

# **STATES OF JERSEY**



## **ENERGY FROM WASTE PLANT AND RAMSAR: REVIEW OF PLANNING PROCESS (S.R.1/2010) – RESPONSE OF THE MINISTER FOR PLANNING AND ENVIRONMENT**

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**Presented to the States on 29th March 2010  
by the Minister for Planning and Environment**

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**STATES GREFFE**

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REVIEW OF PLANNING PROCESS (S.R.1/2010) –  
RESPONSE OF THE MINISTER FOR PLANNING AND ENVIRONMENT**

### **Introduction**

The Minister for Planning and Environment (P&E) respectfully would like to make the following comments in response to the Environment Scrutiny Panel's review of the planning process in relation to the approval of the Energy from Waste plant at La Collette.

The terms of reference for the Panel's investigations did seem to cast a broad view of the Environmental Impact Assessment (EIA) process, but the potential implications for the marine environment were those that were focussed upon. This is understandable, given the Panel's comments as to what led them to initiate the process and the result has been Findings which concentrate on issues relating to a limited part of the EIA. By and large, for the reasons set out below, these Findings are disputed and cannot be endorsed.

However by extrapolating the roots of their concerns, the Panel have produced robust Recommendations which have been fully accepted in the vast majority of cases. Detailed comments on the Findings and Recommendations are set out below.

The Scrutiny process has been extremely useful in challenging and focusing the Minister's and the Department's actions in considering EIAs. The comment and advice gleaned from the Panel Members and their Consultant will undoubtedly contribute to a future approach that seeks to avoid any repeat of the underlying perceptions of mistrust in the process by interest groups, and in turn strengthen credibility with the public. As such, the Minister for Planning and Environment would like to offer his appreciation and thanks to the Panel and their Consultant for their work in producing their report.

## FINDINGS

	<b>Findings</b>	<b>Comments</b>
1	The scoping process for the Environmental Impact Assessment (EIA) for the Energy from Waste (EfW) Plant failed to comply with relevant standards.	<p>Requesting a Scoping opinion for any Environmental Impact Assessment (EIA) is not a statutory requirement for a potential developer or for the Minister for P&amp;E.</p> <p>Notwithstanding the non-statutory status of the request for a Scoping opinion, Article 5 of the Environmental Impact Order specifies that any request for a Scoping opinion must be accompanied by a plan sufficient to identify the land, along with a brief description of the nature of the proposed purpose of the proposed development and its possible effects on the environment. In the case of the Energy from Waste Plant the decision to locate the Plant at La Collette was only finalised by the States themselves in September 2006. Only at that point could any plan have been provided that indicated with certainty where the application for planning permission for the Energy from Waste Plant would be located.</p> <p>As indicated above, a Scoping process is not a statutory one. As no formal request for a Scoping opinion was submitted by the applicants indicating a location of the Plant at La Collette, there was no opportunity for the engagement of statutory or non-statutory consultees or the broader public during a Scoping process as a Scoping process did not take place.</p>
2	There is no evidence of participation by any non-governmental organisations (NGOs), or of broader public engagement during the Scoping process.	As no formal Scoping process took place, the opportunity for NGO involvement was extremely limited.
3	The Environmental Statement (ES) failed to provide sufficient information in several key areas.	<p>The Minister for P&amp;E was satisfied that the information contained within the EIS was sufficient to make an informed decision over the planning application for the EfW and to determine the reserved matters submission.</p> <p>Notwithstanding the Minister's position, it is clear Scrutiny and their adviser concentrated their investigations on the marine environment, although the EIA actually addressed significantly more environmental considerations. The applicant legitimately argued that the EfW would not have any potential effect on the</p>

