

Variation of ESP Water's appointment to include Back Lane, Sowerby

On 15 February 2023, Ofwat began a [consultation](#) on a proposal to vary ESP Water Limited's ("ESP Water") appointment to become the water and sewerage services provider for a development in Yorkshire Water Services Limited's ("Yorkshire Water") water supply area and sewerage services area called Back Lane, Sowerby in North Yorkshire ("the Site"). Details of the application and our assessment of it were set out in the consultation document.

The consultation ended on 15 March 2023. During the consultation period, we received a representation from the Consumer Council for Water, which is summarised in Section 1 of this document.

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 a water and/or sewerage company. As set out in our consultation we are satisfied this is the case. The response we have received to the consultation has not changed that view.

Having assessed ESP Water's application and having taken account of the response we received to our consultation, we decided to grant a variation to ESP Water's area of appointment to allow it to serve the Site for water and sewerage services. This appointment became effective on 23 March 2023.

The Site Maps 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 the Consumer Council for Water (“**CCW**”). Its comments and our response are outlined below.

CCW

CCW stated that in general it expects new appointments and variation appointees to match or ideally better the incumbent’s prices, service levels and service guarantees. This is particularly true for developments that include domestic housing, as household customers do not currently have the ability to choose or switch supplier like business customers can.

CCW noted that ESP Water proposes to charge customers on the same basis as Yorkshire Water. It is disappointed that this means that there will be no formal financial benefit to customers being served by ESP Water. CCW considers that under these arrangements customers will be no worse off in terms of the amount that they will pay.

CCW noted that due to the relatively small size of its customer base, ESP Water does not currently offer its financially vulnerable customers a social tariff in the way that Yorkshire Water does. However, CCW recognised that ESP Water will offer the standard WaterSure tariff for qualifying customers. CCW considers that until ESP Water can provide a formal social tariff, it is appropriate that it tailors some of the services it provides. CCW expects ESP Water to offer appropriate flexible support to any individual in financial difficulty, who would otherwise benefit from a social tariff. It noted that this should not be at the expense of its other customers. CCW said that it recognises that by matching Yorkshire Water's charges, ESP Water already benefits from the cross-subsidy that Yorkshire Water customers pay to support its social tariff.

CCW said that it notes that ESP Water generally matches or exceeds Yorkshire Water's relevant levels of service, therefore, overall, it supports this application. CCW noted our assessment that customers on the Site, will not be any worse off in terms of the level of service they receive from ESP Water, than if they were served by Yorkshire Water and said it is satisfied that this is potentially the case. CCW notes that ESP Water has committed to consider matching the incumbent's level of compensation for service failures if this exceeds the amount that ESP Water has set in its Code of Practice. CCW stated that it would like ESP Water to guarantee to match, at least, any higher level of compensation as this will help ensure its customers are no worse off than those of the incumbent in the event of a service failure.

CCW note that we calculated that there will be no potential increase on the annual water and sewerage bills of existing Yorkshire Water customers as a result of this variation. CCW said

whilst it appreciates this, it is unclear if there are any significant benefits for Yorkshire Water's customers from this arrangement. CCW states its questions the value of a NAV regime if it cannot deliver benefits to all customers.

