

May 2018

Trust in water

**Proposal to grant a variation of appointment to Independent Water Networks Limited to enable it to provide water services to a site called Throckley North, in Newcastle upon Tyne**

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## 1. About this document

We propose granting a variation of appointment to Independent Water Networks Limited (“**IWN**”) as a water company and varying the appointment of Northumbrian Water Services Limited (“**NES**”) as a water company. This notice is a consultation on this proposal under section 8(3) of the Water Industry Act 1991 (“**WIA91**”).

The consultation period will last for 28 days from the date of publication of this notice. Having considered any representations submitted during the consultation period in response to this consultation notice, Ofwat will decide whether or not to grant the variation of appointment set out above.

## 2. The Site

IWN has applied for a variation to its appointment to be able to provide water services to a site called Throckley North, in Newcastle upon Tyne (“**the Site**”).

The Site is a new development of 580 household customers and one commercial customer. Outline planning permission was granted in March 2017. IWN has advised that the Site is likely to be fully built out by 2025.

The Site is within the water supply area of NES, a Site map can be viewed in section 8 of this document. IWN plans to provide water services by way of a bulk supply agreement with NES.

### **3. The applicant**

In October 2007, IWN obtained its first appointment as a water and sewerage undertaker for a housing development at the Long Croft Road site in Anglian Water's (ANH) area. Since then Ofwat has agreed to vary IWN's area of appointment so it can serve a further 15 sites for water and/or sewerage. The register of new appointments and variations can be viewed [here](#).

## **4. The proposal**

Ofwat proposes to:

- grant a variation of appointment to IWN as a water company; and
- vary the appointment of NES as a water company by excluding the Site from its water supply area.

By means of the above, IWN will become the water supplier for the Site.

## 5. Our approach to the assessment of this application

The new appointment and variation mechanism, set out in primary legislation<sup>1</sup>, provides an opportunity for entry and expansion into the water and sewerage sectors by allowing one company to replace the existing appointee as the provider of water services for a specific area. This mechanism can be used by new companies to enter the market and by existing appointees to expand their businesses.

When considering applications for new appointments and variations, Ofwat operates within the statutory framework set out by Parliament, including our statutory duty to protect consumers, wherever appropriate by promoting effective competition. In particular, in relation to unserved sites, we consider that we must ensure that the future customers on a site – who do not have a choice of supplier – are adequately protected. When assessing applications for new appointments and variations, the two key policy principles we apply are that:

- customers, or future customers, should be no worse off than if the site had been supplied by the existing appointee; and
- Ofwat must be satisfied that an applicant will be able to finance the proper carrying out of its functions as a water and/or sewerage company.

We clarified these two policy principles in February 2011 when we published our New appointments and variations – [policy](#) and [process](#) documents. In November 2012, we published our '[Statement on our approach for assessing financial viability of applications for new appointments and variations](#)'. This states that we will adopt a company-based assessment of financial viability, rather than a detailed site-based assessment, where it is appropriate to do so.

When we assess whether customers will be no worse off as a result of the appointment, we not only consider the customers on the site but also the generality of customers – i.e. customers of the existing provider and customers more generally across England and Wales, who in our view benefit from the effective operation of the new appointment and variation mechanism.

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<sup>1</sup> The legal framework for new appointments is set out in the WIA91. Section 7 of the WIA91 sets out the criteria by which an appointment or variation may be made. Section 8 sets out the procedure for making that appointment or variation.

## 6. The application

IWN has applied to be the water company for the Site under the unserved criterion, set out in section 7(4)(b) of the WIA91.

### 6.1 Unserved status of the Site

To qualify under the unserved criterion, an applicant must show that at the time the appointment is made, none of the premises in the proposed area of appointment is served by the existing appointee.

The Site is a greenfield site, IWN has provided an aerial view photograph and confirmed that there are no buildings on the Site. NES has also provided a letter, dated 15 January 2018, confirming that in its view the Site is unserved.

