

May 2022

**Proposal to grant an appointment to  
ESP Water Limited, to allow it to  
provide water and sewerage services  
to Merchant's Wharf, Salford**

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## 1. About this document

We propose granting a new appointment to ESP Water Limited (“**ESP Water**”) as a water and sewerage company and varying the appointment of United Utilities Water Limited (“**United Utilities**”) as a water and 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 appointment set out above.

## 2. ESP Water

ESP Water was set up in April 2021 by ESP Utilities Group ("**ESP Utilities**") to operate in the New Appointment and Variations ("**NAV**") market. ESP Water is a wholly owned subsidiary of ESP Utilities. ESP Utilities owns companies that operate in other utility markets, such as gas and electricity, with over 650,00 customers connected on a variety of networks.

ESP Water intends to operate as an undertaker providing water and sewerage services to household customers. ESP Water will offer water only or water and sewerage services to household customers, as part of a multi utility offering. ESP Water will enter into bulk supply and discharge agreements with incumbent companies and does not plan to use its own resources. ESP Water does not have any acquisition plans; it plans to grow organically via its existing contacts. Self-Lay Providers ("**SLPs**") will construct the networks on site and ESP Water will not undertake installation work but will acquire completed connections.

ESP Water has not previously operated in the sector, and this is its first application for an appointment as a water and sewerage undertaker.

ESP Water has applied to provide water and sewerage or water only services to ten other sites, we are currently processing the assessment for each site, and we will consult on these accordingly.

### 3. The Site

ESP Water has applied for a new appointment to be able to provide water and sewerage services to a site called Merchant's Wharf in Salford, Manchester (“**the Site**”). Site boundary maps can be viewed in section 8 of this document.

The Site is within the water supply and sewerage services area of United Utilities.

The Site will comprise 196 residential properties and 1 business property. The Site is expected to be fully built out in June 2025.

## 4. The proposal

Ofwat proposes to:

- grant a new appointment to ESP Water as a water and sewerage company, by including the Site in its water supply and sewerage services area: and
- vary the appointment of United Utilities as a water and sewerage company by excluding the Site from its water supply area and sewerage services area.

By means of the above, if we grant the appointment to ESP Water, it will become the water and sewerage services provider for the Site. This will allow ESP Water to provide services to both household and business customers.

ESP Water has notified Ofwat, the Market Operator for the business retail market in England ("**MOSL**") and the Department for Food, the Environment and Rural Affairs ("**Defra**"), of its intention to exit the business retail market, should it be granted an appointment. ESP Water intends to operate as a wholesaler and retailer for household customers and wholesaler for business customers.

As such, ESP Water has entered into a subcontracted arrangement with Castle Water Limited ("**Castle Water**"), whereby Castle Water will serve its business customers until it exits the market. We have reviewed ESP Water's intended arrangement with Castle Water and found that this interim arrangement will not impact ESP's business customers. If this appointment is granted, ESP Water's business customers will be added to Castle Water's billing system as new customers and all customer and billing services will be handled by Castle Water.

Once ESP Water's exits the market its business customers will have a choice to remain with Castle Water or move to another retailer of their choice. ESP's business customers can also choose to move to another retailer before it exits the market.

Both Defra and MOSL have not raised any queries or concerns in respect of ESP Water's proposed arrangement with Castle Water, in relation to its business customers, as such, we are processing ESP Water's appointment with this in mind.

ESP Water can only apply to exit the business retail market once it has been granted an appointment to provide water and sewerage services. Applications to exit the business retail market are processed by Defra. The Secretary of State, in accordance with regulation 11 of the Water and Sewerage Undertakers (Exit from

Non-household Retail Market) Regulations 2016, grants permission for an undertake to exit from the business retail market.

## 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 \(2015 and 2019\)](#) 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

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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.

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.

## 6. The application

ESP Water has applied to be the water and 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.

United Utilities has provided a letter dated, 7 January 2022, confirming that, in its view, the Site is unserved for water and sewerage. The Site is Brownfield and aerial maps show that there are existing buildings within the parameter of the Site. ESP Water and the Site developer have confirmed that all existing buildings and connections have been demolished.

Having reviewed the facts of this Site and taking into account the letter from United Utilities, 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.<sup>2</sup>

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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



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**

ESP Water proposes to match the charges to customers on the Site, to those of United Utilities.

### **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 ESP Water'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 ESP Water's proposed Customer Code of Practice than they would be if United Utilities were to be the customers' water and sewerage services supplier.

### **6.5 Site owner choice**

ESP Water has the consent of the Site developer, Legacie Contracts Limited, to become the water and sewerage services provider for the Site.

### **6.6 The Environment Agency and the 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 Environment Agency and the DWI informed us that they are content for us to consult on this application<sup>3</sup>.

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with at least 50 MI 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.

<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.

## 6.7 Incumbent's existing customers

In considering whether customers will be no worse off, we also considered the potential effects of this appointment on the prices that United Utilities 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 United Utilities 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 ESP Water.

We estimate no increase on the water and sewerage bills of existing United Utilities' customers, if this appointment is granted to ESP Water. 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 appointment to ESP Water will have no 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 specifically look at the operational and financial viability of the company.

Our assessment of operational viability requires the company to demonstrate to us that it is technically and operationally able to fulfil the duties of an

undertaker. The key considerations we look at are listed in our published guidance [here](#), in section 5.7 (page 40).

