

THE MINISTER OF TRANSPORT AND TECHNICAL SERVICES
INITIAL RESPONSE TO
THE ENVIRONMENT SCRUTINY PANEL'S REPORT
ENERGY FROM WASTE PLANT AND RAMSAR: REVIEW OF PLANNING PROCESS
PRESENTED TO THE STATES IN JANUARY 2010

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Ministerial Introduction

The Environment Scrutiny Panel performs an important and difficult role for the States of Jersey, and I therefore welcomed their review into the Energy from Waste Facility Planning Process given the stakeholder concerns they identified.

It is important for all stakeholders to have opportunity to raise concerns, particularly when these relate to matters as important as protection of our marine environment and the primary means of waste disposal for the Island.

This Review has been long and comprehensive, and I am pleased that I can agree or partly agree with all of the recommendations included within the Panel's Report. These relate to matters such as improving public consultation, making procedures more open and monitoring and reviewing procedures for environmental management in a more formal way - all of which is to be welcomed and a sensible and productive output from the Environment Scrutiny Panel.

However, I cannot agree with any of the findings within the Scrutiny Consultant's Report, who I believe has not adequately reflected the evidence provided by my Department and has produced an unbalanced and overly-critical report, which gives a completely misleading view of the environmental management of the La Collette Energy from Waste development. As this is unfortunately reflected in the Scrutiny Panel's Report verbatim, the findings within this report are also not accepted.

My Department's response gives a detailed breakdown of why the Scrutiny Consultant's findings are unreasonable, inaccurate and misleading. These are summarised as follows:

- The Environmental Impact Assessment process undertaken by my Department for the Energy from Waste Facility met all relevant Jersey Standards. Although the findings in the Scrutiny Consultant's Report present this fact obliquely, this has now been acknowledged by all parties.
- The Environmental Impact Statement gave sufficient information on all of the key environmental impacts to enable the Minister for Planning and Environment to make an informed decision when determining the Planning Application. The Scrutiny Consultant has either misrepresented, ignored or misunderstood the evidence provided by my Department about baseline environmental impacts, procedures for managing potential contamination and protecting the vitally important RAMSAR site. This is disappointing as it raises public concerns without justification.
- The Environmental Impact Statement is criticised for placing a disproportionate reliance on post determination mitigation, but this finding is based upon a basic

misunderstanding by the Scrutiny Consultant of the approval processes operating in Jersey and the contractual approach adopted for the Energy from Waste Project.

- The Construction Environmental Management Plan is criticised as not being sufficiently robust, but evidence provided by my Department, and witnessed myself, has demonstrated that when put to the test as unforeseen contamination was encountered on site, the environment was protected by the procedures set out within this Plan.
- The allegations about water ingress and the absence of an agreed method statement are not founded on an accurate or considered reflection of the facts. Controls were in place and were implemented by my Department, the Project Manager appointed for the construction and by the Contractor to ensure no damage to the RAMSAR site occurred.
- Statements about shortcomings in drainage details are comprehensively wrong and demonstrate a lack of understanding of the approval processes in Jersey.
- Findings relating to the public consultation undertaken as part of the planning application process are misleading. Stakeholders had 22 months to respond to the planning application. Only four public representations were received. This was despite a comprehensive programme of public consultation at the beginning and end of the process being implemented by my Department. Whilst some of the consultation methods chosen were less successful than others, it is unreasonable to suggest that adequate consultation did not take place.
- Statements made concerning the letter written by my predecessor as Minister for Transport and Technical Services imply that considerable pressure was put on the Minister for Planning and Environment in the latter stages of the planning process. This is incorrect. It was perfectly reasonable of my predecessor to point out the implications of delay in the timely making of a planning application determination to the Minister. This type of representation enables the Minister for Planning and Environment to effectively prioritise applications and understand their relative importance.
- Neither was any special consideration being asked or inadequate time for consideration being demanded from the Minister for Planning and Environment, who I am confident would have rejected any unreasonable request. The period between January 2007 and October 2008 appears ample time for any party to have raised any representation they may have had concerning the Energy from Waste facility planning application.

These findings have been widely publicised, and few of the factual inaccuracies pointed out by my Department have been acknowledged, therefore it is necessary for me to make a comprehensive response to the allegations made.

States Members and the Public of Jersey can be reassured that the environmental management of the Energy from Waste Facility development has been properly managed by my Department.

