. The critical thing to look at was describing the finished product. He was trying to describe the profile he was trying to achieve with the finished field and the objectives or the reasoning behind the application, i.e. to benefit the agricultural viability of the finished site.

3. Although he had used the words "levelling the fields" in his description he agreed that the term "infilling" might have been a better term. There was no intention to try and mislead anyone about the true intent of the project by the use of the word. In any event, Miss Deane changed the description to include the word "infill".

4. He used the words "La Guerdainerie" in his letters and on the site plans because that was the name used in the office to identify the project.

5. With regard to the address of the site of the fields he said that the use of a field number, as far as he was concerned, was the only proper way to describe the location of a field, which was the whole purpose of numbering fields. "Woodside Farm" was added merely to try and be helpful. His clients were well known and he thought that anyone raising any queries could refer them to Mr. Gallichan at Woodside Farm. There was no intention to "cover up" the true identity of the location.

6. He confirmed that he did not discuss the description of the First Application or the address used with Mr. Gallichan.

7. Mr. Waddington offered assistance in the preparation of the report provided on 25th September 2003 by identifying policies within the 2002 Island Plan that were relevant to agriculture and encouraging diversification within agriculture. The document had been intended by both Mr. Gallichan and himself to clarify exactly what the project was about.

(iv) Summary of other evidence with regard to the description, purpose and objectives of the project

1. Mr. Le Gresley stated that an address on an application form would only be changed if it was fundamentally wrong in some way. It would be unusual for the planning officer to change details of an address as there could be possible legal difficulties arising as a result of such a change.

2. Miss Deane explained that changes are made to descriptions of applications to make them more precise or succinct. The description provided by Mr. Waddington was not considered to describe the work adequately. It did not explain whether there was going to be an increase or a decrease in the level of the fields. The word "infilled" was used on the site plan and she felt this was more descriptive and succinct. She included the field numbers in the description, she deleted the phrase "to achieve upgraded soil quality and manageability" as it was not necessary to include the reason for the application and she used the words "create new" in respect of the reservoir rather than the "addition of".

3. At the site meeting the members of the Sub-Committee and Mrs. Tremellen-Frost recalled a very strong case being put forward by Mr. Gallichan based on the fact that the reservoir would enhance the agricultural situation.

(v) Conclusions

I have no doubt that Mr. Gallichan's intention at the time of the decision in principle was to create the reservoir to irrigate the fields either owned or leased in the area hoping that this would result in better crops. He also wanted to level the field to increase the amount of workable land. The information provided in the documentation was consistent throughout.

There was no misrepresentation on the part of Mr. Gallichan or Mr. Waddington either in the description of the application itself, or the representations made with regard to the **purpose** of the project.

3. References to the description of the materials to be used, their source and volume

The purpose of this section is to determine whether, from the information that was available to the planning officers at the time of the in principle decision, the scale and nature of the proposed development was appreciated or whether there had been an attempt on the part of Mr. Gallichan to hide material facts.

The information provided by Mr. Gallichan and Mr. Waddington with regard to the materials to be used in carrying out the project can be found in Appendix 17.

Conclusions

1. There is no doubt that an examination of the documentation on the file clearly shows the nature and extent of the work which was proposed in the First Application. Senator Ozouf, Mr. John Young, Chief Executive Officer of the Department and Mr. Thorne also reached this conclusion once they had examined the file.
2. It is clear from the evidence that members of the various sections of the Department were aware that infilling the fields would involve the importation of materials to the site which would result in large scale traffic movement, although no-one at this stage had a clear idea of how much material would be required or where it would come from.
3. Mr. Pinel, having looked only at the application, based on his experience, had immediate concerns. Reference to "infilling" fields generally causes alarm bells to ring about the type of material that is going to be used in the infilling. He also assumed that infilling would create traffic movement and he therefore requested further information on the materials to be used and the traffic implications, amongst other things. He did not become aware of the scale of the development until he was asked to comment on the conditions to be attached to the permit issued on 19th December 2003.
4. Upon her reading of the application, Mrs. Le Claire picked up on the traffic implications.
5. Mr. Le Mottée said that he was aware all along that materials would have to be imported on to the site although he was not aware of the quantity. He said that he did not feel that he had been misled in any way as he had been told, as mentioned in his memorandum dated 25th April 2003, that a civil engineer and a contractor would be involved.
6. Mr. Townsend was aware of the fact that materials would be imported not only from the documentation but he also felt that it was obvious, when on site, that the depth of the reservoir was not the same as the depth of the fill.
7. Miss Baxter was obviously aware of the need to import materials as she had requested the further information from Mr. Waddington.

8. Therefore at the time of the consideration of the First Application, the planning officers were well aware from the documentation produced by Mr. Waddington and Mr. Gallichan that material would have to be imported on to the site, although they did not have information with regard to the quantity of material which would be required or where it would come from.
9. It follows therefore that neither Mr. Gallichan nor Mr. Waddington made any misrepresentations to the Planning Officers as to the fact that material would be required to be imported to the site.

#### 4. Concerns of ESU

From the memorandum dated 8th April 2003 from Mrs. Le Claire it is clear that ESU had a number of serious concerns about the First Application. She proposed that further information should be requested before the Sub-Committee considered it further. As an alternative, she suggested that if the Sub-Committee was minded to approve the application, then a condition should be placed on the consent requiring consultation with ESU. This is of course what eventually happened on 25th September 2003. These concerns were conveyed to Mr. Waddington in Miss Baxter's letter dated 29th May 2003. He addressed them in his reply dated 14th July 2003. A copy of that letter was not sent to ESU and that Section had no further involvement in the First Application.

It is important to note that although these concerns were summarized in Miss Baxter's report dated 3rd September 2003, and she did mention that ESU had commented on the general lack of information, there was no specific mention made of the concerns regarding the material to be used for the infill or the volume of traffic which might be expected. Although this was an unfortunate omission in hindsight, I accept her explanation that at the time of writing the report, she felt that there was no reason why specific references to traffic and the source of material should be made, because these were, to a certain extent, secondary to the actual principle of infilling the valley. It was the scale of the development which was her cause for concern and this was clearly shown in the section of her report entitled "Scale of development" and in the section entitled "Summary/Conclusion".

#### 5. The Sub-Committee meeting held on 10th September 2003

Present at the meeting were Deputies Hilton, Taylor and Le Main, Mr. Le Gresley, Miss Baxter and Mrs. Tremellen-Frost. Neither Deputies Hilton nor Le Main had had any involvement in the First Application prior to the meeting on 10th September 2003. Deputy Taylor, in his capacity as a member of the Environmental Development Unit, had been advised of the First Application by Mr. Le Mottée earlier in the year. He had been to visit the site with Mr. Le Mottée and Mrs. Hilary Robinson, Support Officer to Mr. Le Mottée, sometime in April 2003. It was explained to Deputy Taylor by Mr. Le Mottée that the Gallichans were a well-established farming family, with a son who wanted to remain in farming, and that because supermarkets were demanding higher standards of quality in the potatoes grown by Mr. Gallichan, he wanted to create a reservoir in the corner of the field in order to irrigate not only the fields, but other fields which he occupied in the vicinity. All members of the Sub-Committee agreed that the application was not discussed in great detail as it was decided to visit the fields before reaching a decision. This was confirmed by the planning officers and Mrs. Tremellen-Frost. Memories were, understandably, hazy after such a long period of time as to the exact documentation available to the Sub-Committee at this meeting but subsequent to the public hearing, Mr. Young found the agenda papers for 10th and 25th September 2003 in bound form which I have now seen. Miss Baxter's report, a location plan upon which fields leased or owned by Mr. Gallichan in the vicinity were highlighted, the site plan submitted by Mr. Waddington with the First Application in March 2003 (not the amended site plan which was enclosed with his letter dated 14th July 2003) and the letter dated 7th April 2003 from The National Trust were available to the Sub-Committee.

#### 6. Site visit on 25th September 2003

The documentation available to the Sub-Committee on 25th September 2003 was Miss Baxter's report, the same site plan, an aerial photograph of the fields and the section A-A which Mr. Waddington submitted with the application in March 2003. The letter from the National Trust was not included but this omission was not material as the Sub-Committee had previously seen the letter and attention was drawn to it in Miss Baxter's report. In any event all members of the Sub-Committee referred to the letter at the inquiry. Save for Deputy Le Main, all agreed that Mr. Gallichan provided an additional document in support of the First Application at the site meeting. The

Sub-Committee attended on site in the morning of 25th September 2003 together with Mr. Townsend Miss Baxter, Mrs. Tremellen Frost, Mr. Gallichan, Mr. Gallichan junior and Mr. Waddington. Although understandably it was difficult to recall in detail the events of the meeting, all agreed that they had eventually stood on the eastern side of the valley and discussed the proposals.

The recollections of that site meeting are as follows –

#### Deputy Hilton

- Mr. Gallichan explained that he was a long-established farmer and he hoped his son would take over the business.
- Due to improved standards required by supermarket protocols the reservoir was needed for irrigating the fields in that area.
- There was a discussion about the depth of the actual reservoir as there seemed to be a discrepancy between the planning officer and the architect.
- Mr. Gallichan explained that there would be movement of earth from the area where the reservoir would be constructed to the valley.
- The impression was gained that Mr. Gallichan required the reservoir to be in place for the following season.
- She equated the figure of 50,400 cubic metres or 1.8 million square feet to what was actually happening on site and not to any material being brought in from outside.
- The report produced on site confirmed her understanding that the application was based purely on agricultural grounds.
- She had read in the report produced by Mr. Gallichan that a certain amount of fill would be coming from the applicant's holding at St. Peter but the initial material would come from the excavation of the reservoir.
- The question of vehicle movements was never raised. If it had been that would have alerted her to the fact that the bulk of the infill was coming from somewhere else.
- She had major concerns about the comments raised by ESU and wanted to be sure that these concerns were dealt with.

#### Deputy Taylor

- The application was based on the overriding need for a reservoir to irrigate the fields surrounding the area. This was paramount to produce good crops for the supermarket's protocols.
- The overwhelming impression was that the work would be done inside the fields.
- There was no mention of any traffic movement in and out of the site or that there would be thousands of truck loads of infill.
- Figures in the context of the work described meant nothing to him.
- There was mention of a depth of 25 metres which he thought was the depth of the bank which would create the reservoir and he was told that it would be 25 feet not 25 metres.

- The applicant and his son wanted to stay in agriculture.
- There was so much emphasis on the sloping field that everything else rather got pushed into the background.
- The impression was that the reservoir was needed for the 2004 potato season although no-one actually said that.
- He did not feel the need to walk around the site as he could see the sloping field and where the reservoir was needed.

#### Deputy Le Main

- There was a full discussion.
- Mr. Waddington gave a full explanation and questions were asked of both Mr. Gallichan and his son.
- The proposal was to excavate the area on the west side and make a huge reservoir and build up a very high bank on the south side of the site.
- It was never explained that inert materials would need to be brought in from off site.
- The first time he saw the report prepared by Mr. Gallichan was at the time of the censure debate in the States.
- There was a dispute about a figure of 25 metres.
- He had no recollection of timescale being mentioned.
- There was no mention of traffic.

#### Mr. Townsend

- The Sub-Committee was reminded why they were on the site visit.
- The nature of the application was explained – the 2 main elements being the creation of the reservoir and the levelling of the field.
- He did not recall any direct discussion about materials to be used.
- He felt that it was obvious that some materials were needed from outside.
- He could not recall any mention of traffic.
- Mr. Waddington clarified the figure of 25 metres.
- Mr. Gallichan summarized verbally the content of his additional document.
- Miss Baxter referred to the figures she had prepared and her reference to Queen's Valley dam and the area of fill being the size of 3 football pitches.

