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SHADOW SCRUTINY PANEL

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DRAFT WATER RESOURCES (JERSEY) LAW 200-
SUBMISSION ON BEHALF OF THE ENVIRONMENT &
PUBLIC SERVICES COMMITTEE

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[A] BACKGROUND

- 1) Following the publication of the Report of the Working Party on the Safeguarding of Water Resources in Jersey under the Chairmanship of the late Major John Riley (23 March 1992), the States debated the issue of the Island's water resources on the 29 September 1992 (Preposition p78/92). The States acknowledged the importance of water resource management and **charged the then Public Services Committee to produce comprehensive legislation on the matter.** Subsequently, provision was made in the Law Drafting Programme for the necessary Legislation to be produced.
- 2) Initially, the Public Services Committee issued Drafting Instructions to the Law Draftman's

Office for the production of a combined water pollution-water resources Law. However, on the **20 March 1995**, the Public Services Committee decided that priority should be given to a Water Pollution Law, as the first phase in overall water management legislation. Accordingly, the Water Pollution (Jersey) Law 2000 was debated by the States on **7 March 2000** and fully enacted on the 27 November 2000. During the debate, some Members expressed the importance of introducing a Water Resources Law to complement the Water Pollution Law. The Committee subsequently gave approval at its meeting on the **19 March 2001** to the Drafting Instructions to the Law Draftsman to prepare a Draft Water Resources Law. At its meeting on the **13 May 2002**, the Public Services Committee approved the Draft Law in principle for the purposes of undertaking a comprehensive consultation process. This consultation process was, however, delayed because of extreme pressure of work on the Water Resources Section at that time.

- 3) At its meeting on the **2 May 2003**, the newly established Environment & Public Services Committee approved the Draft Water Resources (Jersey) Law in principle for a three-month consultation process from 1 June – 31 August 2003. It was agreed that the Draft Law would be brought back to the Committee following the consultation period together with any subsequent Amendments considered by the Instructing Team to be necessary.
- 4) At its meeting on the **19 February 2004**, the Environment & Public Services Committee again approved the Amended Draft Law in principle. It directed that the Draft Law be submitted to the Attorney General (AG) in the usual way (see further under Section F below) and also that it be placed on the Committee's WEB site inviting any comments from members of the public.
- 5) Throughout, both the States and the Committee have, in progressing this matter, placed reliance on the technical advice received from British Geological Survey (BGS). Whilst BGS is based in the UK, it is an organisation with a first class reputation in water resources related issues throughout many parts of the world. During their involvement in Jersey since 1989, BGS have produced a number of technical Reports on water resources in Jersey, details of which are listed in Section H below.

[B] THE POLICY

- 6) The primary objective of the proposed new Law is to create a ‘framework’ for the proper management of the abstraction and impoundment of water on the Island for the benefit of all concerned.
- 7) The intention being that, when the Law has been enacted, anyone who wishes to abstract water from or impound a “source of supply” will require a licence from the Environment & Public Services Committee. In broad terms, a “source of supply” will encompass all water resources on the Island whether on the surface (e.g. a stream) or underground.
- 8) However, it is necessary to impose three important limitations on the requirement for such a licence, namely : –
 - a) A “source of supply” is not intended to include self contained sources of water (i.e. “discrete sources”) and which hence make no contribution to the overall “resource” of the Island. For example, sealed ponds should be excluded.
 - b) In any event, it is intended that certain activities should be “exempt” from the full licensing requirements. In the main , this is intended to apply to abstractions of small quantities of water (in particular for domestic use) where there will not be a significant effect on the “resources” of the Island.
 - c) Furthermore, it is intended that special “transitional arrangements” are incorporated into the Draft Law in order to protect those who are abstracting/impounding at the date when the Law comes into force. However, those transitional arrangements are only intended to operate for a period of 5 years from when the Law comes into force; thereafter the activities in question will be subject to the “normal” requirements of the Law.
- 9) It is intended that the costs of administering the proposed Law would be self-financing under the “user pays” principle.
- 10) Finally, it is intended that the new proposed Law will complement the Water Pollution (Jersey) Law 2000, with the former dealing with the quantitative control of water and the latter dealing with the issue of quality.

[C] THE NEED FOR THE LAW

11) Basically, the Water Resources (Jersey) Law 200- is required for the following reasons :-

- a) To provide for the sustainable development of Jersey’s water resources through the

protection, management and regulation of those water resources and the protection of the fauna, flora and habitats dependant thereon.

- b) To provide for the conservation and enhancement of the natural beauty and amenity value of the Island's water resources.
- c) To provide for the proper allocation and sharing of this valuable resource for the benefit of the whole community, ensuring so far as possible that sufficient water is available for drinking as well as for industry, agriculture and recreation.
- d) To protect existing abstraction and impoundment rights (both public and private).
- e) To complement the Water Pollution (Jersey) Law 2000 in lowering pollution levels that may be caused by over-abstraction, as this can reduce the quantities of water available for dilution; also to link to Water Quality Objectives and Water Catchment Management Areas established under that Law.
- f) To provide for the collection of comprehensive data on current and future abstraction rates, which will also allow public access to more environmental information through a "public register" system.
- g) To provide for the management of drought situations and for long-term management strategies to be implemented to minimise the negative impacts of global warming.
- h) To provide for appropriate powers of entry for monitoring and other purposes.
- i) To provide for appropriate enforcement powers in respect of illegal activities.
- j) To allow for a long-term integrated and sustainable approach to the management of Jersey's water resources in line with the provisions of the EU Water Framework Directive, one of the most important pieces of European Community environmental legislation.

