

STATES OF JERSEY

Environment Panel Ramsar Review Hearing

FRIDAY, 18th SEPTEMBER 2009

Panel:

Deputy P.J Rondel of St. John (Chairman)
Deputy D.J.A. Wimberley of St. Mary (Vice Chairman)
Connétable J.M. Refault of St. Peter
Connétable P.F.M. Hanning of St. Saviour
Mr. R. McInnes (Panel Adviser)
Mr. M. Orbell (Scrutiny Officer)
Mr. M. Haden (Scrutiny Officer)

Witnesses:

Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Environment)
Mr. A. Scate (Chief Executive Officer)
Mr. W. Peggie (Assistant Director, Environmental Protection)
Mr. R. Glover (Principal Planner)
Ms. S. Le Claire (Assistant Director, Environmental Policy)

Deputy P.J Rondel of St. John (Chairman):

If we are all ready, ladies and gentlemen, we will commence. Good morning, gentlemen, good morning Assistant Minister; sorry, and ladies. The purpose of this meeting obviously is a continuation of our earlier discussions at Maritime House and we will start off by, as the meeting is recorded, giving our names and our positions, please. I will start. Deputy Rondel, Chairman of the Scrutiny Panel.

Mr. R. McInnes (Panel Adviser):

I am Rob McInnes, adviser to the Scrutiny Panel.

Mr. M. Orbell (Scrutiny Officer):

Malcolm Orbell, Scrutiny Officer.

Mr. M. Haden (Scrutiny Officer):

Mike Haden, Scrutiny Officer.

Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Environment):

Deputy Duhamel, Assistant Minister for the Environment.

Mr. A. Scate (Chief Officer for Planning and Environment):

Andrew Scate, Chief Officer for Planning and Environment.

Mr. W. Peggie (Assistant Director, Environment and Protection):

William Peggie, Assistant Director, Environment and Protection.

Ms. S. Le Claire (Assistant Director, Environment and Policy):

Sarah Le Claire, Assistant Director for Environmental Policy and Awareness

Mr. R. Glover (Principal Planner, Planning and Environment):

Richard Glover, Principal Planner, Development Control in the Planning Section.

Deputy D.J.A. Wimberley of St. Mary:

Daniel Wimberley, Deputy of St. Mary and Vice Chairman of the Panel.

Connétable P.F.M. Hanning of St. Saviour:

Peter Hanning, Constable of St. Saviour.

Connétable J.M. Refault of St. Peter:

Constable John Refault, also on the Environment Scrutiny Panel.

The Deputy of St. John:

So, straight in with the questions. The Minister stated that the department considered all the representation and documentation in order to come to the conclusion that, with proper management, there should not be an impact on the Ramsar site. Please describe the representation and the documentation used by the department as part of the determination process in assessing the following: (1) the type of mobility and contamination potentially present in the made ground; (2) the nature of the pathway between a source of potential contamination in the made ground and the marine environment; (3) the mobility of contamination and the nature of pathways potentially altered by exposure, evacuation and changes in aerobic status; (4) the potential effects of air emissions in the ecology of the Ramsar site; and (5) detail of the management protocols to ensure that there would not be an impact on the Ramsar site.

Mr. A. Scate:

If you permit, I think I am going to allow William Peggie and Sarah Le Claire to answer various parts of that to give you their expertise.

Mr. W. Peggie:

If I can just start off and to respond in respect of the first 3 points you made there and, in answering this question, it is important that the context is understood in respect of necessity outside of the E.I.A. (Environmental Impact Assessment) process and that specific determinands be taken into account within the reclamation site fill material. So to give a brief history, the Island's Waste Management Law was introduced to the Island to regulate internal and external waste operations. It was formally adopted on 8th June 2004, sanctioned by order of the Privy Council 9th February 2005 and registered by the Royal Court on 4th March 2005. It was approved by D.E.F.R.A. (Department for Environment, Food and Rural Affairs) in 2006. The subordinate legislation debate was held on 24th October 2006. It was brought into force on 1st November 2006. Coercive provisions came into force 3 months later, 1st February 2007. Waste applications were required to be submitted 6 months later, by 1st August

2007, and therefore existing sites operating under the transitional provisions of that law are operating legitimately. So at the time of submission of the E.I.A., there were no biting conditions of the Waste Management Law in place. T.T.S. (Transport and Technical Services) mentioned in their E.I.S. that the substrate to the construction was inert fill and, as the operators of the site, they were well placed to be able to describe and manage the infill here. As the site infill was described as inert, there was no necessity to review the information described in terms of determinands and hence analysis, and it is important to note that there is and was in existence a significant dataset showing heavy metal uptake in marine indicator organisms covering the waters around the La Collette reclamation site. The majority of the determinands monitored were below the limit of detection indicated and that indicated no pollution to the waters. So in respect of the site infill being described as inert there was no requirement to have specific information commented upon in respect of your question there.

The Deputy of St. John:

Any questions?

The Deputy of St. Mary:

Yes, can you just clarify; you went quite quickly, which is fair enough. Heavy water uptake; now, did you monitor water or organisms and you found there was heavy water uptake and no pollution? I lost the ...

Mr. W. Peggie:

Heavy metal uptake in marine biota organisms or marine indicator organisms.

The Deputy of St. Mary:

There was that.

Mr. W. Peggie:

We have had that going back to early 1990s and we have supplied the panel with that data and our subsequent report which summarises that.

The Deputy of St. Mary:

All right. So what does that lead you to conclude about the nature of the fill or indeed about where that comes from? I mean do you speculate at all about why that might be?

Mr. W. Peggie:

Where what comes from?

The Deputy of St. Mary:

Where the heavy water uptake ...

Mr. W. Peggie:

Heavy metal uptake. If I can perhaps clarify, there is a significant dataset to which has been alluded, taken from sampled marine organisms around the south east coast, around the La Collette area and the Waterfront area. These marine indicator organisms are deemed an acceptable method of analysing potential for pollution, specifically in respect of heavy metals, and the purpose of that investigation or the

purpose of that sampling run is indeed to determine the likelihood of potential pollution from that site.

Mr. R. McInnes:

Can I just get this straight; you are using the long-term dataset for the marine biota as an indicator that there is not a source of contamination coming from La Collette landfill site?

Mr. W. Peggie:

There is no proof or no evidence of pollution to date from that site.

Mr. R. McInnes:

From that site, okay. So if there is no evidence of pollution from that site, we accept there might be pollution from somewhere else, then?

Mr. W. Peggie:

Inevitably there will be various types of pollution from outfalls, for example, along various areas of the coast, yes.

Mr. R. McInnes:

And you can prove that link; because if you cannot prove it with La Collette I cannot see how you are going to prove it with other ones.

Mr. W. Peggie:

We have not specifically sampled for pollution along those particular outlets in the same way as we have done and we have obviously specifically sampled all of those types of metals to try and determine the likelihood of pollution from the La Collette/Waterfront area.

Mr. R. McInnes:

So as a department, in terms of looking at the documentation representation you were using that dataset, you felt comfortable that there was not a contamination source from La Collette affecting the marine biota?

Mr. W. Peggie:

It is my understanding that a part of the decision at the time was based on that dataset and there are no significant spikes in heavy metal uptake and that method of sampling is indeed representative and a sensible method of sampling.

Mr. R. McInnes:

I am not sure if that answers my question. You are content then that the heavy metals that have been seen to be accumulating within the biota was not linked to contamination within La Collette?

Mr. W. Peggie:

What I am not saying is that there was a significant rise in heavy metals in biota.

Mr. R. McInnes:

In that area.

Mr. W. Peggie:

Yes. What I am saying is that there is no significant long-term trend of increase of heavy metals in the biota.

Mr. R. McInnes:

Right. So putting it into a simple source pathway receptor model you have got a receptor, the marine biota, which some are showing some heavy metal contamination, which is elevating over time; you will accept that, yes?

Mr. W. Peggie:

Absolutely.

Mr. R. McInnes:

But you are saying in terms of source you felt the dataset you had was sufficient for that to rule out La Collette as a source?

Mr. W. Peggie:

Yes. We would not rule it in as a source because subsequent reports, which I can pass on, have shown that increases in specifically arsenic in this case, we have recently taken samples out of the Minkies and it is deemed that there is a similar increase. We were trying to get a representative site far enough away from La Collette to indicate whether our sampling method was representative. There is an increase in arsenic there which would lead us to a trend that there is a more global increase. What we are not trying to do is determine why that global increase is, but what we are trying to do is see whether there is a specific risk for the La Collette site and the data to date would suggest that there is no specific risk to marine biota, or to marine biota that we have sampled, from that site.

