

SEWERAGE SECTOR GUIDANCE

CHANGE PROPOSAL FORM

Please complete the form below to submit a change proposal to the Sewerage Adoption Panel.

Name of Proposed Change:

Land Promotor Bond Waiver

Release of Restrictions Related to Majority Occupation of Premises Served by Land Promotor Infrastructure

Sewer Adoptions – Land Promotor Equivalence & Inequality – Delayed Adoption – Systemic Inefficiency

Section 1 - Proposed Change

A. Please outline the details (including any relevant supporting documentation) of the proposed change.

PLEASE REFER TO THE LETTER TO OFWAT DATED 28TH SEPTEMBER SETTING OUT THE MATERIAL BASIS FOR THE CHANGE - ATTACHED

☐ *Relaxation of 50% Vesting Restrictions for Land Promoters and Master Developers meeting a predetermined acceptance criterion*

☐ *Decouple the requirement for Surety payments under Adoption Agreements for Land Promoters and Master Developers meeting a predetermined acceptance criterion*

Please refer to the reasoning and explanation of the systemic inefficiencies and related inequivalence arguments detailed within the letter to OFWAT dated 28th September 2021. See attached to this change request form.

B. Has the proposed change been considered previously (including during any prior consultation process)? If so, please provide details.

The change request has been submitted to the Chief Executive Officer of OFWAT for consideration. An explanation of the reasons behind the change request are detailed in the letter attached to this note.

L&Q Estates have engaged Anglian Water directly with these issues which have been considered at that level only. Anglian Water await OFWAT or Water UK involvement.

C. Does the proposed change need to be considered by a specific date? If so, please explain why?

Yes, with immediate effect. L&Q Estates are the current custodian for a substantial amount of operational water infrastructure of which the incumbent Water Authority benefits from financially. However, L&Q Estates are obligated to manage, maintain and respond in emergency situations for this infrastructure notwithstanding their ill-equipped and under resourced workforce. Sometimes this carries on for many decades until 50% occupations occur.

Water Authorities are benefiting from this Infrastructure installed by way of sewerage and potable water connection disposal fees. The Water Companies should therefore take the responsibility for maintenance, management and emergency response well in advance of what the model adoption agreement mandates.

D. Does the proposed change raise any health and safety issues? If so, please provide details.

No, quite the reverse. The change would place the management, maintenance and emergency liabilities of operational infrastructure with the incumbent water authority at the outset rather than with an ill-equipped, under resourced and unregulated private land promotor. Should an emergency situation materialise, the most appropriate, trained and operational effective authority can therefore respond.

E. Please provide any further information relevant to the change proposal.

The requirement for bonds and adoption after 50% occupancy seek only to drive up the costs of housing for those in most need and materialise in significant health and safety concerns for those newly established residents who are reliant on the Land Promotor to maintain their sewerage whilst the incumbent water authority benefits financially.

The costs associated with bonds and delaying the initiation of adoption agreements exacerbates inefficiencies and results in profiteering by external third parties such as banks and insurance companies unnecessarily. The risk attributed to Land Promotor insolvency is negligible and therefore financial exposure to the incumbent water authority remains implicitly unevidenced.

Section 2 - Scope of the Proposed Change

A. Which section(s) of the Sewerage Sector Guidance and Model Adoption Agreement does the proposed change concern? Please provide specific references to the relevant documentation.

From SSG Appendix E – Model Sewer Adoption Agreement – v1, please omit Clause S8.2.2 for Land Promotor’s meeting a predetermined criterion.

NB. This clause is removed for L&Q’s site in Milton Keynes to great and long lasting effect. Please replicate this across all of our developments.

Please allow for a Land Promotor Bond Waiver Scheme whereby the provisions for surety would not apply and a Surety Entity would not be required by the Agreement.

B. What consequential amendments to the Sewerage Sector Guidance and Model Adoption Agreement would be required as a result of the proposed change? Please provide specific references.

A vast reduction in the cost of constructing Primary Infrastructure on a large scale, reducing the on cost of housing stock for the wider general public

A reduction in the administrative processing and associated costs for both the incumbent water authority and the Land Promotor

A vast reduction in work load on technical resource within the incumbent water authority as the Land Promotor's are encouraged to enter numerous Adoption Agreements on one site to predict where 50% occupation may occur first.

