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## 1. About this document

We propose granting a variation 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 variation set out above.

## 2. ESP Water

ESP 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 also 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.

We have recently granted ESP Water [an appointment](#) to provide water and sewerage services to Merchant's Wharf, Salford.

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

### 3. The Site

ESP Water has applied for a variation to its appointment to be able to provide water and sewerage services to a site called Varsity Quarter, Manchester College, in Sale (“**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 224 residential properties. The Site is expected to be fully built out in June 2026.

## 4. The proposal

Ofwat proposes to:

- grant a variation to ESP Water's appointment to 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 variation 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 have notified Ofwat, the Market Operator for the non-household 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 this appointment. ESP Water intends to only operate as a wholesaler and only serve household customers. ESP does not currently intend to serve any business customers on the Site, however, there could be a change in use in the future and it is looking to serve business customers on some of other sites it has applied for.

As such, ESP Water has entered into a subcontracted arrangement with Castle Water Limited ("**Castle Water**"), whereby Castle Water will serve its 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 variation 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 customer 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 before it exits the market. Both Defra and MOSL did not raised any queries or concerns on this arrangement and as such, we are processing ESP Water's variation with this in mind.

ESP Water can only apply to exit the market, once it has been granted an appointment to provide water and/or sewerage services. Retail exit applications and decision on retailer exiting the market are handled 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 undertaker 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

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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.

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 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 consent criterion, set out in section 7(4)(a) of the WIA91.

### 6.1 The Consent criterion

To qualify under the consent criterion, the applicant must provide a letter of consent from the existing appointee consenting to the application and to a variation of its area of appointment corresponding to the applicant's application. The applicant is also required to provide details of the variation should be granted.

United Utilities has provided a letter dated, 5 August 2022, providing conditional consent for this variation. United Utilities provided its consent, given that ESP Water can meet the following requests:

1. The supply to the existing college building must be included in the bulk supply and bulk discharge agreements, and it will be removed and promptly replaced with the enduring supply solution once the connection to the building is disconnected.
2. An appropriate representative of Manchester College has given their unambiguous consent to ESP Water to become their appointed supplier for water and sewerage services. It has been made fully aware of the implications of this variation and that it will no longer be a United Utilities customer.
3. To meet the requirements of the variation, United Utilities intends to deregister the supply points from the college building from CMOS to the date that the variation is granted. From this date, ESP Water will be responsible for registering the new supply point with COMS.

United Utilities recognises that condition 3 is not the standard approach that would apply, which is ordinarily for MOSL to do a volume transfer. However, it recognises that the use of volume transfer would create additional issues, that can be avoided by using the above approach, of deregistering by United Utilities and ESP Water immediately registering after.

ESP Water has satisfied us that condition 1 will be met and has provided evidence from the college to support condition 2. We requested that ESP Water contact MOSL and confirm that a transfer as set out above is viable. ESP Water has provided an email from MOSL, stating that in principle it agrees with ESP and United Utilities' suggested approach. ESP Water and United Utilities are arranging to meet with the retailer to discuss the customer on site

Given the above, we are satisfied that the application needs the consent criterion.

## 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>

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.

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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 with at least 50 Ml 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.

## 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, Miller Homes Northwest 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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<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 variation 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 variation 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 variation 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 demonstrated to us 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, ESP Water has several other subcontracted arrangements in place with other water and sewerage companies and third-party providers. ESP 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 arrangement 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 an unlimited Keepwell agreement with its parent company, ESP Utilities. ESP Water have confirmed that this agreement will be in place 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 variation is granted.

