WA Consultancy Limited

OFWAT CONSULTATION: METHODOLOGY FOR PR24 (RESPONSE CLOSING DATE – 7th SEPT.)

RESPONSE: FINAL VERSION

PREAMBLE

W A Consultancy is an established engineering consultancy serving the needs of both major house builders and SMEs. The responder to this latest Ofwat consultation has been active in the water and sewerage sector since the early 1970's in addition to having previously been a constituent member of the Government's Building Regulation Advisory Committee and for nearly 10 years. The principal activities of the consultancy cover all aspects of land acquisition due diligence, geotechnical/geo-environmental matters, flood risk evaluation/mitigation, planning, and water and sewerage matters. Importantly, before submission to Ofwat our response has been shared with many of our clients together with other actor organisations. We therefore trust that our response will be afforded due weight and recognition given the fact it crystallises the concern(s) and sentiments expressed by a number of our clients, together with other consultants.

This response considers the proposals set out in Appendices 3 and 9 of the consultation, i.e., those proposals that that will have the greatest impact on house builders/developers. That said, it opens with a series of general comments that are pertinent to the entirety of this latest and somewhat lengthy Ofwat consultation.

1. GENERAL COMMENTS

1.1 In setting the rationale for PR24, it is concerning to note Ofwat has made little, if indeed any reference to its binding responsibility to adhere to Defra's statutory Charging Rule guidance first issued in January 2016. Likewise, the statutory duties imposed on all water and sewerage companies under the provisions of the WIA 1991. Instead, Ofwat appear to have subjugated extant statutory guidance in favour of a reliance on Defra's suggested aspirations for Ofwat, as articulated in a more recent Defra publication, namely, ***"Water industry: Government's strategic policy statement for Ofwat – March 2022".***

Unless robust evidence/justification to the contrary can be provided by Ofwat, the Defra 'policy' statement would appear to carry little if indeed any statutory weight. This begs the first of several questions, namely, **why has extant statutory guidance, as issued by Defra, been effectively ignored?** Secondly, will it be Ofwat's intention to ensure PR24 takes cognisance of extant statutory guidance/prevailing legislation, together with established (sewerage) case law, and for these requirements to be imposed on a far more prescriptive basis?

1.2 It is concerning to note Ofwat appear to have unilaterally changed the Government's principles in respect of cost reflectivity and balance of charges – first articulated by Defra in their statutory guidance to Ofwat. More importantly, what is viewed by many house builders as being a fundamental change to extant statutory guidance does not appear to be supported by the requisite Ministerial approval pursuant to established legislative requirements. Ofwat are therefore invited to provide greater clarity on the justification for their approach to PR24 before final crystallisation.

1.3 Ofwat's principal approach to PR 24 continues to be predicated on what are effectively two 'ghost' principles, namely, ***'maintaining the balance of charges'*** and ***'cost reflectivity'***. However, the evidential facts underpinning both, especially when it comes to monetary quantum, have never been defined and/or disclosed either by Ofwat or for that matter their retained consultants. Moreover, Ofwat's consultant(s) when tasked with considering both principles found considerable difficulty defining the nexus of both terms let alone the disclosure of adequate supporting evidence – a material fact committed to the written record. Surprisingly, Ofwat's latest consultation advocates ***'withdrawal of the balance of charges concept'***. This begs a third fundamental question, i.e.,

> ***How can Ofwat withdraw what they have qualitatively and quantitatively failed to define? (This is despite 5 years of house builder customer requests that they provide such definition).***

As a key element of the PR24 methodology are Ofwat intending to finally define what the balance of charges actually constitutes but more importantly, ensure any such concept is properly supported by the required fiscal/cost evidence?

