



Innovation Fund  
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**Innovation Fund: Consultation on amendment to intellectual property right policy for the second Breakthrough Challenge competition**

This letter provides our response to the 'consultation on amendment to intellectual property right policy for the second Breakthrough Challenge competition'.

We welcome the opportunity that Ofwat's Innovation Fund has presented, allowing us to continue building one of our key values, 'always exploring' and find new ways of delivering our purpose of creating social and environmental prosperity in the region we serve.

In total for the first round of the Fund, we put forward six partnership projects (four to the Innovation in Water Challenge and two to the Water Breakthrough Challenge). We have also partnered with other water companies on projects across both Challenges, to help drive these forward and support critical challenges that the water sector face.

Whilst a number of these submissions have been successfully developed, we have had to be selective in shortlisting supplier-led innovation and taking forward only a handful as a result of the current IPR policy.

Within our consultation response we provide specific details on these submissions to help explain how it has impacted our submissions and some of the innovation opportunities that may have been missed as a result.

We are currently engaging externally to our supply chain through our Water Innovation Network and internally through both our Innovation Community, and strategic Innovation Review Board, to identify further opportunities for the new Breakthrough Challenge Transform and Catalyst Streams.

Overall, we strongly believe that there is further customer, societal and environmental value to be realised through a more flexible IPR approach, as opposed to a rigid default policy position. We believe that the strongest position should be where projects are assessed on their overall value potential – with IPR commercial arrangements being one element of this.



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As such, our preference would be to move to a principles-based approach which focuses on overall customer benefit, whereby all value factors, inclusive of commercial IPR arrangements, are assessed to give an overall project value. We also believe that enhanced detailed feedback around these value factors could help to develop very strong projects for future rounds and ensure that the funding is allocated to the highest potential areas.

However, in response to the consultation questions below, we have sought to constructively answer these based on the assumption that an entire policy overhaul may not be possible in time for the next fund round.

We trust these comments will help inform Ofwat's work. Please do not hesitate to get in contact if you wish to explore anything further, either directly with me, or with my colleague Arun Pontin

[Redacted signature line]

Yours faithfully,

[Redacted signature]

**Alex Plant**  
**Director of Strategy & Regulation**

## Appendix 1 – consultation questions and responses

*Q1. In relation to the proposed policy changes which will allow participants to charge for a license for background IPR, to what extent do you think this may, or may not, result in:*

- a) better access to the fund for innovators and third parties;*
- b) a broader range of projects;*
- c) higher quality of projects; and*
- d) any other benefits or disadvantages.*

*Please provide any evidence and / or examples, including from your experience with the fund so far.*

Overall, we broadly support a proposed policy change allowing license charging for background IPR. This is a constructive development and we welcome Ofwat's continued consideration and innovating in this space. We believe this could increase access to the fund, resulting in a broader range of potentially higher quality projects.

However, we believe this is one of many changes required to improve flexibility. Ultimately, if it can be shown that there is a benefit to customers, society and the environment once all commercial IPR arrangements have been considered, then there should be no reason to not progress attractive and innovative projects.

Similar to other water companies, we have experienced significant challenges first-hand with the current background IPR position. Specifically, in the first round of the Innovation in Water Challenge we put forward a partnership project with Thames Water, Yorkshire Water, Northumbrian Water and Business Modelling Associates entitled 'Unlocking bioresource market growth using a collaborative decision support tool'.

Feedback we received from Nesta suggested that overall the project scored very highly and significant benefits to customers could be realised. However, the technology proposed partly included 3<sup>rd</sup> party software, which could not be made available royalty free without threatening the position of the project partner. As such costs were included to cover this, but we believe the submission was ultimately rejected, primarily due to a suggested deviation from the background IPR position.

We are currently considering whether, given these proposed IPR changes, we will re-submit this bid for consideration in the next round of funding and this will largely depend on the extent of the changes to the IPR approach.

Any relaxing to the current restrictive background IPR policy position will likely facilitate better access to the fund for innovators and third parties

alongside a broader range of projects. However, there are still a number of considerations that would need to be addressed to ensure the highest quality of projects are put forward, and it is wholly attractive to those that supply background IPR – these are set out below.

### **A fair, reasonable and non-discriminatory rate**

Within the proposed changes, it is put forward that any licence charge for background IPR should be 'fair, reasonable and non-discriminatory'.

Background IPR exists in many different formats, and it would be difficult to have a one-size-fits-all approach to what is fair and reasonable with regards charging. To ensure this is fair to both IPR owners and customers that will benefit from the innovation, further detailed consideration will be required to understand:

- Who will determine what is considered to be fair, reasonable and non-discriminatory – Ofwat, those that own the background IPR or let the market decide?
- How will this be made fair and transparent between proposals to ensure licence charging is not biased or unfairly weighted?
- What will be required to decide the costs i.e. as part of the bid application looking at cost-benefits, or as open dialogue between Ofwat, water companies and the supply chain?

