

**APPEAL TO PLANNING AND ENVIRONMENT DECISIONS WALES
PURSUANT TO SECTION 43 OF THE WATER RESOURCES ACT 1991**

BETWEEN

RADNOR HILLS MINERAL WATER COMPANY LTD

Appellant

and

NATURAL RESOURCES WALES

Respondent

GROUNDS OF APPEAL

**IN RESPECT OF LICENCE WA/054/0009/0002,
RADNOR HILLS, HEARTSEASE**

NB References to Appendix [x] are references to the location of the documents in the Appendices

- 1 These Grounds of Appeal are split into three sections: Background, the Law and Guidance and the Grounds of Appeal.

BACKGROUND

About the Applicant

- 2 The Appellant is a manufacturer of soft drinks and a producer of mineral and other bottled waters, which are sourced from water abstracted from land owned and operated by the Appellant. The abstraction licence under appeal is in the name of the Appellant.
- 3 The Appellant is a major producer of soft drinks in mid Wales, with an annual turnover of approximately £58 million pounds. It is also the largest employer in

East Radnorshire, employing more than 240 direct employees and a further estimated 200 sub-contractors in the immediate supply chain.

- 4 The Appellant's land crosses the border between England and Wales with a total of 12 boreholes in Wales and 3 boreholes in England. The boreholes in Wales abstract from both bedrock and superficial deposits and the English boreholes abstract only from superficial deposits. A site location plan showing where each of the 15 boreholes are situated is provided at **Appendix 1**.
- 5 The Appellant abstracts approximately 300,000 cubic metres of water per year from the 15 boreholes for predominantly commercial, but also residential and agricultural purposes. Commercially, the Appellant produces and bottles around 250,000,000 individual products for sale per year, with the water abstracted also supplying 15 domestic properties, offices which accommodate approximately 240 employees and providing a drinking water supply to poultry and sheep. Water is also used for agrochemical spraying crops. Water abstraction has formed part of the ongoing operations and maintenance at the Appellant's land for over thirty years and the land itself has been tenanted and later belonged to the family of the beneficial owners of the Appellant for around 100 years. The ability to abstract water encompasses and underpins the Appellant's entire business and it is therefore axiomatic that any restriction, limitation or constraint on its ability to do so will have a damaging and adverse effect on the Appellant company and the business.

The Application for an Abstraction Licence

- 6 Following the coming into force of The Water Resources (Transitional Provisions) Regulations 2017 (the "**2017 Regulations**") on 1 January 2018 (**Appendix 2**), the Appellant was required to apply for abstraction licences from both Natural Resources Wales ("**NRW**") and the Environment Agency ("**EA**") in order to lawfully continue its abstraction of water from ground water sources below the site which had previously benefited from a licensing exemption (the "**Exemption**") pursuant to the Severn River Authority (Exceptions from Control) Order 1967, which designated large areas of the River Teme and wider River Severn catchment area as a Groundwater Licence Exempt Area.
- 7 On 12 August 2019, the Appellant submitted two applications to the Respondent and one application to the EA in respect of new full abstraction licences at the Appellant's land. In total, the Appellant applied to NRW for abstraction licences to

abstract 235,591 cubic metres of water per year for predominantly commercial, but also residential and agricultural purposes. A copy of the application for a licence for the abstraction from the underlying Raglan Mudstone Formation (the “**Bedrock**”) in Wales is at **Appendix 3**. It was considered necessary that the Appellant submit two separate applications to cover abstraction from the boreholes located in Wales as the Superficial Deposits and the underlying Raglan Mudstone Formation were considered as two separate sources of supply. However, aside from this distinction the two applications for the abstraction licences in Wales were largely identical, and all three applications contained a universal information pack.

- 8 The Appellant has actively engaged with the Respondent with regard to the licensing regime and has identified the need for licences in respect of its abstraction operations. All relevant correspondence between the Appellant and Respondent is contained within **Appendix 4** and technical evidence and information provided by the Appellant to the Respondent in support of the application is contained within **Appendix 5**.
- 9 Pursuant to the Wildlife and Countryside Act 1981 (**Appendix 6**), the River Teme (which runs over the gravels from which the abstractions are sourced) is a Site of Special Scientific Interest. Pursuant to Habitats Directive (92/43/EEC) (**Appendix 7**), approximately 6km downstream from the site at which the abstractions are taken, a European Special Area of Conservation (“**SAC**”) related to the River Clun joins the River Teme. The River Teme joins with the River Severn at Gloucester, and some 130km downstream from the site where abstraction takes place, the River Severn enters the Severn Estuary SAC. A first stage Habitats Regulation Assessment (“**HRA**”) screening (“**Tier 1**”) was therefore carried out by the Respondent pursuant to the Conservation of Habitats and Species Regulations 2017 (as amended) to determine whether the abstraction might affect the protected features of the SAC. It was concluded that there might be such an effect and a second stage HRA assessment was required (“**Tier 2**”).
- 10 Following the Tier 2 assessment, it was determined that the abstractions would not have a significant effect on the SAC. As no impact was identified at this stage and as the Respondent did not impose either ‘Hands-off Flow’ or monitoring conditions in the licence, it appeared that no further requirement for the Respondent to identify any further mitigation was necessary.