The Deputy of St. Mary:

Are you saying that for all pollutants, because you have mentioned 4 heavy metals all the time and now you have mentioned arsenic, so are you saying that for all pollutants that might have a harmful effect either on the marine biota or on us who eat them, that for all these pollutants the dataset says the same thing?

Mr. W. Peggie:

Of course arsenic is a heavy metal and I would say that the 4 samples identified, which are the most likely types of contaminants associated with any site of this description, then we are satisfied that the link is not made in terms of pollution.

Mr. R. McInnes:

I appreciate the submission to scrutiny of the datasets, and I have had a chance to look at them. What is missing in the datasets are a whole range of other contaminants: hydrocarbons, P.C.B.s (Polychlorinated Biphenyls), sulphates. What data documentation representation did you use to assess those? I can understand how you can use the biota for the heavy metals but for those other potential contaminants ...

Mr. W. Peggie:

My understanding is that we concentrated on the heavy metals on advice from the environmental adviser to the Island at the time and that it was put in place ... and I do not recall the name of the gentleman, my apologies; environmental adviser to either

the States of Jersey or the Planning and Environment equivalent at the time. It was determined that they were the primary indicators, if you like, or the most relevant indicators of where pollution may be, or about the types of likely pollution, and that is why those were sampled. In terms of other types of contamination, I would agree that we had no similar dataset going back that far and we have concentrated on those types of material or those types of determinants.

Mr. R. McInnes:

So what documented evidence and representation did you use to assess those other contaminants?

Mr. W. Peggie:

There has been no further documented evidence for the purposes of the E.I.A. We have been advised that inert material determined that indeed it was inert material through the historic understanding the T.T.S. passed to us. So my understanding at the time is that there was no further requirement to sample for other materials and determinants.

Mr. R. McInnes:

So you are saying that, because it is inert, there was no need to look at risks associated with hydrocarbons or P.C.B.s but you found it worthwhile looking for heavy metals. Why choose heavy metals when the samples have shown there is ...?

Mr. W. Peggie:

That is a question I cannot answer; it was a decision that was made at the time.

Mr. R. McInnes:

Well, who can answer? By whom?

Mr. W. Peggie:

By the appropriate Environmental Adviser to the States at the time.

Mr. R. McInnes:

That decision, those representations and documentation, that assessment was not necessarily just made at one point in time, there were stages within the whole E.I.A. process where, as a regulator, you had the opportunity to go back and ask for more information; we have established that before. In the E.I.A. checklist that was circulated post submission, I think the date was summer of 2007 I think it was, there was opportunity then to go back and say: "What representation, what documentation do we have on hydrocarbons, P.C.B.s, sulphates?" whatever. Why was that not done? When a rigorous approach was taken for looking at heavy metals, why were other contaminants ruled out?

Mr. W. Peggie:

Again, not being in the position at that time and not having any responsibility for that line at the time, I am not able to answer that question.

The Deputy of St. John:

Who would the officer have been? I am not talking about the ...

Mr. W. Peggie:

The Assistant Director for Environmental Protection.

Mr. R. McInnes:

Would have been the person responsible for making that decision at the time, okay.

Mr. W. Peggie:

Between the Assistant Director of Environmental Protection and the Director of Environment.

The Connétable of St. Saviour:

Can I just ask for the record, can you tell us over what period the sample has been done just so that we have got the background; how frequently and is it current?

Mr. W. Peggie:

It is current, it is up to date. I believe it is quarterly and it has been undertaken since 1993 to present.

The Deputy of St. Mary:

For the record, which organisms were monitored?

Mr. W. Peggie:

Fucus Seaweed, Slipper Limpet and another; it is not my area of speciality.

The Deputy of St. Mary:

It is not a trick question, I mean I have got the study here, the first study, and we are not allowed to mention names, and it is Slipper Limpet, the Common Limpet and the seaweed at the beginning and it says you need those 3 because the 2 limpets are different types of limpet and one is a filter feeder and the other is a browser, an algal browser. That sounds quite comprehensive but those 3 do not appear to be monitored right the way through the paper; they appear in the introduction but do not appear in the paper.

Mr. W. Peggie:

To have a browser and a filter feeder I think was deemed adequate for the purposes of that particular report.

The Deputy of St. Mary:

So what was chosen was the browser and the seaweed, the seaweed being an absorber of what goes on around it and the browser being a muncher of algae, but the filter feeder does not appear in the table so I just wondered what your comment ...

Mr. W. Peggie:

I accept that and the reason being, I do not know.

The Deputy of St. John:

Are we going to have the opportunity of interviewing the Assistant Director, Minister?

Mr. W. Peggie:

If I can answer that. I am the Assistant Director for Environmental Protection. The previous incumbent has retired.

Mr. R. McInnes:

Just to pick up on the previous comment, in the report referred to it does say that the filter feeder is a better indicator for pollution and there is no analysis provided to the panel on the heavy metal accumulations within the filter feeder, even though it is stated that is the better one. Just continuing on this, and I wonder where the answer could be going on this, but taking a precautionary approach which is stated within several bits of documentation which have been cited to us which have come out of Planning and Environment, do you feel that the understanding of the nature of inert fill was sufficient to be compliant with a precautionary approach?

Mr. W. Peggie:

It is a difficult question to answer insofar as it was a long time ago that that understanding would have been understood, for want of a better phrase, and I think I would accept that, as you know, there is a change in understanding more recently in respect of definitions and waste acceptance criteria that would describe inert fill. But I think at the time it was an adequate description.

Mr. R. McInnes:

So under a precautionary approach as a regulator, would it be appropriate to ask for more investigation to try and understand better the nature of that inert fill?

Mr. W. Peggie:

I think, again, not wishing to speak specifically for previous incumbents, I think the intention or the understanding was that as it was inert fill then there would be no need to specifically sample throughout the site to determine all other types of potential contamination; I think if it was to be done then that could be an extremely big survey. I think perhaps the precautionary principle in terms of a watching brief to establish or to find and establish the type of contamination thereafter and determine a remediation methodology or disposal methodology would be acceptable.

Mr. R. McInnes:

Would another approach have been to know when the tipping started on La Collette to work out roughly which year would have been in that area and then find out - it would not be too difficult - where the stuff was coming from in that year, which bit of West of Albert, to put it bluntly, was possibly ending up in that site. Then you could know; you would have a ballpark feel for what the scope of the risk was.

Mr. W. Peggie:

I understand where you are coming from but I think, given that the majority of the material coming in would indeed have been defined as inert and a minority would have been potentially contaminated material which was disposed of elsewhere, and then my understanding is that T.T.S.'s view in respect of what was where, i.e. it was all inert waste, was they had a good understanding of where that was going within the area of the fill at the time.

Mr. R. McInnes:

Can I just pick up; you said that you were not around at the time, Mr. Peggie, so it was not on your watch. I have in front of me the checklist for Environmental Impact Assessments which was circulated to your department and it says under "Consultees", "Planning Environment, Environment Division, Willie Peggie, Head of Waste Regulation." One of the things that was proposed under the checklist which has environmental effects and whether the topic is covered and whether there is any comment, a specific comment, which may or may not have come from yourself but definitely came from your department, was: "Effects of chemical emissions and deposits from soil off site and surrounding land. An interceptor will only be effective against substances that are ... i.e. hydrocarbons." It talks about safety measures. It then also talked about aspects of drainage and the requirement for additional information. This is pre determination, post submissions.

Mr. W. Peggie:

For reserve matters, is it, or for ...?

Mr. R. McInnes:

No. This is prior to determination.

Mr. W. Peggie:

Those comments would have been the comments made by the water resources staff of our team.

Mr. R. McInnes:

Okay. But these are comments that have come from the Planning and Environment, Environment Division, so there was an opportunity here to look at whether there was appropriate documentation and representation made in the submission to understand the nature of potential contamination. Now, you have already said that earlier on in the process that was looked at in terms of heavy metals; why was that discrepancy between heavy metals and other contaminants not identified at that point?

Mr. A. Scate:

I think Willie had said in effect that the decision was taken at the time by the Assistant Director at the time that it was not appropriate for that work to be done and, therefore, that study was not carried out and, therefore, we concentrated on heavy metals.

Mr. R. McInnes:

So as a regulator you were comfortable with the E.S. (Environment Statement) submission even though it did not go into that level of analysis and despite the Minister saying that the department considered all representations and documentations, to come to the conclusion there would be no impact on the Ramsar site?