An instantaneous prevention of wasted expenditure entering third party banking and insurance companies to bond against a negligible risk

A safer and more appropriate management and emergency response capability covering operational sewers and water mains

An equal, fair and competitive basis with which land promoters and housing developers function within

Mitigation of a system whereby the incumbent water authority can benefit financially from a Land Promoters substantial investment and market making ability whilst penalising the Land Promotor preventing adoption in a timely manner, removing their control over adoption under 50% housing Developer occupancy figures and by placing unacceptable maintenance liabilities and costs on them in parallel with the aforesaid.

Section 3 - Rationale for the proposed change

A. What is the nature and effect of the current position/existing arrangements?

Land Promoters do not construct houses. A vesting restriction binding adoption of primary infrastructure to third party developer occupations, not under their control, is an unreasonable requirement. This restriction is imposed over substantial quantity of sewer infrastructure, often servicing thousands of plots.

Given this lack of control, Land Promoters are compelled to delay entering Adoption Agreements to avoid fees and bond premium payments becoming protracted over many years.

Land Promoters are further inclined to place numerous Adoption Agreements across large developments in an attempt to facilitate adoption earlier by predicting where 50% occupancy is most likely to occur first, thus driving up certainty over housing developer controlled occupations. This generates huge inefficiencies for both the Land Promotor and Sewerage Companies who are thereafter drawn in to many more site inspections; technical approval processes; legal conveyancing transactions and general costly

administration. A single adoption agreement covering all infrastructure sewerage would vastly enhance the speed and efficiency of adoptions.

Given the scale of an L&Q Estates development, 50% occupancy may equate to thousands of residents who thereafter discharge to sewers not under the care and control of a Statutory Undertaker for many years. This represents an unacceptable risk to Homeowners, the future Statutory Undertaker and the Land Promotor.

The duration of a typical large L&Q development may span one to three decades leaving operational sewers void of a suitably equipped management and emergency response authority.

From the first occupation, Sewerage Companies benefit from connection fees from potable water connections and subsequent sewerage discharge fees payable by the newly established residents. This income is facilitated indefinitely by the Land Promotor's investment.

Given the substantial revenue taken by the Sewerage Company during the lead up to 50% occupancy, it is considered a flagrant delay of maintenance obligations to insist on these vesting restrictions

B. What is the nature and effect of the proposed change?

A substantial increase in efficiency and a reduction in the amount of wasted expenditure all in keeping with the Code for Adoption Agreements key / core objectives.

C. Why is the proposed change necessary?

Expense associated with the aforesaid inefficiency drives up the cost of housing for the end user which given the scale of these developments will have a significant impact on many within the general public and those attempting to access the housing market for the first time

D. What is the desired outcome of the proposed change?

Equivalence across the industry. Land Promoters are penalised for making substantial financial investments which lead to government targeted growth in the sector. The code for Adoption and the Model Sewer Adoption Agreement reflects the operation circumstance of the Housing Developer and not Land Promoters. Therefore, benefiting Developers over Land Promoters who are arguably more important for market making, growth and the provision of Housing Stock.

Section 4 – Impact on the Principles and Objectives of the Code

A. Outline, how and why the proposed change maintains consistency with the principles and objectives of the Code for Adoption Agreements, and any relevant statutory or regulatory requirements?

There are a series of key principles and objectives in the code that conflict with the Model Sewer Adoption Agreement criteria when considered in the context of a Land Promotor. These are as follows:

Page 4: “Ofwat considers that Water and Sewerage Companies, Developers and Self-lay Providers are best placed to develop Sector Guidance and Model Adoption Agreements and has, therefore, elected to build on existing sectoral initiatives.”

There are no Land Promotor Sectorial initiatives being implemented here. The change would appraise this issue

Page 6: “1.2.2 The purpose of the Code is to: (a) enable the timely provision and adoption of new water and sewerage infrastructure required to enable housing growth;”

The current Model for Sewer Adoption for Land Promotors does not do this at all. In fact, it actively encourages the reverse and forces Land promoters to delay adoption and the split their sites into numerous, often in the tens, of Adoption Agreements. This is not a timely process, nor does it promote growth. In fact it actively discourages it.