Constable Michael Jackson
Minister for Transport and Technical Services

	Findings	Acceptance	Comments
1	The scoping process for the Environmental Impact Assessment (EIA) for the Energy from Waste (EfW) Plant failed to comply with relevant standards.	Not accepted	<p>Environmental Impact Assessment has a specific definition in Jersey (under the Planning and Building Environmental Impact (Jersey) Order 2006), which is the relevant standard in relation to the La Collette Energy from Waste Environmental Impact Assessment. This is not adequately reflected in the Scrutiny Report. References to UK legislation and guidance by the Environment Scrutiny Panel's consultant are therefore not relevant, and as a result the Minister for Transport and Technical Services cannot accept this finding.</p> <p>The Environmental Impact Assessment submitted by Transport and Technical Services fully met the relevant Jersey standard, and this was accepted by the Planning and Environment Department.</p> <p>The Jersey standard does not require participative scoping. However, all relevant authorities were consulted with <u>prior</u> to the planning application being submitted and their comments incorporated in the documentation.</p> <p>The Advice Note indicated in the Scrutiny Report was not made available to Transport and Technical Services prior to the planning application being submitted. Neither was the advice note in active use by Planning and Environment Department at the time of submission.</p> <p>A comprehensive programme of public consultation was completed after submission of the planning application. This was in accordance with the relevant Jersey standard and advice from the Planning and Environment Department.</p> <p>Neither does the standard require that the scope be formally agreed, although the Environmental Statement submitted by the Department included a letter from the relevant Planning and Environment Case Officer confirming the scope to be accepted.</p> <p>Transport and Technical Services always accepted and welcomed that any part of the Environmental Impact Assessment could be revisited in the 22 month period between submission and determination of the planning application, for example in response to concerns raised by consultees. Indeed this occurred in relation to demonstrating the absence of air pollution impacts on the RAMSAR from the EfW.</p>
1	Continued		<p>Transport and Technical Services provided all the detailed information from the scoping process required by the Planning and Environment Department in good faith and undertook extensive public consultation demonstrating that due process was followed, evidence of which was provided to Scrutiny, but which is not acknowledged in a balanced</p>

			<p>way within the Scrutiny Report.</p> <p>There was adequate time for any party to raise concerns during the consideration of the planning application. Where consultation concerns were raised Transport and Technical Services responded to these in full with additional information. The fact that few concerns were raised is not a reasonable criticism of transport and Technical Services compliance with relevant standards.</p> <p>The Scrutiny Report criticises the Environmental Impact Assessment process for “not going beyond the minimum requirements of due process”. From a Transport and Technical Services perspective, this is confirmation that the application process was efficient and did not include erroneous or irrelevant information. This should be welcomed by the Public, who may recognise that Transport and Technical Services are endeavouring to minimise public expense in public development works.</p>
1	Continued		<p><u>Scoping Opinion</u></p> <p>There was no confusion on behalf of Transport and Technical Services as to whether the scope was agreed, as is implied in the Scrutiny Report.</p> <p>There is no requirement to formally request a scoping opinion, but a letter of confirmation of the scope by Planning and Environmental Department was included within the planning submission.</p> <p>Therefore, the finding that Transport and Technical Services did not comply with the relevant Jersey standard by not formally requesting a scoping opinion from Planning and Environment is not accepted.</p> <p>However, if the Jersey Law is amended, and public consultation prior to planning application submission becomes a legal requirement, as suggested by the Scrutiny Report, then the Minister for Transport and Technical Services would accept that it would be sensible for the scope to be formally agreed between the Applicant and the Planning and Environment Department.</p> <p><u>Scoping Decisions</u></p> <p>The scoping process undertaken by Transport and Technical Services on the Energy from Waste Facility</p>

