September 2020

Proposal to grant a variation of appointment to Independent Water Networks Limited to enable it to provide water to a site called Portholme Road in Selby, North Yorkshire

Ofwat

www.ofwat.gov.uk

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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 Yorkshire Water Services Ltd ("**Yorkshire Water**"). 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 of appointment to be able to supply water to a site called Portholme Road in Selby, North Yorkshire ("**the Site**"). The Site boundary map can be viewed in section 8 of this document.

The Site is within the water supply area of Yorkshire Water.

The Site will comprise of 104 residential properties and is expected to be fully built out in 2023.

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 area. Since then Ofwat has agreed to vary IWN's area of appointment so it can serve a further 60 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 Yorkshire Water 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,[1] 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 (2015 and 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 – 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.

[1] 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 variation of appointment is made, none of the premises in the proposed area of appointment is served by the existing appointee.

Yorkshire Water has provided a letter, dated 10 August 2020, confirming that, in its view, the Site is unserved. This is due to the fact that Yorkshire Water has not identified any served properties for water or sewerage services on the Site.

There is also a site map attached to the application which confirms that there are currently no properties on the Site. Having reviewed the facts of the Site, we consider the Site to be 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.[2]

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.

6.3 Price

IWN will match the charges of Yorkshire Water.

[2] 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 Ml where the relevant area is wholly or mainly in Wales) have been able to effectively switch suppliers of water and/or sewerage since 1 April 2017.

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 Customer Code of Practice, and our view is that it is of an appropriate standard. Our view is that customers on the Site would be no worse off in relation to the scope of IWN's proposed Customer Code of Practice than they would be if Yorkshire Water were to be the customers' water supplier.

6.5 Site owner choice

IWN has the consent of the Site developer, Legal and General modular homes, to become the water supplier 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 or variation. Both the EA and DWI informed us that they are content for us to consult on this application[3].

6.7 Yorkshire Water'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 Yorkshire Water'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 Yorkshire Water 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.

[3] 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 estimate a potential £0.001 increase on the water bills of existing Yorkshire Water 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 negligible 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 company.

On the basis of IWN's assumptions, the Site demonstrates that it is financially viable.

IWN has an unlimited Keepwell agreement from its owner Brookfield Utilities UK Limited ("**BUUK**") in July 2013. IWN has confirmed that this agreement is still in place and will cover this proposed new Site. BUUK continues to hold an investment grade credit rating with Moody's.

On this basis, 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 variation on the existing customers of Yorkshire Water.

