

Following acknowledgement of our recent submission to the CMA, a recent and related disclosure/publication by Ofwat on 27<sup>th</sup> May (“Charging Arrangements for New Connection Services for English Companies: Comparative Analysis and Consultation” - see link below) has prompted us to submit the following comments:

1. This latest Ofwat consultation has a direct and influential bearing on each Company’s Final PR19 Determination. It also brings into question whether or not respective determinations are sufficiently robust and representative given Ofwat’s admission that the differences in levels of charges (and therefore capex revenue) are so marked.
2. The consultation confirms and justifies (without question) the comments made in our 9<sup>th</sup> May 2020 submission to the CMA. In our view, it is a document of material fact that supports many of the concerns articulated in our earlier submission but acceptance of this latest Ofwat publication, following the 11<sup>th</sup> May closing date, falls to a decision to be made by the CMA. However, we can only hope that it becomes an integral part of the ongoing review. The first paragraph on page 2 of the consultation provides verbatim confirmation of what we have tried to guide Ofwat and Water UK to accept for over three years. Moreover, many of the issues we have identified and which should have been better addressed by Ofwat at the outset, were actually recognised several years ago in both the Gray Review (September 2010 to July 2011) and Cave Review (2008 - December 2009) respectively. More importantly, many of the recommendations contained in each ‘review’ and relating to the need for water and sewerage sector charges to be robustly and accurately defined/determined, together with the need for far greater transparency, have been compromised by Ofwat’s desire to apply a ‘light touch’ regulatory approach. A resultant lack of effective intervention, wholesome investigation, and timely correction of significant variations in dubious Company cost(s) has certainly not met the objective of creating trust and confidence in the ‘Sector’ – a sentiment repeated by several peer group consultants and Clients.
3. In 2016/17, Water UK were retained by Ofwat to chair various working groups relating to the Charging Rules. One of these ‘groups’, had the specific task of providing much needed clarity on Company charging arrangements. Moreover, specific to this working group, consultation, engagement and customer representation never exceeded 2% of the Developer Community despite an underlying obligation for the widest possible engagement. It is quite clear from the latest Ofwat consultation that Water UK effectively failed. As an aside, Water UK have also been retained to undertake related work on behalf of Ofwat covering several other important aspects of the charging reforms. This has raised many concerns within the Developer Community when it comes to a Water and Sewerage Sector trade association having such an influential and potentially biased position that favours sectoral commercial interests. Therefore, we do not believe it is appropriate for Water UK to have the responsibility to lead the working group, as proposed by Ofwat, and defined as a keynote recommendations in its consultation. In our view this continues the pattern of Water and Sewerage Sector biased control over several important issues and raises serious questions concerning anti-competitive behaviour. Moreover, we are firmly of the opinion that any intended working group should be totally independent with a non-sector independent chair.
4. The Ofwat consultation only partially addresses the issues and concerns we have continued to raise – 12 years on, it still does not meet many of the earlier ‘review’ recommendations.
5. Ofwat advocate that charging arrangements will be harmonised from April 2022 onwards. This raises a compelling question, namely, what happens in those instances when it can be

clearly identified Developers have paid in excess of what was justified for water and sewerage infrastructure provision in the preceding four years? The consultation is completely silent on this count and it is an issue that has a direct bearing on PR19 and the house building industry.

6. In many respects, Ofwat have had a decade to put in place a fair and equitable charging regime. Similarly, for Companies to better record and audit Developer Services income and expenditure. The latest Ofwat consultation continues to leave matters in a state of flux and inequitable confusion for a further two years. Whilst it may not necessarily be the current remit of the CMA, there is a compelling case for a separate investigation into Ofwat's approach to the charging rules/charging arrangements and the fundamental change in the cost dynamic that sees the Developer Community become responsible for a significant increase in the cost of water and sewerage infrastructure provision. Cost neutrality was supposedly a key strand of Defra's Statutory Guidance issued to Ofwat.
7. Returning to matters specific to PR19/AMP 7, in particular new connection numbers, in their Final Impact Assessment for New Connections (Charging Rules) 8<sup>th</sup> December 2016, Ofwat forecast around 169,000 new connections in 2017/2018. (This number again included all new connections in addition to housing and supposedly resulted in an infrastructure charge revenue of around £60M, albeit a revenue figure much less than this was quoted by Ofwat). However, net new home completion data produced by MHCLG for the same year confirmed 183,570 net new homes. Therefore, the infrastructure charge income just from new homes during this period will have produced a revenue stream of around £67M. Moreover, when finalising PR19 Ofwat had 4 years of MHCLG actual net new homes completion data and which they appear to have deliberately ignored. These revenue and cost disparities create further concern in terms of how Ofwat are responding to the Government's housing objectives even to the point of questioning whether or not they have a good enough understanding of the housing market and the synergy required when managing and funding Developer Services. Until these significant gaps can be addressed and/or explained in simple business language and/or resultant intervention/direction, Ofwat will continue to be perceived as a weak and ineffectual Regulator.

We trust you are minded to take these further comments on board and we remain happy to discuss any aspect in further detail.

Yours sincerely

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