- 11 It should be noted here that the Appellant has never seen the results of either the HRA Tier 1 or 2 assessments. An additional technical note (**Appendix 8**) was prepared on behalf of the Appellant and shared with the Respondent in order to assist the Respondent in relation to the Tier 2 assessment. The technical note clearly evidenced that the abstractions could not in fact cause an impact on either the local River Teme, local Site of Special Scientific Interest (“**SSSI**”) features associated with the River Teme or with SAC features further afield associated with the River Clun and fish passage to the River Clun SAC. As the Appellant was not aware of the Severn Estuary SAC being included in the Tier 2 assessment, this was not included in the technical note. The Appellant offered to meet with the Respondent to address any concerns arising from the Tier 2 assessment. However, the Appellant’s offer was never accepted.
- 12 Pursuant to the applications, the Respondent granted licence WA/054/0009/0002 (the “**Licence**”), permitting the abstraction of a total of 125,135 cubic metres of water per year, on 16 December 2022 (**Appendix 9**), together with licence WA/054/0009/0001. The Licence is the subject of this appeal, and an identical appeal is concurrently being brought in respect of licence WA/054/0009/0001.

LAW AND GUIDANCE

The Licensing Regime

- 13 Abstraction operations are licensed under the regime implemented by Chapter 2 of Part 2 of the Water Resources Act 1991 (the “**1991 Act**”), as amended (**Appendix 10**). In order for an entity to carry out abstraction operations which fall within the scope of this regime it is required to apply to the relevant authority for a licence: in Wales the relevant authority is the Respondent.
- 14 Until recently, the Appellant was not required to hold any licences in respect of its abstraction operations given the benefit of the Exemption described in paragraph 6 above.
- 15 The scope of certain exemptions (although not the Exemption) were narrowed considerably by amendments made under section 5 of the Water Act 2003, which came into force on 1 January 2018. The amendments were driven in large part by obligations placed on the United Kingdom by the Water Framework Directive (Directive 2000/60/EC). However, following the 2017 Regulations, the Exemption

previously enjoyed by the Appellant was removed, and a window of two years was provided for previously exempt abstractors to apply for a licence.

Consultations on Changes to Abstraction Licensing

16 The process by which the Exemption was ended and the way in which licence applications for formerly exempt abstraction activities were determined was the subject of consultation by UK and Welsh Governments.

17 An initial consultation was carried out in 2009, and a further consultation was published in January 2016 (the “**2016 Consultation**”) (**Appendix 11**).

18 At paragraph 51 of the 2016 Consultation, the Government made clear that it:

“expects the Regulator [i.e. the Respondent] to take a light-touch, risk-based approach to licensing these abstractions, but in doing so will tackle environmental damage caused by unlicensed abstractions. Our preferred approach is to end exemptions for most of the few remaining exempt abstraction activities, granting a licence in line with recent volumes abstracted where appropriate, and curtailing or refusing licences where there is a risk of serious damage to the environment.”

19 Paragraph 53 of the 2016 Consultation adds that:

“The policy approach recognises that these abstractions have taken place lawfully and that all abstractors should be treated in a fair and consistent manner, both when these abstraction exemptions are ended and when the abstraction is moved into the reformed abstraction system.”

20 In addition, Paragraph 101 of the 2016 Consultation recognised that ‘*wider policy, environmental and social interests*’ needed to be taken into account in developing the transitional arrangements, and explicitly acknowledged that previously exempt abstractors ‘will have made similar business investments to licence abstractors’ (Emphasis added).

21 Further, Paragraph 101 noted that:

“issuing a licence in respect of an existing and ongoing abstraction does not alter the current water situation or cause a water body or the environment to deteriorate and that abstractors as a group contribute to the environmental impacts caused by unsustainable abstraction. Therefore, we are proposing a balanced approach

where the costs of addressing unsustainability and improving water bodies fall proportionately upon all abstractors”.

22 The Government’s response to the 2016 Consultation was published in October 2017 (the “**2017 Response**”) (**Appendix 12**). This set out the Government’s final policy approach (which, to a significant extent, took into account responses from consultees).

23 Paragraph 3.2 of the 2017 Response confirmed that:

“The UK and Welsh Governments expect the Regulator to take a light-touch, risk based approach to licensing these abstractions. A light touch, risk based approach means:

- *The majority of licences will be granted based on existing abstraction requirements. Applicants should be able to demonstrate, to the reasonable satisfaction of the Regulator, their abstraction requirements and entitlements and that abstraction has taken place within the seven year qualifying period.*

It is expected that lawful abstractions will only be significantly curtailed or refused to protect the environment from serious damage.

The UK and Welsh Governments’ expectations are that the Regulator will normally grant licences with a time limit to the relevant common end date in keeping with its published licensing position. Once within the licensing system, these abstractions will be treated like other licensed abstractors. While licences will be issued with time limits, it is the UK and Welsh Governments’ intention to phase out time limits as part of abstraction reform.”