Page 6: “1.2.2 (d) drive efficiency and effectiveness of processes, reducing the time and costs incurred by all parties entering into adoption agreements;”

The current model actively encourages quite the reverse. The current requirements generate substantial additional work requirements for operational, legal conveyancing, technical and administration staff. The changes proposed would comply with this objective much more closely.

Page 6: “1.2.2 (e) protect End-user Customers by preventing the adoption of substandard infrastructure;”

Without accepting the proposed change, Land Promotors are left with significant liabilities managed by poorly resourced, ill-equipped management personnel with no operational capacity. Indeed, it is not a land promoters core business to manage SUDS. This offers the potential for operational sewers to become substandard up until the 50% occupancy restriction which is the only stimulus for the Land Promotor to act. All the time end -users discharge to the system. This is further exacerbated in an emergency situation.

There are numerous other examples that can easily be extracted from the code. Perhaps the most poignant is the Code Principle relating to Fair and Proportionate. It is L&Q’s understanding that Housing Developers are able to benefit from Bond Waivers and have direct control over build out rates. Therefore can manipulate their situation to offer the greatest possible economic advantage and efficacy. However, they offer a far smaller return in contribution terms to the provision of growth and housing stock than a Land Promotor.

Section 5 – Impact on Customers and Sewerage Companies

- A. What is the impact of the proposed change (be it positive and/or negative) on Customers?

Land Promotor's as customers are able to optimise many parts of their business.

The incumbent water authority is able to optimise resourcing and become more efficient.

End user residents have the comfort that the code principles are upheld in return for their connection fee and sewerage fee payments.

The most appropriate authority becomes liable for the emergency dealings to which customers may benefit from a health and safety perspective.

Water authorities are safe in the understanding that they are complying with equivalence policy.

Water authorities can be better prepared to offer high quality services to their customers. Customer service is a worth up to 3% of annual turn over should customer satisfaction be negative.

- B. Is there any evidence of customer concern relating to the proposed change? If so, please provide details.

None to date. However, should a customer become understanding of the incumbent water authority's financial benefit whilst the Land Promotor maintains its future assets, they may not remain silent. More so in the event of a Health and Safety emergency.

What is the impact of the proposed change (be it positive and/or negative) on Sewerage Companies?

Little to no effect whatsoever. The Milton Keynes Western Expansion Area benefits from an SSCM Agreement whereby the change was incorporated from the outset.

The Sectional Agreements are much more efficiently dealt with, although bondsman are still engaged. To date, we are not aware of any defects or damage which has necessitated the incumbent water authority involvement. Infrastructure is constructed and adopted for circa 4,000 homes across the site, without a single one of them being constructed.

The financial position of L&Q Estates is so robust that not even a housing downturn would result in insolvency. All L&Q wealth is tied up in land holdings.

Therefore, there is no risk that the works will not be constructed and therefore bonds are a waste of expenditure.

<p>C. Estimate how much notice Customers and Sewerage Companies may reasonably require to be able to meet any new requirements arising from the proposed change.</p> <p><i>None.</i></p>
<p>D. What is the suggested implementation date of the proposed change?</p> <p><i>Immediate</i></p>
<p>Section 6 – Stakeholder Engagement</p> <p>A. Please outline any informal/formal consultation undertaken with relevant stakeholders likely to be affected by the proposed change, including details of any responses provided by stakeholders.</p> <p><i>Please refer to the attached letter to OFWAT dated 28th September. There have been numerous informal discussions with Anglian Water to date which have culminated in this change request.</i></p>
<p>Section 7 – Applicant’s Details</p>
<p>Name: Simon Taylor (Technical Director)</p>
<p>Company: L&Q Estates</p>
<p>Company Registration Number: 02728184</p>
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L&Q Estates

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Our ref: ST/015

Your ref: -

28 September 2021

Mr David Black
Chief Executive
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

Dear Mr Black,

Re : Sewer Adoptions – Land Promotor Equivalence & Inequality – Delayed Adoption – Systemic Inefficiency

L&Q Estates acquires large scale development land whose principle objective is to mitigate construction risk and secure planning approval for large scale developments. Land is parcelised to form discrete development plots which is then serviced with primary infrastructure comprising highways, foul and surface water drainage, utility services including potable water connections. These parcels are then sold to a multitude of housing developers, who later bring forward the much needed housing stock as an independent entity. This model is known as the "Serviced Site Model" which makes L&Q one of the largest Land Promotors and Master Developers within the UK.

