

8 August 2019

Trust in water

**Proposal to grant a variation of appointment to Independent Water Networks Limited to enable it to provide water and sewerage services to a site called The Cowdray Centre, Colchester**

## Contents

1. About this document	3
2. The Site	3
3. The applicant	5
4. The proposal	6
5. Our approach to the assessment of this application	7
6. The application	8
7. Conclusion and next steps	12
8. Site maps	13

## 1. About this document

We propose granting a variation of appointment to Independent Water Networks Limited as a water and sewerage company and varying the appointment of Anglian Water Services Limited as a water and sewerage 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 variations of appointments as set out above.

## 2. The Site

Independent Water Networks Limited (“**IWN**”) has applied for a variation to its appointment to be able to provide water and sewerage services to a site called The Cowdray Centre in Colchester (“**the Site**”).

If granted, IWN will provide water and sewerage services to 262 household customers, there are no business customers on the Site. IWN proposes to provide water and sewerage services to the Site by way of bulk supply and bulk discharge agreements with ANH.

The application for full planning permission for the Site was submitted on 8 January 2018 and is currently still being considered by Colchester Borough Council. IWN has advised that the Site is likely to be fully built out by 2025. IWN has the consent of the Site developer (Persimmon Homes) to become the water and sewerage services provider for the Site.

Site boundary maps can be viewed in section 8 of this document.

### **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 28 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 and sewerage company to include the Site in its water supply area and sewerage services area; and
- vary the appointment of ANH as a water and sewerage company by excluding the Site from its water supply area and its sewerage services area.

By means of the above, IWN will become the water and sewerage services 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 and / or sewerage 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, and updated them more recently, when we published our New appointments and variations – [policy](#) (2019) and [process](#) (2018) documents. In December 2015, 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 – ie 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 and sewerage company for the Site under the unserved criterion, set out in section 7(4)(b) of the WIA91.

### 6.1 The consent criterion

IWN has applied to supply this Site under the consent criterion. We have a letter from ANH, dated 26 June 2019, confirming that it consents for IWN to take over the Site from it on the basis of the Site maps and that existing supplies are completely disconnected and premises demolished before the new development is progressed.

IWN has confirmed that there is currently an existing (empty) commercial premises on the Site. This building will be being demolished and disconnected as part of the Site construction and built over with new build properties. However, the developer is not planning to do this until a later phase of the development.

Based on the letter from ANH and the assurances provided by IWN regarding demolition and disconnection of the existing premises on the Site, we are satisfied that the application meets the consent criterion.

### 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

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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.



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.

### **6.3 Price**

IWN proposes to offer a discount of 2.5% in the charging year 2019/20. However, first occupancy is not expected on the Site until December 2019 therefore, the discount will only be applicable for a short timeframe. Following this, IWN proposes match the charges of ANH – i.e. – it will not offer a discount to customers on the Site.

### **6.4 Levels of service**

Every appointee is required under its licence conditions to publish and make available the Core Customer Information for its household customers. We have assessed IWN's proposed Core Customer Information 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 Core Customer Information than they would be if ANH were to be the customers' water and sewerage services supplier.

### **6.5 Developer consent**

IWN has the consent of the Site developer (Persimmon Homes) to become the water and sewerage 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>.

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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.

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

In considering whether customers will be no worse off, we also considered the potential effects of this variation on the prices that ANH's 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 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 ANH might have expected to receive in revenue from serving the Site directly, were they to serve the Site, with the revenues they might expect from the proposed arrangement with IWN.

We estimate a potential £0.001 annual increase on the water bills of existing ANH customers and a potential increase of £0.002 on the sewerage bills of existing ANH 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.

Following a risk assessment a decision was made to move to a company based assessment of financial viability for IWN, rather than the site-by-site assessment of each individual application.

IWN has an unlimited Keepwell agreement in place from its owner Brookfield Utilities UK Limited (BUUK) since July 2013. IWN has confirmed that this agreement is still in

place and will cover this proposed new site. BUUK continue to hold an investment grade credit rating with Moody's.

A Keepwell Agreement is an agreement between a parent company and a subsidiary in which the parent company provides a guarantee on the subsidiary's debt for the duration of the agreement.

We have considered the current financial position of the company as a whole and are satisfied that the company can finance its functions.

## 7. Conclusion and next steps

In assessing IWN's application, we have considered the general benefits of new appointments. 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 on the existing customers of ANH.

