

# Independent Steering Group – Sewerage: Recommendation to Water UK

## Introduction

In November 2017, Ofwat issued a Code for Adoption Agreements (“Code”) which requires water companies to develop draft Sewerage Sector Guidance (“SSG”) and a draft Model Sewerage Adoption Agreement (“MSAA”). These documents must be provided to Ofwat by 1<sup>st</sup> April 2019. Their overall purpose is set out in the Code and includes enabling the timely provision of new sewerage infrastructure required to enable housing growth.

Water UK has taken forward work on behalf of the water industry under its Codes for Adoption Programme, establishing the Codes Programme Board (“CPB”) to govern the programme. Water UK will formally submit the draft SSG, MSAA and its recommendations to Ofwat.

CPB established the Independent Steering Group Sewerage (ISG-S) to provide strategic direction and oversight over the work of the programme. ISG-S consists of representatives from developers, water and sewerage companies (“companies”) and Water UK itself. It is independently chaired and its Terms of Reference require the involvement of its customer representatives in its activities and decisions. These arrangements were in part to help enable companies to demonstrate how they had met requirements in the Code relating to the need for adequate consultation with customers and the extent to which a broad consensus has been achieved amongst customers and companies.

ISG-S’s Terms of Reference require it to compile the final SSG and MSAA and make a recommendation to the CPB. This document fulfils the requirement for ISG-S’s recommendation to CPB. It first provides some contextual information relating to the work undertaken before setting out recommendations for the Codes Programme Board. The document seeks to represent fairly the views of ISG-S members.

## Outcomes of the work

It is not the purpose of this document to provide a comprehensive report on the work that the ISG-S has overseen. However, some understanding of the outcomes and conduct of the work will provide important context for the recommendations.

### Draft Sector Guidance and Model Adoption Agreement

The draft documents that have been prepared are in a state suitable for submission to Ofwat.

Completion of the draft SSG and MSAA represents a significant step in the ongoing development of arrangements for the provision of new sewerage infrastructure. Once implemented they will codify clearly and at a detailed level the expectations on all parties relating to the adoption process and provides a clear, consistent and enforceable baseline for the measurement of performance. They limit the areas in which local practices are permissible. They provide the basis for an efficient process for the delivery of sewerage infrastructure while at the same time allowing companies to manage risks to provision of sewerage services for end users in line with their statutory obligations and allowing developers appropriate flexibility. The arrangements will place significant compliance obligations on companies which should, if effectively implemented and enforced, result in an overall improvement in standards right across the industry.

ISG-S has worked effectively to achieve consensus amongst its members in relation to the substantive content and approach embodied in the draft documents.

As might be expected, ISG-S has needed to consider a number of areas where a range of suggestions have been made or where differing views have been expressed by stakeholders. Of these matters, ISG-S wishes to highlight the following:

- **Measures to encourage adoption.** ISG-S considered the consequences of failure to finalise adoption agreements and how a greater rate of adoption might be encouraged. The programme benefitted from the involvement of Welsh stakeholders in relation to the experience of mandatory adoption, which is required under Welsh law. The programme recognises the benefits that appear to have been realised but is unable to replicate the Welsh system because of the different legislative framework in England. However, elements of the proposals should encourage the timely completion and transfer of sewerage infrastructure to companies. One example is the step-in rights for companies during the defects liability period where identified defects have not been rectified. It is recommended that the effects of such measures are monitored once the arrangements are implemented.
- **Early start.** Developers highlighted the importance of being able to start work on site in a timely fashion. The SSG recognises the desirability of this and includes some elements, such as early start meetings and inspection arrangements which allow for this. ISG-S considers that the arrangements strike a balance between allowing for this flexibility while at the same ensuring that the formal aspects of the process are achieved in a timely fashion.
- **Strategic and complex sites.** ISG-S considered the range of different scenarios involved in the development of sewerage infrastructure and the needs of more complicated or strategic sites. The draft SSG and MSAA include a number of elements which should make dealing with such sites more effective, for example the establishment of criteria for the identification of a strategic site and allowing for conditional acceptance of a site to allow for progression of simpler elements and later completion of more complex elements.
- **Levels of Service.** ISG-S considers that the Levels of Service included in the draft SSG, enforceable via the new redress procedures and ultimately through the MSAA, represent a reasonable balance between ensuring that all key aspects of the process are covered and ensuring that the package of measures is readily understandable and implementable. The Levels of Service cover the full life cycle of the adoption process which is a significant advance on the current situation. Some stakeholders expressed concerns that the overall impact of the proposals would be to delay rather than facilitate housing development. This is not the intention and ISG-S considers that it will not be the effect in practice. However, it will be important to ensure that mechanisms are established to measure performance against the metrics and to gauge their overall impact.
- **Design and Construction Guidance.** The programme benefitted from previous collaborative work by the industry and its developer customers on the Sewers for Adoption programme. Past versions of Sewers for Adoption been implemented in the industry, although different versions are currently available and used in practice and the most recent version has never been formally released. The Design and Construction Guidance which forms part of the recommended Sector Guidance reflects this most recent version, dubbed “Sewers for Adoption 8” although not

formally adopted as such. Therefore, implementation of the Sector Guidance will result in the formal implementation of the most up-to-date guidance. The programme recognises, however, that the Design and Construction Guidance does not cover all types of assets that might be included on a site, in particular for more complex assets such as pumping stations where differences in approach amongst companies remain reflecting their specific circumstances. In principle further standardisation of design for such assets and inclusion in the DCG is recognised as being desirable but this is envisaged as a matter for the Panel to take forward.