#### Miss Baxter



- Whilst on site she had mentioned some of the figures she had prepared in order to illustrate the scale of the proposed development.
- She was fairly sure that she mentioned the maximum fill depth illustrated on the section as being 25 metres an equivalent height to the Queen's Valley Dam.
- There was a discussion with Mr. Waddington about the figure of 25 metres.
- She could not recall the infilling or timescale being discussed.
- She could not recall anything specific occurring on site that would have made the Sub-Committee consider the application more favourably.

Mrs. TremellenFrost

- She recalled a very strong case being put forward by the applicant based on the fact that the reservoir would enhance the agricultural situation and that was the reason for the application.
- She could not recall the planning officers giving too much information on site and could not recall any discussion about the depths and height, infill or traffic.

Mr. Gallichan

- He recalled Miss Baxter mentioning a depth of 25 metres and what a shock it had been. He recalled saying that the correct figure could not be 25 metres as that was 80 feet. It would be more like 25 feet or 25 metres and he asked her where the figure had come from. Miss Baxter said that she had taken it from the section provided by Mr. Waddington.
- It was not difficult, standing there in the fields, to get a reasonable impression of what the height of the field would be.
- There was no discussion about the volume of infill which would be required – he thought it was elementary, taken as read, and he felt that it would have almost been an insult to the intelligence of the Sub-Committee to mention it. He assumed that people would have a reasonable understanding of why they were there.
- If he had been asked about it he would have answered correctly.
- He did not recall any discussion about importing material to the site.
- He was there to assist and answer any queries the Sub-Committee raised.
- He knew that there had to be reasons why the First Application was recommended for refusal and that is why he had tried to incorporate everything he could into his report.
- He mentioned that he had had an idea about creating a new temporary access towards the northern end of field 527 in order to alleviate disruption to the properties bordering on the southern side of the field although a new access would be of no benefit to the project itself. He suggested that he could create a track along the northern boundary and make a bank to screen the roadway from the properties. He felt that no-one seemed to be interested or concerned about the idea.
- He had offered to walk around the fields with the Sub-Committee but the offer was declined.
- He got the impression that the Sub-Committee was on a very tight schedule and was under pressure time-

wise.

- He was disappointed that more notice was not taken of his report at the site meeting.

#### Mr. Waddington

- He recalled stopping in 2 places in the fields. At the first place, attendees were scattered but at the second place, there was a tighter formation of the group.
- He recalled at the site visit thanking the Sub-Committee for allowing Mr. Gallichan and himself to present their case and that the site visit would be useful in order better to comprehend the scope of the proposed project and the difficulties that the geography of the fields posed from an agricultural point of view.
- Deputy Hilton asked Miss Baxter to explain her concerns about the First Application and Miss Baxter stated that her main concern was the depth of 25 metres. Mr. Gallichan had intervened and stated that it could not be 25 metres but more like 25 feet. Mr. Waddington realized that the erroneous figure had been taken from the site section which he had submitted and the scale should have been in feet not metres.
- Mr. Gallichan used features in the fields such as bushes or rows of hedges to indicate the extent of the site. He indicated where the level of infill would eventually settle and this was very useful because he could physically see what he was trying to indicate on the drawings.
- Mr. Gallichan described the beginnings of the proposal to create an alternative access to minimize disruption to the houses.
- He went on to explain the agricultural reasoning behind the application.
- He believed it would be naïve to assume that the reservoir excavation alone would provide all the infill needed. He had made this clear in his letter dated 14th July 2003. He noted that Mr. Thorne had made a similar comment after his examination of the file.

Mr. Gallichan had offered to walk around the fields with the Sub-Committee but the offer was declined.

- He felt that the Sub-Committee departed in quite a positive mood. Certainly Deputy Le Main seemed much more comfortable with the project.
- The matter of material being imported in was not mentioned by Mr. Gallichan or himself as they had taken it as read that this was evident.
- It was a good humoured meeting, not controversial and no probing questions were asked of him.

#### 7. Meeting of the Sub-Committee held on 25th September 2003

The recollections of the attendees at this meeting were as follows –

##### Deputy Hilton

- The application was discussed and the Sub-Committee was sympathetic to the agricultural case put forward.
- No concerns had been expressed by the Parish or any neighbours.
- This was a bona fide application by a farmer and the Sub-Committee was conscious of the need to try and support the farming industry.

- Agriculture and Fisheries wholly supported the application.
- The Sub-Committee was appraised of the lack of information.
- There was no mention of lorry movements in and out of the site.
- On balance the application should be approved in principle provided the concerns of ESU were met.

Deputy Taylor

- There had been no complaints from the Parish, the Roads Committee or the residents.
- There was an overriding need to try and help agriculture within the constraints of the Island Plan.
- The list of environmental issues needed to be addressed and met before any work could start.
- He was appraised of the minimalistic amount of information.
- There was no mention of traffic.

Deputy Le Main

- It was a worthwhile application in view of the support the Committee was trying to give to farming.
- It was an on-site development and if all the environmental issues were met there was no objection to granting a permit in principle.
- He was not made aware of the need to bring in material from off-site.
- He agreed that the Sub-Committee were appraised of the minimalistic information available.
- He was satisfied that an in principle permission could be granted on the basis that all environmental issues and the issues raised by the National Trust could be allayed.

Miss Baxter

- She could not recollect much of the detail of the meeting but she would have gone through the report.
- Plans would have been displayed on a board.
- She was aware that members of the Sub-Committee had copies of Mr. Gallichar's report.
- No plans were approved as part of the First Application.

Mrs. Tremellen-Frost

- She recalled the officers advising the Sub-Committee of the insufficient information available and that further information was required on environmental issues.
- She remembered that there was a fairly substantial report from the planning officer and that the officer was recommending refusal.

Mr. Le Gresley

- He could not recall any details of the meeting.

8. The decision made

All 3 members of the Sub-Committee confirmed that no-one other than Mr. Gallichan, Mr. Waddington and the planning officers had made representations to them.

As previously stated, there is no doubt that an examination of the documentation on the file clearly shows the nature and extent of the work which was proposed in the First Application. However, the Sub-Committee at the meeting on 10th September 2003, the site visit on 25th September 2003 and the subsequent meeting did not have copies of the complete file in front of them. It is therefore necessary to look carefully at the contents of the documents which were available to the Sub-Committee to ascertain exactly what written details were in the Sub-Committee's possession on 25th September 2003. I have extracted those details from the summaries in Appendices 16 and 17 and underlined pertinent points –

7th April 2003	<p>Letter from the National Trust:  <u>“The Trust has viewed the plans indicated regarding this extensive proposed development and wishes to make the following comments;</u>          Firstly, owing to the <u>extensive area which will be involved</u>, the Trust questions the general effect on the environment.          Secondly, there seems to be a general lack of information regarding the <u>necessity of the levelling of the fields</u>.          Thirdly, the Trust wonders why a second water storage area has become necessary”</p>
3rd September 2003	<p>Officer Committee Report          Description <u>“Infill fields 520, 521, 528 and 527”</u></p> <ul style="list-style-type: none"> <li>• <u>“This large scale proposal would have a detrimental impact on this site and the surrounding area</u></li> <li>• The application would involve <u>infilling the valley to form a naturally filling reservoir at its head</u> <u>The surrounding fields would be in-filled to a depth of between 1 and 25 metres</u></li> <li>• <b>Scale of development:</b> <u>The proposed reservoir would involve a large amount of excavation and infilling before it could be formed...a conservative estimate of the quality (sic) of in-fill required is 50,400m<sup>3</sup> (or 1.8 million cubic feet).</u></li> <li>• <u>Some areas of infill would raise the existing level by up to 25 metres.</u></li> <li>• <b>Summary/Conclusion:</b> <u>This large scale proposal would have a detrimental impact on this site and the surrounding area</u></li> <li>• <b>Reasons:</b> <u>The site falls in the Countryside Zone where there exists a presumption against any new development. The proposal by virtue of its size, scale and visual intrusion would have an unreasonable impact on this area of countryside”</u></li> </ul>
Document entitled “Planning application to	<p><u>Background</u></p> <ul style="list-style-type: none"> <li>• <u>“In common with most of the few remaining commercial agricultural holdings within Jersey, the</u></li> </ul>

safeguard the future agricultural viability of fields at La Guerdainerie and related areas” supplied by Mr. Gallichan

Gallichan farm is dependent upon the production of Jersey Royal new potatoes. The market place is global with a sophisticated and increasingly demanding customer base.

- This places great emphasis on the ability to produce a high-quality potato crop to exacting standards with a blemish-free skin a pre-requisite to meeting such quality demands.
- The ability to irrigate the crop is essential to meet these requirements, both throughout the growing cycle and also immediately prior to harvest in order to greatly reduce levels of damage, when even the merest nick to the skin may exclude the tuber from meeting customer quality standards.
- The ability to irrigate as high a proportion of crop production as possible is therefore seen as essential and an increasingly important priority to help safeguard a successful future for the farm.
- The provision of a self-filling reservoir at La Guerdainerie is integral to this aim and at the same time affords the opportunity to improve soil quality and manageability, through alterations to field levels, of land that is otherwise becoming increasingly marginal through its topography and high clay content in certain areas.

#### The need for the project

- Average rainfall figures indicate that Jersey is experiencing wetter winters and drier summers. This increases both the farm’s need for summer irrigation and the need for greater water storage capacity.
- During the past week the applicant has been given a Jersey Royal programme by a major U.K. multiple with very high quality standards which further emphasises the necessity of irrigating as much of the crop as possible.
- The proposed work helps to safeguard the commercial viability of agricultural land by providing the means to irrigate over 70 vergées in and around La Guerdainerie.
- The proposed work also helps to safeguard the commercial viability of an additional 10 to 12 vergées of agricultural land by enhancing its topography and soil condition, which over 20 years of ownership has become increasingly untenable as the parameters for survival within agriculture have become ever more challenging.

#### Summary of proposed works

- The initial infill material will come from the excavation of the reservoir itself and form the farm’s existing development at its St. Peter site.
- Further material will come from properly cleaned and screened locally sourced suitable waste material.

- Construction traffic has good access to the site from the main road.

Compatibility with Island Plan 2002

- The application maintains agricultural land in agricultural use and therefore “will not unreasonably affect the character and amenity of the area”
- The application helps safeguard the future use of agricultural land for crop production and therefore “will not have an unreasonable impact on agricultural land”
- The project “makes efficient use of construction and demolition materials to avoid general waste and to ensure the efficient use of resources

Summary

- The site is an agricultural field before the project commences and would be a better quality and more viable agricultural field plus reservoir on completion.
- By granting approval the applicant can then proceed to take this agricultural project to a successful completion”

The Sub-Committee also had the site plan and the vertical cross-section submitted by Naish Waddington. It is unfortunate that the Sub-Committee were not provided with the site plan which accompanied Mr. Waddington's letter dated 14th July 2003 which gives a clearer picture of the area to be infilled but nevertheless it is clear from the cross section that a depth of 25 metres was anticipated.

It is interesting to note that from a mere examination of the plans submitted, the National Trust described the application as “this extensive proposed development”.

