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Dear Kate Barker

Barker Review of Land Use Planning – Call for Evidence January 2006

Thames Water Utilities Ltd is please to respond to your call for evidence in respect of your review of the land use planning system in England. Thames Water is keen to engage with the Government in examining how planning policy and procedures can better support economic growth and prosperity alongside other sustainable development goals.

We have examined the issues on which you are seeking views and the list of questions included in Annex 1. We set out our representations on the attached sheets and where appropriate indicate any of the questions - in brackets [] - to which our representations are particularly addressed. A Summary of the key points is included at the outset.

Yours sincerely

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Barker Review of Land Use Planning – Call for Evidence January 2006 **Response by Thames Water Utilities Limited**

Summary

- There is less flexibility in the regulated water business in comparison to the planning system. Investment is planned in response to growth proposals and yet the planning system does not adequately support the delivery of utility infrastructure that is essential to support economic growth.
- Timescales are critical in deliverability of sustainable new infrastructure. Many external factors affect our ability to deliver, including the time required for setting environmental standards and the funding regime of our regulators. Involvement of all stakeholders in early consultation is vital and resourcing to assess options must be addressed.
- There is sometimes an imbalance in the consideration of sustainable development objectives as they apply to utility infrastructure developments, with limited weight given to economic and social factors, and too much weight accorded to environmental considerations.
- To help guide local authorities more in preventing unnecessary delays to the provision of essential infrastructure, stronger national planning policy guidance and raising of awareness of water industry statutory duties and the purpose behind these duties, should be developed. In addition, the policy pertaining to community involvement in essential utility development schemes should be clarified.
- Planning policy in local and regional spatial plans should go further in facilitating utility infrastructure development. General development control style policies applicable to all types of commercial development are not appropriate for the consideration of essential infrastructure and a positive planning framework is required for its delivery, to support sustainable economic growth.
- The contribution that is made by water/wastewater infrastructure to achievement of economic objectives could be set out more explicitly in Regional Economic Strategies.
- Greater joined up thinking is needed in the context of water resources and wastewater, to bring together the Planning System and the regulated water industry.
- Permitted development rights require greater support in planning policy to help speed up the delivery of essential infrastructure. Unnecessary delays should be avoided.
- The interrelationship between PD rights and EiA should be examined to address the incumbent delays in the current processes.

Background

Flexibility [1] For the water and wastewater statutory undertakings it is important for Thames Water to be able to plan effectively and invest at the appropriate time and to do this we need to work within not only the planning system - where proposed growth will trigger the need for additional infrastructure, and utility

development is subject to the planning acts - but also within the remit of our regulators and statutory duties. The regulated asset management process has less flexibility than the planning system. The regulatory regime is overseen by Ofwat, the economic regulator for the water industry and Ofwat performs its functions through the Periodic Review Process based on 5 yearly asset management periods (we are currently in AMP4 which covers the period 2005 to 2010). Interaction between the two causes inflexibility, partly due to timescales (e.g. for development of planning policy at national, regional and local level; and the 5 yearly price reviews) and partly due to differing drivers.

Whilst both operate within sustainable development principles, the drivers can vary considerably with conflicts arising (e.g. need to secure water supplies in accordance with our Levels Of Service vs. environmental objectives).

The periodic reviews are led by a number of drivers and accommodating future growth is amongst these. This is a key external factor which TW must react to, and is not under our control. Asset planning has to react further down the line and given the relative inflexibility of the AMP process, has the potential to cause delay to the primary objectives of achieving economic growth. As the water industry therefore is essentially in a reactive position in responding to growth, the planning system needs to address this to enable us to respond effectively and in a sustainable and timely manner.

It is important not to underestimate the **time required** for infrastructure provision. Water and Wastewater infrastructure is essential to any development that takes place.

Phasing of infrastructure in line with development, in particular in the case of waste infrastructure needs to happen ahead of any development. Failure to provide infrastructure in time can lead to internal sewage flooding, because the sewers are not large enough, or pollution of rivers as treatment plant cannot be built in time. Under the Water Act Thames Water Utilities has a legal obligation to provide infrastructure and in the majority of cases infrastructure can be provided in time. Small construction projects take 18 months, upgrades to treatment plants take 3 years and relocation of treatment plants can take 7-10+ yrs.

Thames Water has been challenged as to why infrastructure takes so long to put in place. This is often as a result of external factors – for example, Thames Water is reliant on the Environment Agency for defining the treatment limits we work to. It is not uncommon for it to take 2 years for a treatment limit to be released. This is because the Environment Agency needs to undertake comprehensive surveys and modelling work.

The increasing environmental standards around abstraction of water eg alleviation of low flow rivers, coupled with climate change - flashy nature of rainfall - current drought and the need for higher environmental standards for effluent discharge particularly at the head of rivers means new development must be carefully planned otherwise the environment and our Levels of Service to customers is

compromised. Hence the solutions to the new development problem are becoming technically more complex and must be weighed carefully in the sustainability balance, where for example increased energy usage is required to drive the enhanced processes. More time, therefore, is required to follow through the planning, EIA and design, construct commission phases for the assets. These phases are taking longer and longer to complete, even compared with a few years ago.

