

1 August 2019

Trust in water

**Proposal to grant a variation of appointment to Icosa Water Services Limited to enable it to provide sewerage services to a site called Land North of Headcorn Road (Fisher's Farm), Staplehurst, Kent**

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## 1. About this document

We propose granting a variation of appointment to Icosa Water Services Limited (“**ICW**”) as a sewerage company and varying the appointment of Southern Water Services Limited (“**SRN**”) as a 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 variation of appointment set out above.

## 2. The Site

ICW has applied for a variation to its appointment to be able to provide sewerage services to a site called Land north of Headcorn Road (Fisher's Farm) in Staplehurst, Kent ("**the Site**"). The Site is in SRN's sewerage services area.

If granted, ICW will provide sewerage services to 167 household customers, there will be no non-household customers on the Site.

Full planning permission was granted in October 2016. ICW has advised that the Site is likely to be fully built out by 2022.

ICW proposes to provide sewerage services to the Site by way of bulk discharge agreement with SRN.

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

### **3. The applicant**

On 20 October 2016, Icosa Water Limited was appointed as a water and sewerage undertaker for a site called West Raynham in Norfolk. On 20 December 2016, Icosa (the applicant), who is a subsidiary of Icosa Water Limited, applied to take over the appointment for the West Raynham site under the consent criterion. Since then Ofwat has agreed to vary Icosa's areas of appointment so that it serves a further 20 sites for water and/or sewerage services. The register of new appointments and variations can be viewed [here](#).

## 4. The proposal

Ofwat proposes to:

- grant a variation of appointment to ICW as a sewerage company to include the Site in its sewerage services area; and
- vary the appointment of SRN as a sewerage company by excluding the Site from its sewerage services area.

By means of the above, ICW will become the 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**

ICW has applied to be the sewerage 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.

ICW is applying for a variation based on the unserved criterion. ICW has provided an independent report which confirms the Site is unserved. The Site is greenfield, its previous use was arable farming. The independent report states that there are no properties or assets on Site. On 31 May 2019, SRN confirmed that it agrees with the conclusions of the report. Having reviewed the facts of this Site, and taking into account the independent report 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**

ICW proposes to match the charges to customers on the Site of SRN – i.e. – it will not offer a discount.

### **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 ICW'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 SRN were to be the customers' water and sewerage services supplier.

### **6.5 Developer consent**

ICW has the consent of the Site developer (Bovis Homes (South Eastern) Limited) to become the sewerage services provider.

### **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>.

The EA noted that ICW has not yet confirmed whether SRN is happy with the connection, nor whether there are any capacity problems and therefore if there are any potential timing problems. Without this information, the EA has advised that it is difficult for it to assess the impact to the environment. The EA requires assurance that SRN has agreed in principle that it is happy with the connection and that any capacity issues will be resolved in advance of a variation of appointment being granted to ICW for this Site.

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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.

We will not grant this variation until the required assurances have been provided to the EA and we have received a copy of the finalised bulk discharge agreement.

## **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 SRN'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 SRN 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 ICW.

We estimate a potential £0.001 annual increase on the sewerage bills of existing SRN customers if we grant this variation to ICW. 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 ICW 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 sewerage services should the relevant variation be granted. Following our review,

which considered our standard analysis and the specific risks associated with the Site, we have concluded the Site demonstrates sufficient financial viability.

We are satisfied that ICW has in place sufficient financial security which meets our requirements, in that it covers one year's annual operating costs required to supply the number of connections the business is projected to have in two years' time.

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 ICW would be able to finance its functions if the variation is granted.

## 7. Conclusion and next steps

In assessing ICW'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 SRN 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 SRN.