It is understandable that considerable relief was felt when it was realized that the figure of 25 metres was meant to be 25 feet, but 25 feet in itself is a substantial depth. Having felt relief that the project was not on the scale at first thought, the Sub-Committee did not go on to consider what the development would actually involve, notwithstanding that there were sufficient indications in the documentation to draw the Sub-Committee's attention to the fact that this was a fairly substantial application. Unfortunately there was no reference to time scale, traffic and materials specifically mentioned in Miss Baxter's report but the figures of 50,400m<sup>3</sup> and 1.8 million cubic feet should have raised questions in the minds of the Sub-Committee. Miss Baxter's report clearly sets out why the application, in her opinion, was contrary to policies G2 and C6 of the 2002 Island Plan. The Planning Officers, Mr. Gallichan and Mr. Waddington all felt that it was obvious from the documentation and on site that the materials to be excavated from the reservoir would not be sufficient to infill the fields and that materials would need to be imported. Deputy Hilton herself said that she had read in Mr. Gallichan's report that a certain amount of fill would be coming from the applicant's holding at St. Peter but the initial material would come from the excavation of the reservoir.

It must be remembered that this report is not being prepared with hindsight. It is clear from the evidence and from the paperwork that the application for the reservoir to be created and the fields to be levelled was put forward by Mr. Gallichan and Mr. Waddington and supported by Deputy Taylor on the basis that it would be of long term benefit to agriculture. The Sub-Committee quite rightly wanted to assist in any way it could. There was nothing in the evidence from any party which leads to the conclusion that the Sub-Committee was misled at any time as to the nature of the application. It is difficult to understand why the Sub-Committee, with the documentation available to it, did not realise that material would have to be imported.

The Sub-Committee was reminded by Miss Baxter at the meeting at the planning office of the lack of information provided and the recommendation that the First Application should be refused. There were plans and drawings

available. The Sub-Committee obviously had concerns about the First Application and therefore granted in principle permission subject to the applicant satisfying any demands of the ESU. The Sub-Committee does not appear to have taken into account the reasons why Miss Baxter had recommended refusal, namely that the development was contrary to policy and by virtue of its size, scale and visual intrusion, it would have an unreasonable impact on the area. It seems to have played down or even ignored the planning side of the application on the basis that each member thought it was not "as bad as it was at first thought". However, the members of the Sub-Committee openly remarked that the figures meant nothing to a lay person, another said he was not a civil engineer. The fact that the figures meant nothing, the details provided in the paperwork available and the site visit should have raised questions in the minds of the Sub-Committee as to the exact scale of the development. This emphasizes, with no disrespect to the Sub-Committee, but as a general comment in respect of all applications, the danger in not following the advice of the professionals who have studied the application in detail and made their recommendations by applying their expertise to each application. Recommendations as to the procedure which should be adopted in future similar situations appear later in this report.

Deputy Taylor stated at the inquiry that he felt that various people had been economical with the truth, he was not presented with all the facts and he felt that other people did know the significance of passing the site but that he did not. I do not believe that anyone was hiding anything from the Sub-Committee. I do agree with him that other people knew the significance of passing the site. The planners did and that is why they recommended refusal.

Whether or not the nature of the project changed because of subsequent events and the question as to whether or not had the information which subsequently came to light been available on 25th September 2003 a different decision would have been reached, will be dealt with later in this report.

The recommendation for refusal was correct and the permit should not have issued for the reasons set out above.

## **The Second Application**

### 1. Chronology of events

1. The Second Application was submitted to the Department on 31st October 2003 (Appendix 18). The description in that application form was "Form temporary access to field 527, culvert stream, form new natural filling reservoir and fill valley to raise fields 519, 520, 521, 524 and 528 to upgrade soil quality and manageability". Four drawings were submitted as part of the application namely, a topographical survey, site layout plan, sections and site volumes and a photomontage view. The average fill depth was stated to be 2 metres over an area of approximately 24,000 square metres.
2. The application was screened by Mrs. Elke Schlandt and the standard letters were sent to the Agriculture and Fisheries Department, ESU, PSD Highways and the Constable of the Parish of Trinity on 4th November 2003. Although there is a letter on file to PSD Highways, it is clear from the evidence that the letter was referred internally to the Drainage Section and not the Highways Section.
3. Details of the Second Application were published in the Jersey Evening Post on 7th November 2003 (Appendix 19).
4. On 11th November 2003 the Constable replied confirming that he had no objection to the proposals.
5. At the request of Senator Frank Walker, a meeting was held at Mr. Gallichan's farm in St. Peter on 11th November 2003 to discuss various matters not relevant to the Second Application.
6. PSD Drainage Section replied on 12th November 2003 advising that the drainage engineers would need to approve the proposals for the culvert and that measures should be taken to ensure that flow conditions in the existing brook downstream of the landfill remained unchanged.
7. On 14th November 2003 Mr. Le Mottée confirmed that he still supported the application and had nothing further to add to his memorandum dated 25th April 2003.

8. On 17th November 2003 a letter dated 14th November 2003 was received from Mr. and Mrs. Jehan, who at that time were intending to purchase the property "Ste. Maxime" which is situated immediately to the south of field 527. Whilst Mr. and Mrs. Jehan stated that they were not against the principle of infilling the natural valley part of the fields, they raised concerns about the volume of traffic which would be involved and the recycling of material on site.
9. On 17th November 2003 an e-mail was received from Mr. Mike Freeman, an ecologist in ESU, requesting a method statement and more information. His opinion at that time was that the application should be refused or at least that further information was required (Appendix 20).
10. On 26th November 2003 Miss Fairfax confirmed that she had no further comments to add to her letter dated 17th May 2003.
11. On 3rd December, 2003, Mr. Naish telephoned Miss Baxter to request an update of progress during which they discussed the comments which had been made by ESU and Miss Fairfax. As a result of the conversation, Mr. Naish wrote to Miss Baxter on 3rd December 2003 (Appendix 21).
12. Mr. Naish wrote again on 5th December 2003 confirming that he had spoken to Mr. C. Sampson at PSI who had advised him that PSD do not become involved in private projects although assistance would be provided with regard to the culvert.
13. Mr. Freeman's requests for information were repeated in a memorandum dated 10th December 2003 from Mrs. Le Claire (Appendix 22).
14. Between 16th and 17th December 2003, there was an exchange of e-mails between Senator F.H. Walker and members of the Department and the Committee (Appendix 23).
15. On 17th December 2003, Mr. Naish wrote 2 further letters to Miss Baxter providing further information and advising her that the anticipated time scale for the completion of the project would be 3 years (Appendix 24). These were copied to ESU on 18th December 2003.
16. Between 18th and 19th December 2003 there were further e-mail exchanges between Senator Walker, Deputy Dubras, Deputy Taylor and members of the Department (Appendix 25). Also on 18th December 2003 there were various telephone conversations between Deputy Dubras, Mr. Young and Mr. Thorne. Mr. Thorne visited Mr. Gallichan at his office to discuss various projects with him, including the Second Application.
17. The development permit was issued on 19th December 2003 with 10 conditions (Appendix 2).

2. Information provided on behalf of Mr. Gallichan with regard to the description, purpose and objectives of the Second Application

31st October 2003

The Second Application form

- "Form temporary access to field 527, culvert stream, form new natural filling reservoir and fill valley to raise fields 519, 520, 521, 524 and 528 to upgrade soil quality & manageability"
- New vehicular access required

18th December 2003

E-mail from Senator Walker to Deputy Taylor

"He is also of course one of the very few Jersey farmers who, when he has resolved his financial difficulties, wants to invest in his farm and hand it over to his son who, highly unusually these days, wants to continue in farming".



The Second Application was submitted on behalf of Mr. Gallichan by Mr. Naish. There is no evidence that any questions were asked of either Mr. Naish or Mr. Gallichan as to the purpose and objectives of the development.

The address of the property to be developed on the application form was the same as on the First Application. As far as Mr. Naish was concerned, there was no need for it to change as the site itself had not changed.

The description of the proposed development had changed and Mr. Naish explained that this was because he was providing more detailed information and it was reasonable for there to be a more detailed description. The application had been screened following the usual process but the screening officer had not felt the need to amend the description as in the case of the First Application. Mr. Naish and Mr. Gallichan had discussed the idea which Mr. Gallichan had had at the time of the site visit, namely the creation of a new temporary access away from the neighbouring properties in order to attempt to minimize disruption to the neighbours, and this was now included in the Second Application.

Miss Baxter confirmed that she had no concerns about the description of the application. She would have expected it to change slightly on a detailed application because details of the project had been refined and more information was therefore available.

Senator Walker's comment in his e-mail dated 18th December 2003 was a straightforward statement of fact and cannot be deemed to be a misrepresentation.

Mr. Gallichan countersigned the Second Application form but made no comments or statements on the nature of the project itself or the description of the address or the site.

### Conclusion

No representation or misrepresentation was made to any member of the Department with regard to Mr. Gallichan's intention to return the field to agriculture after completion of the development during the period that the Second Application was being processed. Neither was there any misrepresentation with regard to the address of the property to be developed. The address was consistent in both application forms. The forms specifically ask for field numbers to be included in the description. There was nothing more that Mr. Waddington could reasonably have been expected to insert in order to identify the site.

### 3. References with regard to the description of the materials to be used, their source and volume

References in the materials to be used, their volume and source are to be found in Appendix 26.

Even though the plans and other drawings submitted with the Second Application still do not provide the detailed information required by the Department, nevertheless they do give an impression of the scale of the infill. A more accurate figure had been provided of the volume required which was not much different from the initial figure of 50,400m<sup>3</sup>.

There is no need to go through the information provided by those persons who attended the inquiry as it is clear from the documentation referred to in Appendix 26 that everyone involved in the Second Application was well aware there would be a significant amount of infill required and that it would have to be imported onto the site. There is nothing to show that any attempt was made to disguise this fact. It is also clear that the Department, in particular, ESU, had concerns as to the nature of the material to be imported and the resulting effects on traffic movement. These concerns were dealt with in the conditions attached to the development permit.

### 4. Concerns of Environmental Support Unit

The outstanding concerns of ESU with regard to timescale, method of the works, treatment of the southern boundary, the culverting of the stream, the effect on the environment and so on, were clearly set out in the e-mail from Mrs. Le Claire (Appendix 22) and do not need to be repeated here.

5. Progress of the Second Application up to 15th December 2003

It is important to consider the stage reached in the Second Application process as at 15th December 2003 when Senator Walker spoke to Mr. Thorne.

The position was as follows –

1. The Second Application had been with the Department for 6½ weeks.
2. ESU had concerns which, as far as members of the Section were concerned, had not been addressed in sufficient detail.
3. Mr. Freeman, in his e-mail dated 17th November 2003, stated that he thought the application should be refused or at least much more information was required.
4. The opinion that the application should be refused did not appear in Mrs. Le Clair's memorandum dated 10th December 2003 although the remainder of the memorandum was identical to Mr. Freeman's e-mail. She recollected that she had discussed the matter with Mr. Freeman in the interim period and they felt that as permission in principle had been granted, they should be looking for more information before necessarily recommending a refusal. She believed that once an application had been agreed in principle the full application tended to be approved.
5. Mr. Pinel had concerns which he raised at the time of the First Application but he said that, at that stage he did not feel that the application should be turned down outright as long as conditions were set and met by the applicant. He agreed with the points made in Mr. Freeman's e-mails and agreed that further information was needed.
6. Miss Baxter was not satisfied with the information that she had received from Mr. Naish.
7. As stated previously, Mr. Thorne and Mr. Le Gresley confirmed that an in principle decision would not be overturned if (a) the decision was flawed in some way, or (b) if incorrect information had been provided, or (c) if it was shown that officers had acted incorrectly or (d) if the detailed application was fundamentally different from the in principle application. Clearly no member of the Department was aware of the existence of any such circumstance as at 15th December 2003 and therefore it must follow that at that time, there was no cause for revoking the in principle decision.