	<b>Findings</b>	<b>Comments</b>
		<p>marine environment given the location of the building, and that the outputs would all be within accepted and recognised limits and guidelines. The mitigation detailed in the EIS is such that any potential impacts would be avoided.</p> <p>The perceived lack of information is addressed elsewhere in this report – both in terms of the Scrutiny Panel’s Findings and Recommendations and the Minister’s response to them.</p>
4	P&E identified shortcomings in the Environmental Statement, but failed to ensure that their own concerns were addressed fully.	<p>As stated in 1.4.1: “The internal P&amp;E department process seems to have been robust and thorough in seeking information on key issues, significant effects and areas of concern”. This Finding however relates to Waste Regulation and Water Resources comments on the ES. These comments are meant to highlight the risk of the issues noted and P&amp;E have highlighted them for the applicant to ensure that when construction commences, a suitable method is employed to ensure that neither Water Pollution nor Waste Law is contravened. The applicant has dealt with this in the submission and it is important to note that at the time of writing, and notwithstanding the ongoing investigation into alleged pollution of controlled waters at the site, there is no evidence that either Law has been contravened. An important tenet of P&amp;E’s responses in respect of environmental protection is that ultimately the onus is on the operator to ensure that there is no contravention of law, or the operator runs the risk of enforcement action and possibly prosecution.</p> <p>This Finding also seems to refer to page 30 – 2.1.4, para. 5 of the Scrutiny Report. This point refers to a period of approximately 3 months, at the beginning of which P&amp;E raised concerns that a suitable discharge method should be proposed in a discharge permit application. Ultimately, a RAMS was developed and eventually used for the disposal of impacted waters from the excavation.</p> <p>One of the concerns of Scrutiny is that no method statement was produced prior to excavation commencing. The Minister for P&amp;E would contend that there is no requirement under law to have in place a method statement before excavation commencing, as the necessity for this method statement is to inform the regulator in respect of the proposed discharge of and mitigation to the affected waters.</p>

	<b>Findings</b>	<b>Comments</b>
		<p>During the period to which the report refers, P&amp;E were in regular and ongoing discussion with the applicant, and in fact had determined that initial submissions made to discharge waters proposed inadequate mitigation. The applicant was therefore advised to resubmit with a suitable method. Discussions continued and resulted in a proposal for a series of tanks to be constructed for the settlement of solids coupled to a system to remove hydrocarbons from water prior to discharge. It was necessary to trial this system internally on site without discharging first, but this proved fruitless and the applicant was again told to find a better solution. This ultimately led to the final solution of larger and more tanks to settle solids, and the resultant waters to be disposed of at the sewage treatment works at Bellozanne.</p> <p>The solids were to be disposed of in hydraulically independent cells at La Collette and were not, as is stated in the Scrutiny Report, to be deposited back into the excavation. P&amp;E advised Scrutiny of the Report's inaccuracy in this respect in our opportunity to correct factual mistakes prior to publication of the final Report.</p> <p>All parties mentioned in the relevant paragraph of the Report were aware of the issues, were dealing with the issues in accordance with the requirements of law, and the Minister for P&amp;E would therefore contend that there was no "serious failure of process on our part", further there is no evidence of consequent exposure of the marine environment to unnecessary risk.</p>
5	The decision to grant permission placed a disproportionate reliance on post-determination mitigation and pollution control measures in order to protect the marine environment.	The siting of the facility was decided by the States of Jersey Assembly in June 2006 prior to the submission of the planning application. This meant that there would always be a reliance on post-decision mitigation. Further, it would be unreasonable to place upon the applicant the necessity to determine at the early stage of the ES every methodology they were to employ to comply with the goal of protecting the environment. The CEMP points out specific legislation which must not be contravened on peril of possible legal action, and that is the sanction that P&E hold as regulators of the Water Pollution Law.
6	Contemporaneous guidance should have been published when the Planning and Building	<p>Guidance Notes to accompany the Environmental Impact Order will be published imminently.</p> <p>Whilst guidance was not issued, the staff at P&amp;E encouraged discussions in connection with the EIA</p>

	<b>Findings</b>	<b>Comments</b>
	(Environmental Impact) (Jersey) Order 2006 came into force.	process with anyone who had queries or concerns. This included developers and any third parties.
7	The Construction Environmental Management Plan (CEMP) is lacking in detail, based on generic rather than site-specific solutions, has not generated a wider dialogue and fails to demonstrably address concerns raised by P&E.	As in 5 above.
8	The monitoring and reporting protocols associated with managing environmental effects during construction appear to be weak, with poor lines of communication and a lack of co-ordination.	This Finding again refers to the same issue that elicited the response to Finding 4. It is important to note that any investigation into any pollution incident will inevitably highlight communications and co-ordination as areas with room for improvement; otherwise no investigation would be required.
9	Potential environmental risks associated with the ingress of tidal water and the potential for the site to hold contaminated material were predicted for the construction phase of the project. However, it took more than 3 months from the date that water ingress was first encountered within the excavation to the production of a detailed method statement to deal with this issue. This is considered unacceptable.	The response to this Finding is the same as that given to Finding 4.