1.4 From a house building and development perspective, procurement cost control and audit is a primary commercial function for any business, i.e., justifiable and robustly determined/audited labour, plant, material and overhead costs. If Ofwat's concept of 'cost reflectively' is supposedly aligned to this critical business requirement it falls a long way short of legitimate developer customer needs and expectations. Regrettably, it is quite clear Ofwat has no reciprocal appreciation or a good enough understanding of the intrinsic importance of the concept when considering the needs of house builder/developer customers. Likewise, the essential requirement for companies to provide a transparent evidence-based 'make-up' of their costs and charges – as any business auditor would require. More importantly, despite the repeated disclosure of comprehensive house builder evidence drawing Ofwat's attention to the significant disparity in company charges for precisely the same asset procurement, i.e., both quantity and specification, it is concerning to note Ofwat cite limited resources as one of their reasons for not undertaking a detailed analysis and/or more responsive intervention when it comes to company costs and charges. This is despite the demonstrable evidence that has been presented identifying a lack of credible commercial justification. Are Ofwat intending to take cognisance of what the developer community and their consultants are saying and ***address such an important issue before PR24 is crystallised?***

1.5 In being responsible for the effective management and control of monopoly businesses it is reasonable to presume Ofwat would not only acknowledge what developer customers have been saying about the significant disparity in company costs and charges but instigate the necessary investigations. However, Ofwat continue to rely on repeated and half-hearted calls for 'company' evidence, supplemented with in-house water and sewerage company board assurance statements. These statements undergo no credible audit and appear to be accepted by Ofwat with little questioning. Are Ofwat intending to undertake more detailed scrutiny of what is presented as part of the PR24 process?

All the developer community seeks is a charging structure that presents a fair, competitive and justifiable cost for the goods and services that are being procured, underpinned by an adherence to established legislation. Regrettably, the house building industry is confronted by the complete opposite. That said, PR24 provides ample opportunity for more effective intervention by Ofwat, especially if it has any desire to be seen to be facilitating the delivery of much needed new homes – see later responses.

1.6 Ofwat still consider the charging regime that existed prior to the reforms introduced in 2018 was convoluted if not complex but the acid question is for which business entity? Certainly not the developer community. What has evolved to date is conceivably the most complex of all utility charging arrangements confronting developer customers. Articulated through an economist's narrative rather than taking an evidence-based analytical approach, as applied by almost all construction commercial professionals, the outcome is a series of Ofwat proposals that lack reflective substance. The structure and tone of the consultation is not just a far cry from an exercise in simple English, but sadly it is also replete with a litany of contradictions and contrary definitions, for example:

> ***Income offsets have always been defined as fair and equitable recognition of the perpetual income stream water and sewerage companies receive from newly provided housing/customers and as a direct consequence of related water and sewerage infrastructure having to be gifted to water and sewerage companies. Both PR19, and this latest consultation define income offsets as being paid for by existing customers. The latter is simply not correct.***

1.7 The continual change in definitions by Ofwat and the contradictions that result undermine any aspiration to achieve transparent and predictable costs and charges. Moreover, since April 2018, costs incurred by the developer community have increased, some would say exponentially, based on the evidence accumulated to date and shared with Ofwat. Concerns relating to excessive cost increases and how the charging regime has been manipulated by Ofwat to favour companies and existing customers has been flagged to Ofwat on several occasions but effectively ignored. As an integral part of the PR24 process, are Ofwat intending to take greater note of what developer customers are saying or will they continue to ignore the compelling evidence presented to date?

1.8 This consultation represents a last chance opportunity for Ofwat to demand water and sewerage companies provide the essential evidence to justify their costs and charges and for Ofwat to forego its preferred light-touch approach by invoking a prescriptive process – a reasonable customer expectation for any regulatory body, i.e., gather robust evidence, evaluate, implement directive intervention where necessary, apply corrections, and thereafter proceed to full disclosure as an integral part of developer customer reassurance. Expediency remains the golden thread associated with this process, but 5 years of continued light-touch deliberation does not meet the underlying requirement for a regulator to be seen to supporting the delivery of new housing. Will the required attitudinal change be reflected in the requirements Ofwat set for PR24?

1.9 As for Ofwat's proposals in respect of Nutrient Neutrality, these are wholly unacceptable – see our later response to Appendix 9, in particular our response to question 8 of this part of the consultation.