1	Continued	<p>planning application <u>was</u> “systematic, transparent, unambiguous and formally recorded”. Evidence of this was provided in several folders of documentation to the Scrutiny Consultant so criticism of this within the Scrutiny Report appears inconsistent. The finding that Transport and Technical Services did not comply with relevant Jersey standards in this respect is not considered accurate and therefore cannot be accepted.</p> <p><u>Rigour</u></p> <p>A key finding of the Scrutiny Report is that the drafting of the Environmental Impact Statement lacked rigour or that information shortcomings exposed the environment to unnecessary risks. The Environmental Impact Statement rigorously identified the <u>key</u> environmental impacts and how these key risks should be mitigated. The approach agreed with Planning and Environmental Department has proved very successful on site in controlling emerging potential impacts and managing these effectively.</p> <p>The additional surveying and benchmarking suggested by the Environmental Consultant would not have reduced the risk of environmental damage and so is considered hypercritical. As a result, the suggestion that the Environmental Impact Assessment did not meet relevant Jersey standards cannot be accepted.</p> <p><u>Inappropriate Relationship with the Regulator</u></p> <p>The Scrutiny Panel find the relationship between Transport and Technical Services and Planning and Environment Department too ‘comfortable’. This is unfortunate, as the Minister for Transport and Technical Services has observed that the approach taken is entirely professional and successful.</p> <p>This was evidenced by the effective management of the superficial damage to the ash pit by a sub-contractor and the effective control of unforeseen diesel contamination on site in line with processes detailed within the submitted Environmental Impact Statement.</p> <p>The Regulator of the Water Pollution Law is formally investigating the alleged pollution incident and requested further information regarding the discharge consent application made by the Energy from Waste construction Contractor, even though the Regulator understood that this would delay construction. This would hardly have occurred if the relationship were too comfortable.</p>
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2	The Environmental Statement (ES) failed to provide sufficient information in several key areas.	Not accepted	<p><u>Baseline information</u></p> <p>The Scrutiny Report suggests that baseline information was inadequate. This is not accepted. There is detailed baseline information within the Environmental Statement on all of the <u>key</u> environmental impacts including traffic, air quality, visual impact, bio-diversity and ground conditions in over 600 pages of detail.</p> <p>The Scrutiny Draft Report alleges that there is “no presentation or discussion of any information” contained in baseline sources concerning the RAMSAR. This is also incorrect, as ecological impacts are discussed in Appendices to the Environmental Statement, as was pointed out in the Scrutiny Hearing and in the factual inaccuracies response to the draft report. It is also the case that the Planning and Environment Department considered that the baseline information provided was adequate, given the approach taken by the Applicant (TTS) to avoid impacts wherever possible on the RAMSAR site.</p> <p><u>Treatment of Potential Impacts</u></p> <p>The Scrutiny Report suggests that the Energy from Waste Environmental Statement says that there will be “no environmental impact” on the RAMSAR site. This is not the case, as the Environmental Statement included several indications of probable or potential impacts to the RAMSAR Site. It is misleading to state (section 1.3.4) that there was no need to provide a “detailed assessment within the Environmental Statement”. There are numerous detailed statements about environmental impact within the Environmental Impact Statement, including statements about impacts or potential impacts on the RAMSAR site.</p> <p><u>Air Quality Impacts on RAMSAR</u></p> <p>Whilst it is correct to state that there was no consideration of air quality impacts on RAMSAR flora and fauna in the initial Environmental Impact Statement, a full response was provided on this in response to stakeholder concerns raised during the planning process. This information confirmed that the impact would be immeasurable and no harm from air emissions from the Energy from Waste facility would result due to the extremely low level of emission and the immense flushing effect of the tide within the RAMSAR site. It is misleading to exclude this information from the Scrutiny Report, which professes to have considered the full planning process.</p>
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2	Continued	<p><u>Cooling Water Consent</u></p> <p>The Scrutiny Report criticises the Environmental Impact Statement for not including details of the Jersey Electricity Company discharge consent. The Environmental Impact Statement clearly identifies that there will be a minor impact on the RAMSAR site from the Energy from Waste facility cooling water consent as follows:</p> <p style="text-align: center;"><i>Extract from the TTS Environmental Impact Statement</i></p> <p style="text-align: center;"><i>16.4.2 Thermal Discharge</i></p> <p style="text-align: center;"><i>The (Energy from Waste Facility) condenser would use the existing (Jersey Electricity Company) Power Station sea water cooling system which circulates water through the system to an existing consented outfall into the sea to the east of La Collette. The total cooling water requirement of the facility operating at full capacity is only one tenth of that of the power station cooling system.</i></p> <p style="text-align: center;"><i>This system was sized to provide the cooling requirements of all the equipment in the power station, but several of the boilers have now been decommissioned. The power station boilers now operate for about 500 hours per year. As much of the power station is not now used, additional load from the Energy from Waste facility would not exceed previous thermal loading and remain within power station capacity. Therefore the new (Energy from Waste) facility would not have a significant impact and would operate within the conditions of the existing consent.</i></p> <p>The above statement is factually correct, does not 'misrepresent' the existing consent in any way, and sets out a principle that reasonably concludes that the environmental impact from cooling water will not be significantly increased by the Energy from Waste facility.</p> <p>This was accepted by the Planning and Environmental Department, who recognised that no additional baseline information was required with the planning application, given that the protective principle proposed could then be formalised within the Discharge Consent and Waste Management Licence, for which separate subsequent permission had to be sought. These processes are also subject to public consultation.</p> <p>The suggestion by the Scrutiny Consultant that full details of the consent application had to be included in the planning application demonstrates an unfortunate misunderstanding of the Environmental Impact Assessment process in this regard.</p>