	<b>Findings</b>	<b>Comments</b>
10	The drainage schedule submitted in order to discharge a condition of planning holds limited information with no specific quantification of design values regarding chemical, thermal or volumetric issues.	Drainage provision is a material consideration in assessing any application for planning permission. In the case of the Energy from Waste Plant, the Drainage Authority who control provision and capacities designed the scheme as submitted. The Drainage Authority is best placed to comment as to why the scheme was considered appropriate.
11	The consultation process demonstrated several shortcomings and there appears to be an atmosphere of resignation and mistrust surrounding the EfW Plant which pervades the various non-governmental organisations and the public.	<p>The application for outline planning permission and for the approval of the Reserved Matters for the Energy from Waste Plant was publicised as required by the Planning and Building (Jersey) Law 2005 prior to their determinations. There was significant press coverage over the scheme, and the applicants actively engaged the public and any potential stakeholder groups through public meetings and the Health Impact Assessment (HIA) that was carried out in 2 stages parallel to consideration of the submissions. Given the statutory publicity, the press coverage and the additional fora promoted by the applicant, there can be no doubt that considerable steps were taken to stimulate debate over the proposal.</p> <p>There is a limit beyond which it is unreasonable to pursue active participation by an authority that is determining an application for planning permission. Added to this, as the arbiter of the application, the Minister for P&amp;E has to maintain a broadly neutral stance in terms of considering comments that were made in response to the statutory publicity undertaken by the Department and by Press coverage and the public events that were organised by the applicant.</p>
12	Consultation undertaken as part of the EIA process failed to provide an empowering and participative environment.	See 11 above.
13	NGOs should have engaged more actively in raising concerns regarding the submitted ES. By	There was no lack of effort to publicize the proposal, either by Minister for P&E or indeed the applicant, during consideration of the planning application for the plant. The lack of response from NGOs was unfortunate given the concerns raised effectively after the event.

	<b>Findings</b>	<b>Comments</b>
	failing to submit formal comments, they effectively compromised their right to formally influence the determination process.	
14	There is a lack of confidence amongst stakeholders in the ability or willingness of the Regulator and relevant States departments to protect the marine environment.	Outside of the groups questioned through the Scrutiny process, there appears to be little evidence presented to support this Finding. Public engagement from the Minister for P&E is at an all-time high. Recent examples of this are the drawing together by the Department of all key stakeholders in the heating oil and associated hardware market to establish the Oil Care group. This group approach has resulted in the distribution of information to the public and commercial sector, which we anticipate reducing oil-spills polluting controlled waters. EP is also involved in tracking down sources of e-coli pollution threatening Jersey's shellfish beds. Significant effort and discussion with all key stakeholders has been undertaken, and protocols put in place following these discussions, which are designed to further the protection of the industry. Stakeholder engagement is also currently undertaken with the agricultural sector in respect of a strategy to tackle the issue of diffuse pollution from agriculture, which has the potential to impact on surface, ground and marine waters. A series of stakeholder meetings has been formed and have been successful in their outcomes.
15	Article 3.2 of the Ramsar Convention relates to the reporting of change or likely change to the ecological character of listed Ramsar sites. Article 3.2 is unqualified as to the magnitude or significance of change. At no point has P&E acknowledged the potential for change to the ecological character of the area, nor have alleged	The assertion that Article 3.2 is unqualified is correct. However, it should be noted that the Ramsar authorities are currently working to determine criteria which could trigger notification, and they maintain that there was no need to notify them in respect of the construction of the EfW. There has to be an element of judgement made in assessing the obligations such as those contained in the Ramsar Convention, otherwise it would lead to a complete overload of the reporting system. Notwithstanding this issue, the Department maintain that the EfW Plant – both during construction and operation – will not have any effect on the ecological character of the Ramsar site. In either or both of these contexts there was no need to inform the Ramsar Secretariat.  DEFRA have confirmed that implementation of the Ramsar Convention is devolved to the States of Jersey

	<b>Findings</b>	<b>Comments</b>
	environmental incidents known to be under investigation by the Environment Regulator been notified to Ramsar. This is considered to represent a breach of Jersey's obligations under the Convention.	and decisions on whether such an incident merits notification under Article 3.2 rests with the States of Jersey.
16	All Ramsar sites should have a management plan. The South-East Coast of Jersey Ramsar Site did not possess a management plan at the time of the EIA, although the Panel is aware that P&E are addressing this issue.	<p>The Integrated Coastal Zone Management Plan, adopted by the States of Jersey in October 2008, aims to meet not only our obligations under the Ramsar Convention, but also obligations under a raft of other marine-related Multi-Lateral Environmental agreements to which Jersey is a signatory.</p> <p>The Strategy sets out a requirement to develop management plans for all of our Ramsar sites. In March 2009, a Marine and Coastal Officer was appointed to deliver the Integrated Coastal Zone Management Plan and, as such, has been given the specific task of developing Management Plans for each of Jersey's Ramsar sites.</p> <p>The first management plan meeting with relevant stakeholders will take place in early March 2010, when it is proposed to set up a Ramsar Management Authority. The Department hope to have all of the plans agreed by the end of 2010.</p> <p>It should be stressed however, that despite extremely scant resources, since 2003 P&amp;E has made considerable progress towards putting in place measures which will greatly speed up the development of such plans this year. These are listed chronologically below –</p> <ul style="list-style-type: none"> <li>▪ In 2002 the South-East Coast Ramsar site and the Offshore Reefs (not designated until 2005) were included within The Jersey Island Plan 2002 as part of the Marine Protection Zone and given protection from development and harmful activities under Planning and Building (Jersey) Law 2002.</li> <li>▪ In 2003 a public information leaflet about Jersey's South-East Coast Ramsar site was published.</li> <li>▪ In 2005 World Wetlands Week walk introduced 800 people to the South-East Coast Ramsar site</li> </ul>

