

Proposal to grant a variation of appointment to ESP Water Limited to include Springwell Gardens, Leeds

	Details
Applicant	ESP Water Limited (“ ESP Water ”)
Site Details	Springwell Gardens, Holbeck, Leeds (“ the Site ”)
Services	Water and Sewerage
Current water & sewerage appointee	Water Appointee: Yorkshire Water Services Limited (“ Yorkshire Water ”) Sewerage Appointee: Yorkshire Water
Proposed supply arrangements	Bulk supply and bulk discharge agreements with Yorkshire Water.
Criterion	Unserved
Household Customer	224
Business Customers	1
Developer	Morgan Sindall Construction & Infrastructure Ltd
Estimated Site completion date	December 2023
Summary of consultation	<p>A statutory consultation made under section 8(3) of the Water Industry Act 1991 (“WIA91”) to grant ESP Water a variation to its appointment as a water and sewerage company. To also vary the appointment of Yorkshire Water as a water and sewerage company. Consequently, ESP Water will become the water and sewerage company for the Site.</p> <p>This application is being considered as part of a package, further details can be found in section 3 on page 6.</p>
Deadline for submissions	<p>Representations or objections to this consultation should be sent by email to Licensing@ofwat.gov.uk or in writing and sent to the NAV licensing team, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA.</p> <p>Reponses must be received by Ofwat no later than 17.00 hours on 7 December 2022.</p>
<p>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/.</p> <p>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.</p>	

1. Our assessment of this application

Our approach

The new appointment and variation mechanism set out in primary legislation¹, 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.

You can find further details of our approach to assessing applications for New Appointments and Variations ("NAVs") [here](#).

2. ESP Water

ESP Water was set up in April 2021 by ESP Utilities Group ("**ESP Utilities**") to operate in the 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 650,000 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 ESP's first application was for a site in United Utilities Water Limited's area, Merchant's Wharf, the consultation document for this site can be viewed [here](#). We granted ESP Water its appointment on 26 July 2022 for this site.

3. The proposal

¹ 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.

Ofwat proposes to:

- vary the appointment of ESP Water as a water and sewerage company, by including the Site in its water supply area and sewerage services area: and
- vary the appointment of Yorkshire Water 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.

ESP Water [applied to Defra](#)² to exit the business retail market on 23 September 2022 and has proposed an exit date of 23 February 2023. 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.

If ESP Water 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 variation with this in mind.

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.

Yorkshire Water has provided a letter, dated 22 March 2022, confirming that, in its view, the Site is unserved.

² 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 undertaker to exit from the business retail market.

The Site is a brownfield site. ESP Water has confirmed that the area has been cleared and any pre-existing buildings have been demolished. Aerial views of the Site confirm there are currently no properties within the Site boundary.

Having reviewed the facts of this Site and taking into account the letter from Yorkshire Water, we consider the Site to be unserved.

Price

ESP Water proposes to match the charges to customers on the Site to those of Yorkshire Water, it will not offer a discount.

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 Yorkshire Water were to be the customers' water and sewerage company.

Stakeholder engagement

We take the view of the Environment Agency, the Consumer Council for Water ("**CCW**") and the Drinking Water Inspectorate ("**DWI**") into account before progressing to formal consultation on an application for a new appointment or variation. The Environment Agency, CCW and the DWI informed us that they are content for us to consult on this application³.

Impact on existing customers

In considering whether customers will be no worse off, we also considered the potential effects of this variation on the prices that Yorkshire 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. 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 Yorkshire Water might have expected to receive in revenue from serving the Site directly, were it to

³ The Environment Agency and the DWI 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.

serve the Site, with the revenues it might expect from the proposed arrangement with ESP Water.

We estimate there to be no potential annual increase on the water bills and a £0.01 increase on the sewerage bills of existing Yorkshire Water customers if we grant this variation 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 would have a very small financial impact on customers' bills and could have potential benefits for customers.

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 it has in place should these 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.

ESP Water is currently applying to serve a number of sites. This application is being considered as a package with three other sites, which have already been granted: Bridgewater Wharf, Latitude Purple and Bracks Farm (together referred to as “the Four Sites”). We have approached the financial viability assessment on a portfolio basis. This allows some higher risk sites to be balanced by some lower risk sites and enables the applicant the opportunity to demonstrate the financial viability of the Four Sites as a package. In this case, we considered the estimated revenues and costs of the entire Site relating to water and sewerage services, should the relevant variation be granted, and we assessed the financial viability of the applications in respect of the Four Sites on a portfolio basis. We think that when considered as part of a package, the likelihood of this Site not being financially viable is sufficient.

ESP Water has an unlimited Keepwell Agreement with its parent company, ESP Utilities Group. ESP Water has confirmed that this arrangement 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 this variation is granted.

Risks identified in our assessment

In carrying out our assessment of this application we have noted that ESP Water intends to use subcontracted arrangements to operate its sites; Ofwat has considered whether this could impact on ESP Water's ability to perform its functions.