24 The time limits referred to in the 2017 Response are determined by the Catchment Abstraction Management System (“**CAMS**”) process, which sets out the water resources management Licensing Strategy for different catchment areas. The Teme Abstraction Licensing Strategy (**Appendix 13**) provides that the initial common end date (“**CED**”) for new licences within a CAMS area will be between a six and 18 year duration. The purpose of CEDs is to ensure that licences issued within a CAMS area can be reviewed concurrently so that if any action is required, it is done so on a fair basis. Whilst the Teme Abstraction Licensing Strategy was published by the EA in 2013, the Respondent has not published its own Licensing

Strategy and therefore it is understood that the Teme Abstraction Licensing Strategy applies to the Appellant's abstraction in Wales.

25 Taking the provisions of the 2016 Consultation and the 2017 Response into account, it is clear that:

- (a) the Respondent was under a duty to take a 'light touch, risk based approach' when determining the Licence;
- (b) the principles of equity and fairness should have been paramount throughout the decision-making process;
- (c) the Respondent was also expected to have mind to the fact that the Appellant's abstraction had always taken place lawfully, and that the issue of a licence would not alter the current water situation or cause a water body or the environment to deteriorate;
- (d) consideration was given to the fact that those previously exempt abstractors were making and would continue to make business investments based on their abstractions just as licenced abstractors were; and
- (e) that unless a risk of 'serious damage' was identified (which, in the Appellant's case, was not), lawful abstractions should not be curtailed or refused and the defined CED for applications under the 2017 Regulations within the Teme Abstraction Licensing Strategy area should be the default position when determining the duration period of the Licence.

26 In light of the above, the Appellant expected that the Respondent's approach to determining the Licence duration period would reflect the policy set out in the 2017 Response and that the Licence would have a catchment standard time limit derived from the CED.

Respondent's obligations under the Well-being for Future Generations (Wales) Act 2015 (the "2015 Act")

27 In accordance with the 2015 Act (**Appendix 14**), the Respondent must, when carrying out sustainable development, ensure that its actions seek to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. It must also seek to achieve seven well-being goals, which carry equal weight and should each be considered separately

by the Respondent and any other public body to whom the 2015 Act applies (Emphasis added). The well-being goals are as follows:

- (a) A prosperous Wales;
- (b) A resilient Wales;
- (c) A healthier Wales;
- (d) A more equal Wales;
- (e) A Wales of cohesive communities;
- (f) A Wales of vibrant culture and thriving Welsh language; and
- (g) A globally responsible Wales.

28 In determining the application for the Licence, the Respondent was carrying out sustainable development for the purposes of the 2015 Act.

29 The 2015 Act provides that ‘sustainable development principle’ includes balancing short term needs against long term needs, the need for integrated approaches considering all relevant well-being goals and the consideration of how the relevant public body’s well-being objectives impact upon each other or upon other public bodies’ objectives, in particular where steps taken by the public body may contribute to meeting one objective but may be detrimental to meeting another.

30 Guidance published by the Welsh Government (**Appendix 15**) discourages public bodies from viewing the well-being goals in a hierarchical fashion, stating:

“Only looking at one or two of the well-being goals, or interpreting a single goal as being of greater significance (...) must be avoided. Public bodies must consider all seven of the well-being goals (...) It is important to understand that this is not about balancing impacts; it is working towards win-win solutions and identifying the multiple benefits where they exist.

Public bodies that (sic) understand that this is not just about the environment, or just the economy or society, and that it is about understanding the often complex, but real world interconnections between our environment, our economy, our society and culture.”

31 The Respondent has also published its own Well-being Statement as it is obliged to under the 2015 Act (**Appendix 16**). In its Well-being Statement, the

Respondent lists its Well-being Objectives which are intended to contribute to the well-being goals as follows:

- (a) Champion the Welsh environment and the sustainable management of Wales' natural resources;
- (b) Ensure land and water in Wales is managed sustainably and in an integrated way;
- (c) Improve the resilience and quality of our ecosystems;
- (d) Reduce the risk to people and communities from environmental hazards like flooding and pollution;
- (e) Help people live healthier and more fulfilled lives;
- (f) Promote successful and responsible business, using natural resources without damaging them; and
- (g) Develop NRW into an excellent organisation, delivering first class customer service.

32 The Well-being Statement explicitly states that each of the Objectives are “*equally important and not listed in any priority order*”.

Appellant's Abstraction Licence Application

33 The application for an abstraction licence that is the subject of the current appeal was made in accordance with the 2017 Regulations and the 1991 Act.

34 The Respondent is required to determine such applications in accordance with the 2017 Regulations and the 1991 Act.

35 Pursuant to s.24(1) of the 1991 Act, no person may himself abstract water from any source of supply, or cause or permit anyone else to do so, unless that abstraction is authorised by a licence granted by the appropriate agency (in this case the Respondent) and is carried out in accordance with its terms. S.24(2) of the 1991 Act provides that a licence is required before any works are done to enable the abstraction of water from underground strata or to extend an existing well, etc., or to install or modify any plant used to take water from it if more water will be taken, unless the taking is authorised under the terms of a current licence.

36 Section 38(3)(b) of the 1991 Act provides that:

“Without prejudice to section 39(1) below, the appropriate agency, in dealing with any application for a licence under this Chapter, shall have regard to all the relevant circumstances, including any duty imposed by or under any enactment

on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to—

- (a) any representations in writing relating to the application which are received by the appropriate agency before the end of the period mentioned in subsection (1) above; and
- (b) the requirements of the applicant, in so far as they appear to the appropriate agency to be reasonable requirements” (Emphasis added).

