

April 2021

# **Variation of Icosa Water Services Limited's appointment to include Sportsman's Farm, Land South of Kings Hill in West Malling**

# Variation of Icosa Water Services Limited's appointment to include Sportsman's Farm, Land South of Kings Hill in West Malling

## About this document

On 4 February 2021, Ofwat began a [consultation on a proposal](#) to vary Icosa Water Services Limited ("Icosa Water")'s appointment to become the sewerage services provider for a development in Southern Water Services Limited's ("Southern Water") sewerage services area called Sportsman's Farm, Land South of Kings Hill in West Malling ("the Site").

The consultation ended on 5 March 2021.

During the consultation period, we received representations from three organisations, which we considered in making our decision.

On 15 March 2021, we granted Icosa Water a variation to its existing appointment to enable it to supply sewerage services to the Site.

This notice gives our reasons for making this variation.

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## 1. 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/or 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, Icosa Water applied to replace Southern Water to become the appointed 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.

## **2. The application**

Icosa Water applied to be the sewerage services appointee for the Site under the unserved criterion set out in section 7(4)(b) of the Water Industry Act 1991 ("WIA91").

Icosa Water will serve the Site by way of a bulk discharge agreement with Southern Water.

### **2.1 Unserved status of the site**

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

We received a letter from Southern Water dated 22 October 2020 confirming that the Site is unserved and Icosa Water may take over the Site from it. We are therefore satisfied that the application meets the unserved criterion

### **2.2 Financial viability of the proposal**

We will only make a 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 Icosa Water has satisfied us that it can finance its functions and that it is able to properly carry them out.

### **2.3 Assessment of 'no worse off'**

Icosa Water proposes to charge customers for services on the same basis as Southern Water and will not offer a discount

With regard to service levels, we have reviewed Icosa Water's Codes of Practice and its proposed service levels and compared these to the Codes of Practice and the performance commitments of Southern Water. Based on this review, we are satisfied that customers will be offered an appropriate level of service by Icosa Water and that overall customers will be 'no worse off' being served by Icosa Water instead of by Southern Water.

## **2.4 Effect of variation on Southern Water's customers**

In considering whether customers will be no worse off, we also looked at the potential effects of this variation on the price that Southern 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 on customers of Southern Water. It is therefore necessary to use a simplified set of figures. We have expressed the effect in 'per bill' terms to try and quantify the possible effect in an easily understandable way. Broadly, we have assessed the potential magnitude of this impact by comparing how much Southern 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 Icosa Water.

In this case, we have calculated that if we grant the site to Icosa Water, there will be no impact on the sewerage bills of Southern Water's existing customers.

This impact does not take into account the potential spillover benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win new sites.

## **2.5 Developer choice**

Where relevant, we take into consideration the choices of the site developer. In this case, Crest Nicholson said that it wanted Icosa Water to be the sewerage company for the Site.

### 3. Responses received to the consultation

We received three responses to our consultation; from the Environment Agency, the Drinking Water Inspectorate (“**DWI**”) and the Consumer Council for Water (“**CCW**”). We considered these responses before making the decision to vary Icosa Water's appointment. The DWI and the Environment Agency confirmed they had no comments to make with regard to the consultation. The points raised in CCW's response are set out below.

#### 3.1 The CCW

In its consultation response of 5 March 2021, the CCW stated that it generally expects variation appointments to provide customers with prices, levels of service and service guarantees that match or, ideally, better those of the incumbent company. This is particularly for developments that include domestic housing, as household customers do not currently have the ability to choose or switch supplier.

Overall the CCW agrees with our assessment that customers will be no worse off from this variation and it supports this application.

It was disappointed that there was no direct financial benefit to customers from having Icosa Water as their provider of sewerage services as it intends to match the charges of Southern Water on the Site (with no discount), however it noted that Icosa Water generally matches or exceeds Southern Water's service standards - for example Icosa Water will offer greater compensation if it fails to respond to written complaints within 10 working days and provides an automatic disturbance allowance, up to £100, to customers suffering sewer flooding.

CCW noted that Icosa Water will not be able to offer its financially vulnerable customers a social tariff in the way that Severn Trent Water does, although it will offer the standard Water Sure tariff. The CCW noted that given its relatively small size and customer base, it may be appropriate for Icosa Water to tailor some of the services that it provides. Until it can provide a formal social tariff, the CCW expect Icosa to offer appropriate flexible support to any individual in financial difficulty who would otherwise benefit from a social tariff. This should not be at the expense of its other customers. The CCW expect Icosa Water to research the views of its customers on any proposed cross-subsidy before introducing any social tariffs.