6. Progress of the Second Application between 15th and 19th December 2003

Having reached the conclusion in the previous paragraph, it is necessary to consider exactly what happened during this period in order to decide whether or not any of those events altered the position in any way. To summarise from the information provided by the parties concerned at the inquiry and from the documentation –

1. Senator Walker knew that Mr. Gallichan had submitted the application to create the reservoir and level the fields in March 2003 but he had no direct involvement with the process until 15th December 2003. As a close friend of Mr. Gallichan he was aware of his financial situation and he was also aware of Mr. Gallichan's concerns about the length of time the application was taking.
2. Senator Walker had seen some of Mr. Gallichan's correspondence and the report which Mr. Gallichan had provided at the site meeting. He was well aware that this was an agricultural scheme which would require substantial infilling. He knew that some of the infill material would be excavated from the reservoir but that other material would need to be imported to the site. He believed that the volume would be substantial but he was not aware of any figures until he received a copy of Miss Baxter's report at a much later date.
3. Senator Walker had offered to see if he could move matters forward on behalf of Mr. Gallichan. Mr. Gallichan initially refused, as the Second Application had not been with the Department for very

long. He thought it fair to give the Department 6 weeks to consider the Second Application but after that period had expired and he still had no permit, he did ask Senator Walker to assist.

4. Senator Walker's first direct involvement with the Department was at the end of a meeting on an unrelated matter on 15th December 2003. Senator Walker mentioned Mr. Gallichan's application, told Mr. Thorne that he was concerned about the delay, as the Second Application had been in for several weeks, and asked Mr. Thorne to look into it. Mr. Thorne confirmed this conversation and added that Senator Walker had impressed upon him the need for Mr. Gallichan to receive a decision on the Second Application. Deputy Dubras overheard the conversation and asked Deputy Hilton if she knew anything about the Second Application. She advised him that the Sub-Committee had met on site and had issued the in principle permit.
5. On 16th December 2003 Senator Walker e-mailed Mr. Thorne stating that he had expected to hear from him the previous afternoon and requesting an update as soon as possible. Mr. Thorne replied advising Senator Walker that further information was still required from the architects. He said that he would ask Miss Baxter to deal with it as soon as possible.
6. Senator Walker's e-mail to Mr. Thorne dated 17th December 2003 remarked on the delay in processing the application and he could not emphasise too strongly the need for Mr. Gallichan to know the outcome of the Second Application. He went on to ask if Mr. Thorne would ensure that the matter was dealt with that week under delegated powers. He said at the inquiry that he knew, from previous experience, that once a decision in principle had been taken by a Committee or a Sub-Committee that it is usual practice for an application to be dealt with under delegated powers where it is in accordance with Committee policy or accords with an earlier decision of a Committee or Sub-Committee or where a development application follows a previous planning permission.
7. Senator Walker made the point at the inquiry that he was not asking Mr. Thorne to give consent to the Second Application but just asking for a decision to be made one way or the other. He was asked what his reaction would have been if Mr. Thorne had told him that for some reason a decision could not be made and he replied "I would have had no other choice than to accept it". He would have accepted Mr. Thorne's decision, as a highly respected Planning Officer, if that decision had been that the application had to be referred back to the Sub-Committee or the Committee but he would have asked Mr. Thorne to ensure that it was dealt with without too much further delay.
8. Mr. Thorne replied, "Will do", by which he said he meant that if there were no problems with the Second Application, he could see no reason why it could not be dealt with under delegated powers. He spoke to Miss Baxter who explained the nature of the information which was still required. His professional view was that as the in principle permit had issued, once the information received satisfied the concerns of ESU, there was no reason why the detailed application should not be determined under delegated powers.
9. On 18th December 2003, Senator Walker sent an e-mail to Deputy Taylor, copied to Deputy Dubras, about another matter concerning Mr. Gallichan which is not relevant to this inquiry. He also mentioned the delays in relation to Mr. Gallichan's "landfill" application, the fact that Mr. Gallichan was under severe financial pressure and that this could be resolved if the permit for the infill site could be delivered that week. He stated that Mr. Gallichan needed help and he hoped that it could be given.
10. Deputy Dubras then became involved. He replied to Senator Walker saying that he read into the e-mail a high degree of desperation and further that he would urge the Department to deal thoughtfully with the application and also to deal with the application by Friday (19th December 2003) if at all possible. Deputy Dubras openly stated that he had no knowledge of the details of the Second Application but he was concerned that if there had been a delay in the processing of the application, the delay might be contributing to Mr. Gallichan's anxiety. This e-mail was copied to Deputy Hilton, who would be Acting President in Deputy Dubras' absence from the Island over the Christmas and New Year period, and also to Deputy Taylor. Deputy Taylor asked Mr. Thorne to process the application fairly quickly as Mr. Gallichan wanted "it", presumably the reservoir, in place for the next season. Mr. Thorne replied that the permit would be issued in the next few days although further information was still required from

Mr. Gallichan's agent.

11. Mr. Thorne spoke on the telephone with Deputy Dubras on 18th December 2003 to discuss the matter Deputy Dubras did not know a great deal about the Second Application at that stage and was calling to seek that information. However it was clear that Deputy Dubras was concerned about the situation, and whilst it was not an instruction, as such, he made it clear that, if at all possible, he would like the decision to be issued before Christmas. Mr. Thorne did not feel pressurized by Deputy Dubras— he was the President of the Committee, he had asked if the Department had any particular outstanding concerns and if not, he asked if it would be possible to issue the permit.
12. In answer to a question as to whether or not Mr. Thorne felt bullied or pressurized in any way by Senator Walker, Mr. Thorne replied, "Not particularly". It was clear to him that Senator Walker was expressing concerns about the time it had taken to deal with the application. He agreed that it was probably becoming overdue given that the principle had been established. However he was aware that despite the fact that further information had been received from Mr. Naish by that time, ESU still had concerns.
13. On his way home from work on 18th December 2003, Mr. Thorne visited Mr. Gallichan and Mr. Gallichan, junior at their office. This was not a usual occurrence. It had been suggested to him by Deputy Dubras that, given Mr. Gallichan's situation, it might be better to talk to him face to face about the Second Application and other unrelated matters, rather than deal with them in correspondence. Mr. Thorne had spent more time discussing the other matters than the Second Application. Mr. Gallichan confirmed this.
14. By e-mail on 19th December 2003 Mr. Thorne advised Deputy Dubras and Senator Walker that he had visited Mr. Gallichan and that the permit would be issued that day. The further information which had been received from Mr. Naish would be assessed by ESU with any outstanding matters being covered by conditions attached to the permit. Mr. Thorne said that he was not aware that there was anything fatal which could not be resolved in follow up after the permit had been issued.
15. As he was due to leave the Island that day, Mr. Thorne gave instructions to Mr. Le Gresley to deal with these unresolved matters by way of conditions. Miss Baxter drafted the conditions and these were checked and approved by Mr. Le Gresley. Mr. Pinel was asked for, and provided, his comments on condition 9.

7. Effect of interventions

1. Once again it must be remembered that this report is not looking at the situation in hindsight.
2. The intervention of Senator Walker and Deputy Dubras, and, to a certain extent, Deputy Taylor, undoubtedly had the effect of speeding up the decision-making process. However, there is no evidence that anything additional came to light between 16th and 19th December 2003 which would have given grounds to revoke the permit in principle for any of the reasons which have been previously discussed. The position remained the same at 11th February 2004 when members of the Committee were advised that there were no grounds for revoking the permit because the officers had advised the Sub-Committee of the true nature of the First Application in September 2003. Even if the matter had been referred back to the Sub-Committee in December 2003 the position would have been the same.
3. There was time pressure because of the impending holidays but the pressure did not alter the fact that there were no grounds to revoke the in principle permit.
4. There were time pressures on Miss Baxter to draft the conditions and on ESU to comment on and approve condition 9. However the conditions were checked by Mr. Le Gresley and he was satisfied that the outstanding concerns of ESU were covered by the conditions, as was Miss Baxter.
5. It was then and still is the case, that no work can start on the site until all of the conditions are met.

6. Both Senator Walker and Deputy Dubras asked for the application to be dealt with if possible – neither of them demanded that the permit should be issued regardless of any outstanding matters. They both accepted that the permit would not be issued if there were reasons why Mr. Thorne felt it could not be issued.

## **Events subsequent to 1st January 2004**

### Chronology of events

This chronology does not include details of all letters and representations received by the Department from residents in the vicinity of the fields. These will be considered later in the report.

1. On 2nd January 2004, a letter was sent to the Constable of Trinity advising him that the development permit had issued and setting out the conditions attached to the permit.
2. Deputy Taylor complained to Mr. Young on 16th January 2004 that his son-in-law had been offered the fields for sale as a landfill site. He felt that he had been misled as to the nature of the development.
3. Deputy Dubras was briefed about the complaint upon his return to the Island on 19th January 2004.
4. On 21st January 2004 the Constable replied to the letter dated 2nd January 2004, asking the Committee to ensure that applicants are told that they need to also apply to the Parish for consent to create entrances onto Parish bye-roads. He had by that time advised Mr. Gallichan that whilst the Roads Committee has no objection to the work being carried out, the Constable would expect Mr. Gallichan to make a contribution to the repair of the road once the tipping was completed (Appendix 27).
5. Deputy Taylor, at a meeting with Deputy Dubras, Deputy Hilton, Mr. Young and Mr. Thorne on 22nd January 2004, repeated that he felt he had been misled. Deputy Dubras telephoned Senator Walker to discuss the matter.
6. The file chronology was prepared by Miss Baxter on 26th January 2004 at the request of Mr. Young. On the same date, Mr Young advised Deputy Dubras and Deputy Hilton of information which he had gleaned up to that point.
7. On 11th February 2004, at the meeting referred to above, attended by Deputies Dubras, Hilton and Taylor, Senator Walker, Mr. Young and Mr. Thorne, it was concluded (a) that there were no grounds for rescinding the decision and (b) that the conditions should be strictly applied.
8. The fields were sold by Mr. Gallichan to Trinity Holdings Limited for the sum of £413,500 on 20th February 2004.
9. Membership of the Committee changed on 2nd or 3rd March 2004.
10. On 1st April 2004 Members of the Department became aware that the fields had possibly been sold. On the same day, Miss Baxter was advised by residents that machinery had appeared on the site.
11. Having ascertained that Mr. Cummins was now the owner of the fields, Miss Baxter wrote to him on 5th April 2004 emphasizing that no work could be carried out on the site unless the conditions had been complied with and that any proposal to change the approved access would have to be referred back to the Department.
12. On 13th April 2004 the Constable wrote to Mr. Thorne advising that the Roads Committee had refused consent to open a new access and had imposed restrictions on the road. Copy correspondence with Mr. Gallichan and Mr. Cummins was enclosed in that letter (Appendix 28).

