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The Building and Development Control (Alderney) (Amendment) (No. 2) Ordinance, 2017

THE STATES OF ALDERNEY, in pursuance of their Resolution of the [], 2017, and in exercise of the powers conferred on them by sections 12(1), 67(4) and 75 of the Building and Development Control (Alderney) Law, 2002^a and all other provisions enabling them in that behalf, hereby order:-

Amendment of the Law.

1. The Building and Development Control (Alderney) Law, 2002 ("the Law") is amended as follows.

2. Section 6A(5) is repealed.

3. For the heading to section 12 (prohibition on building in certain areas) substitute the following heading –

"Prohibition on development or other work in certain areas."

4. In section 12, for subsections (2) to (4) substitute the following subsection and section -

" (2) The prohibition in subsection (1) does not apply in

^a Order in Council No. XII of 2003 as amended by Order in Council No. XV of 2004, Alderney Ordinances No. III of 2007, No. III of 2014 and Nos. X and XIV of 2016 and the Building and Development Control (Alderney) (Amendment) Ordinance, 2017.

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relation to –

- (a) any development which is only included within the definition of development by virtue of falling within paragraph (b) or (c) of the definition of development in section 76(1),
- (b) any work only falling within section 4(1)(f) or (g), or
- (c) the placement on any site of a movable structure.

Exceptions to the prohibition in section 12(1).

12A. The Committee may, notwithstanding the provisions of section 12(1) and of any Ordinance thereunder but otherwise subject in all respects to the provisions of this Law (including, in particular, the matters the Committee is required to take into account in deciding whether or not to grant or refuse a permission under Part II), permit in an area designated under section 12(1) development or other work of any description set out in Schedule 1."

5. Section 13 (restricted purposes) is repealed.

6. For the heading to section 67 (States not bound by certain provisions of this Law) substitute the following heading –

"Application of Law to the States."

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7. In section 67 –

(a) in subsection (1), for "Parts II, III and VIII" substitute "Part VIII", and

(b) for subsections (2) and (3) substitute –

" (2) In the application of this Law to the States, the States may act by and through its individual committees, notwithstanding that those committees are not legal persons; and accordingly anything which may be done under or for the purposes of this Law by a legal person (including, without limitation, the making of an appeal under section 62 or any other provision under this Law) may, in relation to the States when acting by and through an individual committee, be done by that committee.

(3) For the avoidance of doubt, in this section "**under or for the purposes of this Law**" includes under or for the purposes of any Ordinance or regulation made under it."

8. After section 68(b) (general penalty), the word "or" is omitted and paragraph (c) is repealed.

9. In section 76(1) (interpretation) –

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- (a) in the definition of "**development**", subparagraph (ii) is omitted,
- (b) in the definition of "**dwelling**", for "except in section 12" substitute "except in Schedule 1", and
- (c) in the definition of "**public highway**", after "includes" insert ", except for the purposes of paragraph 12(6) of Schedule 1,".

10. In section 77(1) (repeals and savings, etc.) for "the Schedule" substitute "Schedule 2".

11. Immediately before the Schedule (repeals), insert the Schedule 1 (descriptions of development or other work for which the Committee may grant permission in a designated area) set out in the Schedule to this Ordinance.

12. For the heading to the Schedule substitute the following heading –

" SCHEDULE 2
REPEALS".

Consequential amendment.

13. In section 1(1) of the Building and Development Control (Designated Area) (Alderney) Ordinance, 2016^b, for "section 12(2) of the Law" substitute "section 12(2) and 12A of the Law".

^b Alderney Ordinance No. II of 2016.

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Interpretation.

14. (1) In this Ordinance -

"**Alderney Electricity Limited**" means Alderney Electricity Limited, a company referred to in the Alderney Electricity Concession Law, 1953 and registered in Alderney under company number C/7 and whose registered office is situated at Maison des Venelles, Venelles des Gaudion, Alderney GY9 3TW,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**the Law**" means the Building and Development Control (Alderney) Law, 2002,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

"**Sure (Guernsey) Limited**" means Sure (Guernsey) Limited, a company registered in Guernsey under company number 38694 and whose registered office is situated at Centenary House, La Vrangue, St. Peter Port, Guernsey GY1 2EY,

and other expressions, unless the context requires otherwise, have the same meanings as in the Law.

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(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Transitional Provisions.