Findings	Comments
	<p>and spread the message about the need for wise and sustainable use of the site. Educational walks supported by both P&amp;E and Jersey Tourism have been occurring within the South-East Coast Ramsar site since 1998.</p> <ul style="list-style-type: none"> <li>▪ In 2005 Discovery Pier visitor centre was opened as a public information centre about the Ramsar sites. Sadly, due to funding pressures, this centre was closed at the end of 2009. However, the Department has adopted a more efficient approach to public outreach through ECO-ACTIVE, and specifically, through the introduction in 2008 of ECO-ACTIVE Marine, a dedicated programme designed to provide accurate advice to empower Islanders to make more environmentally conscious decisions on marine and coastal issues.</li> <li>▪ In 2008, in response to concerns over the growing number of marine tour operators landing on the offshore reefs, P&amp;E, in conjunction with Jersey Tourism, organised and part-funded a course designed to ensure the operators have an understanding of how to approach marine wildlife and how to minimise any disturbance to those animals. As a result, over 80% of known commercial marine tour operators in Jersey were trained and accredited under the internationally recognised WiSe (Wildlife Safe Operator) Scheme. All WiSe operators agree to abide by appropriate Codes of Conduct for the animals that they view, created to ensure that their operations are safe and sustainable. Another course has been organised in 2010.</li> <li>▪ In 2008, following extensive consultation, the Minister for P&amp;E also developed and launched the Jersey Marine Wildlife Watching Code. A summary leaflet was widely circulated, with the full version available on both <a href="http://www.gov.je">www.gov.je</a> and <a href="http://www.eco-active.je">www.eco-active.je</a>.</li> <li>▪ In 2008, the process of developing the Les Ecrehous Management Plan was started with a workshop attended by over 70 stakeholders. This, together with the work of the Seabird Working Group, resulted in the establishment in 2009 of parts of Les Ecrehous as a Seabird Protection Zone.</li> <li>▪ In 2009, the P&amp;E Department and WEB jointly commissioned an ecological study of the South-East Coast Ramsar site, which will form an</li> </ul>

	<b>Findings</b>	<b>Comments</b>
		<p>important, up-to-date baseline for developing the Management Plan in 2010.</p> <ul style="list-style-type: none"> <li>▪ In 2009, an Aquaculture Management Strategy was commissioned to provide a framework for the sustainable development of this industry. As the majority of the current industry resides within the boundaries of the South-East Coast Ramsar site, a strategy of this nature will be part of the overall Ramsar management plan.</li> </ul>
17	The resources required to enable proper implementation of the obligations under the Ramsar Convention have not been forthcoming, and shortfalls in both the one-off and recurrent costs remain today.	<p>In 2002/3 in recognition of the fact that Jersey was not able to meet its obligations under the various Multi-Lateral Environmental Agreements within current resources, the P&amp;E Department undertook a detailed Resource Needs Analysis of the basic funding required to address this situation. The report identified a shortfall of £110k to enable Jersey to meet its basic obligations under a number of marine and coastal MEAs, including Ramsar. Of this, £50k was recurrent growth to appoint a Marine and Coastal Scientist and the remaining £60k was one-off costs for developing the Integrated Coastal Zone Management Plan and remote surveillance and an inter-tidal survey of the SE Coast Ramsar site. The offshore reefs were not designated at that time.</p> <p>A bid for resources was subsequently submitted to the 2003 Fundamental Spending Review, clearly setting out the consequences of not providing these funds. This bid was rejected by the States. Consequently, in the absence of additional resources, progress on developing management plans for the Ramsar site has been slower than anyone would have liked.</p> <p>The current situation in relation to recurrent and one-off costs is as follows: £20k was found within internal budgets in 2005 to enable the ICZM Strategy to be developed; and then in order to implement the ICZM Strategy, through re-organisation of existing budgets, an additional £50k was found from 2009 onwards to fund the Marine and Coastal Scientist.</p> <p>Based on the 2003 estimate, there is still a shortfall in one-off costs for remote surveillance of the SE Coast Ramsar site. These costs, estimated in 2003 to be in the region of £40,000, would now need to be re-evaluated, 7 years later. No funding estimates for baseline studies for the offshore reefs have yet been put forward.</p>