### 2. Concerns of the residents

The residents of Trinity living near the fields did not become aware of the development until the end of March or the beginning of April 2004. Their concerns, queries and comments, taken from correspondence, written submissions and from the statement made by Major General Cornock on behalf of the residents about Mr. Gallichan's intentions throughout the process and after the permit had issued in December 2003, can be summarized as follows –

1. They understood that local building contractors had been offered the land for sale during 2003 before the permit had issued.
2. They believed that Mr. Gallichan had it in mind to sell the land for purposes other than agricultural use in 2003.
3. They suggested that negotiations between Mr. Gallichan and Mr. Cummins had commenced before the permit was issued on 19th December 2003.
4. There was no need for him to undertake this project when there is a surfeit of land available for rental in the Island.
5. They understood that the support given by the Agriculture and Fisheries Department was based on the fact that Jersey Royals would continue to be grown. The fact that Mr. Gallichan withdrew from the potato market so soon after the development permit was issued, suggested that he had deliberately deceived and misled the people involved in the process.
6. They believed that Mr. Le Mottée may have been misled or did not understand the extent of the proposed works.
7. Mr. Gallichan sold the land for a consideration considerably more than he could have expected to receive for poor quality agricultural fields.
8. Doubts were raised with regard to the ownership of Trinity Holdings Limited.

All of these matters were put to Mr. Gallichan and he answered them openly and frankly. The information provided by Mr. Waddington, Mr. Naish, Mr. Le Mottée, Mr. Gallichan, junior, Mr. Cummins and Mr. Je confirms what Mr. Gallichan said, as do the memorandum from Mr. Peter Luce, Solicitor, dated 9th July 2004 and the letter from Mr. T. Binet dated 13th July 2004.

### 3. Mr. Gallichan's intentions with regard to agriculture

Mr. Gallichan explained that both he and his son always had, and still have the intention of remaining in the agricultural industry. The only significant change that has occurred is that they no longer grow Jersey Royals. Due to the changing nature of the industry their plan is to reduce the number of sites from which they now operate, by selling two of the sites and investing the capital raised into the operation in Trinity.

The decision to cease growing Jersey Royals had nothing to do with the issue of the permit. Mr. Gallichan was approached by Mr. Binet on 24th January 2004 and asked if he would consider selling his potato growing packing and marketing interests to Jersey Royal (Potato Marketing) Limited, a company formed in December 2003 with the intention of becoming a vehicle to incorporate several farm operations. Both Mr. Gallichan and Mr. Binet stated that the Gallichan family was taken completely by surprise by the proposal. Negotiations took place and the deal was concluded on 19th February 2004. Subsequent to the sale of the potato interests, Mr. Gallichan and his son purchased all of the daffodil-producing capacity from the company and they are now seeking to increase their land base in order to produce those daffodils.

Mr. Le Mottée said that, as far as he was concerned, the Agriculture and Fisheries Department supported the project and still does, because at the completion of the development, there will be a good cultivatable field. There is a condition on the consent issued at the time of the sale of the fields to Trinity Holdings Limited that the land is

for agricultural use only. That condition will be waived temporarily so that the development can actually take place only after he has received and approved a schedule of proposed works.

Mr. Gallichan stated that once the project has been completed, he will probably buy the land back from Mr. Cummins provided that they can reach agreement on the price. Mr. Cummins confirmed this and he also confirmed that he is no doubt that the land has to be returned to agriculture at the end of the project.

4. Mr. Gallichan's intentions with regard to the way in which the development would be carried out

Neither Mr. Gallichan nor his son had considered in any detail how the project would be carried out until the in principle permit was issued, when, as he said "the project became live". At that time they were contemplating doing the work themselves, and as late as October 2003, they had obtained a quote for an excavator. In October 2003, Mr. Gallichan, junior had been approached by someone who had heard that the in principle permit had issued and having viewed the site, he quickly offered to do the work for nothing. The offer seemed to Mr. Gallichan to be too freely made and he decided to wait and see what happened. Two weeks later, that person again approached Mr. Gallichan and offered to do the work at no cost to Mr. Gallichan and also to pay him the sum of £50,000. Mr. Gallichan was astonished and began to make enquiries of his own. Other people approached him and he approached people he knew, asking for information and advice as to the best way in which to carry out the development. He then realized that they could do the project themselves not only at no cost, but they could probably make a reasonable amount of money as well. Mr. Jehan confirmed that his colleague had made the approach to Mr. Gallichan junior, not the other way round.

As time went on, Mr. Gallichan began to have doubts as to whether or not they could carry out the work themselves, as he was concerned that he would not be able to keep control over the development and the materials which would be used to infill the fields. He also had concerns about possible liability in the future as a result of pollution. He spoke to Mr. Luce about it and his son spoke to his insurance broker. At the time, one other possibility would have been to lease the land to a contractor but Mr. Gallichan would still have possible liabilities as the owner of the land. He realized that the work would have to be carried out by a person with the competence, ability and the equipment to do the job properly.

Mr. Gallichan had considered the sale of the land as a possible option but it was his least favoured option until the Constable telephoned him in January. The Constable had made it clear to Mr. Gallichan that he would, in effect be keeping an eye on the development and if anything went wrong he would be on the phone to Mr. Gallichan. Mr. Gallichan understood that this would be the case even if he was not carrying out the work himself. He quite openly said that he did not want to be in that situation and that it was the Connétable's attitude that was the deciding factor with regard to the sale of the field. A third party had suggested that he and Mr. Cummins should meet together and this they did on 12th January 2004. Mr. Cummins confirmed that this was the first time he had spoken to Mr. Gallichan about the matter. He said that Mr. Gallichan had asked for advice on the best way to proceed with the project and had asked him if he would like to become involved. Mr. Cummins obtained copies of the plans from Mr. Gallichan and then went back on 19th January 2004 to have further discussions. Mr. Cummins felt that the proper way for the work to be carried out would be for him to own the fields as he would then have complete control over the materials that went on to the site. As an agriculturalist himself he had a keen interest in ensuring that the work was carried out properly. Mr. Cummins made an offer which Mr. Gallichan thought was fair and the contract was passed before Court on 20th February 2004. Mr. Gallichan provided me with a copy of a letter setting out details of another offer which he had received whereby he would have retained ownership of the fields, had the work carried out at no cost to himself and in addition he would have received a sum of money greater than the figure he eventually received from Mr. Cummins. However he had decided not to take that offer because of his concerns about the Constable.

The information provided by Mr. Gallichan and Mr. Cummins clearly answers all of the points raised by the residents and there is no reason whatsoever to doubt what they said at the inquiry.

Written confirmation has been received from Le Gallais and Luce, who acted for both Mr. Gallichan and Mr. Cummins with regard to the sale of fields, that the company, Trinity Holdings Limited, was incorporated by Mr. Gallichan some years ago and it was intended to be used in a restructuring process which never took place. When the sale of the fields was agreed, Mr. Cummins indicated that he wished to purchase the fields in the name

of a company and Mr. Gallichan offered to sell Trinity Holdings Limited to him for a sum equivalent to the cost of incorporating a company. The shares in the company were transferred to Mr. Cummins on 19th February 2004 and no member of the Gallichan family retained an interest in the company.

5. Did the nature of the project change at any time?

The members of the Sub-Committee and the residents felt that the nature of the application or the project changed somehow throughout the process.

Mr. Cabot asked “How can this permit that was granted for the agricultural purpose of “soil improvement and manageability” be suddenly changed without notice to accommodate a hugely environmentally damaging commercial enterprise by a demolition contractor to have a landfill tip? It changes the use of the permit”.

The residents also felt that the sale of the land changed the nature of the application and that Mr. Gallichan should have notified the Department of his intention to sell before the permit in respect of the Second Application was issued.

Deputy Taylor said that he felt that “things fundamentally changed” at some time during the process. He believed that in the spring of 2003 this was just an application for a reservoir but, due to the fact that PSD raised their tipping charges significantly in the autumn of 2003, “various people” realised that this was something that could make people a lot of money and that this was when the whole process changed. He said that no-one on the Committee was aware of that, nor was anyone from the Parish.

Deputy Hilton believed that the application had been presented to the Sub-Committee in a “certain way and all along it was something entirely different”. She had been influenced by Deputy Taylor’s strong support of the application in his capacity as a member of Agriculture and Fisheries.

From the point of view of the officers in the Department, Mr. Waddington and Mr. Naish, not only were the First and Second Applications the same, but the nature of the project remained the same throughout.

Mr. Le Gresley had compared the First and Second Applications and was of the opinion that there was no material difference between the two. The Second Application was still to infill the fields and level them off so the “fundamental driving principle of the application” had not changed.

Mr. Townsend was asked to explain the difference, if he felt that there was a difference, between “infill” and “landfill” in the context of the First and Second Applications. The approach that he and Miss Baxter had taken to both applications was to look, as is normal with a planning application for physical development, at the long-term end result. In this case the end product was two-fold, namely, a reservoir and a more useful field for agriculture, both put forward on the basis of agricultural needs supported by Agriculture and Fisheries. The project was therefore dealt with as an agricultural development which was in accordance with Committee policy. He felt that there is a fundamental difference in approach as to how the Department would look at an application for an agriculturally related development and an application the purpose of which was, in effect, just to use a hole as a waste site. The fill operation or waste disposal operation in respect of this project would be for a relatively short period of time and would be the means of getting to the end product, namely a more viable field which would be of benefit to agriculture. A waste site is a different situation because the operation of the site is everything, the end product being to dispose of waste materials.

Miss Baxter confirmed that in her opinion, there was no change in the nature of the application throughout the process. The Second Application still involved the creation of a reservoir and the levelling of the fields. It was an agricultural improvement scheme.

From his examination of the file, Mr. Thorne was of the opinion that the nature of the application had not changed. The land was at all times intended to be used for agriculture in the long term. Mr. Thorne also confirmed that from a planning point of view, the ownership of the fields is irrelevant. The sale of the land did not constitute a change of use. Moreover, because of the nature of the work involved, he was not surprised that a specialist contractor would carry out the work. In his opinion that project had not changed at all. There were some



differences in the First and Second Applications in that the size of the reservoir was varied and the infilling area was varied but these were not material changes which would have caused officers to look again at the in principle permit.

As has already been said, the Sub-Committee clearly misunderstood the essence of the proposal and the extent of the work which would be involved in its implementation. It is understandable that they were concerned when they did appreciate what the project involved. Whatever the reason for that misunderstanding, it is clear that the nature of the project did not change in any way whatsoever. The planning officers involved were clear as to the nature of the development throughout, from the time the First Application was submitted. They were concerned about the scale of the development and the impact on the countryside but there were no material changes in the project throughout the process. There is no evidence to support Deputy Taylor's contentions that someone had realized that non-agricultural profits could be made and that this realisation had changed the nature of the application. Likewise the subsequent involvement of Mr. Cummins and the sale of the land had no bearing on the nature of the project.

## **General**

### **1. The involvement of the Connétable of Trinity**

No consultation letter was sent out to the Parish of Trinity with regard to the First Application because no new access to the fields was proposed.