[D] PRECEDENTS FOR THE DRAFT LAW

12) Whilst the Draft Law has been fundamentally based on the equivalent legislation in the UK (namely, the Water Resources Act 1991, Environment Act 1995 and Water Act 2003), it has nevertheless been specifically modified to cater for Jersey's situation. Moreover, it takes account of the relevant provisions already contained within Jersey's existing Legislation (namely, the Water (Jersey) Law 1972 as Amended, Queen's Valley Reservoir (Jersey) Law 1988, Emergency Powers & Planning (Jersey) Law 1990, Water Pollution (Jersey) Law 2000 as Amended). In

addition,, Schedule 4 to the Draft Law (which deals with the situation where the Environment & Public Services Committee performs both regulatory and operational functions) has been based on Schedule 11 to the Draft Waste Management (Jersey) Law 200-, which is due to be debated by the States in early June 2004.

13) Furthermore, the intention to introduce appropriate Water Resources Management Legislation in Jersey would accord with the approach followed by many other jurisdictions, both in Europe and indeed Worldwide. Further details of the same will be submitted to the Shadow Scrutiny Panel in due course.

[E] THE CONSULTATION PROCESS AND SUBSEQUENT AMENDMENTS TO THE DRAFT LAW

14) During the 3 month consultation process, more than 90 people and organisations were consulted on the Draft Law. A total of 15 consultees responded, of which 8 were supportive of the Law in principle (including The Jersey New Waterworks Company Limited, the Health & Social Services Committee and the Economic Development Committee), 5 were against the Law in principle (including the Jersey Farmers Union and the Jersey Hospitality Association) and 2 raised queries for clarification. Details of consultees, those who responded, the main points raised, the responses and Amendments are listed in the Annexes to the Report to the Environment & Public Services Committee dated 19/02/04.

15) Following the Environment & Public Services meeting on the 19 February 2004, the Draft Law was placed on the Environment Department's WEB site. A number of members of the public contacted the Department, mainly concerning the exemption limit for the need for a Water Resources Licence. Most of their concerns appeared to be satisfied following an explanation of the exemption provisions. However, one person did identify a specific situation (namely, where two or more households share the same source of supply), which still needed to be addressed (see further under paragraph 16 b) below).

16) The principal Amendments that have been made to the Draft Water Resources (Jersey) Law 200- as a result of the consultation process referred to above are as follows:-

a) The Long Title of the Law has been substantially extended. This now reflects the wider

purpose of the Law in the protection and management of the Island's water resources and the fauna, flora and habitats that rely on them. In addition, definitions of "groundwater" and "discrete sources of supply" have been included and the distinction between "inland waters" and "sources of supply" has been clarified.

- b) The volume of water that may be abstracted before a licence would be required has been increased from 2 to 3 cubic metres (660 gallons) in any period of 24 hours; in addition provision has been made to cater for situations where two or more households rely on the same sources of supply for their domestic supplies. This should effectively exempt the vast majority of domestic abstractors from the provisions of the Law other than the requirement to register existing or future boreholes.
- c) There will be a requirement for the Committee to publish a Report of its regulatory activities under the Law by the 30 April each year.
- d) The Committee will be required, when considering licence applications, to take into account all relevant circumstances.
- e) The Committee will only be able to unilaterally vary or revoke a licence where there is serious threat of harm to a source of supply. Moreover, the Committee will be required to give reasons for its decision to so vary or revoke a licence.
- f) There will be no charges payable in respect of the registration of boreholes under the Law.
- g) The list of conditions which the Committee can impose when granting water resources licences has been extended to include "minimum flows" and "augmentation of flows".
- h) The Draft Law provided for its introduction by a subsequent Act of the States ("Appointed Day" Act). This will enable the Committee to present the Draft Law to the States as soon as practicable, following which the Committee will then be in a position to make appropriate plans for its subsequent introduction.

[F] HUMAN RIGHTS COMPLIANCE

- 17) As mentioned above, the Draft Law has, in the usual way, been referred by the Committee to the AG for confirmation of its compatibility with the Human Rights Convention. The AG has also been requested to clear the document with the Lieutenant Governor in terms of its application to

the Crown. However, the AG has been informed that the Draft Law is to be the subject of scrutiny by the Shadow Scrutiny Panel and in the circumstances, he may decide that it would be premature for him to give further consideration to the matter until the deliberations of the Panel are known.

18) Subject to the required confirmation from the AG, the Draft Law will be re-submitted to the Environment & Public Services Committee for its approval to lodge the same for debate by the States. This would accord with the direction of the States themselves as set out in Proposition p78/92 previously mentioned.

