

November 2018

Trust in water

# **Variation of Leep Water Networks Limited's appointment to include Liverpool International Business Park**

## 1. About this document

### Variation of Leep Water Network Limited's appointment to include Liverpool International Business Park

On 29 September 2017, Ofwat began a [consultation on a proposal](#) to vary Leep Water Network Limited (**LWN**)'s appointment to become the water and sewerage services provider for a business park in United Utilities Water Limited (**UU**)'s water supply and sewerage services area, called Liverpool International Business Park in Speke, Liverpool ("**the Site**"). LWN currently holds an appointment as a water and sewerage company under its previous name, Peel Water Networks Limited.

The consultation ended on 27 October 2017. During the consultation period, we received representations from three organisations, which we considered in making our decision. On 25 October 2018, we granted LWN a variation to its existing appointment to enable it to supply water and sewerage services to the Site.

This notice gives our reasons for making this variation.

## Contents

1. About this document	2
2. Introduction	4
3. The application	6
4. Responses received to the consultation	9
5. Conclusion	122
Appendix 1: Site Map	133

## 2. Introduction

The new appointment and variation mechanism, specified by Parliament and set out in primary legislation, allows one company to replace the current company as the provider of water and sewerage services for a specific area. This mechanism can be used by new companies to enter the market and by existing companies to expand into areas where they are not the appointed company. In this case LWN applied to replace UU to become the appointed water and sewerage company for the Site.

A company may apply for a new appointment (or a variation of its existing appointment to serve an additional site) if any of the following three criteria are met:

- None of the premises in the proposed area of appointment is served by the existing appointed company at the time the appointment is made (the “**unserved criterion**”);
- Each premises is likely to be supplied with at least 50 mega litres per year (in England) or at least 250 mega litres per year (in Wales) and the customer in relation to each premises consents (“**the large user criterion**”);
- The existing water and sewerage supplier in the area consents to the appointment (“**the consent criterion**”).

When considering applications for new appointments and variations, Ofwat operates within the statutory framework set out by Parliament, including our duty to protect consumers wherever appropriate, by promoting effective competition. In particular, in relation to unserved sites, we seek to ensure that the future customers on the 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:

1. Customers, or future customers, should be no worse off than if they had been supplied by the existing appointee; and
2. We 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.

Entry and expansion (and even the threat of such by potential competitors) can lead to benefits for different customers (such as household and business customers and developers of new housing sites). Benefits can include price discounts, better

services, environmental improvements and innovation in the way services are delivered.

Benefits can also accrue to customers who remain with the existing appointee, because when the existing appointee faces a challenge to its business, that challenge can act as a spur for it to improve its services. We believe the wider benefits of competition through the new appointments and variations mechanism can offset any potential disbenefits for existing customers that might arise. We consider these potential disbenefits in more detail below.

### 3. The application

LWN applied to be the water and sewerage services appointee for the Site under the large user criterion set out in section 7(4)(bb) of the Water Industry Act 1991 (“**WIA91**”). LWN will serve the Site by way of bulk supply and discharge agreements with UU.

#### 3.1 Large user criterion

To qualify under the large user criterion, each of the premises on the Site must be supplied with (or be likely to be supplied with) at least 50 MI of water in England in any 12-month period (250 MI of water in Wales) and the customer in respect of those premises must consent to the appointment. The same threshold levels apply to new appointments or variations for sewerage services (i.e. new appointments may be made to serve business customers who are supplied or expect to be supplied with at least 50 MI of water in England (250 MI of water in Wales), the threshold applying to the amount of water supplied, not effluent discharged).

We are satisfied that the Site will use more than 50 MI per year and that the customer on the Site, namely Leep Utilities Services Ltd (LUSL), has consented to the variation of LWN's appointment.

Having considered all the facts of the Site, we are also satisfied that the Site may be treated as a single premises for the purposes of this application. This is because:

- the freehold for the Site is under the single ownership of Peel Investments (North) Limited (PINL);
- there has been a coordinated development of the water and wastewater assets on the Site with the infrastructure being owned by LUSL;
- while there is a range of diverse commercial buildings on the Site, they all receive and are billed for their water and wastewater by LUSL;
- UU has limited direct contact with the end users. It bills them directly for highway drainage but their bill for other water and wastewater services is from LUSL.

## 3.2 Financial viability of the proposal

We will only make an appointment or variation if we are satisfied that the proposal poses a low risk of being financially non-viable. We assess the risk of financial viability on a site-by-site basis and also consider the financial position of the company as a whole.

Based on the information available to us, we concluded the Site demonstrates sufficient financial viability, and LWN has satisfied us that it can finance its functions and that it is able to properly carry them out.

## 3.3 Assessment of 'no worse off'

Ofwat acts to protect consumers, especially those who are unable to choose their supplier. Our normal assessment of appointment and variation applications includes analysis of an applicant's 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 also consider the impact of making the appointment or variation on the existing customers of the existing appointee.