15. The lawfulness of any development or other work carried out before the commencement of this Ordinance without the permission of the Committee by virtue of –

- (a) the disapplication of Parts II and III of the Law to the States under section 67(1) of the Law, or
- (b) the carrying out of certain works by Alderney Electricity Limited or Sure (Guernsey) Limited not involving development in accordance with subparagraph (ii) of the proviso to the definition of "**development**" in section 76(1) of the Law,

is not affected by the amendments to those sections set out in this Ordinance and any such development or other work commenced but not completed as at the date of commencement of this Ordinance may be continued, without the need for

^c Ordres en Conseil Vol. XIII, p. 355.

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permission from the Committee, provided that it is completed within 6 months of the commencement of this Ordinance.

Citation and commencement.

16. This Ordinance may be cited as the Building and Development Control (Alderney) (Amendment) (No. 2) Ordinance, 2017 and shall come into force on the date it is approved by the States of Alderney.

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SCHEDULE

Section 11

"SCHEDULE 1

Section 12A

DESCRIPTIONS OF DEVELOPMENT OR OTHER WORK FOR WHICH THE COMMITTEE MAY GRANT PERMISSION IN A DESIGNATED AREA

Construction, alteration or extension of structures.

1. (1) The reconstruction of, or extension or alteration to, an existing immovable structure in any designated area.

(2) The construction of –

- (a) a freestanding residential annex for use in conjunction with and ancillary to an existing dwelling,
- (b) a garage, gate, wall, fence, shed or other structure for use in conjunction with an existing immovable structure, or
- (c) an immovable or other structure designed and intended for use principally for agricultural purposes,

in any designated area.

(3) The construction of an immovable or other structure designed and intended for use principally for the shelter or accommodation of animals in any part of a designated area zoned for other uses under the Land Use Plan.

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- (4) Any development or other work necessary for –
 - (a) the construction of an immovable or other structure,
or
 - (b) the provision of any other facility,

designed and intended for use principally for the purposes of recreation in any part of a designated area zoned for recreation and open space under the Land Use Plan.

(5) For the purposes of paragraph 1(1), development or other work shall be considered to be a reconstruction of an existing immovable structure only if -

- (a) in the case of development or other work relating to a dwelling within any part of a designated area zoned for residential development under the Land Use Plan, its position, dimensions, external design, external appearance and other characteristics are consistent with any relevant policy relating to such a reconstruction of a dwelling set out in the Land Use Plan, or
- (b) in the case of any other reconstruction in any designated area –
 - (i) it occupies the same or approximately the same position, and

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- (ii) it is of comparable dimensions, external design and external appearance,

to the existing immovable structure.

Material change of use.

2. The making of a material change in the use of any building or other land in any designated area except for a material change of use from any use to use as a dwelling.

Development or other work necessary for the purposes of Alderney railways.

3. Any development or other work necessary for the construction, maintenance, alteration, replacement or extension of railway track, track equipment (including signal boxes, signalling equipment and other appliances), railway stations, level crossings, railway bridges, embankments, sidings, engine sheds or other structures, infrastructure or equipment forming part of or used principally for the purposes of the Alderney Railway or the Alderney Miniature Railway in any designated area.

Development or other work necessary for the supply of electricity to the public.

4. (1) Any development or other work to be carried out by or on behalf of Alderney Electricity Limited in any designated area which is necessary for the purpose of the supply of electricity to the public.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary –

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- (a) for the erection, installation, maintenance, alteration, improvement or replacement of cables or lines, surface wiring, mains, distribution pillars, high voltage switchgear or transformers, electricity substations, switch stations, inspection chambers, poles or street cabinets,
- (b) for the making of connections to anything referred to in item (a), or
- (c) to avoid contact between any tree or other vegetation and overhead power lines.

Development or other work necessary for the supply of telecommunications services to the public.

5. (1) Any development or other work to be carried out by or on behalf of Sure (Guernsey) Limited or JT (Guernsey) Limited in any designated area which is necessary for the purpose of the supply of telecommunications services to the public.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary –

- (a) for the erection, installation, maintenance, alteration, improvement or replacement of cables or lines, surface wiring, inspection chambers, roadside distribution pillars, poles, street cabinets, block terminals, dish or multiple rod aerials, telecommunications masts or satellite stations, or,

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- (b) for the making of connections to anything referred to in item (a).

