**Sewerage Adoption Panel**

**Meeting on 17th December 2021 at 11.30am via MS Teams**

**In attendance:**

**Victor Olowe – Chair**

**Kate Raybould – Secretary**

**Gary Boddington – Anglian Water**

**Jenny Henman – Yorkshire Water**

**Alison Tregale – South West Water**

**Sam Vernon – Vistry**

**Nick Ayling – Thames Water**

**Kenny Mawson - Persimmon**

**Richard Starritt – Severn Trent Water**

**Gavin Thorne – Barratt**

**Simon Taylor – L&Q Estates (Item 5b only)**

**Apologies:**

**Karl Walker – Seddon**

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|  | **Item** | **Action** |
| 1 | **Introduction and Apologies** The Chair welcomed members to the meeting. It was noted that the meeting was quorate, with the required number of representatives from both Sewerage Companies (SC) and developer members in attendance. Apologies had been received from Karl Walker. |  |
| 2 | **Declaration of Interests**There were no interests to declare from any member. |  |
| 3 | **Waiver of notice and publication period (standing item)**It was noted that the change proposals listed for discussion at the meeting had been published on the Panel website in compliance with the publication period and therefore no waiver of this was required. |  |
| 4 | **Approval of minutes of Panel Meeting held on 19th October 2021**The minutes of the Panel Meeting held on 19th October 2021 were approved and there were no matters arising from the minutes. All actions had been completed. |  |
| 5 | **Change Proposals**1. **New sub-clauses in DCG for Plastic Corrugated Wall Arch Structures for below ground stormwater storage – ADS Pipes**

The Panel considered the proposal from ADS Pipes regarding new sub-clauses in the DCG for Plastic Corrugated Wall Arch Structures for below ground stormwater storage and attenuation. The Panel reviewed the note prepared by WRc and the further responses submitted by ADS. It was noted that there is already scope within the DCG for undertakers to adopt such assets, but this is dependent on individual undertakers’ risk assessments. However, some of the generic concerns around the assets had been addressed by ADS in its further responses. After discussion, it was agreed that the Panel would recommend the intent of the change but that it needed to ensure that the DCG did not become specific in terms of products referred to therein particularly as it could inadvertently create an unhelpful precedent and could be deemed anti-competitive. Furthermore, the Panel considered that the proposed amendments mirroring clause 7.8.3 would require further and detailed technical analysis including positive endorsement from the Highway Authorities, which might in any event not negate the need for individual/site specific risk assessments. Therefore, it should be made clear that such categories of products can be considered for adoption, subject to undertakers being satisfied that they are suitable for use in the proposed circumstances. On that basis, clause 7.8.4 of the DCG should be amended to include a new sub-paragraph(s) to include design criteria for the flow considerations, based on the comments from WRc. NA would draft some proposed wording and send it to the Secretary.The Panel agreed that its decision to recommend the change was consistent with the Code principles, particularly in relation to competition and innovation, including not unduly preventing opportunities for innovation.1. **Relaxation of 50% vesting requirements for Land Promoters – L&Q Estates**