Given the information provided by the application and the incumbent company, we are satisfied that the Site may be considered unserved.

### 6.2 Protecting customers

Ofwat acts to protect consumers, especially those who are unable to choose their supplier. In assessing applications to supply new development sites, Ofwat acts on behalf of both existing customers as well as potential new customers who are not yet on site, to protect their interests. The fact that future customers on a site have not directly chosen their supplier is not a position unique to new appointments and variations – only business, charity and public sector customers (“Business Customers”) in England and Wales are able to choose their supplier<sup>2</sup>.

Recognising this, our assessment of an applicant’s proposals includes analysis of its plans to ensure customers will be at least no worse off in terms of their annual bills and levels of service than if they had been supplied by the existing appointee in whose geographical area the relevant site sits. We will continue to protect customers on a site by regulating the new appointee’s prices and service levels.

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<sup>2</sup> The majority of Business Customers where the area of the relevant appointed company is not wholly or mainly in Wales (and whose premises are, or are likely to be, supplied with at least 50 MI where the relevant area is wholly or mainly in Wales) can effectively switch suppliers of water and/or sewerage from 1 April 2017.

### **6.3 Price**

IWN proposes to offer customers a potable water tariff equivalent to that published in NES' prevailing April 2017 tariffs – i.e. – it will not offer a discount.

### **6.4 Levels of service**

Every appointee is required under its conditions of appointment to publish a Code of Practice on debt and a Customer Code for its household customers. Water companies must also publish a Code of Practice on leakage. We have assessed NES' proposed Codes of Practice and Customer Code, and our view is that these are of an appropriate standard. Our view is that customers on the Site would be no worse off in relation to the points covered by the above Codes of Practice and the Customer Code than they would be if NES were to be the customers' water supplier.

### **6.5 Site owner choice**

IWN has consent from the developer, Greenwich Hospital Ltd, to become the water services provider for the Site.

### **6.6 Environment Agency (EA) and Drinking Water Inspectorate (DWI)**

We take the views of these organisations into account before progressing to formal consultation on an application for a new appointment. Both the EA and DWI informed us that they are content for us to consult on this application<sup>3</sup>.

### **6.7 Incumbent's existing customers**

In considering whether customers will be no worse off, we also considered the potential effects of this or variation on the prices that NES' existing customer base may face.

The calculation necessarily depends on a range of assumptions, and there are clearly difficulties involved in quantifying the effect. It is therefore necessary to use a

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<sup>3</sup> The Environment Agency and the Drinking Water Inspectorate will also be formally consulted on the proposals, as they are on the list of organisations which must be formally consulted as set out in section 8(4)(b) of WIA91.

simplified set of figures. We have expressed the effect in 'per bill' terms to try to quantify the possible effect in an easily understandable way.

We have assessed the potential magnitude of this impact by comparing how much NES might have expected to receive in revenue from serving the Site directly, were it to serve the Site, with the revenues it might expect from the proposed arrangement with IWN.

We estimate a potential £0.004 annual increase on the water bills of existing NES customers if we grant this variation to IWN. This is once the Site is fully built out.

This estimate does not take into account the potential spill-over benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win sites.

Therefore we consider that granting this variation to IWN would have a very small financial impact on customers' bills and could have potential benefits for customers.

## **6.8 Ability to finance and properly carry out its functions**

We have a statutory duty to ensure that efficient appointees can finance the proper carrying out of their functions. When a company applies for a new appointment or variation, it must satisfy us that it is able to carry out all of the duties and obligations associated with being an appointed water or sewerage company.

We have considered the revenues and costs of the Site relating to the provision of water services should the relevant variation be granted. Following this review we have concluded that the Site demonstrates sufficient financial viability.

IWN has an unlimited Keepwell agreement from its owner Brookfield Utilities UK Limited, entered into in July 2013. IWN has confirmed that this agreement is still in place and will cover this Site.

