

Policy title: Vesting of Developer Constructed Assets Policy	Version: Final	Approved by: Barbara Barbarito
Policy owner: Business Strategy and Policy	Date of approval: 23/03/2017	

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Executive Summary - Policy Statements

This policy applies to the vesting of new developer constructed asset. The policy statements are set out below.

Policy Statements:

General Obligations including Legal Title and Servitude Rights

- Scottish Water (SW) will only be responsible for the assets once they are vested and where applicable, the ownership of the land upon which they are constructed has been settled. Appendix 1 applies.
- Diverted sewers will only vest in SW immediately upon their connection to the public sewer if SW has been consulted prior to diversion works commencing.
- SW will not vest unless consulted where works are to be carried out on contaminated land.
- Assets will not vest in SW until the appropriate servitude, with rights of access to the areas identified in the construction specification are provided and appropriate discharge consent(s) Details are provided in appendix 1.
- Assets will vest in SW where they have been constructed in accordance with the technical audit design. Technical audit design to comply with all legislation relating to Sewers for Scotland and Water for Scotland latest edition. Construction and completion of the assets to comply with the drawings and construction specification applied at the time of the technical audit acceptance date.
- Where a variation from the original technical audit and drawings is required, SW will confirm acceptance in writing. SW will expect updated drawings.
- SW will not vest assets that have not been appropriately inspected. See appendix 2.
- SW will not consider carrying out an appropriate inspection unless;
 - a) Minimum of 5 days' notice has been given to SW of the date in which works are to commence.
 - b) A Schedule of works has been provided at technical audit stage of the process.
- SW will have an appropriate escalations process in place should there be any dispute when vesting assets.

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Completion and Transfer of developer constructed assets

- SW will not deem works complete until all documentation is received, i.e.;
 - a) Accurate 'as-constructed' drawings of the completed assets.
 - b) Any agreed variations to the drawings or construction specification.
- SW will not take on costs of repairs and maintenance caused by any defect in the construction of the assets during the two year defects liability period starting from the date of the completion certificate.
- SW will deem the works complete and issue a completion certificate when:
 - a) The assets have been completed in accordance with the construction specification at the time of technical audit, the specification and the drawings.
 - b) SW has received one hard copy and a digital version of the 'as constructed' drawings and sections showing the completed assets.
 - c) SW has received one hard copy and a digital version of the operating instructions and maintenance manuals for any pumping station.
 - d) SW has received the operational certificates for any pumping station, and/or SUDS and/or other equipment that may require a certificate.
 - e) The developer has installed any applicable utility services including any media associated with power and telemetry which may be required and has paid the relevant utility bills up to date.
 - f) SW has completed a site inspection that has been passed.
 - g) SW has confirmation that it has permanent and properly constituted access to any part of the Works with or without vehicles, plant or equipment and that this access is not obstructed.
 - h) SW has confirmation that no building or other form of structure which obstructs access to the works or may cause damage to the Works has been erected within the protected zone.

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- Asset(s) will vest in SW only when:
 - a) The assets have achieved completion and any defects arising or works required have been made good.
 - b) The assets are compliant with all regulatory H&S requirements applicable at the date of vesting and compliant with SW H&S requirements applicable at the date of technical audit.
 - c) The necessary transfer of land title and/or servitude rights to SW have been completed and settled.
 - d) SW has transferred the utility services required for the operation of the assets together with applicable rights.
 - e) SW has completed a handover inspection where appropriate.
 - f) SW is satisfied that operational flows have been achieved; at least two properties must be connected to the asset.
 - g) SW receives confirmation that the developer holds responsibility for any contamination or damage of vested assets as a result of on-going construction activity, for example a diesel spill.
- Asset(s) will not vest in SW while:
 - a) Any dispute exists between the Developer and any third party concerning the works.
 - b) Any cross connection remains whereby surface water or groundwater may enter a foul water sewer or foul water or groundwater may enter a surface water sewer.
- SW will, no later than twenty days following any inspection of the assets, advise the developer in writing of any defects in the assets requiring to be rectified or works requiring completion before the issue of the Completion Certificate.
- SW will not vest discrete parts of works until all intervening private works are themselves vested.

The rules around payment of Reasonable Cost Contribution (RCC)

- In the event of the developer becoming subject to an insolvency event or where agreement cannot be reached, SW will use the RCC to take the asset up to vesting standards. Further information in appendix 4.
- SW will pay RCC on completion of vesting and on receipt of habitation certificates.

Expenses

- SW will seek reimbursement of expenses as detailed in appendix 3.

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Scottish Water Vesting of Developer Constructed Assets Policy

1. Introduction

The key principle behind this policy is that developer newly constructed assets vest in SW. This can only be achieved once both the necessary legal permissions (land title and servitudes) to own, operate and maintain an asset have been transferred to SW and once SW is satisfied that the developer has constructed an asset to their required standard and specifications applicable at the time of technical audit of their design.

