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Date: 23rd December 2009

Enquiries: 01443 452627

Our Ref: IW/PJ

Your Ref:

Dear Ms Thomas

The Role of Water and Sewerage Undertakers in the Town & Country Planning Process

In Jane Davidson's oral evidence to the National Assembly for Wales Sustainability Committee in the summer (as part of its inquiry into the Flood and Water Management Bill), the Minister suggested that we should approach you about the issue of Statutory Consultee status for Water and Sewerage Undertakers under the relevant planning legislation. The Minister implied that you would then put advice to her about the merits of our case.

We have raised this issue with the Welsh Assembly Government previously but have delayed doing so again pending the outcome of a civil case that has recently been determined by the Supreme Court (described in more detail below). The outcome of that case has once again highlighted that inappropriate decisions by Local Planning Authorities can undermine the control that Sewerage Undertakers have over our own assets.

Most developments rely on the availability of key infrastructure, such as high quality water supplies and sewerage. I think that few would argue that the services provided by Water and Sewerage Undertakers such as ourselves are vitally important to the protection of public health and the Welsh aquatic environment. Despite this, none of the current Statutory Consultees under town and country planning legislation have the scope or remit for water supply and drainage matters, albeit Consultees such as the Environment Agency will normally provide general comments and advice, particularly if there are associated environmental impacts.

Although we endeavour to manage our existing assets as best we can, further development can place a considerable additional burden on our asset base which, if uncontrolled, could cause detrimental consequences for both the public and the environment.

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We acknowledge that the majority of Local Planning Authorities in our operational area do consult Dwr Cymru on planning applications in line with "Planning Policy Wales" March 2002. However, we do have some unfortunate examples of where we are not consulted on certain planning applications and the discharging of relevant planning conditions or where our comments and concerns in relation to planning applications have not been addressed. In a number of cases this has led to environmental problems such as flooding and pollution incidents.

A particular example of such a situation has been subject to recent court proceedings between Barratt Homes Ltd and Dwr Cymru. This case has been heard by the High Court, the Court of Appeal and finally the House of Lords in July 2009 and has implications for both the planning and water legislation (and those organisations who work within this statute e.g. Local Planning Authorities and Water and Sewerage Undertakers) in Wales and England.

Following the House of Lords hearing, the judgement on this case was handed down by the Supreme Court on the 9th December 2009. We have attached a copy of this judgement and the Court of Appeal judgement for your reference.

The highlights of the judgement are :-

- 1) The interplay of the Water Industry and Planning legislation requires updating so that the overall objectives of protecting the public and environment are embraced.
- 2) Water and Sewerage Undertakers can expect and be afforded to have protection via the planning process. In this case the Local Planning Authority discharged a planning condition without consulting Dwr Cymru, nor taking into account the consequences of such a decision, which controlled drainage matters and therefore exposed the aquatic environment to further risk from storm sewage entering a watercourse prematurely.
- 3) The Water Industry legislation currently does not provide even basic protection for Water and Sewerage Undertakers and, in turn, fails to protect communities and the environment.

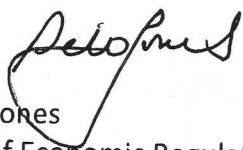
It is important that these issues are addressed and we believe that the inclusion of an appropriate provision in the Flood and Water Management Bill would be one way of rectifying the position. We are also keen to explore whether there are other mechanisms which would provide us with the means of making representations and see these initiatives as key means of discharging our responsibilities and safeguarding the environment and the communities we serve.

We remain firmly of the view that if we also had Statutory Consultee status under town and country planning legislation, our comments would be given more weight by Local Planning Authorities, thus preventing some of the problems we are currently encountering.

We would welcome the opportunity of meeting with you and your colleagues to discuss this proposal further and will contact you again in the New Year.

A copy of this letter has also been sent to your colleagues in the Water Branch of Climate Change and Water Division.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Jones", written in a cursive style.

Peter Jones
Head of Economic Regulation