37 Conditions may be attached to the licence by virtue of s.38(2) of the 1991 Act, which provides that:

“Subject to the following provisions of this Chapter, on any application to the [appropriate agency] for a licence under this Chapter, the [appropriate agency]—

- (a) *may grant a licence containing such provisions as the [appropriate agency] considers appropriate”.*

38 Section 43(1)(a) of the 1991 Act provides that:

“Where an application has been made to the appropriate agency for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if the applicant is dissatisfied with the decision of the appropriate agency on the application” (Emphasis added).

GROUNDS OF APPEAL

39 The Planning Inspectorate’s (which has since been replaced with Planning and Environment Decisions Wales) Appeal Guidance on Water Abstraction and Impoundment Licences (**Appendix 17**) sets out the following grounds of appeal:

“Applicants for abstraction and impoundment licences may appeal on the following grounds:

- *if an application has been refused;*
- *if a licence has been granted subject to conditions; or*
- *if NRW has failed to determine the application within the specified period of time (3 months or such extended agreed period)”* (Emphasis added).

40 This appeal relates to abstractions by means of submersible pump from eight boreholes identified at points A, B C, D E, F, H and I on the Licence diagram (**Appendix 18**). A diagram showing how the water is piped and distributed to the

Appellant's site is provided at Figure 2 of Appendix I of the application (**Appendix 3**). The Licence is for a maximum aggregate use of 125,135 cubic metres of water per year (which equates to 419 cubic metres per day).

41 The Appellant makes its appeal against the decision by the Respondent to issue the Licence with the expiry date of 31 March 2031, rather than the longer term CED of 31 March 2037, which reflects the expiry of other licences within the wider Teme catchment issued under the 2017 Regulations.

42 The Licence provides the reason for the shorter duration period in the 'Reasons for Conditions':

"The licence is time-limited in line with our policy on setting time limits, taking into account the long term uncertainty within this part of the catchment.

The abstraction is required to be metered to demonstrate compliance with the terms of the licence and to provide information on actual water usage for water planning purposes."

43 Despite submitting the application over three years prior, the Appellant was only notified that the Respondent was considering implementing a shorter duration period in correspondence on 25 October 2022 (**Appendix 4**) on the basis that the catchment area was considered to be 'very dynamic', and that "a number of other factors that would justify a shorter time limit in this situation". No explanation of what would constitute 'very dynamic' was given and no further details on the 'other factors' were provided.

44 In response, the Appellant's agents stated in correspondence (on 31 October 2022) (**Appendix 4**) that:

"Radnor Hills [the Appellant] have clearly and beyond reasonable scientific doubt, demonstrated that there can be no impact on either the local River Teme, local SSSI features associated with the river Teme or with SAC features further afield associated with the River Clun and fish passage to the River Clun SAC (Technical Note: River Teme Impacts by Envireau Water dated 08/02/2022 ref. P21-075 Radnor NA DET \ TN R Teme impacts 1). This being the case, effects of abstraction further down the catchment cannot be material, particularly with respect to the Severn Estuary designations. In addition, the Applicant is not aware of any other factors that would justify a short duration abstraction licence. On this basis, Radnor Hills consider that a short duration licence to 31 March 2031 (a

period of only about 8 years) as proposed, as opposed to the wider Teme catchment CED (Common End Date) of 2037, is unnecessary and will have severe and significant implications for the operation of the business.”

- 45 An online ‘Teams’ meeting between the Appellant and Respondent to discuss the outcomes of the HRA and Appendix 4 process, the monitoring requirements, the potential shorter time limit to the Licence and the draft licence conditions took place on 6 December 2022. Despite the Appellant’s efforts and the evidence provided, and despite the fact that the detriment to the Appellant’s business had been made clear to the Respondent if a short licence duration was imposed, the Respondent refused to accept that a shorter term duration period was not necessary.
- 46 The prospect of the abstraction licence duration period being restricted to an expiry date of 31 March 2031 is unreasonable, is not based on all the relevant circumstances and is not in accordance with the 2015 Act. The Respondent has deviated from the guidance which it is obliged to follow and has placed an unjustified and restrictive limitation on the Appellant’s ability to abstract water and therefore its ability to plan, invest and make any long and short term decisions. The Appellant therefore appeals the imposition of the shorter licence duration period.
- 47 As per the Planning Inspectorate’s Appeal Guidance on Water Abstraction and Impoundment Licences (**Appendix 17**), the Applicant is appealing on the grounds that the Licence has been granted subject to conditions. The Applicant is dissatisfied with the Respondent’s decision in implementing a time limit for the Licence which is not consistent with the CED used in the wider catchment under the 2017 Regulations and is therefore appealing the Respondent’s decision.
- 48 The Appellant believes that the impact of the shorter duration Licence has not been fully assessed as the Respondent has failed to factor in all the relevant circumstances; namely the: (i) technical report evidencing no significant impact to the River Teme, SAC or wider catchment area and the Respondent’s policy obligations under the 2017 Response; and (ii) impact of the shorter term licence duration period on the Appellant in contravention of the 2015 Act.
- 49 As outlined in paragraph 43 above, the Appellant was first notified that the Respondent proposed to implement a shorter duration period for the Licence on 25 October 2022 (**Appendix 4**). On 8 December 2022, the Respondent issued a

draft version of the Licence (**Appendix 19**) with an expiry date of 31 March 2031 and stated that a shorter time limit was considered justified:

“...due to the dynamic nature of the catchment and concerns raised during the consultation process regarding the potential for increased or prolonged low flow / drying events, as well as the conservation status of certain designated features. It is also considered justified in light of the limited groundwater monitoring data provided to support the application, which as discussed, covers a relatively short time period from 2017 – 2021.”