Correspondingly, our current and future developments facilitate substantial growth for Sewerage and Water Companies who benefit indefinitely from our investments and capitalise on income from connection fees, infrastructure charges and sewerage fees on a plot-by-plot basis.

However, it has become increasingly apparent that the mechanism in which Sewerage Companies procure adoption of this primary infrastructure is altogether unequal. It is systemically geared towards housing developers rather than land promotors and establishes itself as malpractice under the governing regulations and Model Service Adoption Code Principles stipulated by Ofwat and the Water Industry Act respectively.

The Water UK Model Service Adoption Agreement is resolute in that any Sewerage Company must provide a Model Adoption Agreement for Ofwat approval which should also be in accordance with the general consensus of all customers. One of its central objectives is to maximise efficiency through the adoption process and foster a mutually beneficial environment for both developers, consumers and Sewerage Companies the like.

However, as Land Promotors, we frequently discover that this is not upheld.

For example, with one of our larger Developments at Wixams, Bedfordshire (a 4,500 plot development) the Sewerage Company imposes a restriction on the vesting of assets despite explicit compliance with the Technical Standards and Adoption Criteria. This restriction prevents vesting of primary infrastructure until 50% of the development is occupied with newly established developments.

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This has the following significant implications which are considered not to be in keeping with the Code for Adoption Agreements published by Ofwat:

1. Land Promoters do not construct houses. A vesting restriction binding adoption of primary infrastructure to third party developer occupations, not under their control, is an unreasonable requirement. This restriction is imposed over substantial quantity of sewer infrastructure, often servicing thousands of plots.
2. Given this lack of control, Land Promoters are compelled to delay entering Adoption Agreements to avoid fees and bond premium payments becoming protracted over many years.
3. Land Promoters are further inclined to place numerous Adoption Agreements across large developments in an attempt to facilitate adoption earlier by predicting where 50% occupancy is most likely to occur first, thus driving up certainty over housing developer controlled occupations. This generates huge inefficiencies for both the Land Promotor and Sewerage Companies who are thereafter drawn in to many more site inspections; technical approval processes; legal conveyancing transactions and general costly administration. A single adoption agreement covering all infrastructure sewerage would vastly enhance the speed and efficiency of adoptions.
4. Given the scale of an L&Q Estates development, 50% occupancy may equate to thousands of residents who thereafter discharge to sewers not under the care and control of a Statutory Undertaker for many years. This represents an unacceptable risk to Homeowners, the future Statutory Undertaker and the Land Promotor.
5. The duration of a typical large L&Q development may span one to three decades leaving operational sewers void of a suitably equipped management and emergency response authority.
6. From the first occupation, Sewerage Companies benefit from connection fees from potable water connections and subsequent sewerage discharge fees payable by the newly established residents. This income is facilitated indefinitely by the Land Promotor's investment.
7. Given the substantial revenue taken by the Sewerage Company during the lead up to 50% occupancy, it is considered a flagrant delay of maintenance obligations to insist on these vesting restrictions

It is generally considered that the expense associated with the aforesaid inefficiency drives up the cost of housing for the end user which given the scale of these developments will have a significant impact on many within the general public.

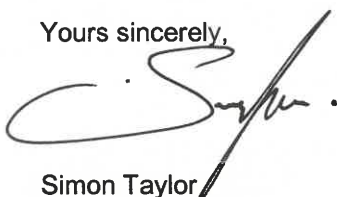
On this basis, we seek to request the following changes to the UK Model Service Adoption Agreement for Land Promoters and Master Developers of an equivalent standing:

- ❖ Relaxation of 50% Vesting Restrictions for Land Promoters and Master Developers meeting a predetermined acceptance criterion
- ❖ Decouple the requirement for Surety payments under Adoption Agreements for Land Promoters and Master Developers meeting a predetermined acceptance criterion

We would be most grateful for your review and assistance in settling this dispute.

Should you have further queries or wish to engage in further dialogue, please do not hesitate to contact me by email, if preferable.

Yours sincerely,



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Technical Director

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