Mr. A. Scate:

Yes. I think we have been clear in terms of what we considered to be in the site through discussions with the operator and that is what led us to that conclusion.

Mr. R. McInnes:

The records that the operator holds for the site, did you look at those records?

Mr. W. Peggie:

I think the operator earlier on alluded to the fact that there were minimal records there and it was indeed a first-hand analysis of the type of material that was coming on to site.

Mr. R. McInnes:

I think, referring to the earlier hearing, it was basically down to the guy standing there next to the machine to make the call as to whether there was contamination going in the ground. Would you agree with that?

Mr. W. Peggie:

Yes, indeed, and I think at the time I would have imagined that would have been considered to be a fair test of ...

Mr. R. McInnes:

Under the management regulations that were extant. Yes.

Mr. W. Peggie:

Absolutely.

Mr. R. McInnes:

Yes. So in terms of understanding the impact on the Ramsar site, taking a precautionary approach, relying on that form of record you felt was appropriate?

Mr. A. Scate:

At the time we did, yes.

The Deputy of St. John:

Who is going to answer 4 and 5, please?

Ms. S. Le Claire:

In terms of the airborne emissions: "Will there be evidence provided within the E.I.A. in consideration of the fact that they were going to meet the requirements of the Waste Incineration Directive and that these requirements would be enforced through the waste licence which would be issued by the Environment Department under the Waste Management (Jersey) Law coupled with the result of the dispersion model." So the fact that the levels that were going to be reached were compliant with the Waste Incineration Directive overlain on the fact of the stack height of the chimney along with the air dispersion model which showed that there will be not a significant impact on the Ramsar site and we were satisfied with those presentations and those results.

The Deputy of St. Mary:

Can I just ask, just the factual question: be enforced by a what; what is the enforcement mechanism going to be?

Ms. S. Le Claire:

Through the Waste Management (Jersey) Law, through the waste licence.

The Deputy of St. Mary:

On air emissions, emissions to air?

Ms. S. Le Claire:

Yes. That covers emissions to air.

Mr. R. McInnes:

All right, we will move on. On number 5 on there, the details of the management protocols, we have mentioned earlier on that in the absence of detailed records on the nature of the inert fill, because none were kept at the time, that a watching brief would be appropriate, and I think that was the term used in the E.S. and it is also used within the reserve matters submission for the construction of the environmental management plan. Do you feel that the construction of the environmental management plan, as you signed off on, was a robust enough document to satisfy those concerns?

Mr. W. Peggie:

I think a Construction Environmental Management Plan is an agreement between parties, the contracting party and the client, if you like, and it is not for us to regulate as such. However, the actions carried out underneath that activity do fall under the greater legal power, if you like, of the water pollution legislation and so, irrespective of how the terminology of the C.E.M.P. (Construction Environmental Management Plan) relate, then we have an ultimate sanction, if you like, in terms of potential for pollution.

Mr. R. McInnes:

Can I go back to 4? Finish 5 and then I would like to go back.

The Deputy of St. John:

Go back to 4, please.

The Deputy of St. Mary:

Okay. The air emissions on the ecology of the Ramsar site, you mentioned dispersion modelling and so on; there have been various diagrams and so on. Was that modelling ever tested, was it ever subjected to any kind of review? That is the first part of the question. What substances are we talking about coming out of the stack? Did you take into consideration as to what they might do to the ecology at the Ramsar site? Did you think about fumes, in effect, did you think about the different types of organism and their different responses to different pollutants and in combination? Because all that is happening when it comes out of the stack and lands in the middle of, say, Greve d'Azette Bay, or whatever you call it, in the middle of the Ramsar site, then underneath there are, you know, little organisms that end up as bigger organisms and end up ...

Mr. A. Scate:

I think that is a point of view whether it is having adverse effects or not. Clearly ...

The Deputy of St. Mary:

Well, the question is not really about whether it has or not.

The Deputy of St. John:

Can we have the question answered first; we do not want interjections.

Mr. R. McInnes:

8.2 of the E.S.

Ms. S. Le Claire:

Yes, absolutely, but just in terms of listing rather than ...

Mr. R. McInnes:

Section 8.2 of the E.S., lists the air quality objectives.

Ms. S. Le Claire:

What we considered was the fact that they would be meeting the legally binding obligations of the Waste Incineration Directive. They set out the pollutants that would be coming from the stack and reflected those against the limits set within the Waste Incineration Directive and then set those against the dispersion model.. We believe that that was a robust way of presenting that information and analysing the impact. All of those potential pollutants were found to be of such small quantities and, bearing in mind the nature of the receiving environment, we felt that that was an adequate analysis of whether or not the impact would be significant.

The Deputy of St. Mary:

I mean I suppose I am concerned with the other substances. I know there is a limited list of substances and you have looked at those and you have estimated what the deposition would be of those substances but the reaction of the different organisms, has that been taken into account at all?

Ms. S. Le Claire:

I think we took a broader approach in terms of the dilution rate, the flushing rate of the receiving environment, and the anticipated levels that they would be at as to whether or not those would be considered significant and, in terms of the directive which takes into account both environmental and health impacts, it would not be considered significant.

The Deputy of St. Mary:

Okay. A slightly different tack because I do not think it comes elsewhere in the questioning, when we are talking about airborne pollutants coming out of the stack, I was concerned; maybe you can point me to a referencing here, but I have not been able to find any reference to combustion temperatures because they affect what comes out of the chimney.

Ms. S. Le Claire:

I am pretty sure combustion temperatures are mentioned within here.

Mr. R. McInnes:

They would be part of a risk compliance test.

Ms. S. Le Claire:

Yes. I think it was 850.

The Deputy of St. Mary:

So you were relying totally on the W.I.D. (Waste Incineration Directive) being complied with and being enforced?

Ms. S. Le Claire:

Yes and that will be enforced through the Waste Management Licence which will be enforced through the Waste Management (Jersey) Law.

The Deputy of St. John:

All right. We will move on to question 2: "Part of the way through the E.I.A. process the Policy Manager from the Planning and Environment Department went on maternity leave. Who became the point of contact for the Energy and Waste E.I.A. within the Planning and Environment Department at this point?"

Mr. A. Scate:

The name is

Ms. S. Le Claire:

I think was there not a point that individual officers could not be named in the previous hearing, so I think we should scrub that name from the list and it should be the Interim Policy Manager was appointed to cover that maternity leave from the period September 2006 to March 2007.

The Deputy of St. John:

Let the record be amended accordingly, please.

Mr. R. McInnes:

Then the original Policy Manager returned in March 2007.

Ms. S. Le Claire:

End of March 2007.

Mr. R. McInnes:

That is correct. So there was only one individual holding the fort, effectively, during that period.

Ms. S. Le Claire:

That person covered the duties of the previous ...

The Deputy of St. John:

How was the new point of contact selected?

Mr. A. Scate:

As we would with any interim cover: we would interview a relevant person and then appoint him to the role.

The Deputy of St. John:

How was the information on the change in the point of contact communicated both internally within the Planning and Environment Department and externally to the Transport and Technical Service Department?

Mr. A. Scate:

It would have been via a variety of methods: face-to-face introductions, internal meetings; the available communications at the time, really. So it would have been in meetings primarily but also introductions face to face.

Mr. R. McInnes:

So everyone involved in the Environmental Impact Assessment would have been aware of whom that point of contact would have been in the absence of that person?

Ms. S. Le Claire:

Everybody who was previously involved with any duties that were undertaken by the Policy Manager, be it E.I.A. or any other areas of work, were informed of the interim arrangements during maternity cover.

The Connétable of St. Peter:

I was just wondering how long was the change-over period between the interim manager coming in and the outgoing one going on maternity leave.

Ms. S. Le Claire:

I am trying to recall exactly; it was a least a week of handover of duties and then, during that time, those introductions were made. But prior to that people involved were made aware of the fact that there would be a change and it was pretty obvious I was going on maternity leave.

Mr. R. McInnes:

Yes, a bit of a lead-in time, is there not?

Ms. S. Le Claire:

There was really no hiding it.

The Deputy of St. John:

In the opinion of the department, is the submitted Environment Statement deficient in any way? This is a straightforward yes or no answer.

Mr. A. Scate:

No.

Mr. R. McInnes:

In that case, can you point to me where it deals with cumulative impacts, please?

Mr. A. Scate:

I see you have got to ask another question on cumulative impacts later on in the piece but certainly we feel cumulative impacts are dealt with in section 8 in relation to air quality, we mentioned the air dispersion model again, construction traffic and cumulative odour emissions.