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2	Continued		<p><u>Cooling Water Culvert</u></p> <p>The Scrutiny Draft Report suggests “the culvert has not been considered as a potential pathway for water transfer.” This is not the case, as this potential is clearly stated within the Ground Investigation reports conducted prior to planning consent being obtained and this information was provided by Transport and Technical Services to the Scrutiny Consultant. The potential impact of the culvert was considered within the Environmental Impact Assessment, within the construction Contract Documents and then by the Contractor within method statements provided to the Scrutiny Consultant.</p> <p><u>Local Knowledge</u></p> <p>It is misleading to suggest (Section 1.3.10) that the former Chief Officer of Transport and Technical Services meant that information from other civil engineering projects adjacent to the RAMSAR should be applied in evaluating significant environmental effects.</p> <p>The former Chief Officer was making the point that the Regulator would have compiled significant local knowledge of likely issues relating to the sensitivity of the RAMSAR as a result of other construction projects. There was no suggestion that the Regulator should rely <u>solely</u> on such knowledge.</p> <p>Nor was it the case that the former Chief Officer argued that experience of other sites on the south east coast could “be used as a meaningful indicator for decision making” in relation to the made ground at the La Collette Energy from Waste Project site.</p> <p>It is a fact that the Environment Regulator has extensive local knowledge as a result of consenting many construction projects along the South East coast and therefore it is entirely reasonable for Transport and Technical Services, as Applicant, to rely on the capability of the Regulator in determining whether the Environmental Impact Statement submitted for the Energy from Waste Facility is sufficient or to request more information from the Applicant if necessary.</p> <p>The Scrutiny Consultant then ‘assumes’ that the Planning and Environment Department relied upon this as an approach - an approach which was not promoted or proposed in any form during the Planning Application process by Transport and Technical Services. Such un-evidenced assumptions are therefore best excluded from Scrutiny Reports and would not normally be included by professional consultants.</p>
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2	Continued		<p><u>Potential Contamination</u></p> <p>Transport and Technical Services do have good knowledge of the la Collette site where the Energy from Waste facility is being built, but as stated within the Environmental Impact Statement:</p> <p style="text-align: center;"><i>Section 11.4.2 Potential Contamination</i></p> <p><i>The site is a former inert waste tip and contamination testing has not been carried out. However, it is possible that potentially harmful substances may have inadvertently been tipped on the site during in-filling. Consequently it is proposed to adopt a 'watching brief' approach to identifying potential contamination during construction. The Contractor would on encountering potential contamination alert the appropriate authorities and take the necessary action which may include testing in order to identify appropriate disposal routes.</i></p> <p>The Scrutiny Report intimates that Members are concerned that insufficient attention was given to these possible sources of pollution.</p> <p>However, the prudent and pro-active management approach was accepted by Planning and Environment Department as entirely reasonable. This approach has been followed during construction and has subsequently proved to be a successful in managing the minor unforeseen contamination that was encountered. The evidence provided of examples of this success on site were not referred to within the Scrutiny Report. This oversight on behalf of the Scrutiny Consultant therefore gives an unbalanced view of the successful measures employed and implemented to protect the environment.</p> <p><u>Ash Pit Issues</u></p> <p>The approach taken within the Environmental Statement, and subsequently during construction, <u>has</u> been one of avoidance of disturbance of the ash pits, contrary to what is inaccurately stated in the Scrutiny Report.</p> <p>The Contractor and Regulator were both aware of the location of ash pits in detail prior to construction commencing. Whilst it is unfortunate that a sub-contractor caused some superficial damage to the top lining of an ash pit adjacent to the Energy from Waste site, it is inaccurate to state that there were not suitable action plans in place in the event of the discovery of ash or other contamination or that there was any need for a method statement for ash excavation prior to this damage occurring.</p>
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2	Continued		<p>A detailed and comprehensive contamination protocol was agreed with Planning and Environment Department in advance of construction on the Energy from Waste facility commencing, this was made a contractual requirement and this evidence was provided to the Scrutiny Consultant but is not referred to in the Scrutiny Report.</p> <p>In summary, it is unfortunate that the Scrutiny Consultant has been so selective and taken such an unbalanced approach to the evidence provided by Transport and Technical Services. This means that the Minister for Transport and Technical Services cannot accept the finding made that insufficient information was provided in key areas.</p>
3	The decision to grant permission placed a disproportionate reliance on post determination mitigation and pollution control measures in order to protect the marine environment.	Not accepted	<p>The Scrutiny Consultant suggests that there was “over-reliance” on mitigation and that this conflicts with European Legislation. Putting aside that European Legislation is not enforceable or directly relevant in Jersey, this cannot be accepted.</p> <p>From the Minister of Transport and Technical Services perspective as Applicant, it is for the Minister of Planning and Environment to determine whether sufficient baseline information has been provided.</p> <p>It is misleading to state that “post determination monitoring” was heavily relied upon to “inform consent and pollution control measures”. No evidence is provided by the Scrutiny Consultant for this inaccurate statement.</p> <p>Several ground investigations were carried out on the site, both prior to submission of the planning application and prior to determination of the planning application to inform the overall assessment. These investigations were provided to the Scrutiny Consultant, but are not referred to sufficiently in the Scrutiny Report. Specific measures regarding dealing with potential contamination were set out within the Environmental Impact Statement and so the conclusions concerning contamination are misleading.</p> <p>It is also misleading to state (Section 1.3.6) that the requirement to describe likely significant effects was deferred. The Environmental Impact Statement sets out all the likely <u>key</u> significant effects, as is acknowledged by the Scrutiny Consultant elsewhere in the Scrutiny Report.</p>