Development or other work necessary for the supply of sewerage disposal services to the public.

6. (1) Any development or other work to be carried out by or on behalf of the States in any designated area which is necessary for the purpose of the supply of sewerage services to the public.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary –

- (a) for the installation, maintenance, alteration, improvement or replacement of pipes, mains, drains, sewers, sewage outfalls, sewage treatment works, septic tanks or pumping facilities, or
- (b) for the making of connections to anything referred to in item (a).

Development or other work necessary for the supply of water to the public.

7. (1) Any development or other work to be carried out by or on behalf of the States in any designated area which is necessary for the purpose of the supply of water to the public.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary –

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- (a) for the construction, installation, maintenance, alteration, improvement, replacement or extension of mains, drains, pipes, pumping facilities, reservoirs, wells or water treatment works,
- (b) for the making of connections to anything referred to in item (a), or
- (c) the extraction of water from a borehole.

Development or other work necessary for the provision of waste disposal or recovery facilities to the public.

8. (1) Any development or other work to be carried out by or on behalf of the States in any designated area which is necessary for the purpose of the provision of waste disposal or recovery facilities to the public.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary for the construction, installation, maintenance, alteration, improvement or replacement of facilities for the disposal or recovery of waste.

Development or other work which is necessary for the provision of postal services to the public.

9. (1) Any development or other work to be carried out by or on behalf of Guernsey Post Limited in any designated area which is necessary for the purpose of the provision of postal services to the public.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary for the

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erection, maintenance, alteration, improvement or replacement of post boxes or letter boxes.

Development or other work which is necessary for the provision of a system for the delivery of heat to premises.

10. (1) Any development or other work to be carried out by or on behalf of Alderney Electricity Limited or the States in any designated area which is necessary for the purpose of the provision of a system for the delivery of heat to more than one premises through pipes or conduits.

(2) The development or other work referred to in subparagraph (1) includes, without limitation, any development or other work necessary for the installation, maintenance, alteration, improvement, replacement or extension of a system for the delivery of heat to more than one premises through pipes or conduits.

Other development or other work by a public utility undertaking which is necessary for the purposes of a public utility service.

11. Any development or other work, not falling within paragraphs 4 to 10, which is of a description prescribed by Ordinance of the States for the purposes of this paragraph and is –

- (a) to be carried out by or on behalf of a public utility undertaking, and
- (b) necessary for the purposes of the provision of a public utility service.

Other States development or other work.

12. (1) Any development or other work to be carried out by or on

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behalf of the States in any designated area which is necessary –

- (a) for the construction, maintenance, resurfacing, alteration or improvement or extension of any highway or any private pedestrian road, street, track or path, however named, or
- (b) to avoid the obstruction of any highway or private pedestrian road, street, track or path, however named, by any tree or other vegetation.

(2) Any development or other work to be carried out by or on behalf of the States in any designated area which is necessary –

- (a) for the safe navigation of ships or aircraft,
- (b) for the safe operation of a port or airport, or
- (c) to avoid the obstruction of navigation points or navigation lights by any tree or other vegetation,

including, without limitation, any such development or other work in relation to a lighthouse or an airport guidance station.

(3) Any development or other work to be carried out by or on behalf of the States in any designated area which is necessary for the construction, maintenance, alteration, replacement or extension of coastal defences.

(4) Any development or other work to be carried out by or on

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behalf of the States in any designated area which is necessary for the construction, maintenance, alteration, improvement or extension of water courses or outfalls or for the carrying out of land drainage.

(5) Any development or other work to be carried out by or on behalf of the States in any designated area for the purpose of the provision of a cremation, burial or other facility for the cremation, burial, interment or other disposal of human remains.

(6) Any development or other work to be carried out by or on behalf of the States in any designated area which is necessary for the installation, maintenance, alteration, improvement or replacement of any fixed street furniture and in this subparagraph –

(a) "**street furniture**" includes lamp standards and other street lighting, public seating, cycle racks, signposts, closed circuit television, signs, refuse bins, bollards, rails, fences and barriers for safeguarding persons using the public highway, and

(b) "**public highway**" means any vehicular or pedestrian road, street, lane, track or path, however named, used by the public.

(7) Any development or other work to be carried out by or on behalf of the States for the purpose of the extraction of aggregates or minerals in any part of the designated area zoned for minerals under the Land Use Plan.