1.10 Far more stretching targets for leakage reduction must be imposed. In the context of nutrient neutrality, there is a fundamental reason for this to be an integral part of PR24. Current water leakage stands at a sector reported ***3.113 billion litres/day – cumulative***, whilst leakage from public foul sewers remains excessively high.

In 2019 the Environment Agency issued the following important publication - ***"2021 River Basin Management Plan – Nitrates" 23rd October 2019.*** Of particular note within this publication is the following evidential fact:

> ***… the contribution water main leakage makes to nitrate pollution is in the order of 3.6kt of nitrogen/year to ground and surface waters in England or c. 20% of total nitrogen inputs into water in urban areas).***

In setting proposals forPR24, this principal phenomenon appears to have been ignored by Ofwat. We firmly believe it should be given far greater consideration as part of the PR24 process.

1.11 Against a background of sector profligate poor effluent quality discharges to sensitive water bodies/receptors, Ofwat must direct more resources and capex to deal with the issue and sooner rather than later – see our response at para 3.3. Research commissioned by others, for example the Angling Trust and the Liberal Democrat Party, has confirmed insufficient capex has been allocated for the required improvements at several WwTWs, and more importantly, matched to the progressive changes in environmental legislation (both EU and domestic) since sector privatisation in 1989. It is therefore manifestly inequitable for Ofwat to now pass the burden of capital expenditure relating to WwTW improvements onto house builders and developers in response to the Natural England advice to Planning Authorities relating nutrient neutrality - see later comments/responses.

2. RESPONSE TO APPENDIX 3: DEVELOPER SERVICES

Q1. Do you agree with our proposal to include network reinforcement in the network plus price controls at PR24?

In essence – no. Ofwat's proposals appear to be aligned to making costs and charges reconciliation as simple as possible for water and sewerage companies whilst denying developers the right to see where, when and how water and sewerage infrastructure charges have been invested. Cumulatively, this income stream is close to £100m per annum and since sector privatisation represents a cumulative income stream of c.£2.80 billion. Furthermore, as part of the reforms introduced from 2018 ICs supposedly include contributory payments for in-consequence network reinforcement. If ICs are not to be perceived as an opportunistic tax on new development then a detailed audit and disclosure of this revenue stream and associated expenditure, as originally promised by Ofwat, must be seen to be far more stringent and undertaken on a more regular basis. In essence, it is nothing more than an integral part of proper business practice. If water and sewerage companies are to avoid what may well result in an exponential rise in EIR requests for this information then it would be far better for Ofwat to instruct all companies to provide more credible, detailed and regular disclosure as an integral part of PR24. Moreover, such qualitative and quantitative disclosure would greatly assist Ofwat to secure more robust cost and charges evidence to test the accuracy and veracity of company costs and charges in addition to informing future iterations of their charging rules.

Q2. Do you agree that the inclusion of network reinforcement in cost sharing would be enough to manage uncertainty around the volume and mix of network reinforcement work to be delivered?

No – see previous answer. In our view Ofwat's approach to network reinforcement is too casual to make any meaningful (positive) difference. It is quite clear Ofwat has little appreciation of the plan-making process, despite water and sewerage companies being statutory consultees at the local/strategic plan stage. This privileged engagement process is also closely aligned to the 5-yearly review of each company's business and investment plans/forecasts and therefore provides the means for effectual investment decision-making. In our view, before making any effective decisions and or recommendations and/or future proposals in respect of PR24 Ofwat must first gather far more robust evidence as to why companies are not being more responsive to local/strategic plan, land-use allocations. At present, the approach to PR24 reads as mere tinkering around the edges at a time when more responsive intervention is required.

Q3. Do you agree with our proposal to remove wastewater site-specific developer services from the wholesale wastewater network plus price control?

No

Q4. For water site-specific developer services: a) Do you agree with our proposal to exclude new developments of more than 25 properties from the wholesale water network plus price control at PR24, but with transitional arrangements for companies with low levels of competition? b) Do you think that new developments of 25 properties and below should remain in the wholesale water network plus control or be removed? If they were removed from the price control, what alternative protections could we introduce to protect developer services customers from potential monopoly power?