- 50 The Appellant does not accept that the reasons given by the Respondent justify the imposition of a shorter licence duration period and considers that the Respondent has erred in reaching this decision. Absent ‘exceptional circumstances’ and any evidence of a substantial impact or risk of substantial impact on the River Teme, SAC or wider catchment area, the Respondent should have issued the Licence with a time limit to the relevant CED under the 2017 Regulations in line with Government policy.
- 51 As evidenced by the technical note (**Appendix 8**) and additional supporting evidence and information (**Appendix 5**) and as set out in email correspondence sent by the Appellant’s agent on 31 October 2022 (**Appendix 4**), it has been demonstrated beyond reasonable scientific doubt that the abstractions will not: (i) have a substantial impact on the SAC or any catchment area; (ii) affect migratory fish passage to the Clun SAC; or (iii) have a material impact from the on flows in the River Teme.
- 52 The Appellant has made it clear to the Respondent and has provided evidence to support its position in Appendix A of the technical note that the River Teme is a naturally ephemeral river which has dried up periodically long before any abstractions have been undertaken. Therefore, any low flow or drying up of the River Teme is an innate characteristic of the River, which runs over gravels and connects and disconnects from the gravels to the groundwater and river channel depending on season and time of year. It has not and will not be caused by the abstraction subject to the Licence. Furthermore, the ‘dynamic’ nature of the periodical low flow and drying up of the River Teme is explicitly recognised as a ‘natural process/phenomenon’ within the Teme Abstraction Licencing Strategy (**Appendix 13**).

- 53 The Respondent also failed to raise any issue or disagreement with the Appellant's presented evidence and conclusions within the technical note (**Appendix 8**) at any point. Whilst discussions between the parties did involve requests for clarification on a number of technical points by the Respondent, the Respondent did not notify the Appellant that it disagreed with the conclusions of the technical note. Both the Appellant and its agent were therefore led to believe that the Appellant's impact assessments and conclusions were accepted by the Respondent.
- 54 As the impact of the granting of the Licence is neutral from a regulatory perspective, there is no foundation or basis for the Respondent to consider the impact to be 'uncertain'. The Respondent's uncertainty is speculative and can be alleviated by the metering conditions implemented by the Licence, as well as the proposed monitoring programme which the Appellant is willing to adopt and which the parties are currently in discussions about (but which does not form any condition of the Licence as the HRA evidenced no impact on the SAC or other designated features).
- 55 In summary, the Respondent was under a duty to act fairly and, unless exceptional circumstances could be identified (none of which were), grant the Licence with a time period relevant to the CED used for the catchment under the 2017 Regulations. The Respondent had not done so. The Appellant therefore submits that the shorter duration period is unjustified in all the circumstances.
- 56 In addition to its obligations pursuant to the 2017 Response, the Respondent was and remains under a statutory duty to consider each of the 2015 Act well-being goals when taking action, which includes reaching a decision on the Licence and any conditions attached to it. Practically in this context, the Respondent was obliged to consider what effect and implications its decision would have on the Appellant and whether, on balance and taking each of the well-being goals into account, its decision would help achieve those goals.
- 57 In balancing the well-being goals, the Respondent was under a duty at all times to consider:
- (a) the economic, social and cultural well-being of Wales and how the Appellant's business promotes and embodies those factors; and

- (b) whether, by imposing a shorter-term licence period under the Licence, this would result in the well-being goals not being achieved.

58 The Appellant submits that the Respondent has failed to consider either of the factors in paragraph 57 above and, in doing so, has contravened its obligations under the 2015 Act. This in turn has resulted in substantial harm to the Appellant as the restriction on the period within which it may lawfully abstract water will cause material and severe adverse effects to the Appellant's ability to continue its business.

The Appellant's contribution to the well-being goals

59 The Appellant's business can be identified to meet, on an objective basis, each of the well-being goals under the 2015 Act. Summarised below are the core elements of the Appellant's contribution towards each well-being goal, which the Respondent has failed to consider when deciding to issue the Licence subject to a shorter-term duration period.

A Prosperous Wales

60 The Appellant is a major producer of soft drinks in mid Wales and was recently identified by 'Insider Wales' (Business magazine) as being in the top ten Food and drink companies in Wales (**Appendix 20**) and listed as number 145 of all industries in Wales (**Appendix 21**). It employs 240 employees directly and a further estimated 200 contractors within the immediate supply chain (including haulage and electrical contractors).

61 The Appellant has an annual turnover of £58 million and is the largest employer in the East Radnorshire. However, its contribution to the local economy is measured not only in the direct form such as business rates (at a payment of £127,000 per annum) but also indirectly from a £7.5 million payroll which is often spent locally. The Appellant contributes to corporation tax on its profits, which are expected to exceed £1 million in the financial year 2022/23.