	<b>Findings</b>	<b>Comments</b>
18	Recent studies have indicated that there has been a reduction in environmental quality over the last decade in the portion of the Ramsar site closest to La Collette. This alone (without the EfW Plant development) should have resulted in an Article 3.2 report being submitted via the UK Department of Environment, Food and Rural Affairs (DEFRA) to the Ramsar Secretariat, but this has not happened.	<p>The Department would not agree, as has been previously stated, with the assertions of the Scrutiny Report that there has been a reduction in environmental quality over the last decade, or that there was therefore a necessity to submit an Article 3.2 report. The Minister for P&amp;E considered that there would be no likely significant change to the marine environment and this continues to be the Department's position.</p> <p>Finding 18 focuses on the Findings of a report generated by P&amp;E staff entitled:</p> <p style="padding-left: 40px;">“Investigation of possible contamination of marine biota from a land reclamation site at La Collette, Jersey”.</p> <p>Scrutiny, and their adviser, have used information collected, synthesised, reviewed, analysed, and concluded upon by P&amp;E, to their own ends and have focussed on Findings which are less pertinent than those which were focussed on by the Department as the independent regulator.</p> <p>The P&amp;E report details how in the late 1980s, environmental concerns focussed on the potential human health risk caused by the uptake into the marine biota of toxic trace metals that were thought to be mobilised from the incinerator ash stored at the Waterfront reclamation site (east of St. Aubin’s Bay) (Romeril, 1995).</p> <p>This was investigated by determining levels of 6 trace metals (<math>\text{mg kg}^{-1}</math> dry weight) for 2 benthic bio-monitors; the common limpet (<i>Patella vulgata</i>) and the serrated seaweed (<i>Fucus serratus</i>). Sampling was undertaken up to 4 times per year between 1993 and 2009 from 5 sites along the south and south-east coast of Jersey.</p> <p>The Report seeks to establish whether any statistical evidence exists that possible contamination from a land reclamation site at La Collette has caused a build-up of trace metal contamination in adjacent marine biota. It was found that a significant correlation existed for all 6 trace metals between the concentration at La Collette and the 2 distant sampling sites (Corbière and Gorey). This suggests that trends recorded at La Collette were evident elsewhere.</p> <p>The mean levels of chromium (Cr), lead (Pb) and zinc (Zn) in limpets was significantly higher at La Collette</p>

	<b>Findings</b>	<b>Comments</b>
		<p>than Corbière, whilst zinc in <i>Fucus</i> was significantly higher at La Collette compared to Gorey.</p> <p>However, high levels of these 3 trace metals also occurred in a nearby coastal sites (West of Albert) suggesting that the source does not originate from La Collette.</p> <p>Higher levels of arsenic (As), cadmium (Cd) and zinc in limpets at La Collette were recorded after the date that Crabbé wood mulch was stored there. However, higher concentrations of the 3 trace metals also occurred at other sampling sites, suggesting that the source is not La Collette.</p> <p>Between 1993 and 2009, mean arsenic levels increased in both limpets and <i>Fucus</i> at La Collette. This increase also occurred at Corbière and Gorey and cannot specifically be linked to La Collette. The mean concentration of arsenic recorded for limpets in March 2009 was below the range cited for the Dorset coast. The Minister for P&amp;E is in discussion with the Centre for Research into Environment and Health (University of Wales) and has requested that they undertake a literature review concerning the rise in arsenic levels that has occurred at all sampling sites.</p> <p>Mean recorded cadmium, copper (Cu), lead and zinc levels at La Collette were within the limits cited in literature for limpets and <i>Fucus</i> in UK and European waters.</p> <p>The analysis presented in the paper provides no statistical evidence that any possible contamination of the sea from the reclamation site at La Collette has resulted in a build up of the 6 trace metals in the soft tissue of the common limpet or the serrated seaweed within the adjacent coastal area.</p>
19	The ES was predicated on avoiding impacts to the Ramsar site. However, the Findings of this review consider the Environmental Statement to be potentially unsound and missing essential	The Minister for P&E's response to this Finding is covered at Finding 5.