Mr. R. McInnes:

Of water-vectored pollutants. Considering we have heard this morning in the previous hearing there are numerous construction activities going on all around that

area, where the marine environment is the receptor of water-vectored waste, I would expect to see a cumulative impact of water-vectored pollutants.

Mr. A. Scate:

I think what we considered at the time is was the statement adequate for us to come to a decision on the issues that we raised at the time, and the answer is yes, it was.

Mr. R. McInnes:

But under the wording of the order it should be: "Assess cumulative short-term, long-term and the rest of the impacts." What evidence was used to assess cumulative short or long-term impacts in water-vectored pollutants?

Mr. A. Scate:

There is not anything in relation to that specific subject but there are cumulative impacts mentioned in relation to other areas.

Mr. R. McInnes:

Absolutely. But in terms of water-vectored, there was no documentation provided; therefore, you could not use that as part of the determination process.

Mr. R. Glover

I think the E.I.S. is clear, and these were part of your earlier discussions, that there was a potential for impact on the water environment and that would be mitigated out so there was no impact on the water environment, so consequently there was no cumulative impact on the water environment.

Mr. R. McInnes:

Even though the department recognises there is an ongoing impact in terms of heavy metals on some of the receptors within the marine environment.

Mr. W. Peggie:

We monitored those but there is no evidence that there is any specific linkage of any description coming from the site itself, neither do we know where indeed it is coming from, so given that we have got similar take-up in other plants and animals in a further away location so I would not say that we have got a specific linkage between the south east coast and the detrimental uptake of heavy metals in those organisms.

Mr. R. McInnes:

Just continuing on that, sorry, there was just one other question. We raised this I think in the previous hearing and subsequently. Again, the Environmental Impact order is very clear: it says: "Forecasting methods should be presented." Again, coming back to the water-vectored issues, I think the air emission was dealt with very well within the E.S. and it is relatively competent but, in terms of water-vectored, I still cannot see any forecasting methods presented.

Mr. W. Peggie:

If it is designed to be mitigated out then there would again be no forecasting methods, presumably.

Mr. R. McInnes:

So it is predicated on the principle that it could be mitigated out; therefore, the appropriate mitigation would be put in place to prevent water-vectored pollution?

Mr. W. Peggie:

That is correct.

The Deputy of St. John:

All right. Next question: “Can the department describe any incidents which have occurred in relation to the ongoing construction activities associated with the Energy from Waste plant at La Collette from which a potential environmental impact might have resulted?”

Mr. A. Scate:

I just wanted to put on record obviously we have got an ongoing criminal investigation in relation to an alleged pollution incident on the site so we are not going to be able to go into detail at this stage on that. However, I will pass over to Willie to just give you any other information that is pertinent.

Mr. W. Peggie:

Yes, as was alluded to in the earlier hearing, we have indeed been informed of pollution incidents on site, one of which, as Andy rightly says, is the subject of an ongoing criminal investigation, another one being the ash pit damage which, as was quite rightly stated earlier on, was dealt with in an extremely efficient manner, in my opinion, by Transport and Technical Services. There was the expectation of T.T.S. and their staff, I think, that there was a likelihood of pollution. We arrived on site to determine that there was not a likelihood of pollution given the volume of liquid that escaped from that ash down into the surrounding trench. As I say, we monitored it; we ensured that that TTS put in place robust methodologies for remediating the issue.

Mr. R. McInnes:

Just on that issue, the ash pits appear within the red line for the planning application. I think I am correct in assuming that, therefore, one has to assume that underneath the ash pits there is ash which could be a potential contaminant.

Mr. W. Peggie:

Inside the ash pit?

Mr. R. McInnes:

Yes, inside the ash pit. In the E.S., do you feel that the ash pits as a potential source of pollution has been dealt with adequately?

Mr. W. Peggie:

If they are referred to as having been hydraulically independent themselves then yes.

The Deputy of St. Mary:

I just want to follow that up on the ash pits. Is there not a problem with the fact that an incident occurred?

Mr. W. Peggie:

I think there is an issue insofar as an incident occurred but, as far as an ongoing problem is concerned, then no. Construction projects, in my view, can have as many mitigating procedures put in place as humanly possible but human error does come into play very often and I think that was the situation this time. The fact that it took place, the fact that it was remediated especially well is, from my perspective, most important.

The Deputy of St. Mary:

My concern is that where one incident happens, which fortunately appears not to have caused lasting damage or that is what we seem to know, my worry is that we have 40 consultants by my reckoning on over £50,000 being paid to make sure that things go right on the project management side and then we have this incident and it just bothers me that where there is one incident there might be another one, because surely the whole process of regulation and making sure it goes right must be that these incidents do not happen. That follows on from the earlier question about the ash pits are within the red line, they are within the planning application, they are known about; everybody knows that they are there, and then somebody slices through one and I just wonder how you see that as a regulator and whether that sets alarm bells or what kind of approach you then take to that concern.

Mr. W. Peggie:

My approach to that concern is that I am not concerned about what the consultants are paid but, in respect of activities undertaken, the Construction and Environment Management Plan can allude to activities that should be undertaken and protocols and pieces of legislation that should be referred to. The recognition of those protocols, legislations for site-based activities; all well and good but still the human factor comes into play.

The Connétable of St. Peter:

Could I just have a follow-up on that as well? What measures have you put in place to ensure that same incident could not recur?

Mr. W. Peggie:

It is what we have asked T.T.S. We have requested of T.T.S. that they undertake a landscape management plan that is sufficient to ensure that no bladed kit is likely to come near those ash pits and for T.T.S. to have a proper understanding of exactly where the limits of those cells are.

The Connétable of St. Peter:

Do the measures they have taken meet your requirements?

Mr. W. Peggie:

The measures they have taken are in train and on their way to me, I understand.

The Connétable of St. Peter:

So nothing has been done so far?

Mr. W. Peggie:

No, lots has been done so far in terms of remediation at the site and we have been in negotiations with T.T.S. since for them to provide information to us in respect of a longer term potential pollution prevention.

The Connétable of St. Peter:

All right. But nothing has been done so far to mitigate the recurrence of the incident with the ash pit liner?

Mr. W. Peggie:

I think if I can use the word rollocking that we put across to T.T.S. at the time was a useful rejoinder or a useful protection against the potential for recurrence ... and if I may just finish, we did not give a timescale upon which that information should come to us and the fact that we have ongoing discussions with T.T.S., and I have officers who spend time on site regularly looking specifically at that area which is obviously now dealt with, is sufficient, in my opinion, to prevent recurrence.

The Connétable of St. Peter:

Well, given that the incident goes back to February this year, we are some months further down stream ... let me give an example. In this particular instance, a digger digging in slightly the wrong area caught the liner. Now, in my example, the digger's brakes fail and he runs into the ash pit, what has been done to stop that happening?

Mr. W. Peggie:

I would not be particularly concerned about brakes failing on a digger; I am excited about the actual action of the pollution occurring. That said, through general operational planning, we would expect that T.T.S., their consultants and their contractors would have maintenance schedules in place.

The Connétable of St. Peter:

I am sorry, that just leaves me rather concerned that you, for the environmental protection, are not more robust in your requirements with T.T.S. to make sure that there could not be a recurrence of that incident.

Mr. W. Peggie:

I do not think that we could ever say there will not be a recurrence of that incident, either. I think they can put measures in place to determine that, absolutely, part of which is an ongoing dialogue with my team and we have people on site regularly looking at that site which acts as a deterrent in itself.

The Connétable of St. Peter:

Do you think 7 months' delay is unacceptable?

Mr. W. Peggie:

In respect of the final piece of information that we are looking for? In this instance, not particularly given that we have ongoing dialogue with T.T.S. and with the contractors and with consultants and we have an ongoing discussion.

The Connétable of St. Peter:

When would you expect the mitigation plan to be put in place for protection of the ash pit liner?

Mr. W. Peggie:

What T.T.S. I think is doing is going sort of over and above the initial requirements to protect the ash pit liner. I think they have done all they can to protect that ash pit liner at the moment. This is an ongoing extra over, if you like, to ensure that ...

The Connétable of St. Peter:

All right. This leaves me slightly confused because earlier on I had asked you whether their mitigation met your requirements and you said: "No, not yet" or words to that effect.

Mr. W. Peggie:

Yes, in respect of a finalised document coming through to us telling us what they are going to be doing in respect of their long-term plans there, there has not, and that is fine. In terms of their short-term activities to ensure that that does not happen then the activity is away from that area now and I am pretty well convinced that there will not be recurrence of that given that we have officer time on site there.