- **Legal status of SuDS.** The Design and Construction Guidance includes technical guidance on the construction of sustainable drainage systems (SuDS). ISG-S has recognised the potential for challenges as to the legal status of SuDS, specifically whether or not they are sewers. One company represented on the ISG takes the view that interpreting SuDS as sewers goes against existing case law. While this view was noted by members, ISG-S as a whole supports the approach of including SuDS elements in the guidance. The SSG does not seek to offer new guidance on what is or is not a sewer.

These are not all of the matters that have been considered but highlighting them emphasises that publication of the draft SSG and MSAA and its implementation should be seen as a step in an ongoing journey of improvement. This work overseen by ISG-S builds on substantial progress already made by the industry and its customers. Further improvements in the arrangements should be expected and encouraged.

### Conduct of the work

The draft SSG and MSAA represents the outcome of very significant effort by developers and their trade associations on the one hand and by water companies and Water UK on the other. We are grateful for the extensive and valuable contribution efforts on the part of the individuals who have contributed to the work over the course of the programme and to those who have provided extensive and useful comments as the work has progressed.

The work generally was embarked upon in a spirit of collaboration and shared endeavour and to this continued through the course of the programme. What has been achieved could not have been achieved without this.

Our work has benefitted from extensive engagement on the part of the developer community at events, as representatives on the ISG and its supporting groups and in responses to consultations. The developer community is numerous and diverse. As a matter of principle, the programme sought to engage with developers directly rather than relying on their trade associations but it welcomed the valuable contribution of these bodies. Given demands on developers' time and resources, ISG-S views their level of contribution and engagement very positively. Inevitably, not all stakeholders agreed with every aspect of the programme. ISG-S has sought to ensure that the programme has sought to engage fully and effectively to explore differing views. There have been two formal consultations on the substantially complete drafts of the SSG and one consultation on a substantially complete draft MSAA. While it perhaps would have been ideal to have had a further consultation on the MSAA, this is not viewed as a substantial shortcoming in the level of overall engagement, given that the current draft MSAA largely reflects the existing model agreement.

### Implementation

The SSG and MSAA will not on their own deliver improvement on the ground. Effective and consistent implementation across the industry is needed and will demand resources and attention

from all parties. For some, implementing the guidance as intended will involve substantial change and it is likely that there is a variable level of preparedness for it. The Programme has considered the practical implications of this and has recommended an implementation date in April 2020 which may be later than originally envisaged by stakeholders. ISG-S members support this recommendation.

Whatever the timing of implementation, it should be recognised that outcomes in practice depends crucially on:

- effective communication and engagement of all parties on the forthcoming changes, and, potentially the running of trials;
- ongoing management of performance, including measurement of relevant metrics and establishing mechanisms for evaluating and responding to poor performance;
- putting in place effective governance, in particular taking early action to constitute the required Panel and to clarify its scope of activity
- effective regulation of compliance;
- clear transition arrangements; and
- effective management of implementation risks.

All of these will be essential to ensure forward momentum is maintained. ISG-S does not have full clarity as to how these matters will be taken forward and hence sees a risk to the overall objectives of the programme. It therefore urges all parties, including Ofwat, to clarify as soon as practicable what is required and expected in relation to implementation.

## Recommendations to the Codes Programme Board

ISG-S recommends that the draft Sector Guidance and Model Sewerage Adoption Agreement prepared under its oversight are submitted to Ofwat.

ISG-S recommends that in submitting these documents the CBP makes the following points its accompanying recommendations report:

- Ofwat and water companies should devote appropriate resources to ensuring that the new arrangements are implemented as intended. Ofwat should make clear its expectations on companies in regard to implementation and engagement over the period to live implementation of the new arrangements;
- Transition arrangements should be clarified;
- Appropriate resources and attention be given by Ofwat, water companies and customers to the establishment of suitable governance arrangements, taking forward the arrangements for a Panel set out in the draft Sector Guidance; and
- Ofwat and the water companies should consider how performance against the new arrangements should be measured, monitored and responded to and consider taking active steps to establishing acceptable arrangements.

### **Martin Silcock**

Independent Chair, on behalf of the Independent Steering Group – Sewerage

26<sup>th</sup> March 2019