Early involvement with all stakeholders around development planning is necessary to engender a transparent process and no surprises. Ideally, planning horizons of 15 to 25 years and adequate detail of locations for new development, to identify impacts on specific catchments, are required. Clearly this is not always possible and so the planning system must recognize the limits this places on the ability of the infrastructure providers to plan for sustainable solutions to the demands arising from growth. Early consultation with full and detailed assessments of the growth options will assist, although this must be properly resourced and funded by all the parties involved.

Funding of such studies is a considerable hurdle. It is not straightforward and needs reviewing; for example: what should the customer, the developer, the Environment Agency, the water company and the government or local authorities pay for? Thames Water is reliant on OFWAT to set its funding levels. The 'Growth' aspect of our 5 year AMP programme is a difficult area to justify with the Regulator for funding - increasingly the view is that the developer must pay. In addition, the recent determination for our funding period up to 2010 has allocated us less money than we requested to meet the growth levels of approved regional plans. The additional growth levels identified as part of the emerging RSS will place a further strain on these funding levels.

Is there an **Appropriate Balance [3]** between economic, social and environmental objectives in the English planning system? In relation to water supply and wastewater, no. There are considerable economic and social drivers to growth and more housing development. The link between this and water/wastewater does not necessarily reflect a balanced approach to the main tenets of Sustainable Development. Considerable focus is placed upon the environmental impacts of utility development, with limited recognition given to the economic and social benefits accrued by such development. Water and wastewater is often assumed as a necessity in keeping pace with development and at policy formulation stage is rather taken for granted. Yet at the development control stage when actual infrastructure proposals are brought forward, opposition to the proposals is sometimes faced, and often on environmental grounds. This is despite the considerable background work already gone into the development of, for example, the Water Resource Plans, signed off by the Environment Agency, and the preparatory work behind Thames Water's Strategic Business Plans, including the assessment of various options according to recognised/standard methodologies, embracing economic, social and environmental costs.

Co-ordination of infrastructure provision cuts across all three Sustainable Development aspects, economic as well as environmental and social. Growth in the economy cannot be supported without provision of fundamental infrastructure in the form of adequate and secure water supplies and the collection and treatment of wastewater.

Planning Policy – National

[1 & 2] To help guide local authorities more in preventing unnecessary delays to the provision of essential infrastructure, stronger national planning policy guidance and raising of awareness of water industry statutory duties and the purpose behind these duties, should be developed.

There is a general lack of recent national planning policy to guide development decisions on essential utility infrastructure. As an example, Circular 17/91 provided policy guidance to LPAs in relation to the Water Industry Investment. The policy guidance is that local planning authorities have a key role in facilitating water industry development proposals; they are urged to work with the water industry and handle applications expeditiously. The drivers behind the investment programmes are set out together with the planning implications. Such an approach is not found in more recent policy, which is surprising given the pressures that are faced to deliver new infrastructure to meet the growth agenda, as well as new environmental obligations, the need to adapt to and mitigate the effects of climate change, the need to meet water industry levels of service, and improve public health. Central and up to date direction is considered appropriate in this regard.

[13] **Stakeholder Engagement** - Stakeholder engagement in some recent essential utility proposals has been fraught with difficulty and caused extensive delays to projects designed to alleviate sewer flooding for example, or treat sewage sludge to new higher standards. The main issue has been the desire of third parties to examine in detail all of the options looked at by the company, requesting details not only of engineering design and planning and environmental reviews, but also cost/financial information.

Whilst TW is supportive of the Government's objectives to involve communities and allow active participation, this has been taken to extremes and has clearly been done to frustrate the delivery of a scheme that is not wanted, in any shape or form. The objectives behind the schemes are given little recognition and are overridden by local political considerations. It is considered that Government policy in this regard could be improved/strengthened as described above and also in PPS1. Para 43 of PPS1 indicates that communities should be engaged in considering options. This should be clarified. It is appropriate to spatial development frameworks certainly, and the value of such engagement in specific development proposals may lead to benefits. However, for essential utility infrastructure, some specific constraints apply (e.g. technical or financial) and coupled with the essential nature of the infrastructure to meet public health requirements or environmental obligations for example, this should be properly recognised. Participation in assessing options has led to an open-ended need to

prove a negative, rather than determine the merits of the proposed scheme. Much time and effort is being redirected to consideration of options that are not feasible or even options put forward by third parties that are unworkable.

Planning Policy – Regional / Local

[7] ***Speed, transparency and certainty*** - There is still a lack of understanding in terms of planning policy of the complexities of water supply/demand and wastewater collection and treatment. This leads to policies which can be inadequate in terms of the types of infrastructure development they deal with e.g. lots of focus on transport, not water/wastewater, and if water/wastewater is mentioned, it is in a narrow sense i.e. in terms of developers (housing, commercial, etc) needing to show that there is adequate water/wastewater infrastructure to serve their development. This is often not followed through in terms of policy support for the infrastructure that growth and development requires. This causes considerable uncertainty and delay in utility infrastructure planning and delivery.