ESP Water has provided assurances regarding the processes for assessing subcontractors prior to its appointment being granted along with its contingency plans should any of these arrangements come to an end.

On balance we note that subcontracted arrangements are common amongst other NAV companies, and this in itself does not necessarily indicate ESP Water would be unable to perform its functions. If any issues were to arise with subcontractors, we expect ESP Water to have mitigations in place to eliminate or minimise any impact on customers.

We have considered the financial position of ESP Water in relation to providing water and sewerage services to the Site, and we are satisfied that the financial position has been considered and we are comfortable in proceeding with a packaged approach in this instance. We have also noted that ESP Water intends to grow quickly as a business, and we will continue to monitor its arrangements for financial security as it grows.

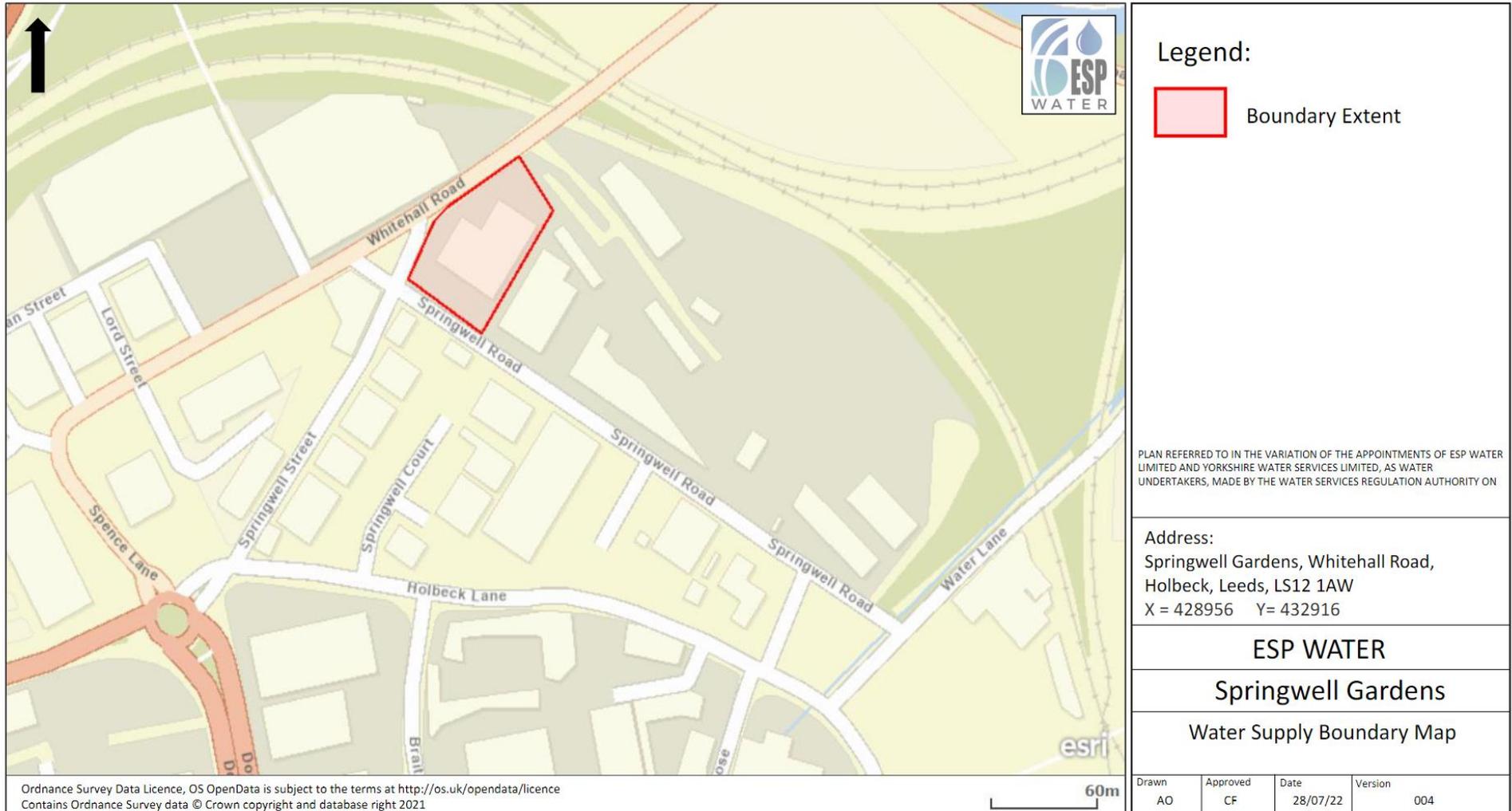
4. Conclusion and next steps

In assessing ESP Water application, we have considered the general benefits of new appointments and variations. 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 Yorkshire Water.

We are currently minded to grant the variation under the unserved criterion. Subject to considering any representations submitted during the consultation period in response to this consultation notice, Ofwat will decide whether or not to grant the variation of appointment set out above.

5. Site maps

Water:



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Sewerage:

