

STATES OF JERSEY



DRAINAGE LAW: SERVICE OF NOTICES ON OWNERS (P.57/2008) – COMMENTS

**Presented to the States on 3rd June 2008
by the Environment Scrutiny Panel**

STATES GREFFE

COMMENTS

Following receipt of correspondence from a member of the public regarding a change of policy in relation to the Drainage (Jersey) Law 2005, the Panel investigated the Ministerial decision MD-T-2007-0092, by the Minister for Transport and Technical Services which states:

“The Minister confirmed an amendment to the current policy of not using the Drainage (Jersey) Law 2005 to serve notice on third party landowners for the benefit of private developers to enable developers to lay sewers across third party land had been changed to allow the Minister to consider in future serving a notice if there was a demonstrable public gain, i.e. where a developer was able and willing to fund the connection of other surrounding properties to the public sewer network.”.

The Ministerial Decision was clear that, where the developer would be the sole beneficiary, the current policy would be maintained. In reviewing this, the Panel had a Public Hearing with both the Ministers for Health and Social Services and Transport and Technical Services. The Panel heard from Senator B. Shenton that he had taken up the case for members of the public of the Island who were concerned about a development of a property which would have obliterated their view of one of the more delightful bays of the Island. His objection to the Ministerial Decision was based upon the premise that it had been made for the particular benefit of the developer involved in the complaint he had received. As the owners of the properties to which the public drainage became available had stated that they had no wish to be connected, argument that this was in the interest of the public of the Island was irrelevant in this case. (Since that time all but two property-owners have expressed an interest in connection.) He was also concerned that the Ministerial Decision was based on supporting documentation which was of a confidential nature because it involved a specific developer, which denied the required transparency for Ministerial Decisions in this day and age.

The result of the Minister’s objections had resulted in P.57/2008 Drainage Law: Services of Notices on Owners, which requests the Minister for Transport and Technical Services to rescind the Ministerial Decision in question.

In taking evidence from the Minister for Transport and Technical Services, the Panel noted –

“Clearly, it is States policy, both under Planning and Environment and Transport and Technical Services, to extend the mains drains system and also to, as far as possible, progressively phase out the use of septic tanks and soakaways, given that they are clearly an overall pollutant.”

In line with that policy, and aware of the opportunity to extend the public drains system at no cost to the taxpayer, the Minister felt he should:

“review the departmental guidelines which, up to that point, I had been advised that normally – at least up to that time – the department did not interfere in third-party disputes with developers.”

In view of that, the Minister had decided that in circumstances where a developer can show that there was a net gain to households on neighbouring properties other than that of the developer, then he would consider the use of the drainage law in order to ensure the mains drains were developed.

The Minister stressed that the consideration of the departmental guideline was a generic policy review decision which was applicable to any development and had no immediate interest in the circumstances of any one particular development. In addition to that, the Ministerial Decision is a direct reflection of the Drainage (Jersey) Law 2005.

As a result, the Panel wishes to make the following comments:

1. Despite the general assumption to extend the system, it is apparent that there are no foreseeable plans to extend the sewers of Jersey as a direct result of the lack of funding to support this initiative.
2. The Panel notes that both the Ministerial Decision and the objections to this Ministerial Decision have arisen in this case from a planning issue, where residents of a given area are concerned about a

particular development spoiling their view. The Panel is concerned that there is an ability to use this law which is intended to expand and improve the sewage system of the Island in arguments relating to planning issues relating to whether a development should or should not go ahead. This has the effect of blurring the lines of responsibility between the Planning Department and Transport and Technical Services.

3. The Panel is satisfied that the Ministerial decision is reflected within Article 10 of the Drainage (Jersey) Law 2005, which states:

“the Minister may construct and maintain a public sewer or a public outfall in accordance with this Article on or over any land that is not in public ownership”.

The Article goes on to describe the manner in which the Minister may exercise his powers and, whilst there is no right of appeal, Article 38 of the Law applies which discusses compensation. The Law as accepted by the States on 12th October 2004.

4. The Panel notes that, in effect, the Island has a single central sewerage system, although it accepts that Bonne Nuit, for example, is independent. It notes that there is little encouragement for Islanders to examine or indulge in new or alternative technology or methods for dealing with their liquid waste such as the Danish Biokube System and in particular, consideration of grey water systems.