On 11th November 2003 in reply to the standard consultation letter, the Connétable said that he had no objections to the proposals put forward. At the inquiry he confirmed that he knew where the fields were but he had not visited the site. He had not realised, at the time, that materials would have to be imported to the fields. When he looked at the plan he had seen an arrow pointing out where the new temporary access would be but he had not realized that this would involve the removal of the hedge. The Connétable received notification in January 2004 that the development permit had issued but he had not discussed the matter with the Roads Committee until he received information that "it was an infill or a landfill site". The Roads Committee then took the view that the temporary access was inappropriate and the Connétable contacted Mr. Gallichan to advise him the he must apply to the Roads Committee for consent to create the new temporary access. It is interesting to note that in his letter to the Department dated 21st January 2004, notwithstanding the fact that the Connétable was now aware that the project was on a larger scale than he had first thought, the Roads Committee had no objection to the works being carried out but it was concerned about possible damage being caused to the road. The Constable advised Mr. Gallichan that the Parish would look to him for a contribution towards the cost of any damage caused to the road once the "tipping" was finished. The Connétable and the Roads Committee believed that notwithstanding the fact that the Department might approve a new access onto a Parish road, the Roads Committee still had the final say as to whether or not that access should be allowed. Mr. Gallichan wrote to request permission to create the new access on 19th January 2004. The Constable met with Mr. Gallichan and Mr. Cummins on 4th March 2004 and advised Mr. Cummins that he would not get permission from the Roads Committee to create the new access and that he should apply for consent to widen the existing access. This Mr. Cummins did by letter dated 8th March 2004. The Connétable replied on 15th March 2004 setting out the conditions upon which the Roads Committee would grant consent to the widening of the existing access, one of which was that a restriction of 6 feet 6 inches had been placed on La Rue Guerdain and signs had been placed at either end of the road to this effect.

Mr. Alan Muir, Director of Traffic and Transportation, explained the procedure which should be followed when a Parish Highway Authority wishes to impose conditions on a Parish road. The procedure differs if the proposed condition is to be temporary or permanent but in either case application has to be made to the Committee and cannot be done by the Parish alone. Neither can a Parish deny access to a site. If a road has a six feet six restriction then a vehicle wider than that cannot use the road as a through route but it can use the road to get to premises situate along that road.

He also explained that an applicant does not have to obtain permission from a Parish for a new access after the Department has issued a permit, as the creation of a new access is development in itself. The Parish has the opportunity to comment on the application and make recommendations in its reply to the standard consultee letter.

In this case, the Connétable chose not to and therefore neither he nor the Roads Committee can now interfere with the development permit which has issued.

It is clear from the correspondence and from the evidence of the Connétable that both he and the Roads Committee misunderstood the position and have imposed certain conditions without authority. The mistaken stance taken by the Constable after the event was the reason why Mr. Gallichan agreed to sell the fields to Mr. Cummins. It is recommended that the Department sends a letter to each of the Parish Highway Authorities to remind them of the position with regard to consents for new access points onto Parish roads and also setting out the procedures which must be followed if a Roads Committee wishes to impose conditions on a Parish road.

It is recommended that in future letters should be sent to the appropriate Parish in relation to all applications for in principle or development permits where the nature of the development may involve possible significant increased traffic movement on to a Parish road. This should be picked up at the screening stage and the additional letter should not place too much of a burden on the Department.

With regard to potential damage that might be caused to a road as a result of development involving heavy traffic, Mr. Muir suggested that a developer could be asked to mitigate any damage to the road as part of the development permit. Mr. Young pointed out that the Law has been amended to include a provision for planning agreements which allow financial contributions towards costs, such as road repairs, to be agreed between the Department and the developer prior to the permit being granted.

## 2. The processing of the applications

The procedure for processing applications during the relevant period has been set out earlier and I am satisfied that the processing of the applications was correctly handled by the members of the Department who were involved throughout. However certain areas of the procedure need to be considered in greater detail. Not all comments below are related specifically to this application. Some are general points which have arisen during the course of the inquiry and upon which recommendations require to be made.

### (i) The recommendation for refusal

1. The purpose of the in principle application is clearly to enable an applicant to get a feel for whether or not his proposal will be acceptable to a Committee without have to go into great detail and without having to incur unnecessary expenditure on a project which will basically be a “non-starter”. It is worthy of note that the process was set up by a previous Committee many years ago to assist applicants in this way. However, I found it difficult to see where the line is drawn between the provision of adequate information for the application to be assessed and insufficient information being produced. The onus must be on the applicant to provide sufficient information to enable the officers, as professionals, to make a recommendation for refusal or approval. If there is insufficient information available to the officer to make a recommendation then the application should not move forward but should be referred back to the applicant until the officer does have sufficient information to enable him to make a recommendation one way or the other.
2. The words “inadequate information” have been used frequently throughout the inquiry. If one looks carefully at the report prepared by Miss Baxter on 3rd September and countersigned by Mr. Townsend on 4th September 2003, the recommendation for refusal was **not** based on the grounds of inadequate information. Miss Baxter clearly stated that in her opinion the “large scale proposal **would have** a detrimental impact on this site and the surrounding area as well as having a potentially damaging effect on the hydrology and ecology of the immediate and downstream areas”. Her first reason for refusal categorically states that the proposal **would have** an unreasonable impact on this area of the countryside by virtue of its size, scale and visual intrusion. Miss Baxter and Mr. Townsend had reached a decision for reasons other than the lack of information. The members of ESU had been unable to properly assess the application because of inadequate information but they were not making the recommendation to the Sub-Committee.
3. It is also clear from Mr. Townsend’s e-mail to Mr. Waddington dated 8th September 2003, that the reason

for recommending a refusal was not the lack of information but concerns about the visual and environmental impact.

4. The minute of the Sub-Committee meeting on 10th September 2003 makes no reference to a lack of information. The Sub-Committee decided to visit the site after they were advised that this was a large scale proposal.
5. The minute of the Sub-Committee dated 25th September 2003 is where confusion starts to creep in. The minute states that “the Sub-Committee was apprised of the minimalistic amount of information which had been forthcoming which had provided insufficient information for officers to determine the application”. Based on the content of the report, that is an incorrect statement as Miss Baxter had made a decision. The minute also went on to note, correctly, that inadequate information had been available to ESU to “properly assess the application”. Notwithstanding the agreed lack of information, the in principle was granted. In my opinion the application should have been referred back to Mr. Waddington with a letter setting out exactly what was required of him. If it had been, the further information provided to the Sub-Committee at a later stage, would probably have given the Sub-Committee a clearer understanding of the nature and scale of the project.
6. The minute goes on to state that the Sub-Committee “had gained a better understanding of the proposals”. This is undoubtedly true with regard to the purpose of the application but it is clear that there was no understanding of the nature of the works which would have to be carried out to achieve that goal.
7. It is surprising that Mr. Waddington was not advised until 8th September 2003 that the First Applicant was being put to the Sub-Committee on 10th September 2003 (and then only after chasing the officers) with a recommendation for refusal, particularly as he had received no reply or comment on his letter dated 14th July 2003. If it is not normal practice to give such notice, I recommend that it should be standard practice to advise the applicant of the date upon which the application will be considered by a Sub-Committee and the recommendation of the officer. In the case of a recommendation to refuse, reasons for that refusal should be clearly indicated.
8. It is clear from the agendas and the accompanying documents for the meetings held on 10th September 2003 and 25th September 2003 that the Sub-Committee had a substantial amount of paperwork to consider before those meetings. What was apparent from the agendas, was the inconsistency in the paperwork attached to the officers’ reports in respect of the various applications which were to be dealt with by the Sub-Committee on those days. Some contained copies of correspondence between the officer concerned and the applicant. Others, as in Mr. Gallichan’s case, did not. It is imperative that appropriate documentation is provided to a Sub-Committee and that the members of a Sub-Committee read those papers to enable it to reach an informed decision. Whilst Miss Baxter’s report and recommendation were clear, the situation would have been clearer to the Sub-Committee if it had had a copy of Miss Baxter’s letter to Mr. Waddington dated 29th May 2003 and his reply dated 14th July 2003, with the amended site plan. It is also imperative that the Sub-Committee is given sufficient time to consider each application carefully, not only for the members own sake, but also to ensure that an applicant is not given the impression that the application has not been given sufficient consideration due to time constraints.
9. Whilst it is appreciated that there are occasions on which a Sub-Committee or a Committee itself might not agree with a recommendation to refuse, there should be a more detailed consideration of the application by a Sub-Committee or a Committee before it goes against a recommendation. On 22nd March 2004, the present Committee approved a document entitled “Code of Conduct for Environment and Public Services Committee Members” (Appendix 29). Paragraph 26 of that document provides that where a Committee goes against the recommendation of an officer, the reasons for doing so must be specified in the resolution of that Committee. I would have recommended such a measure had it not already been implemented. Senator Ozouf said that he had considered in the light of these events, whether or not there should be some additional measure put in place if a Sub-Committee or even a Committee is minded to go against the recommendation of the officer concerned, even though as has been said, this does not happen very often. He suggested a “cooling off period” to provide the officer time to prepare an additional report or an additional presentation before a final decision is made. I entirely agree with his

suggestion and would recommend that such a procedure is added to the Code of Conduct as soon as possible.

(ii) Consultation with others

(a) Highways Section

The Highways Department was not consulted on either the First or the Second Application because the fields are not accessed from a main road. Mr. Muir explained that the Department is bound by law to obtain the views of the relevant Highway Authority, being either the States Department or the appropriate Parish, where the access is onto a main road in the former case or a Parish road in the latter, and where the application might (a) affect road safety, or (b) involve the Highway Authority in additional cost or (c) affect work being carried out by the Highway Authority on the particular road. If the relevant authority is a Parish, then the Department is not bound to notify the States Department and vice versa. However, in respect of this application he would have expected the Department to seek the views of his Section because of the close proximity of the fields to main roads.

Mr. Muir's Section receives notification of applications electronically from the Department and one of his officers scans the notices. If the Department has not specifically asked for the comments from the Highways Section on an application, the officer can request copy documentation if he feels that the application merits scrutiny by the Section. The notices received are very similar to the notices which appear in the J.E.P. and Mr. Muir would not have expected the notice in respect of either the First or Second Applications to have alerted a member of his Section. Although the notices mentioned infill, they did not give any idea of quantities which would be involved. If the road had been a main road and his Section had received the plans, Mr. Muir said that he hoped that they would have picked up on the fact that the development would generate traffic in the area and that the traffic would be comprised of heavy vehicles which might damage the roads. The possible damage which might be caused to a road is a pertinent planning objection.

In normal circumstances, if the Section has queries it would either direct those to the Department or make enquiries direct from the applicant. An officer will make a recommendation which is reviewed by the Committee and then forwarded to the Department. If Mr. Muir was considering a similar application, he would look at wear and tear on the roads but one of the major issues for concern would be road safety. He would want to ensure that vehicles could gain entry to and exit from the site in safety without endangering other users of the road. He would also want to ensure that the vehicles could negotiate the access safely, for example without going onto the other side of the road. He would consider the effect of the traffic on nearby junctions.

I accept that it is normal procedure only to consult with the relevant Highway Authority but it is unfortunate in this case that Mr. Muir's Section was not consulted by the Department, as one of the major topics which has caused the most concern in this matter since the issue of the development permit has been the amount of traffic which will be generated by this project. In April 2004, Mr. Muir's Section prepared a document entitled "Requirement for a Traffic Impact Assessment" in relation to the development which states that the applicant is required not only to provide a traffic impact assessment but prior to the assessment, a scoping document detailing how the assessment will be carried out should be submitted by an appointed professional body and agreed with PSD. The document went on to list ten items which should be included in the assessment. One can only assume that if the Highways Section been consulted directly with regard to the First Application, these concerns would have been raised with the planning officer, and therefore the Sub-Committee, prior to the consideration of the First Application. I appreciate that Mr. Gallichan would probably not have been asked to provide the assessment at that time, as the First Application was only in principle, but nevertheless if the comments of the Highways Section had been available to the Sub-Committee on 25th September 2003, a different decision would undoubtedly have been reached.