	<b>Findings</b>	<b>Comments</b>
	information; consequently the mitigation measures are inappropriate and poorly considered and the implementation of the CEMP lacking in rigour. This has exposed the marine environment to an unnecessary pollution risk.	
20	Additional studies are required to assess the current status of the Ramsar site and to implement the site management plan.	See response to Finding 16 above.
21	There is a need for a greater understanding of issues relating to heavy metal accumulation and bacterial pollution to enable effective protection of Jersey's sea fisheries and the marine environment.	<p>The Department recognises that this is true in both cases. The heavy metals report (see Finding 18) drafted by the Department makes several Recommendations to increase the efficiency and effectiveness of the sampling (these are included in section 5 of the P&amp;E report).</p> <p>Additionally, work is and has been for some time ongoing into increasing our understanding of bacterial impacts upon surface and marine waters. As stated already, this has involved significant departmental resource over the last 12 months alone and has involved numerous States and third party stakeholders.</p>

## RECOMMENDATIONS

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
1	Detailed guidance should be published on the EIA process in Jersey. The Panel understands that this is in preparation by the Planning and Environment Department. In the light of the Findings of this report, the Panel believes that the draft guidance should be reviewed in consultation with local stakeholders and subjected to external peer review to ensure that it fully reflects best practice.		Accept in part	<p>A Practice note – based on UK Best Practice – is shortly to be issued to assist in the understanding of the EIA process. This will provide information to both potential developers and any third party that may have an interest or concern in the proposal. It should be noted that this has been available to view and indeed has been distributed in draft since early 2007.</p> <p>Unlike in the formulation of Policy, a Practice Note is designed to help navigation through the P&amp;E Department's processes. Reviewing the Note with local stakeholders would involve parties from all sides of the development process and if consensus cannot be reached then the Note might not even appear at all. The Department will be alive to feedback on the Note and will engage with stakeholders at launch so as to ensure the message of the Note is communicated. Added to this the Note will be reviewed in the context of comments or changes in practice and/or other influences.</p>	Q1/2 2010
2	A more systematic and transparent process should be implemented in respect of scoping for future Environmental Impact Assessments. This should record how and why decisions have been made and what organisations/ individuals have been consulted; where appropriate these records should be included in the published Environmental Statement.		Accept	This will be detailed in the guidance indicated at 1.	Q1/2 2010

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
3	The scoping process should be more participative and involve key stakeholders as well as representatives of relevant States departments. An assessment of potential stakeholders should be undertaken as part of the scoping exercise and lead to formal invitations to participate in the scoping process; this matter needs to be considered adequately in the ongoing development of guidance.		Accept	This process was revisited in early 2009 and is subject to regular assessment and review.	Ongoing
4	Every new project should be independently assessed on its own merits. Analogies drawn from prior local experience may be used to provide comparative information, but must not be considered as a substitute for comprehensive, site-specific studies and evaluations.		Accept with qualifications	<p>If this refers to the provision of comprehensive information-gathering in connection with an EIA, the Minister for P&amp;E wholeheartedly agrees.</p> <p>However, if it implies that any EIS must be scrutinised by an independent party outside the States this is rejected. The EIA process is ultimately there to inform the decision-maker and as such, whilst from time to time advice may be sought from outside the States, it should be the Minister for P&amp;E who takes responsibility for assessment of submitted information. The Minister not only has the power to determine an application, but also has to defend that decision should it be challenged by any Party.</p> <p>Added to this fundamental issue of principle, there are no resources to employ external agents to fully engage in and run the EIA process.</p>	N/A

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
5	An urgent review should be carried out by Transport and Technical Services (T&TS) and P&E of all procedures for implementing environmental mitigation and protection measures relevant to the remainder of the construction phase of the EfW Plant, including method statements, monitoring and reporting.		Partially accept	This Recommendation can be commented on more fully after the outcome of the current investigation into an alleged pollution incident at La Collette is determined.	Ongoing
6	P&E should adopt a more robust approach to consenting discharges. All discharge consents should include quantifiable values wherever possible. Values should be set at a level designed to maximise environmental protection, not based on any design constraints or plans notified by the applicant.		Accept	This Recommendation is accepted on the basis that the requirements are carried out already. No discharges have yet been consented from the site. When any respective applications for discharge are made, they are already and will continue to be robustly scrutinized and only consented in the best interests of environmental protection.	Complete
7	Future CEMPs should be more robust and closely monitored for compliance. P&E should adopt the best practice guidance published by the Institute of Environmental Management and		Accept	Where applicable in the Jersey context, the best practice guidance referred to – IEMA Best Practice Volume 12 published in 2008 – should be utilised. The CEMP should be used by parties to the contract and to external stakeholders to regulate activities with likely environmental effects. P&E will advise as to relevant legislation that must be adhered to, and the CEMP must indicate that strategies are in place to deal with these requirements. Ultimately, if these strategies	Ongoing