Setting a benchmark of 25 dwellings is contrary to the established definition of a small site, i.e., 10 dwellings, as accepted by both Defra and DLUHC. To avoid introducing further confusion, if not complexity, why not set the bar at 10 dwellings? This would also assist increased competition from SLPs.

As for the second part of the question, before any directions for PR24 are crystallised we would expect Ofwat to first undertake a detailed investigation of the so called 'typical charges'. On page 16 of the consultation, Ofwat state the following:

> ***"SIA Partners found there is wide regional variation in the level of connection charges for the same hypothetical development. For example, typical charges for a 50-house development ranges from £39,216 to £147,590."***

The significant cost variation identified by SIA Partners (consultants retained by Ofwat) is entirely consistent with the analyses undertaken by developers for the past 4 to 5 years. This latte evidence has been disclosed to Ofwat but repeatedly ignored. In our view, and that of many of our house builder/developer clients, determining a typical charge is simplicity in itself, namely, a review of labour, plant, material and overhead costs. (Connection charges are not meant to include a profit element). However, Ofwat continues with its reluctance to instruct companies to provide the necessary granularity, and continues to speculate why there is such significant variation. If predictable costs are to be provided by companies they must be first accompanied by transparent and robust supporting evidence. PR24 should make this a compulsory, annual requirement.

Q5. Do you have any views on any other aspect of our developer services proposals in this appendix?

The nexus of the PR24 methodology reads as nothing more than an exercise in routine housekeeping for the water and sewerage sector. If effective decisions are to be made they must be accompanied by the necessary robust evidence – this basic requirement is still missing and on several counts. Until there is much improved evidence/data granularity Ofwat's approach to PR24 is unlikely to increase competition, whilst continuing to raise questions about the monopoly position enjoyed by water and sewerage companies, especially when it comes to costs and charges that are considered anti-competitive.

In addition, there is no indication that water and sewerage company term contractor rates/terms/provision and especially costs are representative of value for money. Neither is there evidence of their having undergone robust audit. For example, sewerage infrastructure constructed by developers is often provided at a much lower cost than the sector's incumbent contractors – a cost difference close to 100% is common. On some occasions, water and sewerage company preferred contractors are actually appointed by the house builder/developer but the cost difference between the contractor's cost to the developer and those of a sewerage company's contractor-based costs for s104 agreements is often excessively different. Why there is such a difference in cost needs to be better explained as it raises the question as to whether water and sewerage company retained contractors, appointed to provide requisitioned infrastructure, are using the opportunity to their commercial advantage. In summary – much improved cost granularity must be a principal requirement before PR24 is crystallised by Ofwat.

In terms of facilitating increased competition the period of time to appoint a NAV must be considerably reduced from the present 5 months.

Finally, the role of DSRA lacks sufficient explanation. On the face of it, it would appear to be a financial mechanism introduced by Ofwat that rewards water companies for effectively doing nothing in the event that SLPs and/or NAVs provide water infrastructure rather than the incumbent water company – as articulated in the statement below and taken from the consultation document:

> ***"The revenue adjustment is neutral to which party delivers the services. So, <u>incumbent water companies can benefit financially</u> from connections completed by others because their revenue is unaffected, but costs are avoided."***

The justification for this defies commercial logic but more importantly, who or by what mechanism is such a financial reward paid?

3. RESPONSE TO APPENDIX 9 (QUESTION 8) – SETTING EXPENDITURE ALLOWANCES

3.1 The major concern expressed by our developer clients arises from the following Ofwat statement:

> ***"We propose to allow funding through the price review if water companies are required to go beyond environmental requirements due to nutrient neutrality in England. We would expect developers to pay the full costs for any nutrient mitigation." required to go beyond environmental requirements due to nutrient neutrality***

In the first instant we were somewhat taken by the statement – "… ***required to go beyond environmental requirements due to nutrient neutrality."*** In the context of nutrient neutrality, environmental requirements have been enshrined in legislation, so in what context does Ofwat believe environmental requirements go beyond extant legislation? It would have been useful had Ofwat expanded on the rationale for making such a statement.