62 Notably, as production of soft drinks within England and Wales is predominantly centred in England, the Appellant generates revenue which would otherwise generate revenue retained within England.

63 As an investor in its people, the Appellant encourages employees to excel in their role and to see a clear job progression path which, in turn, positively affects employee self-esteem and mental wellbeing. The Appellant has, in collaboration

with the Welsh Government, helped its employees respectively achieve level 4 apprenticeships in food maintenance, food management, team leading, HNC engineering , foundational level apprenticeship in engineering; and Green belts in LEAN production methods. The table at **Appendix 22** sets out the total number of apprenticeship courses currently being undertaken and those which have been completed.

- 64 Job roles within the Appellant's business are highly skilled and include engineering, electrical, robot programmers, HR, logistics, accounting, food technology, sales, marketing, production, Health and Safety and Quality Assurance and Technical. The Appellant encourages applicants of all diversities and academic abilities to apply for roles within the business.
- 65 By bringing and enhancing both business and employment to the local community, the Appellant helps achieve the development of a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.

A resilient Wales

- 66 The Appellant's substantial and growing workforce is actively addressing and tackling issues of rural depopulation in Mid Wales by offering highly skilled and rewarding careers to local residents. This in turn means that local talent is retained as employees are not driven away from the area to find alternative suitable employment. The Appellant offers transferrable skills training, meaning that if employees move to another part of Wales, they retain the skills they have developed and feed these into the Welsh economy elsewhere. This is particularly prevalent as the Welsh Government is currently focusing on the Food and Drink sector as one to help drive employment in the more rural areas of Wales.
- 67 Where circumstances arise, the Appellant provides an important resource as a backup water supplier for emergency supplies of water in scenarios where, for example, mains water supply has failed and communities are been forced to rely on bottled water. In the past, the Appellant has been asked to supply emergency water. Retaining the ability to provide the most crucial of resources within Wales arguably helps to make the country more resilient.
- 68 The Appellant is a major supplier to public services across Wales and the UK. It supplies the vast majority of secondary schools in Wales, as well as the NHS, the

Ministry of Justice and many UK universities. A number of the product pack formats (such as 125ml tetra juice drinks) are specifically produced at the Appellant's site and have a primary focus of providing affordable portion control pack sizes to supply to the NHS.

69 The Appellant is an environmentally responsible company which takes its commitments to sustainable production seriously, as evidenced in the following ways:

- (a) the Appellant is a zero to landfill company, meaning that all packaging waste from the site is recycled;
- (b) the Appellant has ISO 14001 accreditation for environmental standards and is regularly audited by both customers and government bodies against these standards; and
- (c) the Appellant also operates a water treatment plant to clean all effluent water and return it to the River Teme in a pristine condition. This practice is recognised as a Best Available Technique and up to 40% of all water treated in the effluent plant is recycled to the factory.

70 The Appellant hosts regular school visits from local schools and colleges and hosts tours of its site with the aim of encouraging young people to engage in and find interest in the work environment.

71 The Appellant's core market (over 90%) is located across the border in England, resulting in a financial injection into the Welsh economy, promoting long-term resilience. The Appellant's environmentally responsible practice also demonstrates its commitment to maintaining and enhancing the natural environment through ecological resilience. Without the ability to plan for the future, there is a risk that the social and economic benefits derived from the Appellant's business will halt the progression of an adaptable and eco-focussed local business.

A healthier Wales

72 Given that approximately 90% of all drinks produced by the Appellant sit within a 'low or no calorie' category, the business evidently helps to promote health throughout the country. In addition, 20% of the products produced by the Appellant are bottled spring water: a vital human resource and one which is required in all localities or situations where tap water is not available.

- 73 The Appellant produces school compliant drinks that fit the criteria required by the School Food Plan 2009. School compliant drinks are deemed healthy drinks for children, which are available in many primary schools and most secondary schools. Ensuring that the younger generation get the healthiest start in life is vital to achieving the aim of a healthier Wales.
- 74 The Appellant also offers both a discounted gym membership scheme and a 'cycle to work' scheme for its staff, encouraging and promoting health longevity for all employees.
- 75 Outside of the business, the Appellant sponsors Prostrate Cymru and encourages its employees and partners to get involved in the charity's fundraising events. The Appellant also indirectly promotes better health by financially sponsoring the 'Pink Ribbon' campaign against Breast cancer. During November 2022, the Appellant produced bottled products with pink ribbons on the label to help the cause of raising awareness of Breast cancer.
- 76 The Appellant promotes health through its products, its employee benefit schemes and through financial and active support of NGOs which raise awareness of illness and fundraise to fund prevention and cure. Without the financial support of the Appellant (which it would more than likely be forced to withdraw if it could not guarantee further cash flow), these organisations would lose vital cash flow.

A more equal Wales

- 77 The Appellant operates an equal opportunity system for all current and prospective employees. Whilst all job opportunities are advertised in-house, external candidates are considered with no regard to sex, race, religious persuasion, or sexuality. The Appellant strives to ensure that employees and associated sub-contractors receive high pay levels which equal or exceed the minimum wage. By training its employees to higher levels, the Appellant encourages those within its employment to 'better' themselves, driving equality both economically and culturally.
- 78 The also Appellant sponsors the 'Anti bullying alliance', a Non-Governmental Organisation which helps tackle bullying in schools.
- 79 By ensuring that its staff resourcing process provides equal opportunities for all, the Appellant is contributing to the 2015 Act goal of enabling all persons to fulfil

their potential, regardless of background or circumstances. If the Appellant's business is compromised, those equal opportunities may no longer exist for individuals who would otherwise have been able to access fair and impartial employment.