The Connétable of St. Saviour:

Given as you say there is always a possibility of human error in the ... and what happened you feel was dealt with well. Would you, with hindsight, have put in stricter requirements to prevent this happening?

Mr. W. Peggie:

I think there were adequate protection ... or there was adequate information there to protect the area. As I say, I think this was a human error which, ultimately, failed and I think without ... it is very difficult to engineer out absolutely every human error so I think, generally speaking, it was dealt with in an adequate manner from the prophylactic side, from the preventative side.

The Connétable of St. Saviour:

So, in other words, it is conceivable this could happen again in another form?

Mr. W. Peggie:

It is always conceivable.

The Connétable of St. Saviour:

Because of human error and you think you have done all you can to write it out in terms of planning.

Mr. W. Peggie:

Absolutely. It is always conceivable in my opinion and from my historical experience that the best laid plans can go wrong.

Mr. R. McInnes:

Can I just come in there? As an example, in the U.K. if people are going to do works close to a river course, they have to keep 8 metres away from the top of that water course to prevent that sort of incident, so a digger does not maybe spill something into a river. And a water course is normally pretty easy to spot. You can see it. Given we have buried ash pits and it seems, in this situation, the boundary of that ... it should

have been known where it was, that human error might have taken someone just over that boundary, and I could see how that would happen. Would an appropriate mitigation measure have been to ensure that any pipe work going in, if this was to lay a cable, would have had a wayleave of 5 metres, 10 metres from any known boundary to allow that bit of error to be managed better?

Mr. W. Peggie:

With retrospect and perhaps in a different situation perhaps yes, but I understand at that particular ... or on that site I understand the constraints of geography and of the neighbouring property. So an accurate dig would be more appropriate in that respect.

Mr. R. McInnes:

So maybe going in with doing a hand dig first rather than going with a machine might be better mitigation if you cannot delimit an area?

Mr. W. Peggie:

If there was any question in respect of the delimitation of the area then perhaps, but it would appear ... and I am not ... I do not know, but it would appear that T.T.S. knew of the location of that site.

Mr. R. McInnes:

But as a regulator, you should be identifying where there might be a risk within the process which requires appropriate mitigation and it seems that this has not been dealt with at all within the E.S. in terms of identifying it as a ... it has been identified as a source of pollution. There has been no mitigation put in.

Mr. W. Peggie:

I think as a regulator we would be looking at the more global perspective of T.T.S, their contractors and their consultants taking appropriate actions to prevent pollution from a ... we would not necessarily become involved in that level of detail right from the outset.

The Connétable of St. Peter:

Just a little bit of clarification. The ash pit, we talk about ash pits but this particular incident occurred at the above-ground site, did it not? The ashes that were removed from pits on West of Albert was stored above ground in a liner and then covered with soil.

Mr. W. Peggie:

Because it is a pit and it goes both down and up.

The Connétable of St. Peter:

So it was quite obvious where it was, was it not? It is a physical element that you can see?

Mr. W. Peggie:

Well, without wishing to speak for the operator but from my historic background, which is waste management, no, it is not always desperately easy to spot physically where the liner is. You can spot where a ... where the material on top of that liner is and make an assumption.

The Connétable of St. Peter:

Yes, thank you, William. I think we are just getting a little bit too detailed. My fault wholly for that. Move on.

The Deputy of St. John:

While we are still on that, I have somewhat of a personal concern because we have had G.P.S.s (global positioning systems) around doing surveys on properties now for a number of years. I would have thought, and tell me if I am wrong, that your department would have insisted on G.P.S. locations of all these particular sites and have them on record. Have you got all that on record?

Mr. W. Peggie:

No, we do not and we would not require that. Under waste management licensing, as it is incoming, it may well be that we require specific 3D G.P.S. modelling of ash sites, but historically speaking it would not be required, no.

The Deputy of St. John:

Even a few months ago when we were setting up a site like this, you would not have considered it advantageous to yourselves?

Mr. W. Peggie:

Advantageous, possibly. Necessary, no.

The Deputy of St. Mary:

I was going to suggest another method might bring in some red and white tape.

The Deputy of St. John:

All right, we will move on. Question 7: the E.S. lists a variety of information available regarding the Ramsar site, 10.2.1. Have any of these studies been updated or repeated more recently than the dates provided in the E.S.?

Ms. S. Le Claire:

Yes, they have. We have had a study recently commissioned and undertaken by Plymouth Marine Laboratories looking at the South East Coast Ramsar site specifically in relation to ... as a jointly funded project between Planning and Environment and the Waterfront Enterprise Board to look at the area and the ecological status of the area. So that was undertaken earlier this year and we had a final draft in July of this year and we are expecting the final piece of work shortly.

Mr. R. McInnes:

Can I ask what that actually covered, what different aspects of the guides were looked at?

Ms. S. Le Claire:

I am just going to refer to my colleagues in terms of the detail of that.

Ms. S. Le Claire:

Yes, its title was "Review of the Current Ecological Status of the South East Coast Jersey Ramsar Site". It did a desktop data and literature review of the characteristics

of the site and all the background information, the data. We can provide you with this, actually. We are just waiting for the final copy. We have been asked by W.E.B. to hold off the final copy, rather than go through the detailed list of everything at the moment, but it is a very useful document and we are happy to provide it to you.

Mr. R. McInnes:

And that included actual new survey data?

Ms. S. Le Claire:

It did, and a very useful maps from it.

The Deputy of St. Mary:

What area does it cover?

Ms. S. Le Claire:

The South East Coast Ramsar site.

The Deputy of St. Mary:

Just the Ramsar site and not into St. Aubin's Bay?

Ms. S. Le Claire:

No.

Mr. R. McInnes:

And the survey work was completed over 2008-2009 to the period ...?

Mr. A. Scate:

Carried out in 2009.

Mr. R. McInnes:

2009? Okay. So before 2009, was there anything else done previous to that which is not listed on the data sources in the E.S.?

Mr. A. Scate:

No, there is not.

Mr. R. McInnes:

So looking at things like macro invertebrate fauna, bearing in mind the earlier comments about heavy metals, that survey was done in 1988. There do not seem to be many other reports that refer to macro invertebrates since 1988 listed. There is data on wintering water birds up to about 2001 but nothing from 2001. I just wonder whether you feel that was a robust enough baseline data set bearing in mind the earlier comments about potential pollution to actually determine the baseline conditions within the Ramsar site.

Mr. A. Scate:

I think the view at the time was taken that, yes, that was a sufficient baseline data set.

Mr. R. McInnes:

Just on that, I think there is process in place now to actually get a management plan assembled for the Ramsar site but at the time was there a management plan for the Ramsar site?

Ms. S. Le Claire:

No, there was not.

Mr. A. Scate:

No.

Mr. R. McInnes:

Am I correct in my assumption that there is now an officer in post who is charged with one of that ...?

Ms. S. Le Claire:

Absolutely. In October last year an Integrated Coastal Zone Management Plan (Making the Most of Jersey's Coast) was approved by the States, part of which was employing a specific Marine and Coastal Projects Officer. Within the strategy there is a requirement for developing Ramsar plans for ... management plans, sorry, for all of the Ramsar sites, not just South East Coast but obviously offshore reefs as well, and also to look at further protected areas in the marine environment, and that study is underway now.

Mr. R. McInnes:

And that baseline that Plymouth Marine Laboratories undertook will feed into that management planning process?

Ms. S. Le Claire:

Absolutely, it forms an essential part.

Mr. R. McInnes:

And that will give you a new baseline upon which to look at management activities?

Ms. S. Le Claire:

Completely, yes.

The Deputy of St. John:

That more or less covers question 8 as well or do you want to go into question 8 in more depth? Question 8, does the department and hence the States of Jersey feel that it is meeting fully its obligations on the Ramsar Convention? I think you have answered that.

Mr. A. Scate:

Yes, we feel we are meeting ... we are not fully meeting, obviously, relating to management and those aspects which we have just mentioned. We are now plugging those gaps in terms of our coastal management strategy and the officer concerned.

Mr. R. McInnes:

Just picking up on that, one of the documents submitted to the panel was an assessment which yourself had undertaken on the resourcing implications for the

various environmental obligations and international treaties and conventions that the Island is party to. I think that was submitted in -- you put that document together in 2004.

Ms. S. Le Claire:
2003.

Mr. R. McInnes:
2003. My understanding is that was rejected, the budget implications of that were rejected by the States?

Ms. S. Le Claire:
It was part of the fundamental spending review ... evidence at the fundamental spending review and it was rejected by the States at that time, yes.

Mr. R. McInnes:
And has that been revisited subsequently?