CCW recognised that customers of Southern Water will not see an increase in their sewerage charges as a result of the variation, however it noted that it is unclear whether there will be any significant benefits arising from the arrangement for the incumbent's customers. CCW questions the value of the NAV regime if it cannot deliver benefits for customers.

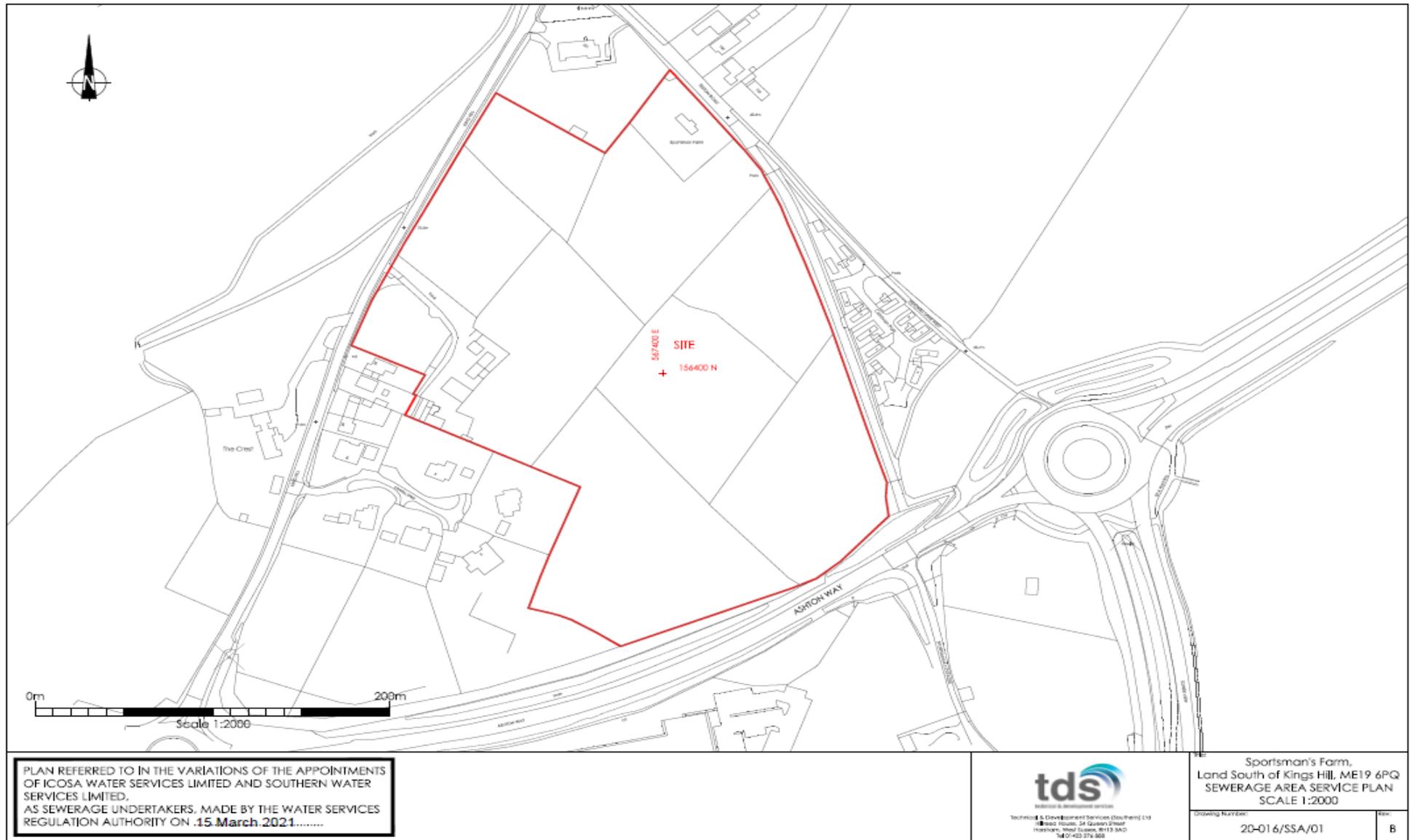
One of our key policies is that customers should be no worse off if a new appointment and variation is granted. That is, an applicant must ensure its new customers are made no worse off in terms of charges and service than if they had been supplied by the previous appointee. We do not require applicants to better the service and price of previous incumbents.

## 4. Conclusion

Having assessed Icosa Water's application, and having taken account of the responses we received to our consultation, we decided to grant a variation to Icosa Water's area of appointment to allow it to serve the Site for sewerage services.

This variation became effective on 16 March 2021.

## Appendix 1: Site Map



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