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
	Assessment as a minimum standard.			fail and legislation is contravened, the operator risks enforcement action.	
8	A robust baseline data set for the Ramsar site and other coastal waters should be developed as part of a strategy to protect the marine environment from further unnecessary risks. This should include a thorough investigation of sediments, appropriate biota and water quality, with particular attention to areas considered likely to be affected by pollution. The results of these studies should be made public and updated on a regular basis.		Accept	Whilst accepting that this is a very desirable goal, which the Minister for P&E wholeheartedly supports, there is currently no funding to achieve this Recommendation in full. Despite this, it should be acknowledged that certain baseline data is gathered by the Department including heavy metals and various water quality parameters. See also response to Finding 17. The Minister for P&E would welcome the support of the Scrutiny Panel to increase funding for this worthwhile aim.	Ongoing in part  No target date in part due to lack of resources
9	There should be a clear separation between the roles and responsibilities of government departments regarding future planning applications. P&E, as the regulator and responsible planning authority, should treat States departments as they would any other applicant, adopting a rigorous and challenging approach to maximise protection of the natural environment.		Accept	This is already the case. Whilst enjoying a close and effective and efficient working relationship, there have never been any occasions when the role of all the parties involved has become compromised. Certainly P&E has never lost sight of its responsibilities in all of its roles that touch on the EfW development.	Existing

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
10	Future EIAs need to be conducted in a culture which ensures that all applicants, including States departments, and all stakeholders provide full details of environmental information relevant to each application.		Accept	The maturation of the EIA process in Jersey and Europe has meant that the exercise has grown in terms of its impact on the development process.	Ongoing
11	The provision of relevant environmental information should ensure that the Minister, in determining any application, takes all material considerations into account.		Accept	This is already the case.	Existing
12	A culture of inclusivity, participation and empowerment needs to be developed in order to rebuild trust between NGOs, the regulator and the wider public regarding the EIA process. This could be assisted by inviting consultation during the preparation of guidance on the EIA process as recommended above.		Accept with qualification	See response to Recommendation 1 above.	Ongoing

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
13	The “Environmental Who’s Who” should be maintained, updated and used as a matter of course in guiding public participation and consultation.		Accept	This has occurred in parallel with the drawing-up of the revised Practice Note (see response to Recommendation 1 above).	Q1/2 2010
14	Public consultation should follow best practice guidance, use a variety of fora and be as participative and inclusive as possible.		Accept	<p>The Minister for P&amp;E recognises the importance of public participation in the Planning process. This should not be taken as only a commitment to fulfil the statutorily required minimum, but as a proactive and constructive commitment to garner as much comment as possible. Only by public engagement can the planning process claim legitimacy. This cannot mean that public opinion is the sole consideration in the determination of planning applications, but the opportunity for that opinion to be considered is vital in making the correct decision. However, this has to be carried out within the potential restrictions of available resources.</p> <p>However, as indicated elsewhere in these comments, the Minister for P&amp;E has to act as an arbiter of comment so as to ensure that the wishes of an applicant can be balanced against public comment in the context of the needs of the population as a whole.</p>	Ongoing
15	Steps should be taken to encourage both NGOs and the public to maintain active involvement in the consultation process, especially where this may be prolonged as a result of change or delay to the application.		Accept	In revisiting the potential NGO consultation groups, relationships have been established or re-established. The Minister for P&E is committed to nurturing and supporting such relationships to allow engagement in the EIA process and will welcome any credible NGO to the list.	Ongoing

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
16	T&TS should re-establish the Community Liaison Group to provide a forum for consultation on ongoing developments at La Collette. However, there is a legitimate concern that this may prove counter-productive.			This targeted Recommendation can only be responded to by colleagues in T&TS.	
17	P&E should be awarded sufficient funding to enable adequate implementation of the Island's obligations under the Ramsar Convention.		Accept	Whilst steps are being taken to draw up Ramsar Management plans – including Ramsar Management Authority – this has had to be carved out of existing funding, despite previous requests for the States to allocate dedicated resources. Any future funding would obviously enhance the ability to meet Ramsar commitments and P&E would welcome the Scrutiny Panel's support to achieve this.	Ongoing in part (see 18); further resources may need to be identified
18	P&E should complete and implement a management plan for the South-East Coast of Jersey Ramsar site as a matter of urgency and the remaining States Ramsar sites as soon as possible.		Accept	This process has commenced and included the involvement of stakeholder groups and is targeted to be completed by the end of 2010.	Ramsar Management Plan Scheduled to be completed Q4 2010
19	Development of the management plan should give careful consideration to monitoring and assessment protocols. Physico-chemical sampling and biotic monitoring should be appropriate, stratified and fit for purpose in order to evaluate		Accept	Along with parallel activities, this will form part of the management plan. However, as stated in response to Finding 17 and Recommendation 17, limitations of funding will dictate the sampling and monitoring regimes. In the absence of further funding, the precautionary principle will need to be adopted.  See response to Recommendation 18 in terms of involvement of stakeholders.	Ongoing in part (see 18); further resources may need to be identified