On this basis, our view is that the risk of this Site not being financially viable is small and as a result we are currently satisfied that IWN would be able to finance its functions if the variation is granted.

## 7. Conclusion and next steps

In assessing IWN's application, we have considered the general benefits of new appointments and variations. Our view is that our two key policy principles would be met in this case, as customers would be no worse off, and IWN would be able to finance, and carry out, its functions. We have also considered the effects of granting the proposed variation and consequential variation on the existing customers of NES.

We are currently minded to grant the variation of appointment under the unserved criterion. We are consulting on our proposal to do so.

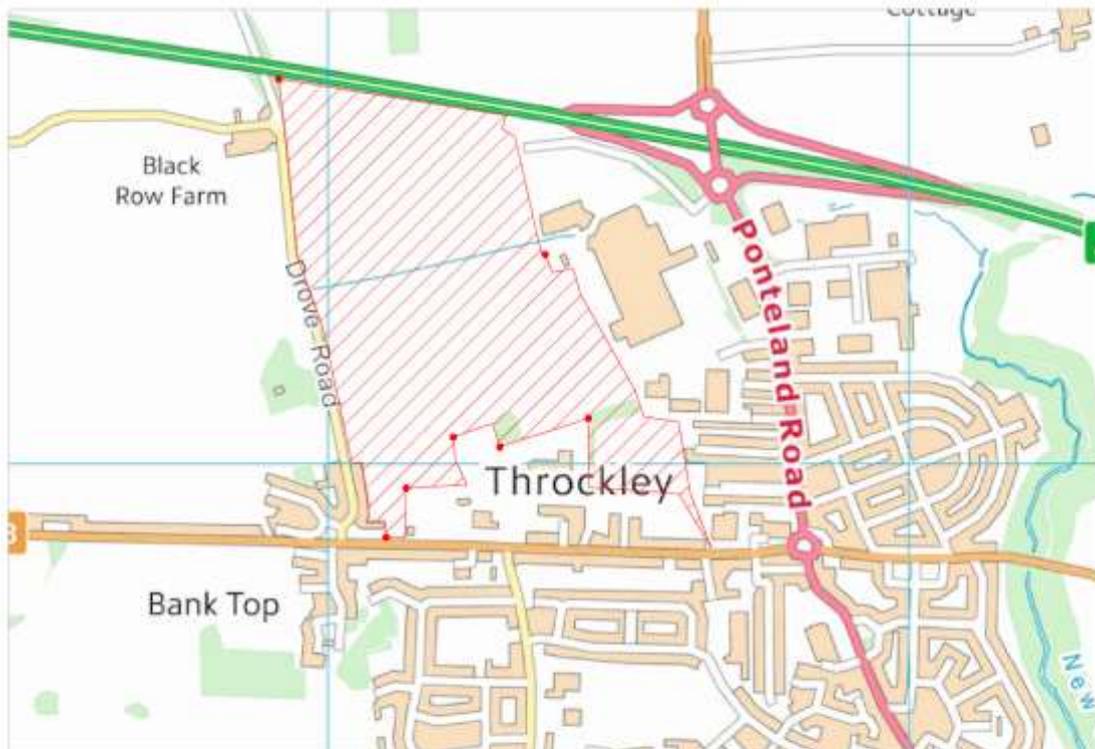
### Where to send submissions

Any person who wishes to make representations or objections with respect to the application should do so by completing the web form.

Representations must be received by Ofwat no later than 17.00 hours on 13 June 2018. Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or at <http://www.ofwat.gov.uk/foi/>

Ofwat will only use the information you have provided for the purpose of this consultation. We will retain your information in accordance with Ofwat's retention schedule and will not share with third parties unless we have a legal obligation to do so. For further information please see Ofwat's Privacy Policy in our [Publication Scheme](#).

## 8. Site map



Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

Phone: 0121 644 7500  
Fax: 0121 644 7533  
Website: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)  
Email: [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk)

May 2018

ISBN 978-1-911588-38-2

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