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

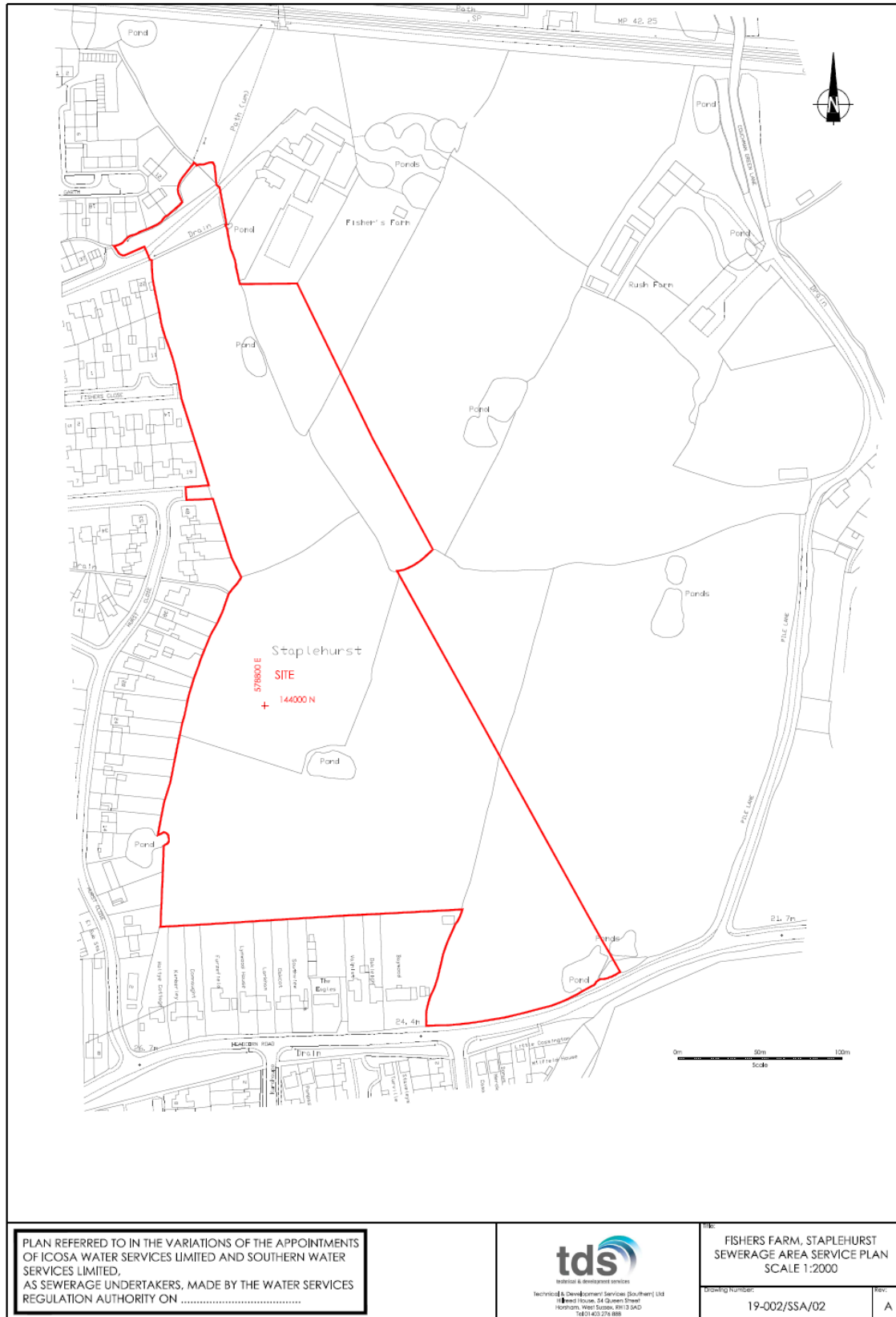
### Where to send submissions

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

Representations must be received by Ofwat no later than 17.00 hours on 29 August 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 map



I:\19-002 Fishers Farm, Staplehurst\136 Drawings\DWG\19-002-SSA-02.dwg David Harrington 19/03/2019 09:26:27

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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