4	<p>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.</p>	<p>Not accepted</p>	<p>The statements in this section indicate a lack of understanding of the planning process and the design and build contract form employed on the project by the Scrutiny Consultant, although this was carefully explained. Therefore the finding cannot be accepted.</p> <p><u>Lack of site specific detail and generic nature</u></p> <p>The design and build form of the construction contract employed for the Energy from Waste facility meant that the Construction Environmental Management Plan (CEMP) could not dictate the dewatering process to be undertaken by the Contractor.</p> <p>The Construction Contract and the Construction Environmental Management Plan detailed how contamination should be managed and so the two examples given by the Scrutiny Consultant as indicating a lack of detail are entirely without foundation.</p> <p>The Construction Environmental Management Plan has many site specific details within it, such as consideration of blasting, relevant noise and other environmental controls. Therefore it is bemusing that the Scrutiny Consultant concludes it is not specific and the allegation that the document is generic is not accepted.</p> <p>However, the Construction Environmental Management Plan document is not prescriptive as to <u>how</u> the standards set out therein should be achieved, nor could it be.</p> <p><u>Prescriptive Document and Lack of Inclusion</u></p> <p>The Construction Environmental Management Plan is part of the contract requirements placed upon the Contractor and the design and build nature of the contract requires that it is clear and responsibility is transparent. Therefore the finding that this was inappropriate reflects a lack of understanding on behalf of the Scrutiny Consultant of the contractual process involved. Fortunately, Planning and Environment Department fully understood this important consideration.</p> <p>The fact that the Construction Environmental Management Plan document is prescriptive about the <u>standards</u> to be met does not preclude dialogue between all interested parties. The Scrutiny Consultant did not seek evidence of inclusive involvement by the Contractor in accordance with the Construction Environmental Management Plan, so none was provided.</p>
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4	Continued		<p>However, the implementation of blasting protocols and the consistently excellent high scores achieved by the Contractor for Considerate Constructor's independent assessments are evidence of excellent dialogue in accordance with the Construction Environmental Management Plan by the Contractor.</p> <p><u>Inclusion of changes to the CEMP prior to Reserved Matters approval</u></p> <p>The Scrutiny Report implies that because no changes occurred to the Construction Environmental Management Plan document between its approval within the planning process and discharge of Reserved Matters that the document must be static and inadequate. The Contractor was not appointed until after Reserved Matters approval and so it would not have been appropriate for changes to documentation to have occurred in the way suggested. This indicates an unfortunate lack of understanding of the planning and contractual process by the Scrutiny Consultant.</p> <p>However, the Preferred Bidder (later the appointed Contractor) was provided with draft copy of the CEMP and invited to provide any comments. Since construction has commenced the Contractor has been following the approved Construction Environmental Management Plan rigorously. No changes to its contents have been required by Transport and Technical Services as Client or have been requested by the Contractor and therefore no changes to it have been recorded.</p> <p>Transport and Technical Services recognise that, for monitoring purposes, it would have been sensible to record the review undertaken on a quarterly basis, even if no change is necessary, and this change has been instituted.</p>
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5	<p>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.</p>	<p>Not accepted</p>	<p>It is incorrect to state that there is a “piecemeal approach” to environmental management. The contamination and asbestos control process, Construction Environmental Management Plan and Environmental Management System contractual requirements were all developed prior to planning consent, and have been implemented successfully on site, as has been evidenced extensively to the Scrutiny Consultant.</p> <p>The report acknowledges the “numerous documents” provided by both Transport and Technical Services, the Project Manager appointed to oversee the construction of the Energy from Waste facility and by the Contractor themselves.</p> <p>These requirements are effectively monitored in accordance with the requirements of the Construction Environmental Management Plan and Contract. Daily inspections and site diary, weekly audits, monthly progress meetings and monitoring records were all provided to the Consultant and are all managed on site in a coordinated fashion. To suggest otherwise is not reflective of the evidence provided.</p> <p>The Scrutiny Draft Report states that the “Construction Environmental Management Plan has not been used as a tool for managing the impacts of the development”, which is not correct. Evidence has been provided to the Scrutiny Consultant that the Construction Environmental Management Plan requirements were addressed in Environmental Management documentation generated by the Contractor and within the Contract documentation.</p> <p>The Minister of Transport and Technical Services considers the inclusion of references to “incomplete site diaries” by the Scrutiny Consultant as unreasonable, given the Regulator’s instruction that parts of the diaries were not provided by Transport and Technical Services, and this was pointed out to the Scrutiny Panel prior to publication of the Report.</p>
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6	<p>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 three 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.</p>	Not Accepted	<p>The Scrutiny Report adequately reports the delay in resolving the greater than expected water ingress encountered by the Contractor and this was unfortunate in contractual terms. However, the conclusion stated, that this was a serious failure of process that exposed unnecessary risks, is totally unacceptable.</p> <p>The Contractor is a joint venture including Spie Batignolles a leading French civil engineering company and Camerons Building Contractors, both with proven experience of previously managing excavations in numerous applications, including in the Jersey marine environment.</p> <p>The approach taken by the Contractor was to employ the simplest possible excavation technique necessary and to only consider progressively more complicated de-watering techniques where these were required by circumstances on the ground. Therefore, initially earth bunding and sand bags were employed to restrict water ingress, then a 'coffer dam' constructed, then de-watering pumps introduced, then a three-stage dewatering tank (which required a discharge consent application) and finally, when this application became delayed, the Contractor approached Transport and Technical Services to assist in the safe disposal through the Bellozanne waste water treatment works. This approach required the production and subsequent discarding of several method statements and therefore it is incorrect to state in the Scrutiny Report that a single method statement took three months to implement.</p> <p>Nor is it correct to state that these techniques put the RAMSAR site at risk. But, as this is a matter under investigation by the Regulator of the Water Pollution Law, no further comment will be made on their efficacy until the investigation is concluded to avoid any allegation that Transport and Technical Services prejudiced this investigation.</p> <p>It should be noted that the entire La Collette II Reclamation Site has been subject to tidal ingress throughout its operation and that measures were taken by the Contractor to control the risk of potential mobilisation within the inert fill of any pollutants discovered during the excavation in accordance with the agreed potential unforeseen contamination protocols.</p> <p>The two statements made in Section 2.1.4 of the Scrutiny Report by the Scrutiny Consultant regarding the final disposal method employed by the Contractor are rejected. Firstly, the requirements of the Drainage Regulator were fully met by the Contractor and these and the method employed were communicated and accepted by the Regulator of the Water Pollution Law in advance of the disposal commencing.</p>
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6	Continued	<p>Secondly, at the time of the Scrutiny Panel’s request, discussions between the Contractor, the operator of the La Collette infill site and Planning and Environmental Department had not concluded and so no method statement for disposal of silt arising from this disposal method had been agreed. This has now happened and the silt has been disposed of within a sealed and lined hazardous waste pit at La Collette for precautionary reasons, although no unacceptably harmful levels were observed in sampling. This oversight is further evidence of an unfortunate lack of balance within the Scrutiny Consultant’s conclusions.</p> <p><u>Alleged Ash Pit Problems</u></p> <p>The Scrutiny Report states that information was not provided by Transport and Technical Services to the Environment Regulator and the Contractor as to how the ash pits would be protected. This is incorrect as the ash pits were to be protected <u>by avoidance</u> as indicated in the Environmental Statement and details of their precise location and nature were provided to both Planning and Environment and the Contractor to the satisfaction of both.</p> <p>It is inaccurate to state that there were not suitable action plans in place in the event of the discovery of ash or other contamination or that there was a need for a method statement for ash excavation to be agreed prior to construction commencing. An unforeseen contamination protocol was agreed with the Regulator, and was made a Contractual requirement and this evidence was provided to the Scrutiny Consultant.</p> <p>A sub-contractor caused superficial damage to an ash pit adjacent to the construction site whilst excavating for an electricity connection. The Scrutiny Report states that the evidence suggests that the Regulator of the Water Pollution Law was informed of the ash pit incident “a week later”. This is entirely incorrect. The Project Manager on site observed the incident, stopped works, and alerted Transport and Technical Services immediately. Transport and Technical Services informed the Regulator within a couple of hours of the incident and both were on site within that time. Subsequently, a method statement for repairs was agreed with the Environment Regulator in advance of repairs commencing and was implemented successfully on site.</p> <p>Because the communication process on site relating to this incident was the Project Manager reporting to Transport and Technical Services who then reported to the Environment Regulator, the Contractor did not record this within their environmental record keeping system.</p>
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6	Continued		<p>The Contractor maintains that this is in accordance with the Environmental Management System employed on site. As significant other recording of the incident within minutes and contract discussions has been provided to the Scrutiny Consultant, the allegation made that this should call into question the appropriateness and robustness of on site reporting is considered hyper-critical, and does not warrant the adoption of a cynical approach to all environmental management on site.</p> <p>However, reporting procedures can always be improved, and given the concerns of the Scrutiny Panel, further improvements to environmental reporting have been implemented on site to ensure that external monitoring cannot be subject to misinterpretation in future.</p>
7	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.	Not accepted	<p>The statements made about cooling water by the Scrutiny Consultant in Section 2.2.2 of the Scrutiny Report are comprehensively wrong, which is unfortunate given that a full briefing was provided. For example, the 'separator' tank included on site is not for storing storm water but recycling 'grey' water (from clean surface runoff) within the Energy from Waste facility.</p> <p>The Environmental Impacts Statement clearly identifies the environmental impact from the three sources of water generated by the Energy from Waste facility and how these will be managed. As noted above, the Planning and Environment Department accepted this as sufficient identification of impact at the planning application stage given that further details will be formalised within the Discharge Consent and Waste Management Licence, for which separate subsequent permission had to be sought. These processes are also subject to public consultation.</p>
8	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.	Not accepted	<p>Details of all the public meetings and other consultation activities relating to the Reserved matters determination in September 2008, the planning application in January 2007, the P45/2006 Location Debate and the P95/2005 Solid Waste Strategy debate, have been provided to the Scrutiny Consultant and so their exclusion leads to a misleading conclusion about the level of public awareness of the Energy from Waste Facility development.</p> <p>It is inaccurate to state that the Environmental Impact Statement application relied on stakeholders to approach the Planning Department for information. Adverts were taken out in the JEP, public meetings were held, leaflets distributed to every Parish Office and website promotions undertaken as part of the planning application process. In addition, the Health Impact Assessment process contacted all voluntary organisations on the Department of Health and Social Services database. At the time it is believed that this was the most consultation ever undertaken on a single construction project. This is not reflected in the Scrutiny Report.</p>