[2] The ***scope of plans*** does not adequately deal with a positive/proactive approach to infrastructure delivery, in particular at the local level.

Regional strategies are beginning to address this better in relation to major projects (e.g. the draft South East Plan) although in London, the London Plan (LP) lacks clarity in its approach to securing adequate sustainable water supplies. There is lack of clarity for example as to how the aspirations in the LP, towards delivering environmentally sustainable development, will be reconciled with social and environmental objectives, especially in the context of the increasing rate of growth that is now proposed through LP alterations. In relation to smaller scale, yet equally essential infrastructure such as sewer flooding alleviation schemes, the scope of spatial plans is limited. Such proposals are assessed against the same range of “development control” style policies applied to all types of development. Whilst the acceptability of such proposals in these terms should be taken into account, the policies fail to provide the necessary context for such essential utility development, for example in terms of the wider social, economic and environmental benefits that would accrue. Policies are therefore still generally stacked against such proposals, rather than helping to facilitate. This is considered a particularly important factor in the context of greater community engagement because often it is the perceived harm caused by such developments that becomes the focus of local communities, rather than the sustainability benefits. Planning policy which recognises these wider concerns associated with essential utility infrastructure would be more in line with a positive/proactive approach to planning.

[6] Regional Economic Strategies tend to mention water resources although in a limited, generalised way. The contribution that is made to achievement of economic objectives could be set out more explicitly. Delivery of an improved and effective infrastructure to support growth should form part of RES and is a key investment theme to ensure that sustainable communities will have adequate and

secure services and facilities.

In relation to joined up thinking and other related aspects of government policy in the context of water resources and wastewater, greater integration and understanding could be achieved, for example the ministerial guidance provided through the water companies' price reviews. The planning system is not necessarily aligned with this and national policy or RSS could helpfully take it into account.

Permitted Development Rights

[7] **Speed** – Permitted development (PD) rights are an important part of the planning system to enable essential water and wastewater infrastructure development to be brought forward. PD rights are extensively used by the industry. They are fundamental to the achievement of objectives associated with public health. Whilst current PD rights generally appear to operate satisfactorily, there is an increasing number of challenge to those rights leading to uncertainty and delay. More robust planning policy as set out above may assist this position and some matters of detail are subject to comment below. To foster greater efficiency in the delivery of essential infrastructure extended PD rights would assist.

Some major projects are capable of being implemented through permitted development rights, providing there are no likely significant environmental effects. There is no guidance to local authorities to avoid delays in this regard - consultation as per Circular 9/95 is regularly undertaken, yet the response time from LPAs is open-ended, defeating the objective of being able to deliver p.d. schemes quickly. This should be addressed.

In relation to stakeholder engagement, this has sometimes led to serious delays to development proposals which should be able to proceed as permitted development. Challenges have been made in order to prevent a scheme going ahead rather than genuine concerns over the PD rights (because by refusing to accept that PD rights apply, control is gained via a planning application which can be delayed and ultimately refused). This has caused considerable delays and costs, involving legal advice and ongoing uncertainty.

Environmental Impact Assessment and Permitted Development

Associated with this too is the inter-relationship between PD rights and the EIA regulations. Many developments to be undertaken by water companies may proceed as PD, significantly assisting in minimising costs and delays that could otherwise occur. This is unless a scheme becomes subject to a requirement for EIA, as such, PD rights are withdrawn. Despite the advice in Circular 2/99 that LPAs should avoid unnecessary delay to essential infrastructure projects, an over-cautious approach still prevails, and a number of screening opinions have been issued seeking EIA, for developments which are minor in nature and have very limited impacts. Whilst it is open to us to seek a Screening Direction, the added uncertainty and delay is unsatisfactory. TW makes extensive efforts to minimise the environmental effects of capital projects and all schemes are

screened to assist in this. Considerable resource time is given to assessing options and minimising impacts and in fact the majority of projects have received positive Screening Directions following unfavourable screening opinions.

The current system means that for certain types of project, there is a major difference to the timescale associated with implementation, depending on the applicability or otherwise of the EIA regulations. For long distance below ground water pipelines for example, PD rights will apply so long as EIA is not required. However, if EIA is required, the timescales become extensive and the outcome uncertain. This differs from a project which, even if it didn't need EIA, would still need planning permission. The timescales are not so severely affected. An alternative approach to avoid such a varying degree of uncertainty and delay could be to remove the requirement for planning permission in those cases where EIA is deemed to be necessary. Whilst EIA could still be undertaken, the additional delay and uncertainty associated with making a planning application on a scheme which is otherwise PD, could be avoided. Any mitigation required through the EIA could still be undertaken, either on an informal basis as is currently the case with PD schemes, or it could be secured through a s106 agreement, where appropriate.