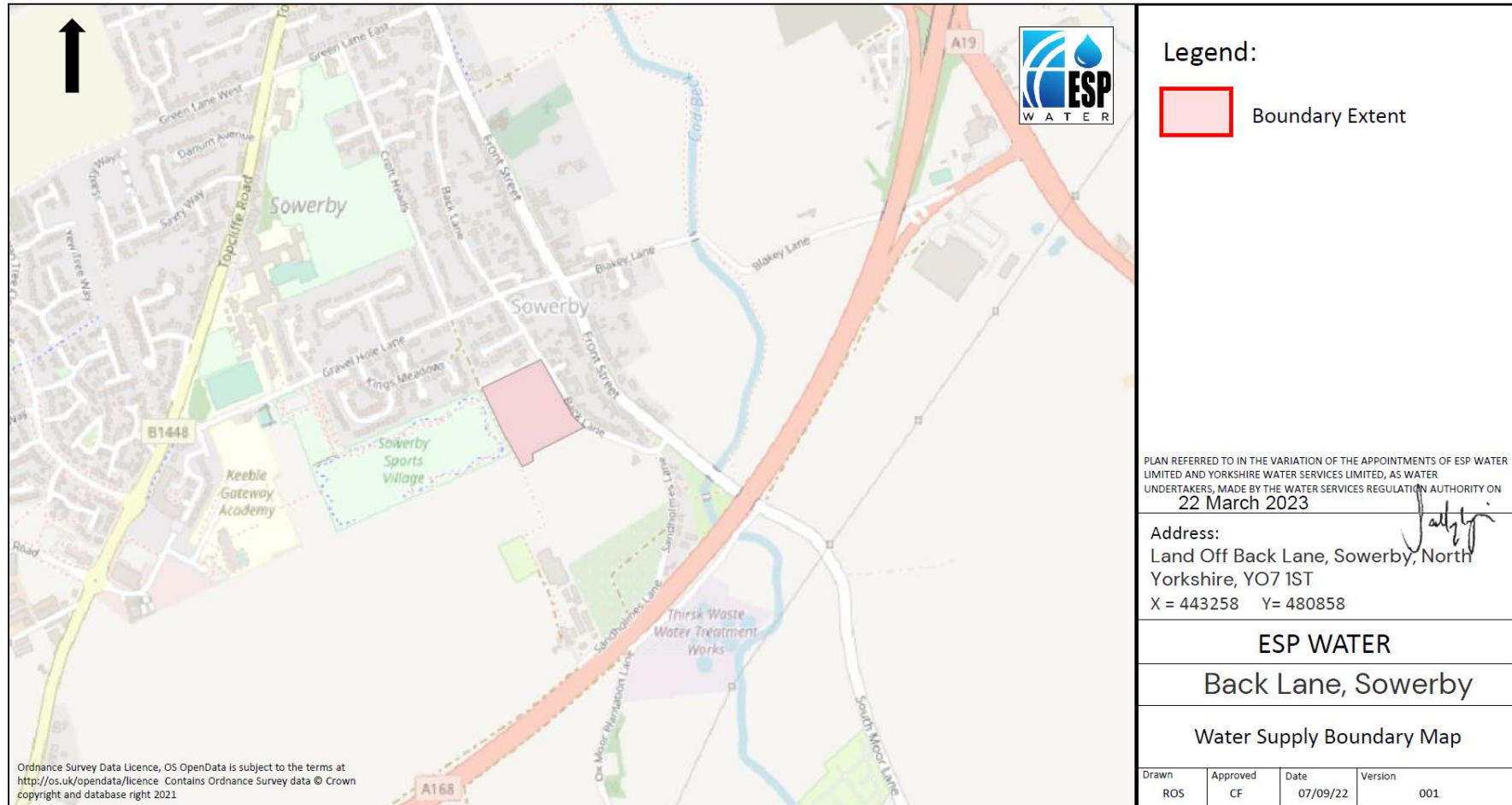
Our response

One of our key policies when considering NAV applications, is that customers should be no worse off if a new appointment and variation is granted. That is, an applicant must ensure its new customers are made no worse off in terms of charges and service than if they had been supplied by the previous appointee. We do not require applicants to better the service and price of previous incumbents.

Vulnerable customers may not be aware of the social tariff that would be available to them if they were served by the incumbent rather than by the applicant. It is the responsibility of the applicant to identify and protect vulnerable customers on the Site. Although the applicant does not offer a social tariff, it should ensure customers will be no worse off.