The circumstances in this application were, however, unique in that there was an existing single customer on the Site who consented to the variation. This meant that granting this variation, would largely retain the *status quo* for the appointee and for UU and UU's customers.

### a. Price

As there is only one customer and that customer has chosen LWN to be its supplier, we have not carried out the analysis in respect of customer charges and customer service that we would normally carry out.

The charges proposed to be levied by LWN will be in line with UU's published scheme of charges but with a 5% reduction against the water supply tariffs. LWN has indicated that this reduction will be applied indefinitely.

### b. Levels of service

Every appointee is required under conditions G, H and I of its conditions of appointment to publish Codes of Practice on debt and leakage and a Customer

Code for its household customers. We have assessed LWN's proposed Codes of Practice and Customer Code, and our view is that these are of an appropriate standard.

We did not consider it necessary to carry out a detailed comparison of the services LUSL would have received had it been supplied by UU with the services it will receive from LWN. This is because nothing is changing on the Site for the customer and the customer has chosen to be supplied by LWN. We nonetheless conducted a high level review of the customer service information provided by the applicant and shared it with the Consumer Council for Water (CCWater). LWN has set out how it will deliver customer service in terms of the statutory minimum requirements (The Guaranteed Standards Scheme (GSS) compliance) and company voluntary standards and has provided information relating to its planned levels of service. Its targets will match or exceed those typically achieved by UU and the sector as a whole.

We have assessed LWN's proposed Codes and we are satisfied that:

- all necessary information has been included;
- the relevant legal requirements and licence conditions have been met; and
- relevant policies are broadly comparable with UU's policies.

### **3.4 Effect of variation on UU's customers**

We have not conducted our normal analysis of the impact of this variation on the customers of UU as this is an existing developed Site with end-user customers receiving a private supply via LUSL. They will continue to receive a supply via LUSL and UU will continue to supply water to the boundary of the Site. As very little is changing we consider any impact on the customers of UU will be negligible.

### **3.5 Retail exit**

On 1 April 2017, UU exited from the non-household retail market. This had the effect of making the area that is served by UU a retail exit area in which the incumbent water and sewerage company is not able to provide retail services to non-household customers. Granting a variation to an appointment under the consent criterion does not result in the site covered by the variation no longer being a retail exit area, even if the company that now serves the site has not exited the retail market. As a result, the Site will remain a retail exit area and LWN will not be able to provide retail services to non-household customers in the Site.

## 4. Responses received to the consultation

We received three responses to our consultation; from CCWater, UU and the Environment Agency (EA). We considered these responses before making the decision to vary LWN's appointment. The points raised in the responses are set out below.

### 4.1 CCWater

CCWater stated that there is no compelling information to support the application.

- 4.1.1 CCWater asked what assurances the various Leep owned companies were giving with regards to a level playing field to ensure that there were no barriers preventing any other potential competitor in the retail market from supplying the Site.
- 4.1.2 CCWater agreed with Ofwat's decision not to carry out a levels of service comparison as there is no change for the end business users on the Site and the terms and conditions will remain the same.
- 4.1.3 CCWater queried whether the 5% discount that LWN will offer to LUSL will then be passed on to the 35 end business users on the site.
- 4.1.4 CCWater acknowledged that the impact on UU's customers will be small. They questioned whether granting this new appointment and variation ("**NAV**") could lead to an increase in similar arrangements, which may increase the impact on UU's customers.

### Our response

- 4.1.5 In January 2018 Ofwat explained to CCWater that the assurances we have with regards to a level playing field approach are the same as those provided by any other provider. There is no reason why another retailer could not occupy the retailer space in the proposed set up. We could investigate if there are potential competition law concerns in the future, should LWN prevent any other company from gaining the benefits of retail competition.
- 4.1.6 LWN confirm that the 5% discount offered to LUSL will not be passed to the 35 end business users on the Site. These customers are currently charged for their water and sewerage by LUSL as part of a commercial agreement to rent

space on the Site. These charges have been arrived at as a result of private commercial agreements and are not part of the regulated water and wastewater sector. Granting this NAV will not change this relationship between LUSL and these end customers. As a result, these end customers will be no worse off.

## **4.2 UU**

- 4.2.1 UU advised that although the application states that there is just a single customer on the Site there are in fact a number of customers being billed for highway drainage and one for trade effluent. UU advised that there are 70 highway drainage Supply Point Identifications (SPIDs) within the Site.
- 4.2.2 UU stated that it does not bill the 35 end business users on the Site for highway drainage. Rather, it bills a retailer not associated with the applicant. This has been the case since it exited the retail market.
- 4.2.3 The current water usage on the Site stated in the application is less than UU's records suggest. However, UU suggested that this may be due to the trade effluent customer on the Site that LWN has not included in its calculations.
- 4.2.4 UU stated that the map included in the original application does not include a number of newer buildings now present within the proposed area of appointment.