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

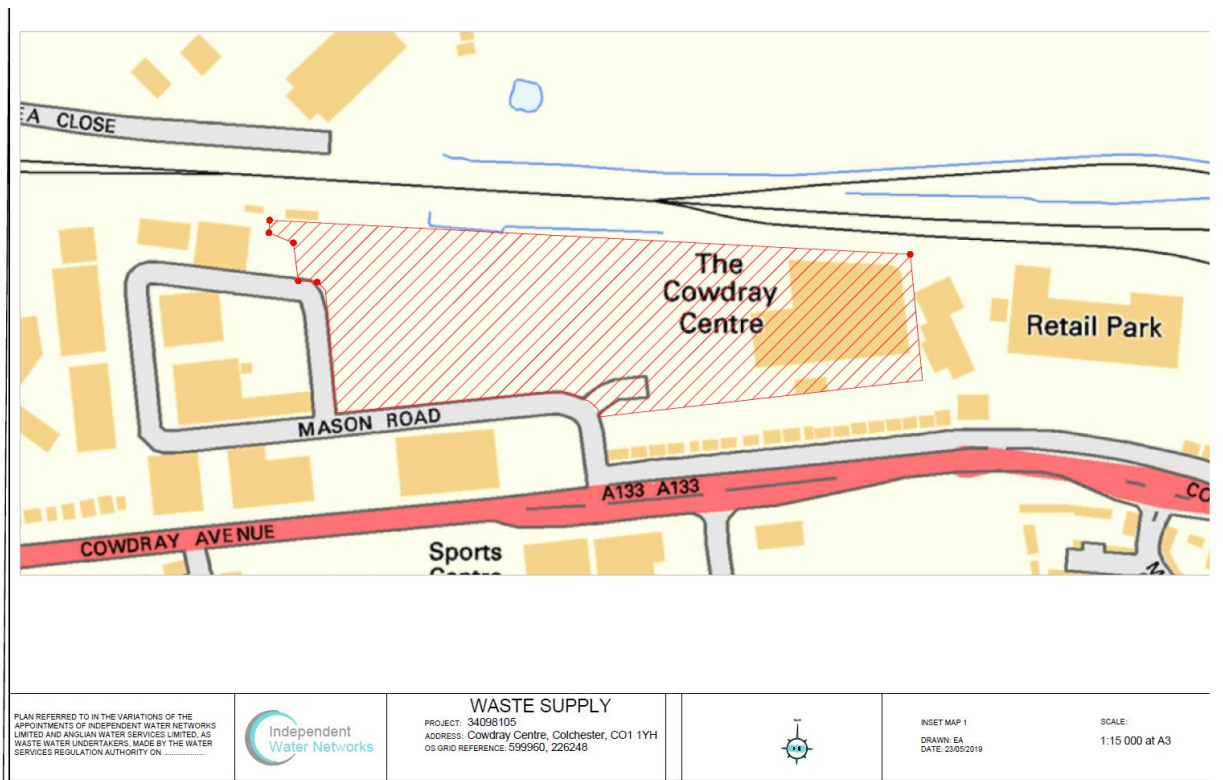
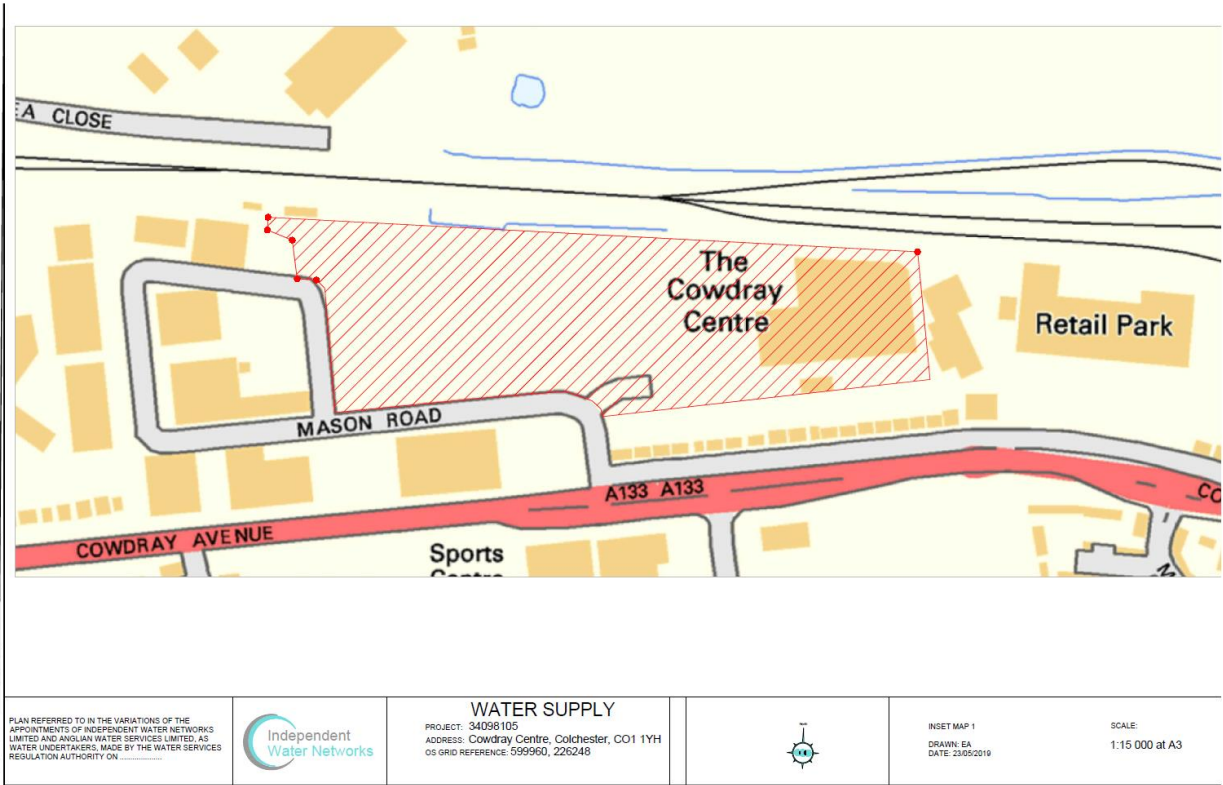
### Where to send submissions

Any person who wishes to make representations or objections with respect to the application should do so in writing to Hayley Robinson at Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or by email at [hayley.robinson@ofwat.gov.uk](mailto:hayley.robinson@ofwat.gov.uk)

Representations must be received by Ofwat no later than 17.00 hours on 6 September 2019. 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 maps



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.

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**Consultations under section 13 and 17IA of the Water Industry Act 1991 on proposed modifications to the licence conditions of 17 water companies and Bazalgette Tunnel Limited (trading as Tideway) to include the Board leadership, transparency and governance objectives**