 Simon Taylor (ST) of L&Q Estates then joined the meeting to discuss the change proposal, which he confirmed was applicable to other land promoters rather than specific to L & Q Estates only. ST provided the Panel with an overview of the activities and role of land promoters, explaining that their primary function was to purchase land, develop some infrastructure on-site, including roads and drainage, before selling on (often with planning permission secured) to residential developers who would proceed to develop housing on the site. In the view of L&Q, the current requirements of the Model Adoption Agreement are geared towards developers and as assets are not adopted until a 51% occupancy threshold on the site is met, promoters can be left with responsibility for drainage assets long after they have sold the site to developers, as they have no control over the speed of development. This leads to long delays (sometimes decades) in entering into adoption agreements and promoters will have already paid a bond for the site. ST explained that the combined effect of the occupancy and bond requirements places an unfair significant burden on land promoters. ST further stressed that the fact that undertakers receive revenue benefits during such periods before adoption exacerbates the negative impact of the current situation. This contravenes the key aims of the Code to enable timely adoption of assets and to drive efficiencies in the adoption process. L&Q have already raised this issue with Ofwat and will consider whether to take further action regarding the issue, subject to the outcome of the change proposal. ST emphasised that the proposal seeks to ensure that land promoters meeting pre-defined criteria (operating at a certain level of magnitude) are not treated as developers in relation to the twinned requirements of occupancy and bond. However, a waiver, of occupancy would be preferable to the bond requirement as an alternative approach or as a minimum.The Panel discussed the proposal at length with ST. The key points of the discussion were:* Land promoters are usually involved in very large development sites and it was noted that the adoption regime is generally more aligned with smaller scale developments. For instance, the 51% occupancy threshold on a very large site will take longer to reach than on a smaller development.. Any changes to the Code should take into account ‘large’ developments and ensure equality between developers and land promoters.
* There is potentially cross-over between the activities of land promoters and developers. It was recognised that a promoter is also a ‘customer’ under the Code.
* Bonds should only be in place for a short period. The current adoption arrangements are designed primarily for quick and rapid progression of development sites. Undertakers do offer bond waivers to developers, but not to promoters. Highways authorities will offer an interim bond reduction process, whereby the amount of the bond is reduced as stages of the construction are completed.
* The reason for the bond requirement is to ensure that a promoter has done as they are required to do. However, as undertakers can refuse to adopt an asset if it is not up to standard, then the bond may be superfluous.
* The 51% occupancy requirement is intended to ensure that the sewer is operating as designed. If this was removed, undertakers would assume a lot of risk for the asset, particularly while construction is ongoing, and the costs of this would end up being passed on to the rest of their customers. This could be mitigated if land promoters were to be made parties to either s.104 agreements or a separate agreement with the undertaker regarding maintenance obligations subject to agreed reasonable charges.
* There is also the possibility for parties to vary adoption agreements if appropriate even though ST indicated that he was advised otherwise as any such deviation is still subject to the occupancy requirements. However, the Panel noted that a possible unintended adverse consequence of deviating from adoption agreements could be wider inconsistency that runs contrary to the principles of the Code.
* The Panel noted the rationale for the revenue referred to above received by undertakers and why they were deemed appropriate and not deemed relevant to the issues relating to waiver of the occupancy and bond requirements.
* The Panel noted ST’s position that the current system does not recognise the role of land promoters in developments. The Panel would need to consider whether the proposal remedies this or whether there may be other ways to address the issue.

ST then left the meeting.After discussion, the Panel agreed to carry out further consultation with the Land Promoters and Developers Federation, HBF and HBA and other relevant stakeholders as appropriate. The Panel reiterated the importance of clarifying a possible definition of large scale developments and the option for undertakers to use such a definition or other agreed clauses to inform their assessment of a different balance of risk in their consideration of whether a variation of the adoption agreement is appropriate. The Panel will meet again in January 2022 to discuss the proposal before finalising its recommendation to Ofwat for the deadline of 5th February. | Draft wording for 7.8.4 (NA)Consult with LPF/HBF/HBA (KR) |
| 6/7/8/9 | Due to time constraints, these items were not discussed by the Panel and it was agreed that the Secretary would deal with them via email to Panel members after the meeting as appropriate. | Email Panel (KR) |

**Sewerage Adoption Panel**

**Meeting Action Log**

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| **Date of Meeting** | **Action** | **Action Owner** | **Due Date** | **Status** |
| 19/10/21 | Draft Action Log | KR | 05/11/21 | Complete |
| ADS Pipes proposal – propose wording for WRc instruction to KR | All | 12/11/21 | Complete |
| ADS Pipes proposal – discuss extension with Ofwat | KR | 27/11/21 | Complete |
| ToR – discuss Panel proposals with Ofwat | KR | 27/11/21 | Complete |
| Arrange December meeting | KR | 12/11/21 | Complete |
| Raise shallow manhole issue with WRc  | KR | 30/11/21 |  |
| 17/12/21 | ADS Pipes – draft wording for 7.8.4. and send to KR | NA | 23/12/21 | Complete |
| L&Q – consult with LPF/HBF/HBA | KR | 23/12/21 |  |
| Email Panel re: meetings/WRc and CESWI review project/Technical Sub-Groups | KR | 31/12/21 |  |