8	Continued		<p>It is also inaccurate to state that the Applicant did not answer many of the questions or comments raised. A full response to all questions was provided subsequent to Application. Transport and Technical Services strongly object to the suggestion that a pro-active public engagement campaign was not developed or that any criticism can reasonably be levelled against the Department for lack of effort in engaging the public.</p>
9	<p>Consultation undertaken as part of the EIA process failed to provide an empowering and participative environment.</p>	<p>Not accepted</p>	<p>Transport and Technical Services funded the Health Impact Assessment process and established the Community Liaison Group meetings to provide an empowering and participative environment for consultation in addition to the other means of engagement employed, all of which was made clear in submissions to the Scrutiny Consultant, in interviews and in Public Hearing. It is therefore misleading to not reflect this evidence in the Scrutiny Report.</p> <p>It is incorrect to state that Transport and Technical Services did not consider the Community Liaison Group to have a role to play in relation to the Environmental Management of the project, as is evidenced from the information provided to the Scrutiny Consultant and within the Public Hearing. It is also disingenuous not to reflect the attempts made by Transport and Technical Services to address the concerns raised by those who attended these meetings.</p> <p>However, it is fair to state that the meetings ended up being dominated by the two representatives who gave evidence to the Scrutiny Panel. As these representatives were unwilling to consider the multitude of evidence provided to them to address their concerns seriously it was not considered productive to continue these meetings further. It is also the case that the implications of hazards arising from the adjacent La Collette fuel storage facility have made site visits by the general public to the Energy from Waste facility construction site problematic.</p> <p>The Minister for Transport and Technical services therefore accepts that the Community Liaison Group as a method of public engagement was not as productive as had been hoped and will therefore meet with local States Members to seek their advice on how best to engage stakeholders with concerns about the Energy from Waste facility going forwards.</p>