Ms. S. Le Claire:
The report or the request for ...

Mr. R. McInnes:
The request for the resources to satisfy those international obligations?

Ms. S. Le Claire:
It has become increasingly apparent that there are no additional resources for that sort of thing, so what we have done, we have tried to work around ways of making that happen and we have managed to now make that happen by reallocating existing resources.

Mr. A. Scate:
If I can comment on just the resourcing of the department, if we look at the trend in resourcing of the department, clearly our budgets and our staffing levels are fairly static over the last 5 or so years. What we are increasingly seeing, though, is additional environmental regulation being added and other projects and proposals that we know we need to develop, we are doing more with the same, if that is the right phrase, but we are trying to do more with the same. So generally with the resourcing sort of envelope we are working within, the pressure on the Environment Division is quite intense. I cannot disagree with that.

Mr. R. McInnes:
Do you feel that in terms of the report you produced, which very clearly set out the activities and the resource - both one-off and recurrent - resource implications, do you feel that the department is now close to satisfying all those different objectives and tasks listed in it?

Ms. S. Le Claire:
We are much closer. We did actually another review in 2007 which we are just putting the final touches to, because we have a commitment under the previous States Strategic Plan to meet all our international obligations by 2010, so we are working

hard to make sure that we are ... even if we have not actually met them that we have proper plans in place, not just aspirations, to ensure that by the end of next year that we will be either meeting, or in a position to meet, our obligations under international conventions that Jersey has been signed up to.

The Deputy of St. John:

Questions? No. We will move on. Was any formal or documented guidance provided to the Transport and Technical Service Department by the Planning and Environment Department following the commencement of the Planning and Building (Environmental Impact) (Jersey) Order 2006 in October 2006? If so, what did that take?

Ms. S. Le Claire:

No formal guidance was issued in October 2006. T.T.S. was made aware of the new order and that the procedures set out within the Environmental Policy Advice Note 1, which was the previous guidance, was still valid as it was based on the E.I.A. Directive and the U.K.'s E.I.A. Regulations. So the principles of that and the spirit of that was still valid and that draft guidance for the related E.I.A. Order was drawn up in 2007. I can go into details of how that was done, but actually in October 2006 there was no official guidance that specifically related to that Order.

Mr. R. McInnes:

And the state of the guidance document now? Is that now ...?

Ms. S. Le Claire:

It would be worthwhile outlining exactly how that has happened. We drew up formal guidance in 2007. We had an E.I.A. review workshop in November 2007 run by I.E.M.A., the Institute of Environmental Management and Assessment, which was attended by members of Planning and Environment staff, senior planners and environment staff, representatives from T.T.S. from waste, drainage and traffic, health protection, health and safety and also the Law Officers' Department. The purpose of this workshop was to discuss the guidance in order to improve our approach to reviewing E.I.A.s and develop a Jersey-appropriate checklist to accompany the guidance. There are a number of checklists which are hugely bureaucratic and cumbersome and what we wanted to try and do was something that would actually be meaningful and worthwhile in the Jersey context. This document was then circulated in early January 2008 for consultations with attendees at the workshop. Once comments from them were incorporated it was sent to the Law Officers' Department for legal review prior to wider consultation. We did during that time, once we got to a point where we felt it was useful guidance but still were aware that it needed to be cleared with legal review, we did issue it with a health warning just so that people who were about to submit environmental impact assessments, they were aware of the new procedures. The procedures were likely to remain the same regardless of the technical detail and the legal detail. During this time it was decided to transfer responsibility for the administration of E.I.A. procedures to the Development Control Division of Planning and Environment as is the practice in the U.K., which made a lot more sense in terms of administration. The guidance has since been updated to reflect this change in procedures and workshops have been held in July this year both with consultees and internally with staff ... sorry, internal/external consultees and also internally with planning staff as to how the procedures will now run, to explain these

new procedures. We are just waiting now to be able to go out to a wider consultation on that before it gets issued as final guidance. I imagine what is there now is pretty much how it will stand.

Mr. R. McInnes:

And is there a proposed timetable to when it goes live as a guidance document?

Mr. R. Glover:

It is draft at the moment. It is ready to go out to consultation. It is usually a 6-week consultation period, then we review the comments that come back, and it is difficult to do a timetable because we have to wait and see what comments are raised.

Mr. R. McInnes:

But it is relatively imminent?

Ms. S. Le Claire:

Absolutely. The absolute vast bulk of the work is done. It is just that last bit.

The Deputy of St. John:

Similarly, was any formal or documented guidance provided to the staff of the Planning and Environment Department on how to implement the Planning and Building (Environmental Impact) (Jersey) Order 2006? If so, what form did that take?

Ms. S. Le Claire:

Sorry, I think I have just answered that.

The Deputy of St. John:

Sorry. Are we going to have the opportunity of questioning the Assistant Director or the Environment Minister?

Mr. A. Scate:

That is the former Assistant Director. **[Interruption]** The former Assistant Director referred to earlier was Mr. Peggie's predecessor. He has now retired from the States of Jersey. Is that the person you are referring to?

The Deputy of St. John:

Yes.

[Aside]

Mr. A. Scate:

The department structure, we have a Director of the Environment post and we have a number of Assistant Directors covering their specialisms.

Mr. R. McInnes:

Who is currently the director?

Mr. A. Scate:

The current Director of Environment is currently on long-term sick leave and so he is not available at the current time.

The Deputy of St. John:

We were told at an earlier meeting that he would be back in August and we are now the end of September. Have we any indication of when the Director ...?

Mr. A. Scate:

Unfortunately, I cannot give an indication of when or if that member of staff will be available to give evidence. I am more than willing to brief the panel privately on that issue

The Deputy of St. John:

Is there any opportunity of us having a written submission from the Director?

Mr. A. Scate:

Again, if I could cover that at the end of the hearing in a closed session.

The Deputy of St. John:

Also, the research ecologist who was mentioned in the previous hearing this morning in terms of the role in determining the Ramsar site and scoping in or scoping out the Ramsar site who, unfortunately, again I hear is on sick leave ... off sick at the moment?

Mr. A. Scate:

Yes, we are hoping he will return back in service in the near future so there may be ...

The Deputy of St. John:

Could we get a written submission from him in the absence of having to hold another hearing?

Mr. A. Scate:

I am sure when he is back at work, which we are expecting hopefully fairly imminently, that can be provided. But I cannot give you a defined timescale, unfortunately.

The Deputy of St. John:

You can appreciate it is difficult for the panel to tie everything up if we cannot speak to these people and not wanting to make delays but we may have to if we do not ... Minister, if we cannot get to your officers to question them. Any other questions, gentlemen?

The Deputy of St. Mary:

We have come to the end of the Order Paper. Yes, I do have a couple. One is the general question of how the whole process has been engaged in, and I just want to quote what T.T.S. wrote in P.72/2008, which was the proposal that went to the States for the approval of the incinerator. What they say is in paragraph 5.1: "Following approval by the States of the La Collette reclamation site for the replacement of the Bellozanne incinerator in 2006, Transport and Technical Services undertook a full environmental impact assessment for the proposed facility." I just wonder how the

understanding ... because it takes 2 to tango, and I just wonder how the understanding grew in the mind of T.T.S. that they were running the E.I.A. process?

Mr. A. Scate:

Unfortunately, I think that is probably one for T.T.S. to answer rather than Planning and Environment.

The Deputy of St. Mary:

That is why I put in the bit about it takes 2 to tango because the theoretical position is that you run the E.I.A. and that they produce an E.I.S. as part of that whole process of ...

Mr. A. Scate:

Can maybe Richard answer the process, please?

Mr. R. Glover:

The environmental impact assessment process is the responsibility of the applicant. The result of that process is the E.I.S., the statement which accompanies the planning application. So, in that sense, T.T.S. were quite right. They were undertaking the environmental impact assessment. We, as the planning authority, were assisting them in that and that is normal practice, certainly throughout the U.K., in order to make sure that the environmental impact assessment looked at issues that were of recognised importance. E.I.A.s are, in my experience, very collaborative processes between the regulatory or planning authority and the applicant and they work best in that way. So T.T.S. were quite right that they undertook the impact assessment. We offered advice and assistance to them in doing that.

Mr. R. McInnes:

I just have 2 final aspects on the Ramsar side of things that I just want to try and clear up a wee bit. In terms of the public consultation and the wider consultation feeding into the E.S. production, there is documented evidence that the Ramsar steering group, the designating group, was still meeting in 2004. They were still holding regular meetings in 2004. Yes, it is all right. I have the minutes of the meeting.

