

August 2021

# **Variation of Icosa Water Services Limited's appointment to include Bishops Rise, Hatfield**

## About this document

# Variation of Icosa Water Services Limited's appointment to include Bishops Rise, Hatfield

On 11 February 2021, Ofwat began a [consultation](#) on a proposal to vary Icosa Water Services Limited's ("**Icosa Water**") appointment to become the sewerage services provider for a development in Thames Water Utilities Limited's ("**Thames Water**") sewerage services area called Bishops Rise in Hatfield, Hertfordshire ("**the Site**").

The consultation ended on 11 March 2021. During the consultation period, we received representations from four organisations, which we considered in making our decision. On 2 August 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 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 Thames 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 consent criterion set out in section 7(4)(a) of the Water Industry Act 1991 (“**WIA91**”). Icosa Water will serve the Site by way of a bulk discharge agreement with Thames Water.

### 2.1 The consent criterion

To qualify under the consent criterion, an applicant must provide a letter of consent from the existing appointee consenting to the application and consenting to the variation of its area of appointment corresponding to the applicant's application.

A letter has been received from Thames Water dated 21 October 2020, confirming that it consents for Icosa Water to take over the Site.

We are therefore satisfied that the application meets the consent criterion.

### 2.2 Retail exit Market

On 1 April 2017, the non-household retail market was opened to competition. Thames Water chose to exit the non-household retail market. Under the Water and Sewerage Undertakers (Exit from Non household Retail Market) Regulations 2016 (the Retail Exit Regulations), once a water or sewerage company exits the non-household retail market, its area of appointment becomes a 'retail exit area'. In a retail exit area, non-household customers must be supplied by a company holding a retail licence (a retailer), and water and sewerage companies are prohibited from providing retail services directly to those customers. The Retail Exit Regulations make an exception to this prohibition if a variation is granted in respect of a site where there are no served premises (that is under the unserved criterion). Where a variation is respect to a served site (that is under the consent or large user criteria), the site will remain a retail exit area and non-household customers must be served by a retailer rather than the appointee.

This variation is being made under the consent criterion. As a result, the Site will remain a retail exit area and Icosa Water will not be able to provide retail services to non-household customers on the Site. There is currently one non-household customer on the Site. Icosa Water has confirmed that this business customer will be supplied by a retailer rather than by it.

Icosa Water has confirmed to Ofwat that it understands restrictions on its ability to supply non-household customers on the Site in light of the Retail Exit Regulations

## **2.3 Financial viability of the proposal**

We will only make an appointment or 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.

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

Icosa Water proposes to match the charges to customers on the Site of Thames Water, that is it 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 Thames 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 Thames Water.

## **2.5 Effect of variation on Thames 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 Thames 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 Thames 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 Thames 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 there will be no increase on the sewerage bills of existing Thames Water customers if we grant this variation to Icosa Water.

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.

## **2.6 Developer choice**

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

### 3. Responses received to the consultation

We received four responses to our consultation; from the Drinking Water Inspectorate (“**DWI**”), the Environment Agency, the Consumer Council for Water (“**CCW**”) and Welwyn Hatfield Borough Council. We considered these responses before making the decision to vary Icosa Water's appointment. The points raised in the response are set out below.

The DWI and Welwyn Hatfield Borough Council had no comments to make with regard to this consultation and did not have any objections.

#### 3.1 Environment Agency

The Environment Agency response confirmed that it was supportive of Icosa Water's application in principle but requested a series of further information from Icosa Water to better understand how it would serve the Site. Its queries included confirming which Sewage Treatment Works (“**STW**”) Icosa Water planned on using, and whether it had confirmed capacity and sufficient permit at this particular STW. In addition to this, it also raised queries around the surface water drainage plans at the Site and whether Icosa Water has planned innovations for the site in terms of grey water use or storage, prevention of leakage or infiltration. Icosa Water responded to these queries on 24 March 2021. The Environment Agency subsequently confirmed it was satisfied on 8 April 2021.

#### 3.2 CCW

In general CCW expects new appointees to provide consumers with prices, levels of service and service guarantees that match or, ideally, better those of the incumbent/s. CCW states that Ofwat's overall assessment is that customers will be no worse off in terms of the levels of service they receive if served by Icosa rather than Thames Water, and it agrees with this assessment, and for this reason, CCW support this application.

CCW is disappointed that there is no direct financial benefit to customers from having Icosa Water as their provider sewerage services, as it is Icosa Water's intention is to match Thames Water's charges.

As part of the application process, CCW commented on a comparison of Icosa Water's voluntary and statutory service standards with those of Thames Water. CCW notes that Icosa Water is offering guaranteed and voluntary standards of service that generally match or exceed the standards offered by Thames Water. For example, Icosa Water will inspect internal sewer flooding incidents within four hours and will clean these up within 12 hours, whereas

Thames Water does not offer a timescale. Icosa Water also offers additional compensation for disturbance and will consider discretionary payments towards alternative accommodation for customers with critical health needs.