ESP Water has provided sufficient evidence to demonstrate that it has the necessary processes and expertise in place to be able to comply with its obligations as a water and sewerage undertaker. In addition to its arrangement with Castle Water for business customers, ESP Water has several other subcontracted arrangements in place with other water and sewerage companies and third-party providers. ESP Water intends to rely on these arrangements and support from incumbent companies to be able to perform its statutory and regulatory duties. These arrangements cover provisions such as emergency mains repairs and the supply of bottled water. ESP Water has provided information on its assessment process of appointing subcontractors, how the arrangement will work in practice and the contingency plans in place should arrangements not work as intended. Further, ESP Water has provided details of the assurance processes it has in place to ensure any infrastructure or assets it adopts meets the industry standard required.

Having reviewed the above, we are satisfied that it has the necessary operational viability to perform the duties of an undertaker.

We also have considered the financial position of ESP Water in relation to providing water and sewerage services to the Site, and we are satisfied the company demonstrates sufficient financial viability.

ESP Water has a draft unlimited Keepwell Agreement with its parent company, ESP Utilities. ESP Water have confirmed that this agreement will be finalised and will cover this proposed new Site. ESP Utilities holds an investment grade credit rating with Moody's.

On this basis, we are currently satisfied that ESP Water would be able to finance its functions if the appointment is granted. The granting of the appointment is dependent upon receipt and review of a finalised Keepwell Agreement between ESP Water and ESP Utilities.

## 7. Conclusion and next steps

In assessing ESP Water'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 ESP Water would be able to finance, and carry out, its functions. We have also considered the effects of granting the proposed appointment on the existing customers of United Utilities.

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

### Where to send submissions

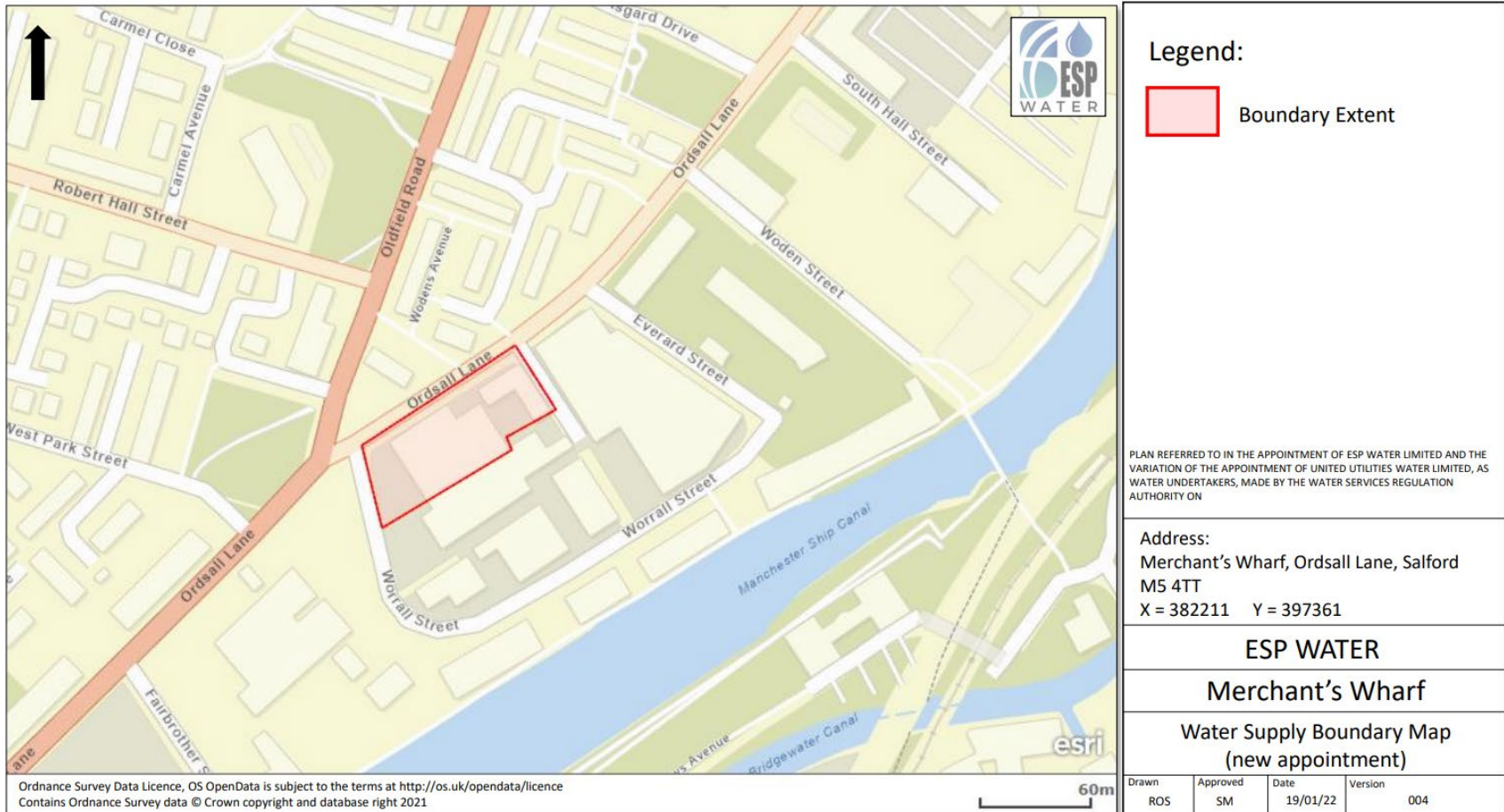
Any person who wishes to make representations or objections with respect to the application should do so in writing to Henna Begum at Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or by email at [Licensing@ofwat.gov.uk](mailto:Licensing@ofwat.gov.uk)

Representations must be received by Ofwat no later than 17.00 hours on 16 June 2022. 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](#).

## Site maps

Water boundary map



Sewerage services map



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**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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