## **Our response**

- 4.2.5 We were unaware that there was an agreement between a customer on the Site and UU for trade effluent (as described in point 3.10 above). Although disappointed that details of this agreement were not in the original application, we advised that UU and LWN must now reach their own agreement on this point. This has now been done and the agreement on trade effluent forms part of the Bulk Discharge Agreement between the parties.
- 4.2.6 With regard to highway drainage, we understand that UU billed the end users on the Site rather than LUSL for highway drainage. This was permitted by its charges scheme which provided that a single management agent could allow UU to bill individual tenants rather than the management agent. We

understand that once LWN becomes the undertaker for the Site, individual customers will no longer be charged for highway drainage by UU. Instead, LWN will bill LUSL (the single customer on the Site) on a single site area basis, in line with LWN's standard charges scheme.

4.2.7 LWN has provided an accurate map of the Site as we do not consider that the specific details of the buildings on the Site are required.

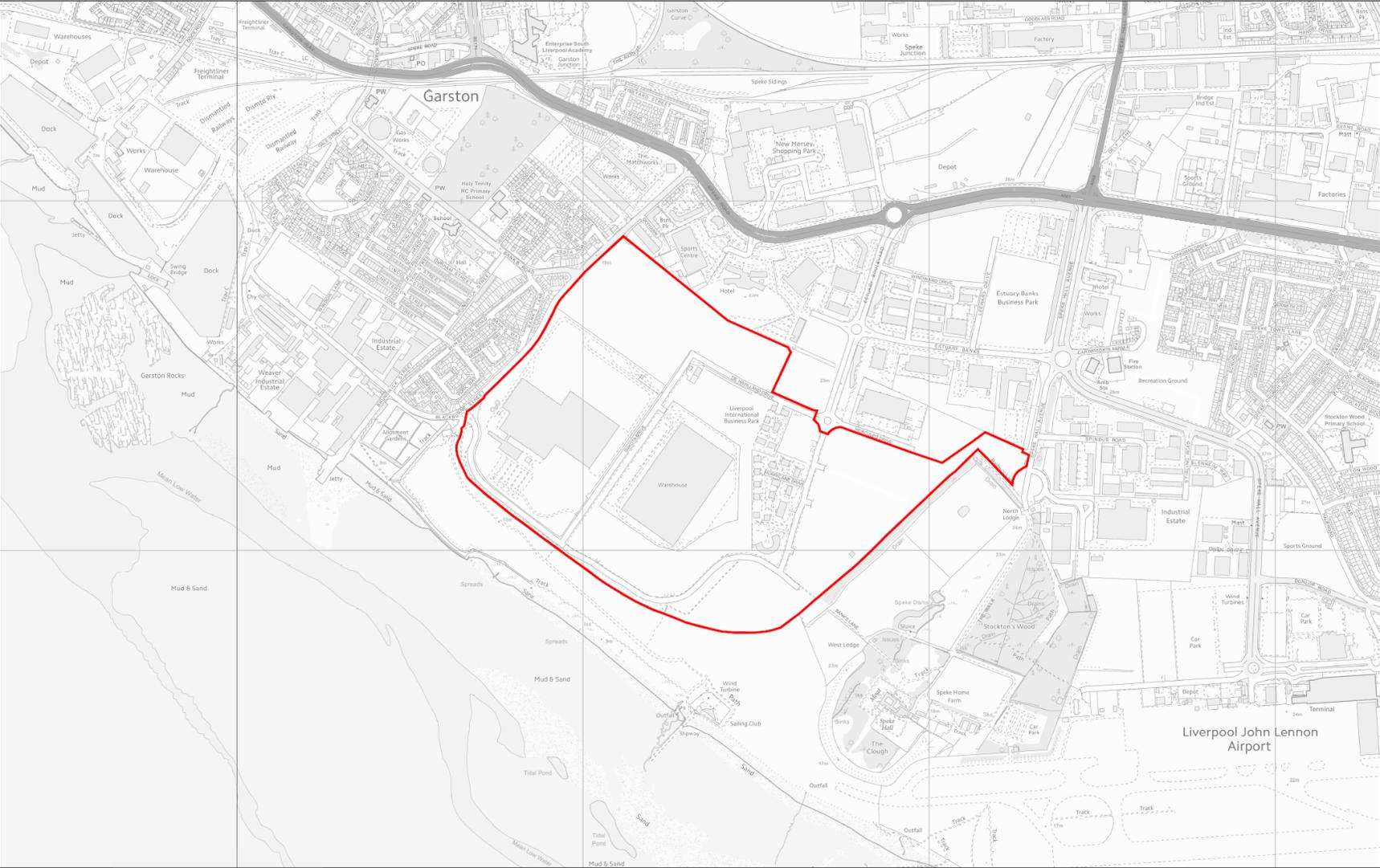
### **4.3 The EA**

4.3.1 The EA made no objections to us granting this variation.

## **5. Conclusion**

Having assessed LWN's application, and having taken account of the responses we received to our consultation, we decided to grant a variation to LWN's area of appointment to allow it to serve the Site for water and sewerage services. This variation became effective on 26 October 2018.

# Appendix 1: 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)

November 2018

© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk).

Any enquiries regarding this publication should be sent to us at [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk).