CCW notes that Icosa Water will not be able to offer its financially vulnerable customers a social tariff in the way that Thames Water can, although it will offer the standard WaterSure tariff for qualifying customers who find themselves in financial difficulty. CCW notes 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, however, CCW expects Icosa Water 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. CCW would expect Icosa Water to research the views of its customers on any proposed cross-subsidy before introducing any social tariffs.

CCW notes that Ofwat has calculated that there will be no cost to Thames Water's existing customers as a result of this variation. However, CCW states that it is unclear whether there will be any significant benefits from the arrangement for existing customers of Thames Water. CCW questions the value of the NAV regime if it cannot deliver benefits to customers.

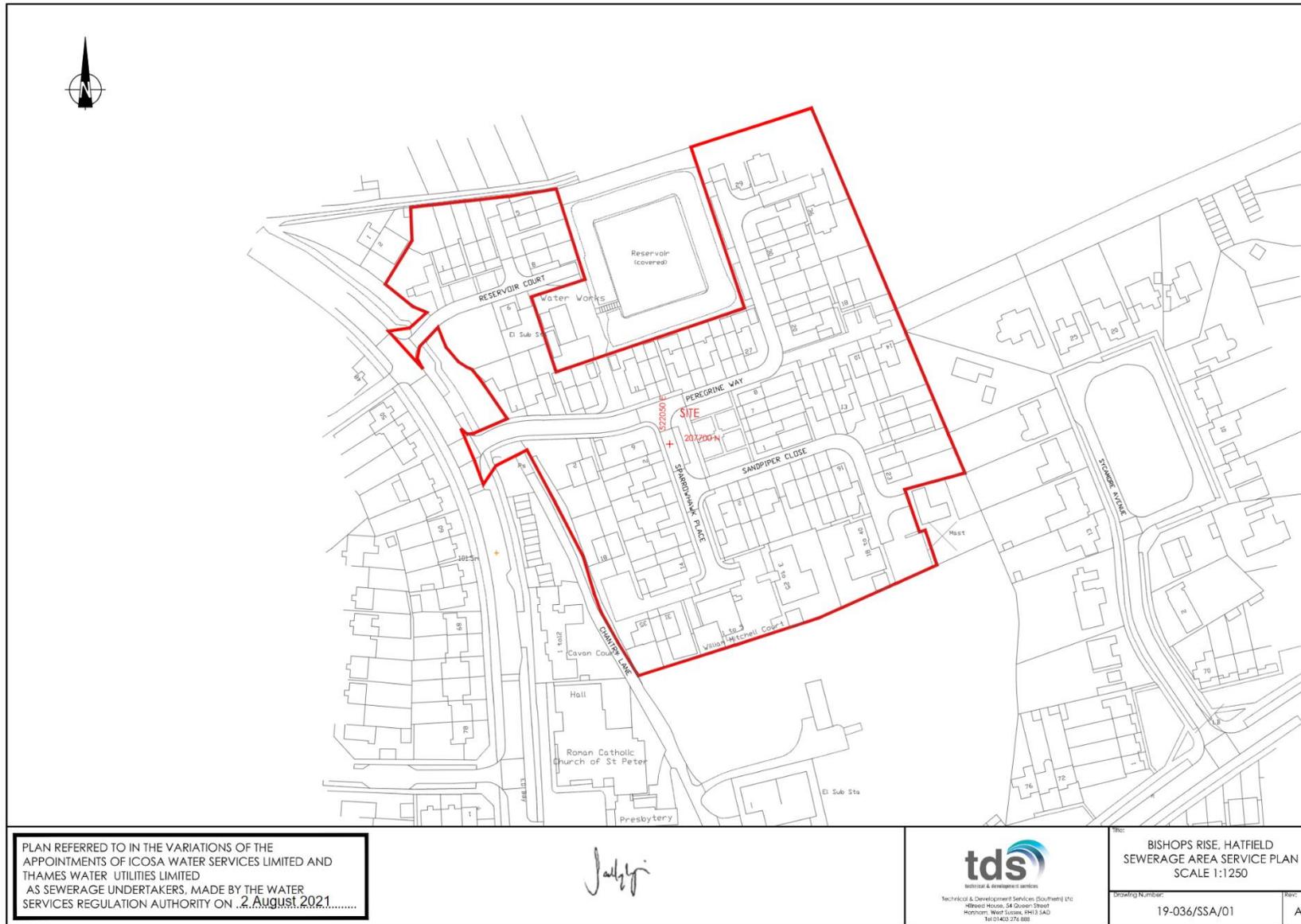
## **Our response to CCW's comments**

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 3 August 2021.

## Appendix 1: Site Map



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is a non-ministerial government department.  
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Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA  
Phone: 0121 644 7500

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