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
	ecological character. The evaluation of ecological character needs to take into account wider ecosystem services provided by the Ramsar site. The development of the management plan should also be inclusive and involve local stakeholders.				
20	An Article 3.2 report should be produced and submitted to the Ramsar Secretariat regarding the likely change in ecological character within the South-East Coast of Jersey Ramsar site as a result of potential water-vectored contamination. This report should also highlight the activities proposed to assess and understand this situation and to ensure appropriate protection and, if necessary, remediation is established.		Reject	There is no evidence that the ecological character of the Ramsar site is likely to change as a result of either the EfW or any other activities along the coastline. This accords with other EfWs that have been approved – Ince Marshes and Runcorn – adjacent to sensitive wetland areas including Ramsar designated sites. As there is nothing to report then the purpose of a report is superfluous.	N/A
21	Further investigations should be carried out to evaluate ongoing and potential impacts on the marine environment, to include consideration of further developments on the waterfront, and discharges from the		Accept	The Ramsar Management Plan will set out the monitoring regime for the Ramsar site, and the Ramsar Management Authority will assess these data in relation to the management of the site. In addition, it is important to note that there already exists within P&E a timetable of monitoring, including scientifically robust monitoring of the effluent from the Bellozanne Sewage Treatment Works and ongoing works determining effects on receiving waters from	Ongoing in part; further resources may need to be identified

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
	Bellozanne outfall and other sources. These studies should be used as a basis for proposals to prevent further degradation of the marine environment.			coastal point and diffuse sources. Lack of resources continue to be an issue in preventing exhaustive investigations, but P&E staff are already involved in significant bodies of work in respect of this issue.	
22	Testing for cumulative impacts of heavy metals and other potential pollutants on marine biota should be extended to a wider range of sites and biota, and carried out on a more frequent basis to enable the compilation of relevant and reliable baseline data. Key local stakeholders should be involved in this process.		Accept	<p>See response to Recommendation 21 above – again, resource is required to give this more gravity and priority.</p> <p>The Minister for P&amp;E would agree that key statutory bodies should be involved in this process and that information should be made available to other interested parties to enable local stakeholders to be more informed in the event that they chose to become involved in the Ramsar management authority.</p>	No date until resources are identified
23	A review of environmental protection mechanisms relevant to the marine environment should be carried out between P&E and other relevant departments in consultation with key stakeholders to identify areas of concern and establish a way forward.		Accept	The Comptroller and Auditor General (C&AG) has already been requested by the Minister for P&E to carry out a review of this issue, and the Department understands that Scrutiny too have approached the C&AG with a view to undertaking similar works. The Department is confident in the environmental protection mechanisms carried out, but will work with both the C&AG and Scrutiny to make this confidence more widely accepted.	Ongoing

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
24	Ministers and Chief Officers should meet with the Scrutiny Panel to discuss difficulties over access to potentially sensitive information and to establish how such problems can be avoided and requests expedited in future.		Accept	There is always a balance to be struck in information-sharing. The Minister for P&E has a duty to ensure that information shared does not breach either legal protocols for investigations and potential prosecutions, or the States of Jersey's duty as a considerate employer.	TBA

### **Conclusion**

Notwithstanding the above comments regarding the Scrutiny Panel's Findings, the Minister for P&E has found the process valuable as a means of examining processes and procedures within his Department. The Minister welcomes the acknowledgement from the Panel that aspects of process have already evolved from the time of consideration of the EfW application and EIA, and also that best practice itself has also matured. This is reflected by the acceptance of the vast majority of the Recommendations that have arisen from the Report.

Once again, the Minister for P&E would like to offer his appreciation and thanks to the Panel and their Consultant for their work in producing their Report and looks forward to responding to any future reviews the Panel may wish to carry out. In the meantime, the Minister undertakes to update the Scrutiny Panel appropriately in regard of the progress of implementing their Recommendations.