In our view and that of our clients Ofwat's statement is wholly unacceptable and ignores the statutory duty imposed on all sewerage companies pursuant to s94 WIA 1991 and upheld in the Supreme Court decision handed down in 2009 (Barratt versus Welsh Water) – paragraph 23 of the decision being of particular relevance – see below:

> ***23. The right to connect to a public sewer afforded by section 106 of the 1991 Act and its predecessors has been described as an "absolute right". The sewerage undertaker cannot refuse to permit the connection on the ground that the additional discharge into the system will overload it. The burden of dealing with the consequences of this additional discharge falls directly upon the undertaker and the consequent expense is shared by all who pay sewerage charges to the undertaker. Thus in Ainley v Kirkheaton Local Board (1891) 60 LJ (Ch) 734 Stirling J held that the exercise of the right of an owner of property to discharge into a public sewer conferred by section 21 of the 1875 Act could not be prevented by the local authority on the ground that the discharge was creating a nuisance. It was for the local authority to ensure that what was discharged into their sewer was freed from all foul matter before it flowed out into any natural watercourse.***

3.2 This remains an important precedent whilst the position taken by Ofwat that developers are responsible for nutrient mitigation is misaligned for fundamental but simple reasons, for example, it is the occupier of a home/premise that creates wastewater discharge not the developer. Moreover, these occupiers are paying for effectual wastewater treatment as part of domestic/commercial water and wastewater billing arrangements with water and sewerage companies. This principal fact has not been recognised in Ofwat's proposals.

3.3 Importantly, in 2021, Ofwat made the following statement:

> ***"The water and sewerage sectors … are required to make new investments to meet European Union Directives, quality standards and to improve the balance of supply and demand."*** (Underlining for emphasis)

This statement was made long after the Dutch Nitrogen Case and it is reasonable to presume Ofwat had supposedly took due cognisance of the implications for wastewater treatment, but evidence now suggests otherwise. The current consultation proposals relating to nutrient neutrality are therefore in total contradiction to the 2021 statement issued by Ofwat.

3.4 As articulated in paragraph 1.10 of our response, excessive leakage from water mains is a major contributor to nitrate and phosphate concentrations. Likewise, excessive levels of leakage from existing sewers, with the reverse dynamic of potable water entering the public foul sewerage network also a known contributory phenomenon.

3.5 Drinking water is dosed with phosphate to prevent the dissolution of lead from lead-based water infrastructure into the water supply – how will this be accounted for by Ofwat? (Note: The evidence relating to phosphates being introduced to potable water supplies, by Water Companies, in order to reduce the dissolution of lead into drinking water from old lead-based water asset infrastructure, can be found in EA Publication ***"Phosphorous & Freshwater Eutrophication: Challenges for the Water Environment – October 2021.***

As an aside, but still relevant to this consultation it begs a further question as to what water company expenditure is to be committed to enhanced/expedited replacement of lead-based water distribution infrastructure?

3.6 Ofwat must recognise and accept these evidential facts before leaning on the developer community to fund WwTW improvements for which it has no responsibility whatsoever – see also our subsequent response(s) relating to quantum calculation methodologies.

3.7 In addition, in November 2021 (our formal letter to Defra) and in subsequent correspondence with Natural England, a number of serious flaws with the Natural England calculation methodology were raised directly with both bodies. As yet, there has been no response from either, but the flaws remain. In our view and that of our clients, the calculation methodology requires far more detailed evidenced-based scrutiny. This should be undertaken as a matter of urgency, i.e., before Ofwat's PR24 proposals can be finalised, albeit Natural England appear reluctant to engage on such a crucially important issue.