Furthermore, it can take significant time to work through proposals as a partnership with innovators and there is a danger that too much time could be spent focused on the IPR to detriment of the submission. Therefore, whilst we understand that charges need to be representative and fair, there needs to be further consideration and ultimately clear guidance on the points above to provide a firm foundation to work from prior to the fund opening on 11<sup>th</sup> October. We would welcome the opportunity to work with Ofwat and others to propose solutions to these questions.

### **Pilot using half the Catalyst Stream funding**

We would strongly recommend utilising the full amount of Catalyst Stream funding for the proposed background IPR policy changes, as opposed to half the amount.

Utilising only half the proposed funding from the Catalyst Stream could result in projects being progressed purely because they meet the IPR policy change requirement, as opposed to the 'best' projects put forward to this Stream. This would be avoided by utilising the entirety of the funding, allowing for all projects submitted to the Catalyst Stream to be considered equally.

## Licensing and agreements

Following this consultation, we would welcome further discussions with Ofwat, water companies and suppliers during drafting of the new proposed IPR policy, in order that a collective approach to licensing and agreement is developed.

The nuances as to how this would work both legally and practically is essential; and a model that benefits all involved must be reached. For example, whether there would need to be individual bespoke IPR agreements in place for background IPR with each individual water company, or whether there may be a lead organisation that holds this and licences via themselves.

Building on learning from how the funding of this first round has worked between water companies could support this conversation and thinking.

*Q2. To what extent might the proposed approach benefit or disadvantage customers in comparison to the current policy?*

We believe there would be limited overall benefit from this modest relaxation of approach to IPR, and the sector should be aiming to entirely remove the barrier to innovation presented by having a rigid default IPR policy.

We appreciate and understand the perception and need for customers not to be charged twice for the development of any innovation. However, it must also be recognised that charging for background IPR is a lifeline for many SMEs and new-to-market companies that the sector relies on for innovation, alongside the heavy investment they will have already made. It is likely that we will see more diverse and innovative solutions being put forward if we are to remain flexible on the approach to IPR.

If it can be shown as part of the bid that charging for the background IPR that is required still results in an overall net benefit to the customer and that this can be sustainable at scale and into the future, then this type of project should be fundable under the competition and should be assessed on the basis of the customer benefit potential rather than the fit to rigid terms.

Excluding projects that offer benefit to customers through exploitation in the sector but do not adhere to the default IPR arrangements is not in the long-term interests of customers. The management of IPR and resulting royalties (e.g. administration resource) may also not be value-adding for certain projects and therefore, ownership of IP should remain with those parties best-placed to manage it and this may not be customers or representatives of customers.

*Q3. Is there any merit in retaining the option to propose alternative IPR arrangements when submitting a bid given the changes we're proposing within this consultation document? If so, where do you consider that we should allow flexibility in the scope for any alternatives – e.g. Foreground IPR? Please provide specific examples in answering this question.*

We believe that there should not be a one size fits all approach to IPR and flexibility to ensure that, where there is significant customer benefit potential from an innovation, the option to propose a different arrangement is essential. This will ensure that any funds can be allocated to the most beneficial and transformative projects.

Whilst the focus of the current IPR policy changes is on background IPR, we believe there is still a need to address foreground IPR, and as such ultimately are in favour of retaining the option to propose alternative IPR arrangements in both the Catalyst and Transform Streams.

Alternative IPR arrangements can take significant time to develop and come with reputational risk with both existing and new suppliers, alongside taking time away from the bid development. During the previous rounds, these alternative arrangements may have only been developed towards the end of the bid submission deadline with no guarantee that they would be acceptable.

Given this, some degree of assurance or guidance needs to be provided by Ofwat so that water companies and suppliers can understand what exactly may be acceptable, and what may constitute a 'red line' in alternative IPR arrangements. This would help build confidence to those developing the bid and lead to better quality submissions, which can present an informed case for this alternative arrangement.

*Q4. How do you think we could evaluate the impact of our proposed IPR policy changes to inform the next competition, including areas such as access to the competitions and ultimately the benefits to customers? What additional information do you think we should collect in order to help us to evaluate?*

We believe that the evaluation of proposed IPR policy changes can be made now on reflection of previously submitted bids for the first round of the competition. These bids should be reviewed to quantify those that were rejected purely on the basis of IPR approach, but which otherwise could be funded. As such a further pilot period policy change may not be required in order to evaluate the impact of this.

We would caution against creating additional work for Ofwat, water companies and suppliers during these deadline submission dates so that the focus can be on developing the bid rather than capturing learning in the first instance.

We would recommend trying to get to a position where overall customer value potential is assessed from the projects of those with rigid IPR approach compared to those with a flexible IPR approach.