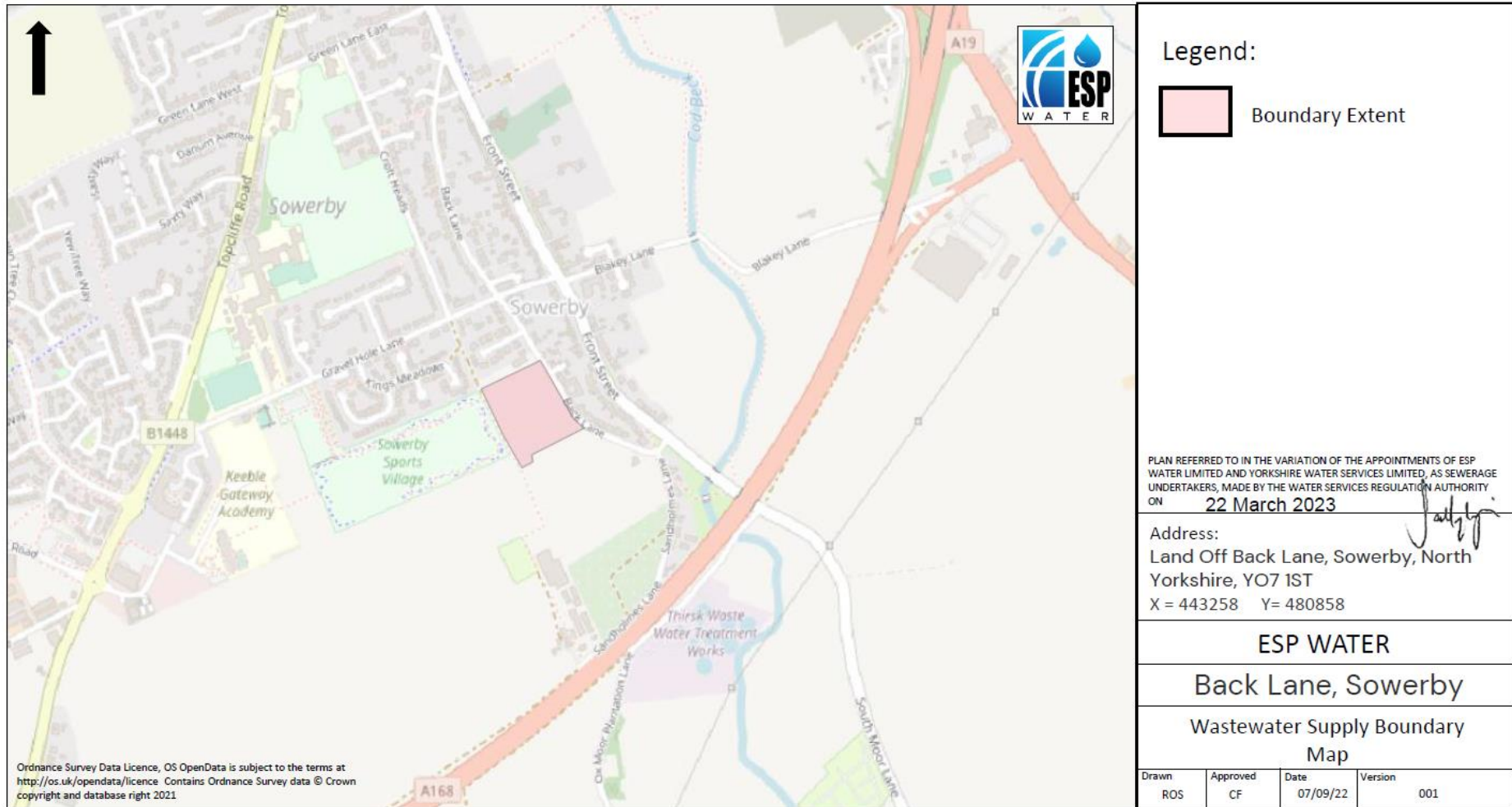
2. Site Maps

Water:



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Sewerage:



3. Variation Notice

WATER SERVICES REGULATION AUTHORITY
WATER INDUSTRY ACT 1991, SECTIONS 6 TO 9

**Variation of the Appointments of ESP Water Limited and Yorkshire Water Services Limited
as Water and Sewerage Undertakers**

Made on 22 March 2023

Coming into effect on 23 March 2023

1. ESP Water Limited ("ESP Water") and Yorkshire Water Services Limited ("Yorkshire Water") hold Appointments as water and sewerage undertakers for their respective areas ("the Appointments").¹ The areas to which the Appointments of ESP Water and Yorkshire Water Services Limited as water and sewerage undertakers relate ("Water Supply Area" and "Sewerage Services Area") are set out in their Instruments of Appointment.
2. The site called Back Lane, Sowerby in North Yorkshire, which is shown edged in red on the plan attached to this variation, ("the Site") is within Yorkshire Water's Water Supply Area and Sewerage Services Area. The Site is being developed by Tolent Living Limited.
3. ESP Water has applied under section 7(4)(b) of the Water Industry Act 1991 ("the Act") for a variation of its Appointment as a water and sewerage undertaker to include the Site and for a consequential variation of Yorkshire Water's Appointment 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 ESP Water's application.
5. Therefore, as provided by sections 7(2) and 7(4)(b) of the Act, and with the agreement of Tolent Living Limited, the Water Services Regulation Authority **varies**–

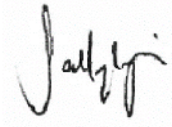
¹ Yorkshire Water's original Appointment as a water and sewerage undertaker was made by the Secretary of State for the Environment under sections 11 and 14 of the Water Act 1989, now replaced by sections 6 and 11 of the Water Industry Act 1991. ESP Water's original Appointment was made by the Water Services 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 ESP Water as a water and sewerage undertaker so that the Site is included in ESP Water's Water Supply Area and Sewerage Services Area; and
- (b) the Appointment of Yorkshire Water as a water and sewerage undertaker so that the Site is excluded from Yorkshire Water's Water Supply Area and 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**