3.8 In Mid-July 2022, the following formal EIR/FoIA request was made to Ofwat – repeated verbatim below. In the context of both PR24 and nutrient neutrality, it is considered to be of highly significant importance:

1. ***Since sector privatisation in 1989, what steps has Ofwat taken to ensure sewerage companies meet their s94 statutory duties in response to the progressive changes in environmental legislation (both EU and domestic) and specific to the effectual management and control of all WwTWs, especially the statutory obligations relating to treated effluent quality?***

2. ***What level of Sewerage Company related capex has Ofwat sanctioned/approved as part of the AMP process to meet these progressive obligations?***

3. ***If compliance exemptions were deemed appropriate what legal justification supported such decisions?***

The above questions relate specifically to the following progressive changes in environmental legislation, and which had and continue to have a direct bearing on the s94 statutory duty imposed on all sewerage companies in terms of effectual wastewater treatment and treated effluent quality standards:

- ***July 1989 – Water Act 1989***
- ***May 1991 – Urban Wastewater Treatment Directive***
- ***July 1991 – Water Industry Act 1991***
- ***July 1991 – Water Resources Act 1991***
- ***December 1991 – Nitrates Directive***
- ***May 1992 – Habitats Directive***

- ***November 1994 – Urban Wastewater Treatment (England & Wales) Regulations 1994***
- ***December 2000 – Water Framework Directive***
- ***December 2006 – Groundwater Directive***
- ***2006 - Bathing Water Directive***
- ***April 2010 – The Conservation of Habitats & Species Regulations***
- ***May 2014 – Water Act 2014 (s22 & s23)***
- ***November 2017 – Conservation of Habitats & Species Regulations 2017***

When considering nutrient neutrality these are crucial questions and for any number of compelling reasons.

3.9 The above list of key changes in legislation is not exhaustive but it crystallises the fact the adverse impact of nutrients, principally nitrate(s) and phosphates, on sensitive receptors and water bodies has been known for over 30 years. In the context of effectual wastewater treatment, and the statutory obligations placed on all sewerage companies, it is therefore reasonable to question why investment at wastewater treatment works (WwTWs) has not been matched to meet these progressive changes in environmental legislation. It has remained incumbent on any regulator/government body, including Ofwat, to ensure sewerage companies were; (a) alerted to the changes in affecting environmental legislation, especially WwTW treatment standards and effluent quality, and (b), provided with the necessary capex in response to these changes. Unfortunately, the EIR response from Ofwat distils into a compelling perception that Ofwat has effectively been missing in action when it comes to such important matters.

3.10 PR24 provides Ofwat with the opportunity to correct the situation by ensuring sewerage companies are given sufficient capex to undertake the necessary mitigation works rather than impose such unfair and inequitable costs on the developer community. Likewise to ensure adherence to the statutory charging guidance first issued to Ofwat in January 2016.

3.11 The manner in which Ofwat responded to our EIR request raised a number of concerns. Two separate responses were received, namely, the first confirming Ofwat's refusal to answer questions 1 and 3 – the second, a supposedly dedicated response to question 2. This later response was so generalised and lacking in sufficient detail, including the allegedly supporting detail accessed via disclosed Ofwat links, that it was effectively meaningless.

3.12 There is a considerable groundswell of concern that before Ofwat contemplate saddling developers with further costs that are neither justified nor reflective, they should first ensure that sewerage companies discharge their statutory duties, especially those pursuant to s94 WIA 1991. Moreover, Appendix 9 provides no indication as to how any developer contributions would actually be determined on a fair, proportionate and representative basis, especially given the suite of subjective and unrepresentative considerations that populate the Natural England calculation methodology. Likewise, the critical exclusions that have not been accounted for by Ofwat, e.g., water company water leakage, extraneous water entering public foul sewers, phosphate dosing of potable water, etc..

3.13 In addition, Ofwat's proposals appear to be in direct contradiction of the recent Ministerial Statement with Ofwat having stated in Appendix 9:

> ***" …. any improvements to WWTW will not be available to housebuilders to count towards mitigation."***

Therefore, and from Ofwat's perspective, in the short-term this option will not be available in any event and therefore hardly a positive commitment when it comes to the water and sewerage sector effectively facilitating the delivery of new homes..

Moreover, in the longer term, developers will effectively be being taxed for something that is the solus responsibility of sewerage companies. Furthermore, there is no indication that as a consequence of this proposal Ofwat will reconsider both the principle and quantum associated with sewerage infrastructure charges.