In future, it is recommended that the Department should ensure that the Highways Section is consulted directly on **all** applications which might involve heavy traffic movement.

(b) ESU

ESU was asked directly to comment on both the First and Second Applications. At the inquiry, Mrs. Le Claire outlined the procedure which was adopted at the time for dealing with applications. She explained that although numerous issues may be raised by ESU, those issues do not necessarily become concerns. They are issues which the officers feel need to be addressed by the Department in relation to a particular application. Both Mr. Pinel and Mrs. Le Claire agreed that in considering both the First and Second Applications they were not concerned with whether or not the fields should be infilled, as that is not their job, but they were concerned about the way in which the work would be carried out.

The letter from Mrs. Le Claire dated 8th April 2003 made it clear that the officers in ESU did not have sufficient information to enable them to make a full assessment of the effect of the proposed development. Notwithstanding that fact, they had a number of concerns which Mrs. Le Claire went on to outline. It is also clear from that letter that ESU's preference was for further information to be obtained **before** the application was considered, but accepted that it was the Sub-Committee's decision. It was suggested that conditions should be attached if the Sub-Committee was minded to issue the permit. As Mr. Pinel said, the Department or the Sub-Committee is not obliged to take any advice from ESU as it is not a statutory consultee and he was not surprised that he heard nothing further about the First Application. Mrs. Le Claire said that it was not so much the information which was available that caused her concern, but rather the lack of information, which prevented the officers in ESU from making informed recommendations.

Mrs. Le Claire mentioned the fact that ESU was given very little time to comment on the draft conditions sent by Miss Baxter although she was satisfied that the conditions finally attached to the development permit had the potential to cover everything that ESU had been concerned about. Miss Baxter also believed that the conditions covered the outstanding concerns of ESU.

I have already made the comment that if a planning officer feels that there is insufficient information available to enable a decision to be made then the application should not be referred to the Sub-Committee. Although it is not relevant in this case as Miss Baxter felt, quite rightly, that she had sufficient information to make her decision, in future, it is recommended that where there is insufficient information provided to the officer or to any of the consultees which the officer considers material to the determination of the application, he should either defer making a recommendation and revert back to the applicant or refer the application to the Director or Assistant Director.

(c) Jersey New Waterworks Company Limited ("JNWW")

The Department did not consult with JNWW as a matter of course on either the First or Second Applications. Mrs. Le Claire, in her response of 8th April 2003 suggested that Mr. Gallichan should contact JNWW but this was not mentioned in Miss Baxter's letter to Mr. Waddington of 29th May 2003. It should be remembered, however, that Mr. Waddington had been provided with a copy of Mrs. Le Claire's reply.

On 4th September 2003 the standard letter was sent to JNWW by the Department requesting comments on the First Application. A reply was received on 11th September 2003 stating that JNWW had no comments on the application. Therefore there was no concern of JNWW at the time of the decision to grant the in principle permit which should have been conveyed to the Sub-Committee.

The attitude of JNWW had certainly changed by April 2004 when, in response to a letter from Mr. Naish dated 16th April 2004, JNWW expressed concerns about the inert building waste which might be used and whether or not there would be adequate supervision of the site during the development to ensure that no materials likely to cause future pollution were buried. The difference in the two responses can only be explained by the fact that the first letter merely enclosed a copy of the application and the plan, whereas Mr. Naish's letter specifically referred to inert building waste. Also by this time, the nature of the application had been well publicised in the media.

It has to be remembered by the Department that the consultees are not professional planners and will not automatically appreciate from the documentation provided, the exact scale and nature of any development. I believe that neither JNWW nor the Constable realised exactly what was proposed. This is further confirmed by fact that Mr. Muir felt that members of his Section, who are professionals, would not have picked up on the nature of the application. I would therefore recommend that an additional paragraph be added to the consultee letter, in appropriate cases, along the lines of “Your particular attention is drawn to.....”. Without wishing to increase the workload of members of the Department, I do not believe that it would impose any additional burden on the screening officer to draft the appropriate wording which will only be necessary on very few occasions.

(iii) Was there undue delay on the part of the Department?

The First Application was received by the Department on 21st March 2003 and a decision was made on 25th September 2003, a period of just under 27 weeks. The Second Application was received on 31st October 2002 and a decision was made on 19th December 2003, a period of 7 weeks.

Mr. Le Gresley stated that the Department receives about 2,500 applications each year and each officer deals with between 35 and 40 applications at a time. The Department aims to deal with an application within eight weeks and it manages to do so in approximately 78 per cent of cases. The First Application took well in excess of the target period but the Second Application was dealt with in less time.

To summarise the timescales on the First Application, the consultee letters were all received by 25th April 2003 (5 weeks), Miss Baxter wrote to Mr. Waddington on 29th May 2003 (5 weeks), Mr. Waddington replied on 1 July 2003 (6½ weeks), Miss Baxter wrote her report on 3rd September 2003 (6½ weeks), the Sub-Committee met on 10th September 2003 (one week) and the Sub-Committee met on 25th September 2004 (2 weeks).

Miss Baxter could not be expected to consider the application in detail before she had received the replies from the consultees. ESU responded within 2 weeks but the memorandum from Agriculture and Fisheries was dated 25th April 2003. It would be obviously helpful to the Department in meeting the target if all consultees could respond within the period of 2 weeks.

Given that this was an unusual application and given her workload, I do not consider that Miss Baxter unduly delayed in sending her letter to Mr. Waddington. However it is of concern that nothing happened for 6 weeks after receipt of Mr. Waddington's letter, notwithstanding that he took 6 weeks to reply.

Even though the First Application was somewhat unusual and complex, it ought to have been dealt with in less time than 27 weeks. It is recommended that the Department should consider implementing a process whereby applications on which there has been no activity after a certain period of time can be identified and enquiries can be made as to the reasons for the delay.

Consultation letters were sent out in respect of the Second Application on 4th November 2003 and replies were received by 26th November 2003. Although Mrs. Le Claire did not reply until 10th December 2003, her letter did not contain anything different to the copy e-mail from Mr. Freeman received on 17th November 2003. A copy of Mrs. Le Claire's letter was sent to Mr. Naish but due to the Christmas post he did not receive it until 17th December 2003. He replied on the same day.

Mr. Naish telephoned Miss Baxter on 3rd December requesting an update on the application and as result of the conversation he wrote to her on 3rd and 5th December 2003. Although it is clear from Miss Baxter's "Planning Officers Site Notes Assessment Sheet" that she had looked at the Second Application and had queries which needed to be answered, there is no mention of any dates on that form and she had certainly not prepared her report at 15th December 2003 when Senator Walker asked Mr. Thorne for an up date on the application. I believe it unlikely that the application would have been dealt with before Christmas if Senator Walker and Deputy Dubras had not intervened resulting in the Second Application becoming overdue.

Although both Mr. Waddington and Mr. Naish expressed frustration about the delays and the lack of communication they both said that they were aware that planning officers have significant caseloads. Mr. Le

Gresley and Mr. Young both made the point that the planning officers in Jersey have a higher caseload than officers in the U.K. It is important that planning officers do take extreme care with each and every application in order to avoid the risk of mistakes which might have a long enduring effect on the community. It was very disturbing therefore to hear from Mr. Young that the Department is due to lose 3 posts next year. Far from decreasing the officers' workload it is inevitable that their workload will increase, and inevitably delays will become longer. I entirely agree that consideration should be given by politicians to the Department's financial and manpower resources.

(iv) Should the Second Application have been dealt with under delegated powers or referred back to the Sub-Committee?

The in principle permit clearly stated that the Sub-Committee had given in principle permission subject to the application satisfying any demands of ESU. The Delegation Code of Practice which was in effect during the relevant period makes it clear that the Director of Planning had the authority to make a decision on all development applications which follow a previous planning permission, as in this case.

Mr. Thorne said that it had been reasonable to refer the First Application to the Sub-Committee because it was a significant project and it was being recommended for refusal. However once the Sub-Committee had issued the in principle permit and expressed its concerns, it was quite usual for a planning officer to look at those concerns and deal with them.

The Sub-Committee did not ask for the application to be referred back to it at the development stage. Deputy Hilton said that she would have expected the application to be referred back to the Sub-Committee if there had been problems or if any conditions put on the permit could not be met. Deputy Taylor would have expected it to be referred back only if conditions could not be met or if the applicant was asking for conditions to be waived. Deputy Le Main said that once the Sub-Committee had made the decision the matter was in the hands of the "very highly qualified" planners and it was for them to approve once they were satisfied that all criteria had been met.

Deputy Dubras, in a telephone conversation on 18th December 2003, had made it clear that he would like the decision, if it could be made, to be made as a delegated decision because there was no Committee meeting scheduled before Christmas. He was advised by Mr. Thorne that information which had been awaited from Mr. Naish had arrived.

It must be remembered that at the time of making the decision as to whether the permit could be issued using delegated powers, Mr. Thorne did not know that the members of the Sub-Committee were unaware that infill was to be imported. There is no way that he could have known that. If he had been aware of the misunderstanding then I am sure that he would have referred back to the Sub-Committee. Once asked by Senator Walker to look into the reasons for the delay, he looked at the file and spoke to Miss Baxter when she returned to work from sick leave. She had explained the nature of the information still required from Mr. Naish. More information was forthcoming in Mr. Naish's letter of 17th December 2003. Mr. Thorne was aware that there were unresolved issues but he did not believe that any of them were so significant as to be fatal to the application and he was satisfied that outstanding issues could be dealt with by way of conditions. He felt that this was a fair way of dealing with an application which he himself stated was probably becoming overdue, given that the principle had already been established. I believe that he gave professional consideration to the information available to him at the time and to his discussion with Deputy Dubras and there was no reason at that time to refer the decision back to the Sub-Committee.

It is recommended that in future the Sub-Committee should earmark any application which it would wish to be referred back to it, if it does not do so already.

(v) Notification of applications to the public

As has already been said, the Department is under no statutory obligation to publish notices of applications in the paper.

I have already stated that in my opinion there was no intention on the part of Mr. Gallichan or his agents to

mislead or deceive residents living near the fields and I have dealt with the wording of the description of the application.

The notices in the J.E.P. have been criticized because –

- they only contained the field numbers and did not contain the name of the road adjacent to the fields;
- the address was given as Woodside Farm but the farm is some distance away from the fields;
- the fact that the access was on to La Rue Guerdain should have been made clear.

Mr. C. Wilson, the owner of the property Le Chatelet, La Billotterie, did not see the notice of the First Applicant in the paper but he did see the notice in November 2003. He did feel concern and puzzlement when he first read it but he was comforted by the statement that the filling of the valley was for the purpose of upgrading soil quality and manageability. Although concerned, he did not check out the location of the fields as he assumed they would be near to Woodside Farm.

Mrs. R. Evans is a joint owner of field 531 which borders part of the fields 520 and 521, and field 534 which is 2 fields away. She saw the original application and assumed that the fields were adjacent to Woodside Farm.

Mr. Jehan saw the notice in November 2003 and because he and his wife were contemplating the purchase of the adjoining property owned by Mr. and Mrs. Cabot, he went to the Department to view the plans. He also knew about the application as he had been to look at the site with a colleague with a view to possibly undertaking the work. When they were leaving the site, they stopped to talk to Mr. Cabot and advised him why they had been there. Mr. Cabot said that Mr. Jehan had mentioned that there was going to be a reservoir in the field but that was all he had said.