10	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.	Not accepted	It is not accepted that the majority of stakeholders lack confidence in States of Jersey to protect the marine environment nor is any meaningful evidence of this provided by the Scrutiny Consultant. The stakeholders who have influenced the Scrutiny Panel's consideration of public engagement may indeed lack confidence in the States, but this is not a statistically significant sample on which to base such a damning conclusion and a balanced approach has not been taken within the Report to the evidence that has been provided of wider stakeholder engagement.
11	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 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.	Not accepted	<p>The fundamental premise taken by the Consultant employed by the Scrutiny Panel is flawed. The Scrutiny Consultant fails to take into account the extensive baseline detail within the Environmental Impact Statement, to recognise the validity of techniques employed to protect the environment or the success of their implementation in practice.</p> <p>The allegation that the Environmental Statement is unsound is fundamentally rejected because it fails to account for the relative importance of environmental impacts, the fact that <u>key</u> environmental impacts were properly investigated and that the Environmental Statement met all of the relevant Jersey standards.</p> <p>The Scrutiny Consultant has been hyper-critical of minor shortcomings in recording and the alternative approach favoured would have resulted in unnecessary baseline information gathering for no significant environmental benefit. The only beneficiaries of such an approach would have been Environmental Consultants.</p> <p>The allegations made of obfuscation on the part of Transport and Technical Services are strongly denied. There were some minor delays in provision of some information due to some confusion on the part of the Contractor as to what was precisely required and the need to ensure that information relating to the alleged pollution incident were removed on the instruction of the Regulator of the Water Pollution Law.</p>