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[G] FINANCIAL & MANPOWER IMPLICATIONS

19) The implementation of the Law will require the appointment of one full-time civil servant technical officer. This post has been evaluated at Grade 12 and the Filter Group has agreed the appointment. The cost of this officer will be approximately £60K per annum at today's rates.

20) The overall cost of implementation of the Law (including staffing and overheads) is estimated to be £120K per annum. It is planned to recover this cost on the "user pays" principle.

21) It is estimated that approximately 400 water resources licenses will be issued for abstractions greater than 3 cubic metres per day.

22) The Jersey New Waterworks Company Ltd. is by far the biggest abstractor on the Island and it is expected that the Company will bear the major part of the costs (approximately £100K per annum). If recovered from the Company's customers, this will add approximately £3 per annum per household to the average water bill.

23) The remaining £20K will be recovered from the other licence holders, who will be mainly commercial abstractors. Shared between the estimated 400 licence holders, this would equate to approximately £50 per annum per licence holder.

24) This is considered by the Environment & Public Services Committee to represent "good value for money" having regard to the benefits which would be derived from the proposed Law, both to individual abstractors and to the community as a whole.

[H] TECHNICAL DATA AND SUPPORTING DOCUMENTS

25) The following documents are available (or already have been submitted*) to the Shadow Scrutiny Panel. (The BGS Reports contain many examples of borehole hydrographs showing the variation in groundwater levels over time):-

- a) *Report of the Working Party on the Safeguarding of the Water Resources of Jersey (Chairman: the late Major John Riley)

26) BGS Reports

- a) Groundwater Resources of Jersey: A Review with Recommendations for Further Study (1989)
- b) Hydrogeological and Hydrochemical Survey of Jersey WF/91/15 (1991)
- c) Jersey Groundwater – Year two: Further Observations and Groundwater Model (1992)
- d) Jersey Groundwater – Year 3 Further Observations and Potential Sources of Pollution (1993)
- e) Jersey Groundwater – Year 4 Monitoring and Consolidation (1994)
- f) Jersey Groundwater – Year 5 Towards an End (1995)
- g) Jersey Groundwater – Year 6 An Exceptionally Dry Year (1996)
- h) Groundwater Resources Degradation in Jersey : Socioeconomic Impacts and their Mitigation (1996)
- i) The Hydrogeology and Hydrogeochemistry of Groundwater in the Island of Jersey (1997)
- j) The Jersey Groundwater Study (1998)
- k) The State of the Groundwater Resources of Jersey during 1997 and 1998 (1999)
- l) The State of the Groundwater Resources in Jersey during 1999 (2000)
- m) The State of the Groundwater Resources of Jersey during 2000 and some Topical Issues (2001)
- n) The State of the Groundwater Resources of Jersey during 2001 (2002)
- o) Jersey Groundwater 2002 – Groundwater Systems and Water Quality Programme

Commissioned Report (2003)

N.B. BGS are being commissioned by the Environment & Public Services Committee to prepare a Statement (which will form part of their Submission) providing a non-technical summary of the fore-going Reports – a copy of that Statement will be supplied to the Shadow Scrutiny Panel in due course.

27) Report and Proposition of the States (p78/92)

28) *Reports to the Public Services Committee and Environment & Public Services Committee, which were considered by the Committee on the 13 September 1993, 1 August 1994, 20 March 1995, 19 March 2001, 13 May 2002, 2 May 2003 and 19 February 2004.

29) British-Irish Council Report on Climate Change (July 2003)

30) *Draft Law and Explanatory Note (Draft No.12 – 27 April 2004)

[J] WITNESSES

31) Subject to the views of the Shadow Scrutiny Panel, the following can be made available to appear before the Panel in order to answer any detailed questions which the Panel may have in relation to this submission:-

a) Senator P F C Ozouf, President, Environment & Public Services Committee

b) The Instructing Team comprising :-

- Mr C Newton, Director of Environment

-Mr G Jackson, Assistant Director-Environmental Protection

-Mr T Williams, Environmental Law Consultant, UK

c) Mr D Hull, Senior Assistant Law Draftsman

d) Dr Denis Peach, Representative from British Geological Survey (BGS), UK

e) In addition, the Panel may consider it helpful in relation to their deliberations, to request a written Submission on behalf of The Jersey New Waterworks Company Ltd. and if necessary to invite a Representative of the Company to appear before the Panel in support of their Submission.

[K] PRESENTATION TO THE SHADOW SCRUTINY PANEL

32) Finally, the Environment & Public Services Committee considers that the Shadow Scrutiny Panel would find it helpful to have at the outset of their consideration of this matter a 'Powerpoint' presentation of the Draft Law made to them by the Instructing Team (hard copies of the slides used would be supplied to the Panel Members).

[L] ADDENDUM

33) This Submission to the Shadow Scrutiny Panel was duly approved by the Environment & Public Services Committee at its meeting on the 3 June 2004.

SENATOR P F C OZOUF

PRESIDENT

ENVIRONMENT & PUBLIC SERVICES COMMITTEE