2. Scope

The policy covers vesting and the operation and maintenance of developer constructed assets

- General obligations including Legal Title and Servitude Rights
- Completion and Transfer of Developer Constructed Assets
- The Rules around payment of Reasonable Cost Contribution

3. Policy Context

This policy is consistent with the position stated in the latest edition of our standards and specifications. The policy is also compliant with our regulatory requirements and our business plan commitment to work with developers and communities to enable vesting. This policy links to the following existing SW policies;

- Surface Water Policy - <https://www.scottishwater.co.uk/business/connections/connecting-your-property/planning-your-development>
- Scheme of Charges - <https://www.scottishwater.co.uk/you-and-your-home/your-charges>

This policy also links to existing legislation;

- Sewerage (Scotland) Act 1968
- Water (Scotland) Act 1980

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4. Policy Statement(s)

This clearly outlines our policy in the area of vesting. In particular it gives clear direction for developers and outlines our approach for vesting assets which has been a long running reputational concern.

This Policy is consistent with how we apply the vesting process to all infrastructure. The Policy meets the legal requirements placed on Scottish Water with regards to the provision of drainage infrastructure and it is consistent with the position clearly outlined in Sewers for Scotland and Water for Scotland latest edition. The policy also supports the commitment made in our business plan to work with developers and communities to enable vesting.

5. Roles and Responsibilities

It is the responsibility of the Development Services department within SW to implement this policy internally and the responsibility of both SW and the development community to adhere to this policy.

Development Operations in SW will have a key role to play to ensure relevant process and procedural guidance is provided to developers to support adherence to this policy. The development community also have a key role to play to ensure compliance to process and procedure is achieved and sustained.

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APPENDICES

Appendix 1 - Land Title and Servitude Rights

Land Title

In respect of any part of the works to be constructed in third party land, the developer must procure the consent of the land owner.

Where applicable, the developer must confirm that it has sufficient rights on third party land to enable the works to be carried out and to permit use, repair and maintenance and to discharge to any Watercourse prior to the date of the Transfer Certificate. Where appropriate, the developer must serve the appropriate statutory notice in order to acquire these rights.

It is the developers responsibility to ensure there are no title conditions which would be adverse to construction and use of the assets or which would prevent or restrict the use of SW's statutory rights to the assets.

Servitude Rights must;

- enable construction of the asset(s).
- permit use, repair and maintenance of the assets and provide the right to discharge into any Watercourse prior to the date of the Transfer Certificate.
- enable a valid and effectual vesting to be made in respect of the assets.

It is the developers responsibility to ensure any agreement with any third party does not unduly restrict SW's ability to vest or that would otherwise impose any unreasonable burden or cost on SW.

Any deeds of servitude to be granted in favour of SW must be in the form set out in the style guide provided in the legal pack issued at technical audit.

The Missives of transfer for the land must include;

- A proviso that the transfer to SW shall occur on the same day that the assets are vested in SW
- Agreement with respect to administrative arrangements for the maintenance and permanence of any part of the works which is not to be vested in SW
- All relevant and necessary servitude rights of access to such parts of the Works or equipment which is not to be vested in SW

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Appendix 2 – Site Inspections

SW must be notified by the developer prior to any assets being covered up.

Upon receiving notification SW will, if required, arrange with the developer to inspect the assets within an agreed timescale, provided that if SW does not attend on the agreed date of inspection, SW will be responsible for any costs in relation to the opening up of the works as a result of SW's failure to attend.

SW will not be liable if the developer fails to give notice or fails to comply with arrangements above, and can request the developer to reopen the works at their expense.

SW must have all necessary access to the assets and the site at all reasonable times. SW will not be expected to provide relevant vehicles plant, equipment (including safety equipment) signing, guarding or lighting for the purpose of carrying out inspections. SW will use reasonable endeavours when carrying out these inspections not to interfere with, or cause any unnecessary delay to, the assets or to any other works being carried out by the developer or its contractors or any other third parties.

Appendix 3 - Expenses and Fees

SW will seek reimbursement of the following expenses:

- any expenses due under its Scheme of Charges
- any additional fees arising from CCTV or other internal resurveys associated sewer cleansing and site visits essential to rechecking sub-standard work
- any additional Inspection Fees in respect of drains and water pipework that are proposed for vesting and which were not constructed at the same time as the sewers or water infrastructure within the named development site
- VAT at the current rate upon any payments required

The Developer is liable for any fees, charges, rental payments and any other costs and expenses demanded by any third parties (including, the Navigation Authority, SEPA, the Crown Estate and Network Rail)

Appendix 4 – Reasonable Cost Contribution

SW may use RCC to fund completion of any incomplete part or parts of the assets or to rectify any defect or defects in the assets where works remain incomplete or the developer becomes subject to an Insolvency Event. SW has a right to set off any costs incurred in completing the assets against the RCC provided that where any other party completes the assets in accordance with the drawings and the construction specification, SW will vest the assets provided the criteria allowing a completion and transfer certificate are met.