SUMMARY

In the round, Ofwat's PR24 proposals do not go far enough when it comes to meeting the requirements and expectations of Defra. If anything, Ofwat has unilaterally changed a charging regime to one that now places an inequitable burden on the house building industry. Conversely, it favours not just the commercial wellbeing of water and sewerage companies, but it has also become a means of cross-subsidising existing customers.

Against such an outcome, In November 2017, Defra was unequivocal in what it expected the reforms that were to be overseen by Ofwat would achieve:

> ***"The government has certainly made it clear in its strategic priorities and objectives for Ofwat that it expects that companies will contribute to increased house building by achieving timely connections of new developments to water and wastewater systems."***
>
> ***"We have asked Ofwat to keep under review what it can do to make sure that company planning, and delivery keeps pace with housebuilding and supports development across the country."***

[Underlining for emphasis] This is a key statement in the context of the present paralysis with housing delivery (120,000 homes delayed and rising) due to Natural England's standing advice concerning nutrient neutrality and affecting 74 Local Planning Authorities].

Furthermore, Defra's expectations for the charging reforms were unequivocally crystallised in a formal letter of response to the house building industry:

> ***" … the range of initiatives underway are intended to improve the developer service experience by providing improved customer service, increased competition, more choice and transparency in the market. These in turn are expected to lead to cheaper, better and more innovative services for all developers."*** **(Sarah Hendry Director, Floods & Water Defra – letter dated 7th November 2017)**

At a time when the commercial vitality of house builders and developers is being threatened by excessive cost increases, (and a market that is rapidly 'cooling') Ofwat's latest consultation represents another exercise in 'mission creep' and one objectively seeking to rely on the developer community as a proxy for maintaining if not enhancing the commercial interests of the water and sewerage sector. Likewise, it has become a means of potentially cross-subsidising existing customers - for example, by the removal of income off-sets. This latest consultation appears to overrule long-established legislation/statutory guidance to favour a monopoly utility provider that lacks adequate cost transparency, together with qualitative and quantitative supporting evidence, and a robust audit mechanism. In essence, Ofwat has introduced a series of weaknesses that populate a regime they [Ofwat] are actually responsible for creating. Moreover, attempts to justify what has emerged by labelling the process as a complex area of customer charging is anathema to the simplicity and equitable fairness that existed prior to the April 2018 reforms.

Ofwat are responsible for making what was a simple process far more complex than it needs to be, whilst the ability to challenge has been progressively diluted by Ofwat's Inherent indifference when it comes to their taking cognisance of important developer customer input and feedback.

As for Ofwat's proposals relating to nutrient neutrality these are wholly unacceptable for the reasons articulated in our response. Moreover, Natural England's calculation methodology remains counter-intuitive to one of Ofwat's key PR24 proposals, i.e., the so called environmental discount for reduced water consumption in new housing. This lack of synergy/joined-up thinking is unhelpful and only serves to introduce greater complexity in addition to being manifestly inequitable. Hence the justification for an evidenced-based review/audit of the Natural England nutrient calculation methodology and as a matter of urgency.

When collectively considered the reforms introduced and overseen by Ofwat have clearly resulted in a charging regime that has had significant and adverse cost repercussions for house builders and developers – in some instances to the point of seriously compromised project viability. In essence, for gifting assets to water and sewerage companies that are income generating in perpetuity, there are now no reciprocal financial mechanisms benefitting the developer community. In our view and that of many of our clients, PR24 should be the start of a process that replicates what happens in Scotland where these assets are paid for by water and sewerage companies.

Finally, given the gist of Ofwat's proposals and the financial repercussions they will have for house builders, especially when it comes to the adverse impact on the delivery of much needed new homes, the lack of an accompanying Regulatory Impact Assessment produced by Ofwat is of serious concern.

We are not confident that the concerns and comments articulated in this response will be considered by a regulator that gives the impression that it has already decided the outcome of any consultation. That said, we remain more than willing to engage in further dialogue and to share with Ofwat the evidence supporting our response.

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