Ms. S. Le Claire:

No, absolutely, if you do. I was not aware of that.

Mr. R. McInnes:

Including officers from your department, and I find it strange that that group that was still meeting in 2004 was not one of the consultees as part of the E.S. process. Could you explain how that could happen?

Mr. A. Scate:

Sorry, as a consultee, once the environmental statement was received?

Mr. R. McInnes:

Either as part of the scoping process, at any stage in the process. There is an extant group that is dealing with Ramsar-related issues that is meeting, producing minutes, that includes officers from your department, in 2004. Why was that group not consulted at any stage in the process?

Mr. A. Scate:

Well, certainly, consultation pre-submission was a responsibility of the applicant. Once submitted, the environmental statement was subject to wide publicity and consultation to all parties on the Island. So I would answer that by saying the steering group, if still in a form to respond, would have been covered by that general consultation to all parties once the environmental statement was submitted. That consultation lasted some 9 months in duration.

The Deputy of St. Mary:

Was any guidance given or discussion held at all with T.T.S. about who they might think of consulting in the process in the scoping process in the early stages?

Mr. A. Scate:

Yes, I think last time we gave evidence certainly we spoke about pre-scoping. There was no formal scoping opinion requested of the department. We did not go through formal scoping because under the law that is not required and it is there, really, for the applicant if they find it necessary to help them on their way to producing the environmental statement. So that is, in effect, the position of the department. We were involved in pre-scoping discussions but not in formal scoping, but actually I think the main message in terms of consultation and involvement, there were 9 months of consultation and involvement available once that environmental statement was submitted to the department.

The Deputy of St. Mary:

What I am certainly most focusing on is the scoping because that defines what the E.S. is going to look at, and the question is, in view of the collaborative approach you have taken, which you have explained that it is a good way of working, you would have thought that in those conversations you would say: "By the way, there is a 'Who's Who' of environmental organisations. You might like to look at that" to T.T.S. as a way of reaching people in this dialogue to get the best answer.

Mr. A. Scate:

As I said, there was no formalised scoping process undertaken because it was not required under the law. However, those groups were more than able to get involved in the full consultation on the environmental statement again for a period of 9 months.

The Deputy of St. Mary:

Sorry, I am going to press this and be fairly tactless. It seems to me you are using no formalised scoping as a way of avoiding the fact that in those conversations which you had informally, because we are left with just informal now because there is no formalised scoping, but in the informal scoping possibly there could have been discussions about: "Well, who should we talk to about this?" in this process of finding out what the E.S. should cover?

Mr. A. Scate:

Yes, that is the role of scoping, in effect. That was not undertaken, as I have already outlined and we have previously outlined. However, the role of scoping does result in an environmental statement. It helps the applicant form an environmental statement. Once consulted on, however, there is a formal procedure for all parties to comment on

whether they feel the environmental statement is sufficient or robust enough and, as I said, that lasted 9 months so all parties at that stage would have had ample opportunity to say their piece.

Mr. R. McInnes:

Can I just come in there? It seems that there is a default position that if you put the E.S. out there the responses will come, which is part of the whole public broadcasting of the process. But given that there is a Ramsar site there with an existing steering group with an administrative officer who resides within Planning and Environment, who is named thus, the role of the individual, and given the sensitivity of that site, I would have expected that that group would have been formally consulted in the process. I do not understand why that group, which has people that have been involved in the designation process, who understand the site, who have a vested interest in the site, have a chance as a collective, not as a set of individuals who might send a letter in or might send an email in, but as a collective have not been given the opportunity or been invited to be given the opportunity to comment or that the department, despite having members within that group, have not actively sought them.

Mr. A. Scate:

What I cannot answer is whether that group was formally in existence in 2006 when the environmental statement was submitted. You have mentioned, certainly, minutes of 2004 but, obviously, there is a default position that there is very wide public consultation. There were public exhibitions and meetings and if any party felt they were not consulted then, clearly, the Island knew that the proposal had been submitted. It was a significant proposal for the Island.

Mr. R. McInnes:

But to answer my question, why do you feel that group was not actually consulted? Rather than going back to the default position that anyone has the chance to do it.

Mr. R. Glover:

I think we need to go away and look at that and come up with the -- and possibly if you could provide the information of the context of the Ramsar group meeting in 2004.

Mr. R. McInnes:

Group meetings. There were several.

Mr. R. Glover:

Yes, meetings. It may be, and this is conjecture at the moment, it may be that the Ramsar group that met in 2004 were addressing the Ramsar designation of the offshore reefs and not the South East Jersey Ramsar site. So consequently, their brief was involved with the offshore reefs. Certainly, my understanding, and I am willing to be proven wrong on this and we will go away and look at it, my understanding is that the Ramsar group that was convened for the South East Jersey Ramsar site effectively stopped functioning when the Ramsar site was designated and that was sometime before 2004. As I say, that is conjecture as to what the explanation might be.

The Deputy of St. John:

Could I say I have some concerns here given that you have a body that has been meeting for a number of years and you are trying to tell the panel that they may not have been interested in something as important as this?

Mr. R. Glover:

No, I am not suggesting that. What I am suggesting is that any Ramsar group in 2004 was not concerned with the South East Jersey Ramsar site. It was concerned with the offshore reef designation as a Ramsar site. So as far as the Ramsar steering group are concerned, they did not have a function following the designation of the Ramsar site for South East Jersey and their role was to steer the Ramsar designation through to adoption by the Ramsar secretariat. Now, the application then came in a number of years later. I can understand that you are saying the default position is, look, we put the information out there and publicised the application. There are 2 threads there. One is you have to understand our role, Planning and Environment's role in this, is as a determinative body for the application. We have responsibilities not just to the wider public in terms of engaging for public comment; we also have responsibilities to the applicant. We have to be seen to be a body that receives the application and then makes it publicly available, statutorily in line with our statutory requirements, and then receives comments about that document and about that proposal, and then we have to look at them on the balance, balance those comments against what the applicant is saying. It is difficult to prove a negative. If people do not submit comments, do we assume that it has not been publicised adequately or do we assume that people have not got anything to say? It is very rare that people write in and say, "We think this is a great planning application." Given the amount of publicity that there was during the 9 months of consideration, there was a lot of press coverage and I do not think it was an unreasonable position to come to that people were not writing in because they did not want to make comments.

The Deputy of St. Mary:

Yes, can I just sort of clarify this maybe a little bit and then ask a question? Yes, the position is that in 2004 it was the reefs ... the Ramsar steering group for the reef, for the designation of the reefs. The membership of that group was very, very similar to the original Ramsar steering group for the South East Coast and it stands as what our adviser says - and I put the question to him again - you have a group set up with the word Ramsar in its title that is engaged in extending the Ramsar designation; therefore, understands the Ramsar designation to the offshore reefs, and that group was not consulted. The way it is perceived by a lot of people, I think, is that that group was left out of the consultation. That is what it looks like.

Mr. R. Glover:

Yes, I can appreciate that. I think I have to go right back to the beginning of what I said. It is conjecture what I am saying and I think we need to go away and look at that. We need to look at the terms of reference of the Ramsar groups. We need to see whether we felt that they were an active group at the time of the application coming in, and we will be open and honest about that but we have not got that information available so we need to go and look at that again.

The Deputy of St. Mary:

On that topic of active group, if I can pick you up on that, you have a group that a year and a half before was actively engaged with designating a Ramsar site. So even

if they have done their job and ticked their box you would have thought you would have gone back to their membership, which is clearly the people most interested in that particular ...?

Mr. R. Glover:

We need to go and look at their terms of reference and also look at if people on that group made individual representations to the planning application, which they were entitled to do as individuals.

The Deputy of St. Mary:

That seems to be ... from where we are standing, it seems to be an exclusive approach rather than an inclusive.

Mr. R. Glover:

No, it is inclusive. If someone from the group had written and said: "The Ramsar steering group, which only recently disbanded in connection with the offshore reefs, would be interested in looking at this," we would have engaged with them.

The Deputy of St. Mary:

Taking up that point, on the original Ramsar steering group, which was chaired by Maurice Dubras, Save our Shorelines were assured, and presumably all the groups were assured, that if anything was to happen to the Ramsar site or if anything was to impinge on the Ramsar site, they would be the first to know.

Mr. R. Glover:

We go back to our position ...

The Deputy of St. Mary:

This is the problem that we have with this whole issue ...