A Wales of cohesive communities

80 The Appellant is actively involved in the local community, acting as main sponsor to the annual Knighton show and carnival, financially supporting the Knighton community centre redevelopment and outside play park at the local Offa's Dyke centre, and contributing towards the redevelopment of each of the Knighton Leisure centre, Knighton Football club, and Knighton Rugby club. The Appellant encourages organisations of differing scales and sizes to seek supporting funding from it and supports a range of projects.

81 The Appellant also employs individuals of a multitude of nationalities including Welsh, English, Polish, Slovaks, Czechs, Ukrainians, Romanians, Bulgarians, Lithuanians and Latvians, creating a cohesive and collaborative community within the internal work place as well as friendships, camaraderie and good relationships of employees of many nationalities.

82 The Appellant's business embraces the spirit of community, both for its employees and for the external community. If the Appellant was no longer able to offer this through its business, this cohesive neighbourhood would likely be lost, and with it, the connections made between individuals from all walks of life.

A Wales of vibrant culture and thriving Welsh language

83 The Appellant proudly represents the Welsh culture via its brand (with a Welsh dragon depicted on its logo) and through its company name, taken from the locality Radnorshire. The Welsh culture and heritage is therefore promoted each time the Appellant's products are sold (which are estimated to be in the region of 250 million per year).

84 The Appellant's offices use multilingual wall art in both Welsh and English, and the Appellant supports its local community through sporting and cultural activities (such as local shows), promoting Welsh culture and community.

85 Loss of the Welsh branding, and with it promotion of Welsh heritage, as a result of the decline of the Appellant's business would have an arguably detrimental effect on the country's reputation within the industry sector. The Appellant's ability

to continue promoting and representing Wales is dependent on its ability to keep creating its product.

A globally responsible Wales

- 86 The Appellant is acutely aware of its corporate responsibility to improve its sustainable practices and reduce its carbon footprint, both nationally and on a global scale.
- 87 By way of example, the Appellant is currently installing 2 MW of solar panels to power its facilities and supply 21% of its annual electricity consumption by April 2023, with a capacity to generate power for 25 years at a total cost of £1.6 million. The Appellant is also party to a Climate Change Levy Agreement whereby it has agreed to and must demonstrate a reduction in energy usage per container produced. This demonstrates the Appellant's ambition to proactively offset its carbon footprint on a local and global scale.
- 88 The Appellant has also been a significant contributor to the Deposit Return Scheme ("**DRS**") and has helped to formulate the DRS, which is due to come into force in Scotland in 2023 and in England and Wales by 2024/2025. The scheme presents a sustainable solution to environmental damage caused by drink container waste by charging consumers a deposit on such containers, which they are then able to reclaim once the waste is returned. The Appellant has taken an active role in progressing and formulating the scheme in association with the British Soft Drinks Association ("**BSDA**"). William Watkins, Managing Director of the Appellant, currently holds the position of Vice President of the BSDA and is due to take up the position of President once the DRS comes into force in England and Wales. The Appellant's contribution to this vital scheme has helped to develop a circular economy by creating a sustainable method of recycling which affects an industry worth approximately £17 billion across England and Wales.
- 89 Without certainty of ability to abstract in the longer term, the Appellant will no longer be able to comfortably make long or short term investments in sustainable energy generation and infrastructure, which in turn will lead to rapid decline in business growth, contraction and a loss of vital jobs within the community and wider area. It would also cease to be an active and influential member of the DRS, a scheme to which its contribution has been instrumental and one which would very certainly be impacted by the loss of the Appellant's and its director's input.

Practical implications of the shorter-term licence duration period on the Appellant

90 As identified above, the Appellant's business contributes on a major scale to the achievement of the well-being goals through economic, cultural and socio-economic impact. That same business relies fundamentally upon the ability to abstract water, as it has done for many years, for business continuity, investment and future decision-making. Water is the crucial primary resource in the Appellant's entire operation and it would simply cease to function without a means of abstraction. Therefore, the knowledge that it can continue to abstract water for the foreseeable future is paramount to the Appellant.

91 The effect of the shorter licence duration period on the Appellant is that its entire business is now compromised. It cannot confidently make decisions and strategise for the future without certainty that the main resource used in its products will continue to be available for at least the next 12 years.

92 As is the case for most businesses, the Appellant works on a minimum ten-year business plan. A licence duration period limited to nine years will have a major impact on all planning relevant to the business, as this window of time to accommodate any changes made to the Licence is entirely insufficient for the purposes of the Appellant's operations. By way of example, in the event that the volume of abstraction under the Licence is in future reduced, this would represent a serious risk to the Appellant's business and a disruption to future planning.

93 In contrast, an expiry date of 31 March 2037 would provide the Appellant with a sufficient amount of time to prepare for and plan any future investment decisions over the next nine year period. The additional six year window would be crucial in providing the Appellant comfort and certainty that financial investment and strategy would not be interrupted or affected by a restriction to abstract the one resource vital to its entire business.