Major General Cornock openly said in his statement that the residents failed to pick up details of the application in the J.E.P. No-one had recognized the field numbers which meant nothing to them at that stage. If the notice had mentioned the road or “La Guerdainerie” then someone would have picked it up.

Mr. Le Gresley said that the address of the site would only be changed if there was a fundamental error in the address. There might be legal implications for the Department if changes were made.

Understandably the residents feel that they were not given the opportunity to comment on the applications because of the fact that the name of the road was not mentioned. It is impossible to say whether or not, even if the name had been mentioned, that they would have seen the notices. However the fact remains that the Department is under no legal obligation to notify the public about applications and therefore it did everything it reasonably could be expected to do with regard to advertising the applications, particularly as the field numbers were mentioned in both notices.

### 3. Other points raised during the Inquiry

1. The question was asked: why was the Parish not consulted in March 2003, if there was, at the time, an application for a new access to the fields? It is clear from the documentation that there was no application for a new access at that time.
2. In a fax from Mr. Thorne to Senator R.J. Shenton dated 2nd April 2004, Mr. Thorne mentioned that outline planning permission was granted in July 2003 for temporary access to field 527. The residents queried why this application had not been advertised in the J.E.P. Mr. Thorne accepted that this was an error and there had been no such application in July 2003.
3. Deputy Dubras has been criticised for taking into account Mr. Gallichan’s financial situation when asking Mr. Thorne to deal with the Second Application. However, Mr. Thorne made the decision that the second



permit should be issued and he said that although he was aware of Mr. Gallichan's financial situation, it did not have any bearing on the determination of the application. He also pointed out that the application had already been granted in September when the in principle permit issued. Deputy Dubras made it clear that a person's financial situation is not a planning issue and it was not in this case. To put the sentences he used in the e-mail into context, he was sympathetic to Mr. Gallichan's situation but he was concerned that the alleged delay on the part of the Department was a contributing factor to Mr. Gallichan's state of mind at the time. For that reason only, he urged Mr. Thorne to deal with the application, if he could. There are obviously financial consequences to all planning decisions but financial considerations must not, and I am sure do not, weigh heavily as issues which assist a Committee to make one decision or another. I am satisfied that although Mr. Thorne was aware of Mr. Gallichan's financial position, he did not authorise the issue of the permit, either voluntarily or through pressure, in order to alleviate Mr. Gallichan's financial position.

4. Mr. D. Minty drew my attention to an application relating to fields in St. Peter to remove shale and infill with clean building rubble and then reinstate with good quality top soil. Deputies Hilton and Taylor also dealt with that application. As far as they were concerned, the St. Peter's application was different from Mr. Gallichan's application in that large amounts of shale would be excavated and removed from the site with resulting increased heavy traffic movement. In addition, there had been a lot of complaints from residents near the site and the Parish, the application was not based on any future agricultural benefit and the project could take years to complete. The Planning Officer involved recommended refusal on the basis that the excavation and fill of the site would be visually harmful to the countryside, the project could take years to complete and the stated purpose was that the land would be converted from agricultural land to woodland. There was clearly a difference in the two applications as Mr. Gallichan's application did not involve such a large scale excavation and there was a time scale envisaged at the end of which the land would be returned to agricultural use.
5. Since the residents became aware of the nature of the development, much has been said about the flow of water through the fields, the effect on properties downstream, Grands Vaux Reservoir and the possibility of pollution to water supplies in the area. It has been inferred that these concerns were not taken into account when the First and Second Applications were considered. That is not the case. These concerns were first raised in Mrs. Le Claire's response dated 8th April 2003 and Miss Fairfax's letter dated 17th April 2003. They were specifically addressed by Miss Baxter in her report. One of her reasons for recommending refusal was the potential damaging effect on the hydrology and ecology of the immediate and downstream areas. These concerns were eventually covered under condition 9 in the permit dated 19th December 2003.
6. The residents were concerned, understandably, about the effect of the traffic movement on the nearby property "The Old Mint". Mr. Townsend said that this is not something which would normally be taken into account. An investigation of the Department's website shows that the property is a "possible site of special interest". The Law states that no person shall execute any works for the demolition of the building or for its alteration or extension in any manner which would seriously affect its character without the prior permission of the Committee. The new Law imposes obligations upon the owner of such a property not to carry on an activity which might injure or deface the site or part of the site. Whilst I am sure that similar situations do not occur frequently, this might be something that the Department should take into account in the future. It does seem illogical that having considered the property to be worthy of possible listing, account is not taken of the effect upon that property of such a development by a third party.

#### 4. Site visits

From personal experience of site visits at Review Board hearings, I am well aware that it is difficult to keep attendees on site together thus ensuring that everyone is provided with the same information. I therefore would have made recommendations with regard to the conduct of site visits. However that is now unnecessary as paragraphs 10 to 19 of the Code of Conduct (Appendix 29) set out the procedure to be adopted by Committee members and officers of the Department at site visits.

#### 5. Minutes of meetings

The notes taken by Mrs. Tremellen-Frost were not available. Mr. Michael de la Haye, Greffier of the States explained that it was not the policy of his department to retain notes made by Committee Clerks. Individual clerks operate in different ways at meetings, some taking extensive notes, others only making brief notes. At the end of the day, the purpose of the notes is to enable the Committee Clerk to prepare the minute of the meeting. Once the minute has been approved by the appropriate Committee that is the official record of the meeting and there is therefore no reason for the notes to be retained. Notes should not be used at a later stage to impugn the accuracy of the minute.

I totally accept the points made by Mr. de la Haye and it is not for me to comment on the policies adopted by the States Greffe. However, as he said, it could have been useful, in this particular case, to see if there was something in the notes which was not put into the minutes, particularly in relation to the minutes of 25th September 2003. But even if it was, for example, the policy to keep notes until an application had been determined, then those notes would still not have been available in this case as the application had been finalised before questions were asked as to what was said or done at the relevant meetings.

#### 6. Notification of applications to neighbours

There is no obligation upon the Department under the Law to notify neighbours of any applications which might affect their properties. It is clear that the residents living near to the fields were not aware of the nature of the proposed development. For the purpose of this section of the report, the reasons why they were not made aware of the proposals are irrelevant. The fact is that if they had been, they would have undoubtedly made representations at the appropriate time and of course, it would have been up to the planning officers and the Sub-Committee to decide how much weight should be given to those representations. All 3 members remarked on the fact that there were no letters from concerned neighbours and therefore they assumed that the neighbours had no concerns about the proposals. It may well have been that the Sub-Committee would have reached a different decision if there had been representations from parishioners. It is not within my remit to make recommendations as to what should follow as a result of this report but I feel that this is a very important point to be taken into account.

Mr. Muir stated that this situation could not arise in Scotland where the onus is on the applicant to ensure that neighbours and other appropriate authorities are notified of proposals which might affect their properties and notices have to be put up in and around the site in question. Applications will not be considered by the planning authority until proof of this has been provided.

The point was also made by Mr. R. Anthony, Chairman of the Environment Section of the "Société Jersiaise" that the processing of applications should be made more transparent.

With hindsight it is easy to blame the notice in the J.E.P. for being erroneous or misleading or deceptive. It is also easy to say that Mr. Gallichan should have notified the neighbours. Be that as it may, the present situation is that there is no obligation on the Department or any applicant to ensure that neighbours are notified of any proposal which might affect their properties. This situation must be remedied as a matter of urgency to ensure that a similar predicament does not arise in the future.

#### 7. The new Law

After many years had been spent in drafting the new Law, it was sanctioned by Order of Her Majesty in Council on 22nd October 2002 and was registered in the Royal Court on 8th November 2002. It deals with the precise point raised in the previous paragraph. It also deals with numerous other matters, including public inquiries, the aim of which is to improve the planning process and make it more transparent. Both Deputy Dubras and Mr. Young commented on the fact that the new Law has not been put into effect because of problems with funding. It is probably right to say that if the new Law had been in place "none of this would have happened" and I can only impress upon the politicians the need to implement the new Law as a matter of extreme urgency.

As has been stated, the present Committee agreed the Code of Conduct on 22nd March 2004, the aim of which is to ensure that members are seen to be behaving with the utmost probity and objectivity. The present Committee is to be commended for approving the Code but the adoption of the Code should not override the need for

implementing the new Law as soon as possible.

### **Terms of reference**

There are only 2 points raised in the Terms of Reference which have not already been dealt with.

1. Disclosure of information held by the former Department of Agriculture and Fisheries

There was no information available to the Department of Agriculture and Fisheries which was withheld from the Department prior to the determination of the First and Second Applications. The sale of the land in February 2004 had no bearing on the development permit which had issued and there was therefore no need to disclose to the Department details of the transaction which had been agreed between Mr. Gallichan and Mr. Cummins. It is worthy of note, once again, that any future development of the fields is controlled not only by the Department because of the conditions imposed on the development permit, but also by the fact that the stated use of the fields as agricultural land cannot be changed until Mr. Cummins has provided the required statement of proposed work to Mr. Le Mottée.

2. Whether information that became available subsequent to the determination of the applications should reasonably have been ascertained prior to that determination

There is, in my opinion, no **new** information which has come to light since 19th December 2003. What has become apparent is the **detail** of the information required to satisfy the concerns of ESU. This only reinforces the previous opinion that the in principle permit should not have been granted.

There was no single fundamental mistake made in the consideration of the First and Second Applications. The end result was a consequence of relatively minor mistakes or omissions and failures to consider all the information available. A repetition of this situation will only be avoided if resources are made available in the future to meet the twin demands of proper and timely consideration of all applications.

## Appendices

1. In principle permit dated 2nd October 2003
2. Development permit dated 19th December 2003
3. Terms of Reference
4. Flowchart showing the procedure adopted with applications
5. Delegation Code of Practice in force during the relevant period
6. First Application and accompanying documents
7. Planning screening form
8. J.E.P. advert
9. Memorandum dated 8th April 2003 from Mrs. Le Claire
10. Miss Baxter's letter to Mr. Waddington dated 29th May 2003
11. Mr. Waddington's reply dated 14th July 2003
12. Miss Baxter's report dated 3rd September 2003
13. Minute of the Sub-Committee dated 10th September 2003
14. Document produced on behalf of Woodside Farms on 25th September 2003
15. Minute of the Sub-Committee dated 25th September 2003
16. Information provided by Mr. Gallichan and Mr. Waddington in documentation with regard to the project and the need for the project to be given approval (First Application)
17. The information provided by Mr. Gallichan and Mr. Waddington with regard to the materials to be used in carrying out the project
18. The Second Application and accompanying documents
19. J.E.P. advert dated 7th November 2003
20. E-mail from Mr. Freeman dated 17th November 2003
21. Mr. Naisi's letter to Miss Baxter dated 3rd December 2003
22. Memorandum from Mrs. Le Claire dated 10th December 2003
23. E-mails 16th to 17th December 2003
24. Mr. Naisi's letters dated 17th December 2003
25. E-mails dated 18th to 19th December 2003
26. Representations and references with regard to the description of the materials to be used, their source and volume (Second Application)
27. Letter dated 21st January 2004 from the Connétable of Trinity
28. Letter dated 13th April 2004 from Connétable of Trinity with enclosures
29. Code of Conduct for Environment and Public Services Committee Members.

**N.B. The Appendices of this document are NOT attached at the present time. We will endeavour to place a full electronic copy of this document on this site in due course but, should anybody need access to these papers, they can be obtained from the States Bookshop at Morier House.**

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