Mr. A. Scate:

I think we will look at who we considered to be active groups at the time and whether we considered these groups to be, in effect, task and finish groups centred around the designation of the Ramsar sites, because if that was the case then, clearly, once designation was achieved the group has finished and it has met its purpose. That is a different sort of group to an ongoing, if you like, pressure group to defend certain areas or certain interests. So we will go back and define - and I think we have already provided this - who we did consult on the planning application and, therefore, by virtue of that, that is the list of who we felt at the time were active groups who actively needed to be consulted. Clearly, if groups exist and they are meeting inactively, if that is the right ... we would not know about it, but then we get the default position that there was a lot of publicity around this proposal. It is a very big proposal for the Island. There was 9 months of consultation. So even if we did miss an active group off because they were not very clear in their activity, they had every opportunity to wave the flag and say: "You have missed us off the list. Can we make a comment?" and they are more than entitled to make a comment. So understand that the mechanics that, yes, we are always trying to consult all of those groups that we feel is appropriate at the time. Again, if groups are meeting without formal minutes or without any sort of publicity about that, it is very hard for the department to know if they are an active group or not. But the default position is that there is a lot of

public consultation out there. There were exhibitions and there was a lot of noise around this planning application and they had 9 months to make their views known.

The Deputy of St. Mary:

Broadening this out, the “Who’s Who” was not mentioned in connection with T.T.S. or, you know, the directory of environmental organisations in Jersey was not mentioned in conversations with T.T.S. as a good source of people who would be interested?

Mr. A. Scate:

Again, because there was not any formal scoping there was no need at that stage. That did not occur.

Mr. R. McInnes:

But despite no formal scoping, you talked about a lovely collaborative relationship in ...

Ms. S. Le Claire:

I think I should come in there. What we have on the list of people that we consulted regularly were people from the “Who’s Who” who were broad environmentalists. Because you have to ... if you have seen the list in the “Who’s Who” there are things like the Hedgehog Group, the ... who if that was specifically relevant ... for example, at Plémont, and there were issues relating to puffins, we specifically engage with groups like that. On the default list of who we engage ... who we send the E.I.A. to or who we sent the E.I.A. to for consultation, they were groups that were generally felt to be active and covered a broad scope of issues, and they included Concern, National Trust, Société and other ...

Mr. R. McInnes:

Just as a suggestion to take this forward, because there obviously seems to be a little bit of ambiguity about the context of the steering group and its precise terms of reference, given that one of your officers was on that and, unfortunately, cannot be here today, I just wonder whether we can seek a written clarification from that officer who sat on it and would understand the workings of that group better?

Ms. S. Le Claire:

I think it would be a very good idea. I also think going forward we now have somebody to take forward the management plans for that group in whatever shape or form, whether it be a coastal forum, whether it be for a specific Ramsar site, because we have a massive coast and waters we want to protect, not just the Ramsar sites, and obviously those sort of forums will be taken going forward.

The Deputy of St. Mary:

Can we have evidence to the panel through the Chair of the approaches made to the Société, National Trust and Concern, you know, what form those approaches took? You said you actually went out and ...

Ms. S. Le Claire:

They were sent ... they were sent the full environmental statement.

The Deputy of St. Mary:

This is going back to the old problem. I am talking about the scoping, the process of informal scoping that we seem to have settled on.

Ms. S. Le Claire:

I think we covered that in the previous one and it is documented.

The Deputy of St. Mary:

I think we might have done.

Mr. R. McInnes:

I think really the only other point would be a possible getting clarification from D.E.F.R.A. We might be approaching D.E.F.R.A. with some of the outcomes of the review, just to make you aware of that.

Mr. A. Scate:

Okay, thank you.

The Deputy of St. John:

Officer, have I omitted anything that I spoke to you about?

Mr. M.Orbell:

Not that I am aware of, no.

The Connétable of St. Peter:

Just one final point. William, when we were talking earlier on you said you were not aware ... sorry, Environment was not aware of where the ash pits were. So where is the other one?

Mr. W. Peggie:

Ash pits?

The Connétable of St. Peter:

Yes.

Mr. W. Peggie:

There are many ash pits throughout the site.

The Connétable of St. Peter:

You do not know where they are?

Mr. W. Peggie:

We do. We have them ... T.T.S. have documented evidence in terms of ... surveyed in evidence of where they are.

The Connétable of St. Peter:

Well, I understood you said earlier on that you did not know where they were, earlier in the hearing.

Mr. W. Peggie:

We know the areas they are in and we know through T.T.S.'s surveys where they are, if I alluded to that ...

The Connétable of St. Peter:

Well, that surprised me that you did not know and that is why I have come back to it. So I hope it was my misunderstanding rather than what you said.

Mr. W. Peggie:

I wonder perhaps if it was the specific delineation of the side walls or where ash stops and where soil starts that I ...

The Connétable of St. Peter:

Fine. We will look at that one later. Thank you.

The Deputy of St. John:

Minister, could I thank you and your officers, but prior to closing the meeting, have you any comments? You have been very quiet all the way through. Have you any comments to pass?

Deputy R.C. Duhamel of St. Saviour (Assistant Minister, Planning and Environment Department):

I think I probably would prefer to answer specific questions from any panel members if you had any specifically of me bearing in mind that I have been parachuted in to represent the Minister at the last moment. I think if you press me for some comments I could probably make a couple which may or may not be helpful. I think the overall impression I get from the work of the department on environmental issues is that perhaps ... well, it is a constantly changing field. Waste regulation and environmental issues are developing all the time and I think it is pretty difficult to keep your finger on the pulse and be up to date or completely up to date at any particular point in time, although you may wish to. I think on that basis the work of the department probably centres in my view probably too much on the regulatory side, which is by definition a reactive process and looks at things once they have happened in order to put them right, whereas if I had my own way I think I would prefer them to act probably more in a proactive fashion, which would be giving them enabling laws to dictate the environmental standards from a Planning and Environment point of view under which individual departments would have to respond. There are elements of legislation that have come and gone within the U.K. which I am particularly referring to and that is the B.A.T.N.E.E.C., or Best Available Technology Not Entailing Excessive Costs, and the B.P.E.O., which is the Best Practicable Environmental Option. Certainly, if those 2 standards were available to the department in terms of assessing applications for whatever, then I think the directional part of the department's job would be made a lot easier. I think it is part and parcel of the reasons for maybe having this review in the first place stems from the fact that those 2 different areas need to be perhaps properly funded and maybe there are some organisational kind of things that could happen within the department in order to bring that way of dealing with environmental issues to the fore. That said, I mean, it would not necessarily be the submission department's way of doing things and Planning does have more than one hat on in terms of having to give the final permissions and I think there is an issue as to the extent to which environmental considerations can be brought to the fore in order to insist on a particular set of outcomes or solutions that perhaps the department

is not wishing to undertake. I do not know how we solve it at the moment but I just raise that one as an issue. Going back to one or 2 more things on the changing face of the environmental organisation and management, we do have on the composting site, for example, a set of guidelines. I checked up on the internet to see what the current practice was for D.E.F.R.A. and, for example, exempt applications are those for storage and composting of biodegradable waste. In order to be classified as an exempt activity you have to show to the Environment Agency, and presumably the planning bodies as well, that there will be no risk to water, air, soil, plants and animals, there be no nuisances through noise or odours, and you will not adversely affect the countryside or places of interest. Surprisingly, I also noticed that within the upgraded designations and guidelines from D.E.F.R.A. were references to the proximity of these operations to Ramsar sites, and the current guidelines are that these things will be called for, proper environmental assessments as to the nature of the risks and their mitigation, if at all possible, of distances of one kilometre from Ramsar sites. Now, it does strike me that the composting processes that we have on the site are within the one kilometre of the Ramsar site. But that said, I am not at all sure whether or not the requests for specific documentation to be provided to assess the risks under the Habitats Directive, for example, which is an E.U. law and they have a whole load of things about whether or not Jersey, not being a member of the E.U., is bound by some of these international treaties and obligations, but specifically I am not at all sure whether or not because it is a changing set of events that perhaps the attitudes for setting out documentation to assess properly or more formally or more tightly whether or not the risks are acceptable, if at all they do exist, whether or not we are in that position. So I think, if anything, the overriding comment must be that it is a moving field, it is changing quite quickly, and I think the Island has to get to grips as to whether or not it wants its Planning and Environment Department not just to be seen to be the regulator but to be seen earlier on in the process of putting forward overarching environmental considerations which will generally kind of dictate up to a point the types of solution that are going to be put forward for other projects.

The Deputy of St. John:

Thank you very much, Minister. Are there any comments from the ...? If not, I will close the meeting and thank everyone for attending. Meeting closed at 12.55 p.m. Thank you.