

Variation of Icosa Water Services Limited's appointment to include Land at Summerhill, Hailsham, East Sussex

On 6 September 2022, 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 Southern Water Services Limited's ("**Southern Water**") sewerage services area called Land at Summerhill, Hailsham, East Sussex ("**the Site**"). Details of the application and our assessment of it were set out in the consultation document.

The consultation ended on 4 October 2022. During the consultation period, we received one response to the consultation which is detailed in Section 1.

We will only make an appointment or variation if our assessment concludes that the application meets the criterion it has been made under; that customers or future customers on the site will be no worse off than if the site had been served by the existing appointee; and if the applicant will be able to finance the proper carrying out of its functions as sewerage company. As set out in our consultation we are satisfied this is the case. For the reasons set out in Section 1, the response we have received to the consultation has not changed that view and the concerns raised in that response will be considered separately.

Having assessed Icosa Water's application and having taken account of the response 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 appointment became effective on 16 December 2022.

The Site Map for the variation can be found in Section 2 of this document.

The Variation Notice legally making the variation can be found in Section 3 of this document.

1. Response received to the consultation

We received one response to our consultation from Wealden District Council. We considered this response before making the decision to vary Icosa Water's appointment. Wealden District Council ("**the Council**") objected to the proposal to vary Icosa Water's appointment to include the Site.

The Council stated that in July 2022 it had received communications from Icosa Water serving notice (under provisions in the Water Industry Act 1991, "**the Act**") on the Council, that Icosa Water planned to undertake survey works at the Cuckoo Trail, land owned by the Council. The Cuckoo Trail is land located near to the Site, and to other variations granted to Icosa Water in June and July (NAV sites named "Ersham Road" and "Cuckoo Fields and Ersham Park").

The Council set out its view that Icosa Water did not, at the time, have the legal powers to serve these notices and to require access to work on the private land, due to the relevant variations of Icosa Water's appointment not yet having been granted. It considers that this disregarded legal requirements and stated that the Council does not have confidence that Icosa Water will deliver services in an open, honest and transparency manner. The Council also raised concerns about how Icosa Water has communicated with it and about the level of fees it will fund to enable landowners to seek professional advice when they are affected by works in private land.

Our response

We have considered the relevance of the concerns raised in the Council's response for our decision on this proposed variation. In making our decisions on NAV applications we seek to adopt the most appropriate approach to enable us to fulfil our statutory duties. Currently, there is no evidence that the issues raised in the response are a systematic issue for Icosa Water that raises concerns that overall, it would not be able to fulfil its functions as a statutory undertake. Taking into account our [statutory duties](#) in the round, including the consumer objective to protect the interests of consumers, where appropriate by promoting effective competition, we believe it would not be proportionate to reject this application based on this one allegation. Therefore, we have granted this variation to Icosa Water's area of appointment to allow it to serve the Site for sewerage services. We and we are investigating the issues raised in the response to our consultation.

Nevertheless, we recognise the concerns raised in the Council's response and will be considering these separately, Ofwat has a qualified duty under section 181 of the Act to investigate complaints made to us about how a company has exercised the powers it has, under section 159 of the Act, to lay, inspect, maintain and repair or alter any pipes falling on private land. We can investigate where:

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- the company failed to adequately consult respondent, before and during the course of the work (for example, where it did not know they were carrying out the work); and/or
- the company acted unreasonably whilst carrying out the work (for example the company did not carry out the work as they had described in the consultation).

An initial review of the Council's objection suggests that it may have grounds to ask Ofwat to consider its complaint under section 181 of the Act. As we would in relation to any water company, we will gather further information to separately consider whether further action is needed by Ofwat on that matter.

2. Site Map

Sewerage boundary



3. Variation Notice

WATER SERVICES REGULATION AUTHORITY

WATER INDUSTRY ACT 1991, SECTIONS 6 TO 9

Variation of the Appointments of Icosa Water Services Limited and Southern Water Services Limited as Sewerage Undertakers

Made on 15 December 2022

Coming into effect on 16 December 2022

1. Icosa Water Services Limited ("Icosa Water") and Southern Water Services Limited ("Southern Water") hold Appointments as the sewerage undertakers for their respective areas ("the Appointments").¹ The areas to which the Appointments of Icosa Water and Southern Water as sewerage undertakers relate ("Sewerage Services Area") are set out in their Instruments of Appointment.
2. The site called Land at Summerhill, Hailsham, East Sussex, which is shown edged in red on the plan attached to this variation, ("the Site") is within Southern Water's Sewerage Services Area. The Site is being developed by Vistry Homes Limited.
3. Icosa Water has applied under section 7(4)(b) of the Water Industry Act 1991 ("the Act") for a variation of its Appointment as a sewerage undertaker to include the Site and for a consequential variation of Southern Water's Appointment as a sewerage undertaker to exclude the Site.
4. On 27 June 1995, the Secretary of State for the Environment and the Secretary of State for Wales acting jointly and pursuant to sections 6(1) and 7(2) of the Act authorised the Director General of Water Services² to make variations such as those contained in paragraph 5 below. After public consultation, as required by section 8 of the Act, the Water Services Regulation Authority has decided that it should grant Icosa Water's application.
5. Therefore, as provided by sections 7(2) and 7(4)(b) of the Act, and with the agreement of Vistry Homes Limited, the Water Services Regulation Authority **varies**–

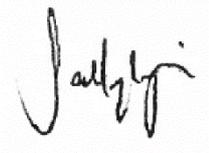
¹ Southern Water's original Appointment as a sewerage undertaker was made by the Secretary of State for the Environment under sections 11 and 14 of the Water Act 1989, now replaced by sections 6 and 11 of the Water Industry Act 1991. Icosa Water's original appointment as a sewerage undertaker was made by the Water Services Regulation Authority under sections 6 and 11 of the Water Industry Act 1991.

² With effect from 1 April 2006 the functions of the Director General of Water Services were transferred to the Water Services Regulation Authority in accordance with section 36 of, and Schedule 3 to, the Water Act 2003.

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- (a) the Appointment of Icosa Water as a sewerage undertaker so that the Site is included in Icosa Water's Sewerage Services Area; and
- (b) the Appointment of Southern Water as a sewerage undertaker so that the Site is excluded from Southern Water's Sewerage Services Area.

Signed for and on behalf of the Water Services Regulation Authority

A handwritten signature in black ink, appearing to read 'Sally Irgin', is positioned above the printed name and title.

**Sally Irgin
Director of Enforcement**