## 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 variation on the existing customers of United Utilities.

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

### Where to send submissions

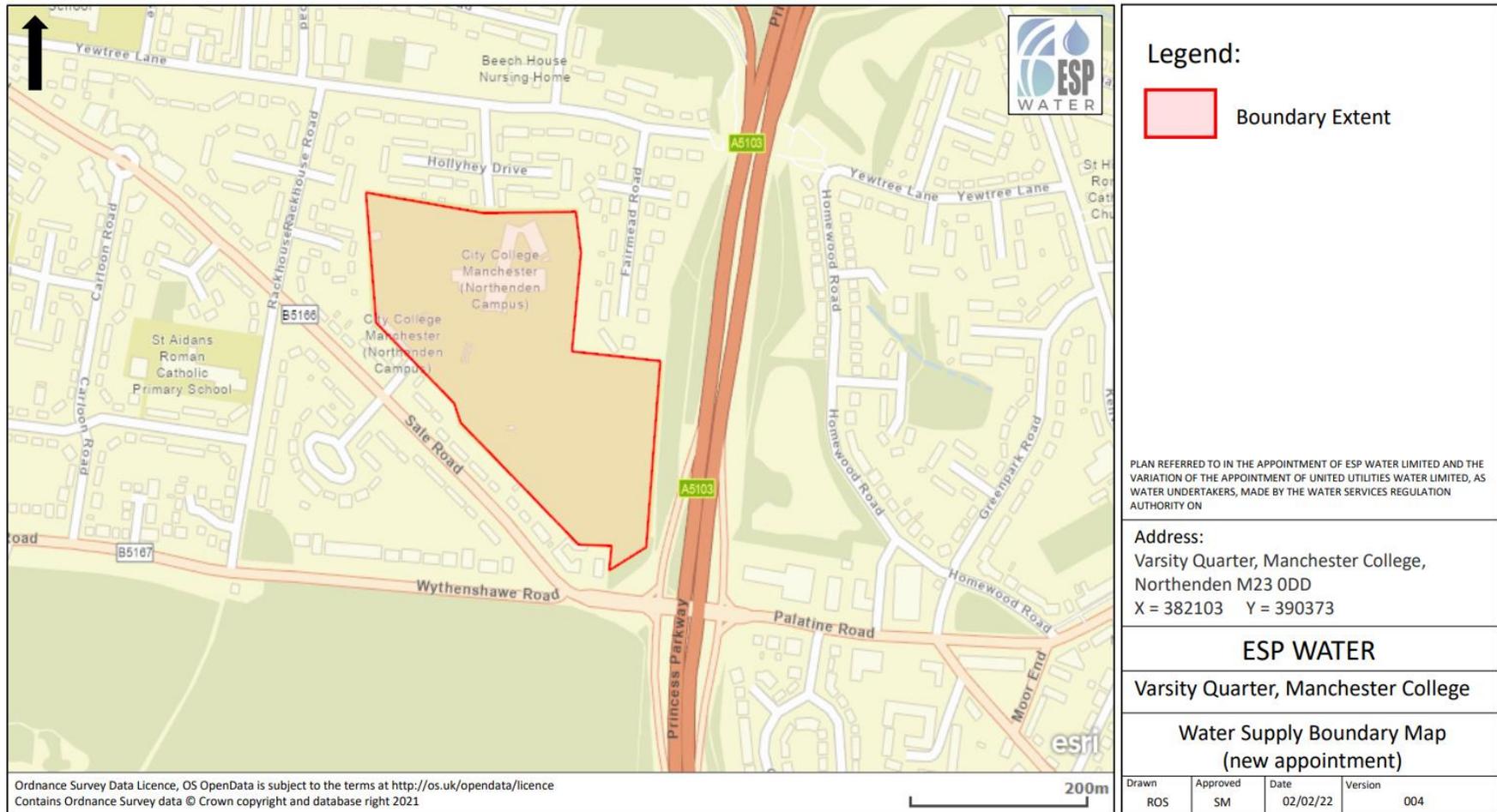
Any person who wishes to make representations or objections with respect to the application should do so in writing to Henna Begum at Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or by email at [Licensing@ofwat.gov.uk](mailto:Licensing@ofwat.gov.uk).

Representations must be received by Ofwat no later than 17.00 hours on 3 October 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/>.

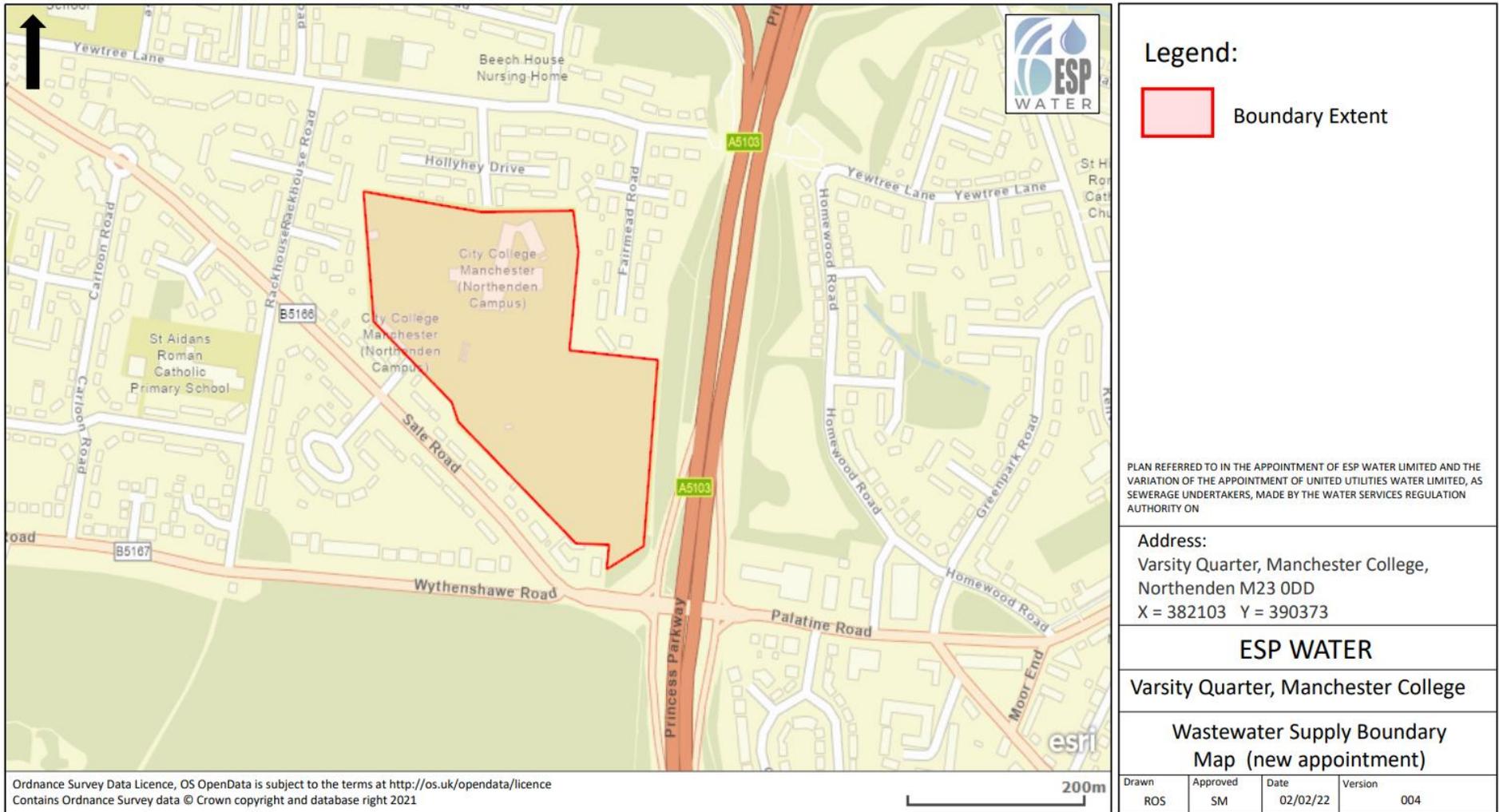
Ofwat will only use the information you have provided for the purpose of this consultation. We will retain your information in accordance with Ofwat's retention schedule and will not share with third parties unless we have a legal obligation to do so. For further information please see Ofwat's Privacy Policy in our [Publication Scheme](#).

## Site maps

### Water:



## Sewerage



Proposal to grant a variation to ESP Water Limited, to allow it to provide water and sewerage services to Varsity Quarter, Manchester College, Sale

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