

Proposal to grant a variation of appointment to ESP Water Limited to include Seaham Garden Village, Durham

	Details
Applicant	ESP Water Limited (“ ESP Water ”)
Site Details	Seaham Garden Village, Durham (“ the Site ”)
Services	Water and Sewerage
Current water and sewerage appointee	Water and Sewerage Appointee: Northumbrian Water Limited (“ Northumbrian Water ”)
Proposed supply arrangements	Bulk supply and bulk discharge agreements with Northumbrian Water
Criterion	Unserved
Household Customer	1,500
Business Customers	7
Developers	Karbon Homes Limited Miller Homes Limited Taylor Wimpey UK Limited
Estimated Site completion date	December 2030
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.</p> <p>To also vary the appointment of Northumbrian Water as a water and sewerage company.</p> <p>Consequently, ESP Water will become the water and sewerage company for the Site.</p> <p>Please note this application is being considered as part of a package with the Foundry Lea (Vearse Farm), Bridport site. Further details can be found in section 1, page 5.</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>Responses must be received by Ofwat no later than 17.00 hours on 22 January 2024.</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</p>	

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](#).

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](#).

The 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.

Northumbrian Water has provided letters dated 23 August 2023, confirming that, in its view, the Site is unserved for both water and sewerage.

The Site is greenfield and in satellite images there are constructions visible within the boundary in the northwest area of the Site. ESP Water have confirmed in an e-mail dated 1 September 2023 that these are World War II civil defence structures. They are planned for demolition once the development construction progresses to this northwest corner of the Site. In a further e-mail dated 13 September 2023, ESP Water confirmed the structures are unserved for both water and sewerage.

Given the information provided by ESP Water and Northumbrian Water, we are satisfied that the Site can be considered unserved.

Price

¹ The legal framework for new appointments and variations 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.

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ESP Water proposes to match the charges to customers on the Site to those of Northumbrian 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 Northumbrian Water were to be the customers' water and sewerage company.

Stakeholder engagement

We take the view of the Environment Agency, the Drinking Water Inspectorate ("**DWI**"), and the Consumer Council for Water ("**CCW**") into account before progressing to formal consultation on an application. The Environment Agency, the DWI and the CCW informed us that they are content for us to consult on this application².

The DWI is satisfied that ESP Water understands the obligations under the Water Industry Act 1991 (as amended), the Water Supply (Water Quality) Regulations 2016 (as amended) and the Water Industry (Suppliers' Information) Direction 2021. The DWI therefore raises no comments or objections to Ofwat proceeding to consultation and decision for applications submitted by ESP Water.

As part of the application process Ofwat has engaged with CCW. CCW's position is that new appointments and variations (NAVs) should bring benefits to customers on the proposed NAV site. CCW expects New Appointees to provide consumers with prices, levels of service or service guarantees that match or, ideally, better those of incumbent water and/or sewerage companies. CCW has stated that it is satisfied that ESP Water as an established New Appointee, offers customers on its NAV sites prices and levels of service which match or better those offered by the incumbent water and/or sewerage companies which would otherwise serve the Site. CCW agrees with Ofwat's assessment that customers on the Site will be no worse off if served by ESP Water and so, overall, supports the proposed variation of appointment.

CCW recognise that due to the small size of ESP Water's customer base, it does not currently offer its financially vulnerable customers a social tariff in the way that the incumbent companies do but does offer the standard WaterSure tariff for qualifying customers. CCW consider that it is appropriate for ESP Water to tailor the services it provides, until it can offer

² 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.

a formal social tariff, ensuring customers are provided with appropriate flexible support where needed.

CCW notes that it is important for the NAV regime to have wider benefits for all customers, including those of incumbents, particularly as the number of sites in each incumbent area increases. CCW expect NAV companies and incumbent companies to work together to ensure the arrangements on the site and bulk charges are reflective of the impact on an incumbent's existing customers.

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 Anglian Water's existing customer base may face.

The incumbent's bulk charges to the NAV should closely relate to the services the NAV provides to its end customers. We published our final guidance on bulk charges in January 2021 ([Bulk charges for new appointees - guidance on our approach and expectations](#)), following a consultation on our approach and a consultation on a draft version of our guidance in November 2020.

Our approach to regulating bulk charges was informed by a report we commissioned to explore whether incumbents' practices when setting bulk charges for NAVs were driving benefits for customers, the environment and wider society. The report confirmed that incumbents were setting bulk charges with reference to our May 2018 guidance, [a new approach to bulk charges for new appointees](#). This guidance introduced the principle that bulk charges for new appointees should be set to reflect the relevant wholesale tariff(s) and deduct costs that the incumbent would no longer incur if a new appointee supplied the site instead.

Therefore, if the incumbent's bulk charges are set at the correct level and adjusted to ensure that they remain cost reflective, we consider that granting this variation to ESP Water would have no financial impact on the bills of the incumbent's customers and could have potential benefits for customers. There are also potential spillover benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win sites.

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).