(8) Any development of other work to be carried out by or on

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behalf of the States in any designated area which is necessary to carry out works of archaeological investigation or evaluation.

Development or other work of strategic importance.

13. (1) Any development or other work –
- (a) not falling within any other paragraph of this Schedule, and
 - (b) to be carried out in any designated area,

which the States, on the recommendation of the Policy and Finance Committee, have resolved is development or other work of strategic importance.

(2) The States may pass a resolution, for the purposes of this paragraph, that development or other work is of strategic importance only if in their opinion –

- (a) the development or other work reasonably appears to be of such a nature that it is likely to be of significance for the whole of, or a significant part of, the Island, or it reasonably appears to be very significant for the Island in any other way,
- (b) there appears to a real possibility that the development or other work will be of long term benefit to the public or to the Island such that there is a real possibility that it will be in the wider public interest, and

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- (c) the potential long term benefit is so significant, having regard to the long term strategic interests of the Island, as to justify an exception from the prohibition in section 12(1).

(3) In having regard to the long-term strategic interests of the Island, the States must take into account any strategic policy document of the States referred to in section 23(3A).

(4) For the avoidance of doubt, the States are only required under subparagraph (2) to consider such information as is reasonably available at the time, in all the circumstances, for them to make an assessment of whether or not the criteria in subparagraph (2) are met.

Development or other work necessary to enable the carrying out etc. of other excepted development or work.

14. Any development or other work (including, without limitation, demolition or excavation) which is necessary to enable the carrying out of, or which is incidental to, any development or other work of a description set out in any other paragraph of this Schedule.

Interpretation of the Schedule.

15. (1) In this Schedule, unless the context requires otherwise –

"**agricultural purposes**" means the purposes of any trade or business of dairy farming, the producing, rearing or maintenance of livestock, market gardening, seed growing or fruit growing, or the outdoor cultivation of flowers, bulbs or nursery stock,

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"**Alderney Electricity Limited**" means Alderney Electricity Limited, a company referred to in the Alderney Electricity Concession Law, 1953 and registered in Alderney under company number C/7 and whose registered office is situated at Maison des Venelles, Venelles des Gaudion, Alderney GY9 3TW,

"**Alderney Miniature Railway**" means the miniature railway on the Island operating at the Mannez Quarry,

"**Alderney Railway**" means the railway on the Island operating between Braye Road Station and Mannez Station together with the disused railway track running between Braye Road Station and the breakwater in Braye Harbour,

"**construction**" includes erection and related expressions shall be construed accordingly,

"**dwelling**" means any building or part of a building which is occupied as a dwelling,

"**Guernsey Post Limited**" means Guernsey Post Limited, a company registered in Guernsey under company number 38693 and whose registered office is situated at Envoy House, La Vrangue, St Peter Port, Guernsey GY1 1AA,

"**highway**" means any –

- (a) vehicular or pedestrian road, street, lane, track or

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path, however named, used by the public, and

- (b) any private vehicular road, street or lane, however named,

"**JT (Guernsey) Limited**" means JT (Guernsey) Limited, a company registered in Guernsey under company number 39971, whose registered office is situated at La Plaiderie House, La Plaiderie, St. Peter Port, Guernsey GY1 1WG,

"**public**" means the public on the Island and includes a section of the public on the Island,

"**public utility service**" means the supply or provision to the public of—

- (a) water, electricity, telecommunications services, sewerage or foul water disposal services, postal services, waste disposal or recovery facilities or of a system for the delivery of heat to more than one premises through pipes or conduits, or
- (b) such other service as the States may prescribe by Ordinance for the purposes of paragraph 11,

"**public utility undertaking**" means -

- (a) the States,

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- (b) Alderney Electricity Limited,
- (c) Guernsey Post Limited,
- (d) Sure (Guernsey) Limited,
- (e) JT (Guernsey) Limited, or
- (f) such other person as the States may prescribe by Ordinance for the purposes of paragraph 11, and

"**Sure (Guernsey) Limited**" means Sure (Guernsey) Limited, a company registered in Guernsey under company number 38694 and whose registered office is situated at Centenary House, La Vrangue, St. Peter Port, Guernsey GY1 2EY.

(2) In this Schedule, where development or other work is expressed to be necessary for a specified purpose or matter (however worded), it is to be construed as not falling within the relevant description of development or other work where it is to be carried out principally for another purpose.