94 Additional areas of investment which will be affected by the uncertainty attached to the Licence's time limit are as follows:

- (a) Investment in machinery: most of the Appellant's investment is based on a minimum amortisation of 15 years, and in many cases 20 years (where filling lines and general site infrastructure is involved). The Appellant's ability to invest further into infrastructure and filling lines is impacted by a nine year licence duration period as this creates uncertainty. As filling machines are currently operating on a two year lead time, the Appellant

would effectively have a short seven year window to plan for purchase and payback on its investment;

- (b) Solar installation: as noted above, as part of its effort to increase business sustainability, the Appellant has invested in a large 2 MW solar installation. The funds for the cost of purchase and installation will be repaid over a period of around 25 years. Whilst the Appellant is keen to invest in renewable energy sources, it is now unknown as to whether the funds can feasibly be repaid (and indeed, whether the investment was justified) if there is possibility that it will only continue to operate for another nine years;
- (c) Investment in employees: the Appellant has an active apprenticeship programme with a usual apprenticeship lasting between three to five years, followed by a further, often more advanced, apprenticeship. The window of nine years means that the Appellant will no longer be in a position to complete staff development plans and maximise career prospects within the company, which would become more prevalent in the approach to the current licence expiry date. Therefore, the Appellant's investment in its people will be adversely affected;
- (d) Long-term charity partnerships: the Appellant will have to reappraise its commitment to charity partners in the lead up to the current licence expiry date given the lack of certainty about whether it will continue operating at the same scale. Charity partners such as Prostrate Cymru, the Anti-bullying Alliance, St Michael's Hospice and the Pink Ribbon Foundation may therefore no longer be able to benefit from the financial support they receive from the Appellant;
- (e) New product development: the Appellant envisages that without a secure source of its main product ingredient, it would have to effectively cease new product development from around 2028, as the considerable investment required to develop new products would have the potential to be worthless;
- (f) Contractual responsibilities: the Appellant is party to a substantial number of contracts with suppliers and manufacturers of, to name a few, bottles, cans, cartons and ingredients. Whilst many of the contracts are entered into annually, the majority require a five-year forecast. It would therefore

be impossible for the Appellant to be able to provide the forecasts in the years leading up to the current licence expiry date and as a subsequent result, the Appellant's supply chains would begin to break down. Further, many of the Appellant's larger contracts (such as bottle and can supply) are based on a five-year period and are linked to volumes. If volumes drop below a certain figure, the Appellant is subject to financial penalties which will be imposed if the Appellant is forced to scale its business back;

- (g) Automation: much like the machinery and infrastructure, many of the new systems (ERP systems and new software) which the Appellant intends to invest in will have to be placed on hold in the approach to the current licence expiry date. Given that much of the Appellant's automation investment is what gives it a competitive edge (in a highly competitive marketplace), this will have an immediate detrimental effect on its ability to compete with other producers (who are predominantly based in England); and
- (h) Maintenance engineers: maintenance engineers (regardless of level of skill) require around two to five years to become fully familiar with the Appellant's equipment (which is important not only from a business efficiency perspective, but also from a Health and Safety perspective). The Appellant will be unable to proceed with confidence that these engineers can be taken on and trained up from 2026 onwards as they will only be fully trained by the time the Licence is renewed (if indeed it is). The Appellant cannot therefore ethically offer positions to career engineers without a plan for a long-term future at the business.

95 For all the reasons outlined above, the continuity of the Appellant's business is intrinsically linked to and dependent upon the comfort provided by a longer-term licence duration period. Limited by a nine year duration within which it can lawfully abstract water, the Appellant will need to commence a gradual cessation of trade and operation in the years leading up to the present expiry date of the Licence, given that it cannot make any future investments without the knowledge that its business can, or will, continue.

96 Not only has the Respondent failed in its obligation to take into account the numerous benefits that can be identified by the Appellant's business (and which, together, can be objectively evidenced to achieve the seven well-being goals), but it appears to have reached its decision to impose a shorter-term licence duration

period without justification and having mind only to one or two of the well-being goals, or interpreting a single goal as being of greater significance. This is despite the Welsh Government guidance explicitly stating that decision-making on such a basis is to be avoided.

- 97 As communicated by the Appellant's agent in email correspondence on 31 October 2022 (**Appendix 4**), the Respondent's decision to limit the duration of the Licence to a shorter period presents a material risk to the Appellant's business by preventing long-term decisions surrounding investment to be made as a result of uncertainty of business continuity. The Respondent was made aware of the severity of the implications of a shorter-term licence duration period and still proceeded to issue the Licence subject to a restrictive time limit.
- 98 The Appellant therefore submits that the Respondent has failed to take into consideration all the relevant factors and considerations which is it obliged to do both pursuant to the 2017 Response and under the 2015 Act when granting the Licence.
- 99 The Appellant submits that the Respondent has not fully assessed the full impact of the shorter licence duration period and that the Licence should therefore be varied to extend the expiry date to 31 March 2037 to allow it to be reviewed fairly alongside and in conjunction with other licensed abstractions in the catchment.

BURGES SALMON LLP

13 January 2023

APPENDICES

Appendices 1-22 are provided in conjunction with the Grounds of Appeal.