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 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. 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. 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 in place should 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 one other site, Foundry Lea (Vearse Farm), Bridport. We have approached the financial viability assessment on a package basis. This allows a higher risk site to be balanced by a lower risk site and enables the applicant the opportunity to demonstrate the financial viability of the two 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 application in respect of the two sites on a package basis. We think that when considered as part of a package, the likelihood of this Site being financially viable is sufficient, however we

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are still engaging with ESP Water to satisfy ourselves prior to any variation on this Site being granted.

ESP Water has an unlimited Keepwell Agreement with its parent company, ESP Utilities Group Limited ("**ESP Utilities**"). ESP Water have confirmed that this agreement will be finalised and will cover this proposed new Site. ESP Utilities holds an investment grade credit rating with Moody's.

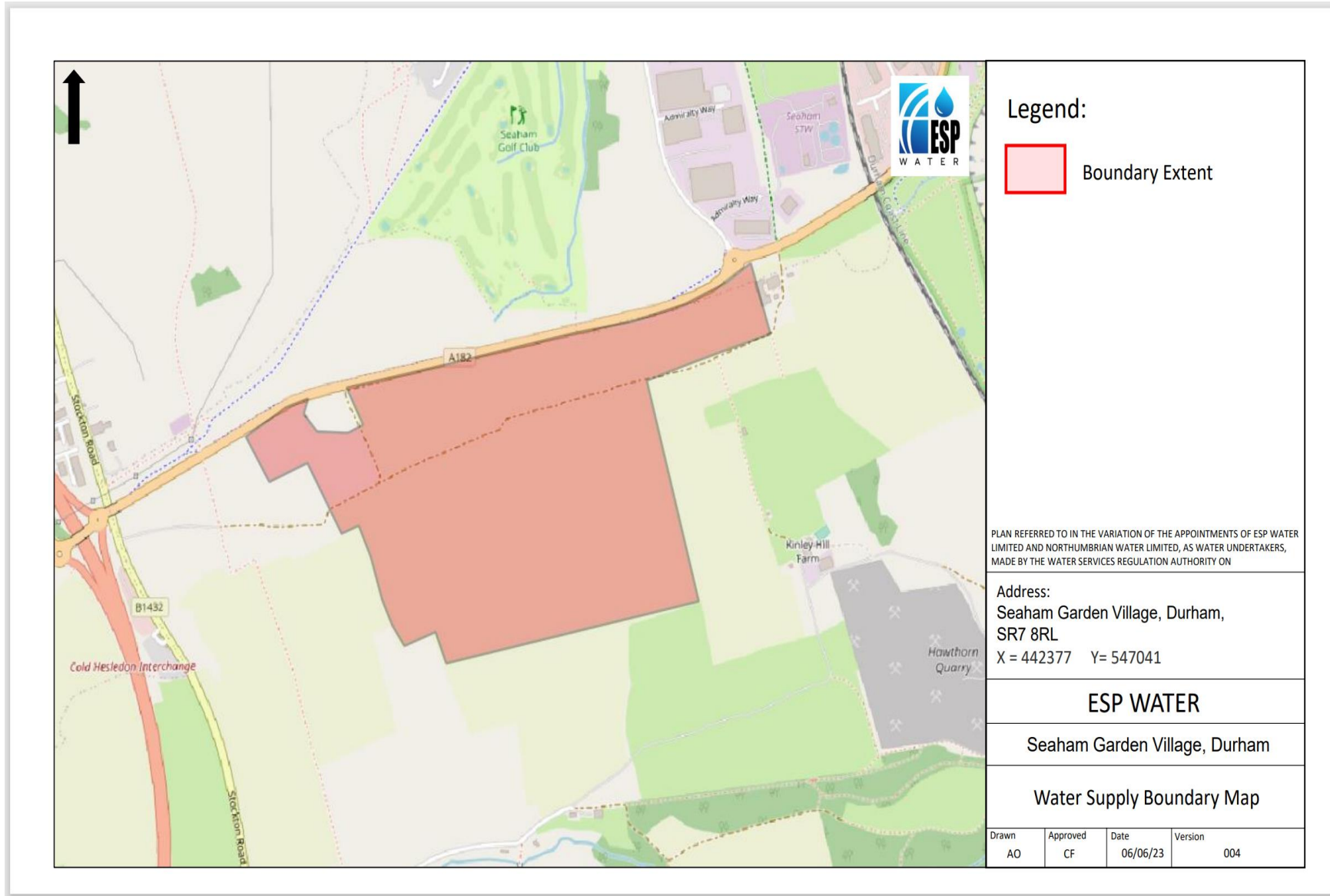
On this basis, and upon receipt of the additional information from ESP Water, and subject to no further issues arising, we consider we will be satisfied that ESP Water would be able to finance its functions if this variation is granted.

2. Conclusion and next steps

In assessing ESP Water's 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 Anglian Water.

We are currently minded to grant the variation under the unserved criterion subject to our ongoing engagement with ESP Water, and matters regarding the packaging of the sites being resolved to our satisfaction. It is also 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.

3. Site map – Water



Site map – Sewerage