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

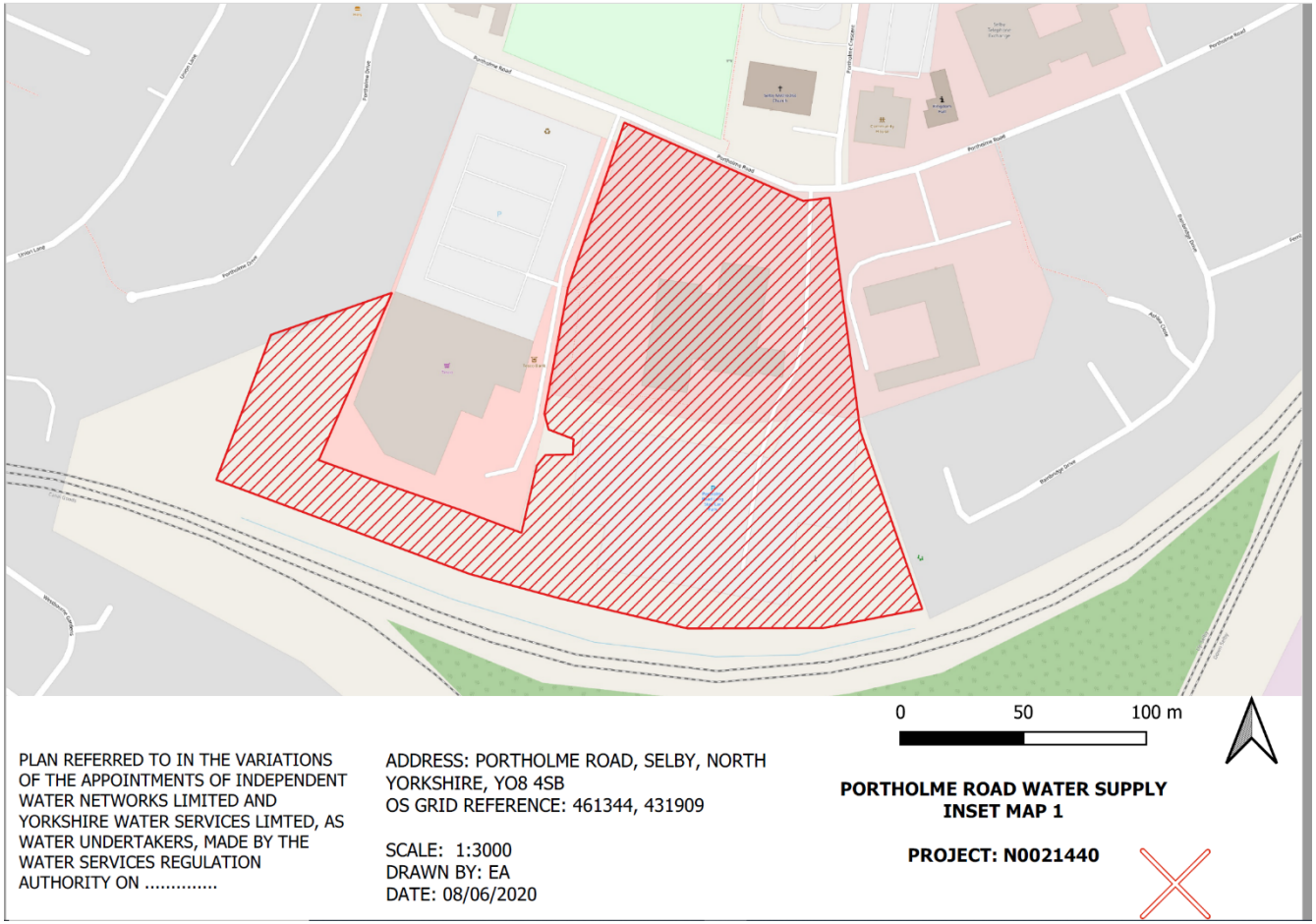
Where to send submissions

Any person who wishes to make representations or objections with respect to the application should do so in writing to Melissa Dooley at Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or by email at licensing@ofwat.gov.uk

Representations must be received by Ofwat no later than 17.00 hours on 28 October 2020. 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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PLAN REFERRED TO IN THE VARIATIONS OF THE APPOINTMENTS OF INDEPENDENT WATER NETWORKS LIMITED AND YORKSHIRE WATER SERVICES LIMTED, AS WATER UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON .....
ADDRESS: PORTHOLME ROAD, SELBY, NORTH YORKSHIRE, YO8 4SB
OS GRID REFERENCE: 461344, 431909
SCALE: 1:3000
DRAWN BY: EA
DATE: 08/06/2020
PORTHOLME ROAD WATER SUPPLY
INSET MAP 1
PROJECT: N0021440

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PLAN REFERRED TO IN THE VARIATIONS OF THE APPOINTMENTS OF INDEPENDENT WATER NETWORKS LIMITED AND YORKSHIRE WATER SERVICES LIMTED, AS WATER UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON ....

ADDRESS: PORTHOLME ROAD, SELBY, NORTH YORKSHIRE, YO8 4SB
OS GRID REFERENCE: 461344, 431909

SCALE: 1:6000
DRAWN BY: EA
DATE: 08/06/2020

PORTHOLME ROAD WATER SUPPLY
INSET MAP 2

PROJECT: N0021440

Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.

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