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ completion
1	An urgent review should be carried out by Transport and Technical Services (TTS) 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.	TTS	Accepted	<p>There is no need for an urgent review of all procedures as the procedures in place are robust and proven in practice.</p> <p>However, an audit of implementation of the Environmental Management System and associated project management processes was undertaken by Transport and Technical Services during the Autumn of 2009, following the concerns raised by the Environment Scrutiny Panel at the Public Hearing. This identified a number of small record keeping shortcomings which may have been subject to misinterpretation when viewed from an external perspective. These shortcomings have now been improved. The evidence confirms environmental protection has been and remains well managed on site.</p>	Completed

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ completion
2	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 Assessment as a minimum standard.	-	Partly accepted	<p>The premise for this recommendation is flawed as the Energy from Waste Construction Environmental Management Plan was robust as has been evidenced in practice, had to be clear and transparent as it was a Contract Document and did not preclude inclusion of other parties in developing practical construction solutions, again as evidenced in practice.</p> <p>The best practice guidance quoted was not issued by the Institute of Environmental Management and Assessment until 10 December 2008, after the time when planning consent was issued for the Energy from Waste Facility was granted.</p> <p>Any such guidance needs to reflect different contractual situations as well as the relevant Jersey standard and legislation. The recommendation made by the Scrutiny Consultant, whilst well meaning, has not been grounded in a balanced consideration of the Energy from Waste facility construction process.</p>	-

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ Completion
3	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.	-	Accepted	<p>This recommendation is accepted. Even greater distribution of information would ensure that more stakeholders understand and have more confidence in the environmental impact assessment process.</p> <p>However, this does not mean that criticisms of the Energy from Waste Environmental Impact Assessment are accepted. The relevant Jersey standard was followed rigorously and a comprehensive Environmental Statement detailing all the key environmental impacts was submitted, was made subject to full consultation and was subsequently approved.</p>	-

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ Completion
4	Public consultation should follow best practice guidance, use a variety of fora and be as participative and inclusive as possible.	-	Accepted	<p>This recommendation is accepted.</p> <p>Consultation can always be improved and it may be helpful for Applicants submitting environmental impact assessments if best practice guidance is made available.</p> <p>However, a comprehensive programme of public consultation, using a variety of fora, and attempting to be as participative and inclusive as possible, was undertaken in relation to the Energy from Waste planning application.</p>	-

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ Completion
5	TTS 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 counterproductive.	TTS	Accepted	<p>The Community Liaison Group was established to enable stakeholders in Havre de Pas have opportunity to understand the processes that would be employed during the construction and operation of the Energy from Waste facility and to give them a good opportunity to raise relevant concerns directly with the Minister for Transport and Technical Services.</p> <p>However, it is also true that the meetings ended up being dominated by two representatives for their own purposes. As these representatives were unwilling to consider the multitude of evidence provided to them to address their concerns seriously, it is not considered productive to continue these meetings further.</p> <p>The Minister for Transport and Technical services therefore accepts that the Community Liaison Group as a method of public engagement was not as productive as had been hoped and will therefore meet with local States Members to seek their advice on how best to engage stakeholders with concerns about the Energy from Waste facility going forwards. An invitation will be issued shortly to relevant States Members.</p>	Spring 2010

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ Completion
6	A review of environmental protection mechanisms relevant to the marine environment should be carried out between Planning and Environment and other relevant departments in consultation with key stakeholders to identify areas of concern and establish a way forward.	-	Accepted	<p>It is hoped that the response given by the Minister of Transport and Technical Services to the Scrutiny Panel Report will reassure States Members and the Public that this Report does not give a sufficiently balanced picture of the Energy from Waste Planning Process or reflect the care taken by Transport and Technical Services to protect the environment.</p> <p>However, given the Scrutiny Panel's concerns, it is accepted that the proposed review may be a sensible means of reassuring some key stakeholders of the good development practices that are followed by Transport and Technical Services and our Consultants and Contractors.</p> <p>The Minister for Transport and Technical Services is willing to support the Minister for Planning and Environment should he implement this recommendation.</p>	-

	Recommendation	To	Accept/ Reject	Comments	Target date of action/ Completion
7	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.	-	Accepted	<p>It is a matter of regret to the Minister of Transport and Technical Services that a member of the Environment Scrutiny Panel has chosen to publicise and potentially prejudice a criminal investigation into an alleged pollution incident at La Collette for his own political purposes.</p> <p>It is also sadly the case that information provided in confidence to States Members in the past has ended up in the public domain.</p> <p>The Minister for Transport and Technical Services therefore welcomes the sensible suggestion of the Scrutiny Panel that this matter be reviewed properly, hopefully with the assistance of the Greffier, to ensure that unfounded allegations of inappropriate retention of information or obfuscation are avoided in future.</p>	-