

# Water Code Adoption Consultation Session 21 August 2019



# Introductions and Outline Objectives of the Session

David Strang,  
Water UK



# Workshop on Water Code Adoption-21 August 2019

Plan for the day:

- Introduction – DS
- Agreement- Zoë
- DCS-Mike Thornley and Lee Green
- Procedures and LoS-Gareth Davies

Lunch

- FWC comments-Martyn Speight
- Conclusion-DS.



# Workshop on Water Code Adoption-21 August 2019

- Aims of the workshop:
  - Explain main areas of change since first consultation in January
  - Verify if we have satisfied stakeholders' comments
  - Get input for the purposes of the consultation questions
- Detailed changes are for the consultation-not today



# Water Code Adoption-Work to date

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Presented to Ofwat		Feedback from Ofwat	Further feedback	FWC meeting	S/holder session		Workshop



# Workshop on Water Code Adoption-21 August 2019

- Key messages from Ofwat:
  - Drafting and balance in MWAA ✓
  - DCS needed completing (plus panel) ✓
  - Fixed delivery timetable ✓
  - “Control point” inspections to be avoided ✓
- Key messages from June workshop:
  - Improve DCS (see SLCOP and increase scope)
  - Fixed Date (again...)
  - Vision of the Model Agreement ?



# Workshop on Water Code Adoption-21 August 2019

- Ofwat's requirements in April were relatively modest
- We have gone significantly beyond their requirements, eg, in the DCS
- Further areas
  - Accreditation-latest developments
  - Panel-statement from Panel chair



# Model Water Adoption Agreement Update Zoë Brewer

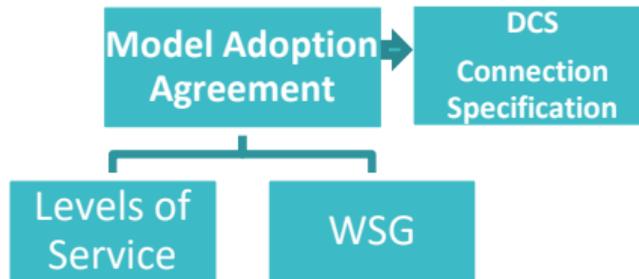


# How do the documents fit together?

## Pre-Adoption Agreement



## Post-Adoption Agreement



# An Adoption Agreement is not...

A performance driven, design and build construction contract. Water Companies aren't 'client' and they don't 'appoint' SLP's to build them anything as 'contractor'.

There are no performance driven liquidated damages for delay. It is not intended that an SLP can back-off its own performance risk through an Adoption Agreement, nor that the Developer is compensated for a delayed mortgage completion.

But helpfully for SLP's though, there are no insurance stipulations, no defect monies held on retention and no guarantor is sought – incidentally, all things which are routinely found in other self-lay utility contracts!

Finally, there's no mandatory requirement for arbitration and no Construction Act compliant payment provisions.



# So What is an Adoption Agreement?

It's a binding contract entered into part way through a process prescribed by regulation (the Code) which tells the parties the basis on which the WC will connect and adopt a new water main and accessories built by the SLP.

- The MWAA and supporting WSG documents are intended to set out clearly the processes which will enable an SLP to sign an MWAA in a predictable and timely manner;
- enabling the SLP to build the SLM with the confidence that the Water Company will deliver water to site as quickly as 42 days after application. Gareth is going to elaborate beautifully on this before lunch;
- with minimal WC interference!



# What's Changed in the Adoption Agreement?

We have incorporated the two most notable requests arising from the meeting on July 7<sup>th</sup>, namely:

## Contractual Delivery Date (MWAA clause 10) & Final Connection

WC must provide SLPs with a Source of Water for Testing within the stated Delivery Date. This will be a maximum of 28 calendar days after signing the MWAA (with a few caveats); and

- Final Connection within 7 calendar days for an SLP notified connection; or
- Final Connection within 14 calendar days of an SLP request for a WC connection.

## Defect Corrections in most circumstances (MWAA clause 13.4)

- WCs must permit SLPs to carry out defect correction work (if SLPs choose to) as long as it won't interfere with or deviate the water supply in the existing water main.



# Delivery Date! What's the Catch?

There isn't intended to be a catch. In fact, it's a significant change in the balance of contractual risk in favour of SLPs, beyond what is anticipated by the Code.

However, the 28 day 'Delivery Date' for the Source of Water for Testing is only going to work if:

- Agreed Land Rights and Statutory Consents are in place; and
- Highways haven't imposed restrictions on the WC or SLP which cause delay.



# Final Connection after Testing

You've got your Source of Water and carried out the Testing, what next?

## FINAL CONNECTION

### SLP Accredited for Final Connection (cl.10.2-3)

- Give WC Testing data w/in 24hrs of the testing and
- tell WC planned Final Connection date **at least 7 calendar days** in advance.

### SLP Not Accredited for Final Connection (cl.10.6 -7)

- Give WC Testing data w/in 24hrs of the testing and
- request Final Connection made by **WC w/in 14 calendar days** of request.



# What will delay Final Connection?

## FINAL CONNECTION WILL BE DELAYED IF:

SLP may NOT make Final Connection at least 7 days after notification (cl.10.3) if:

- WC confirms it's not reasonably satisfied with Testing results;
- WC hasn't received 'as built' plans and manuals etc;
- WC gives written notice that there's a material non-compliance with the MWAA;
- An inspection has revealed a Defect or damage which hasn't been rectified.

WC will not make Final Connection within the 14 calendar days (cl.10.7) if:

- WC confirms it's not reasonably satisfied with Testing results;
  - WC hasn't received 'as built' plans and manuals etc;
  - WC gives written notice that there's a material non-compliance with the MWAA;
  - An inspection has revealed a Defect or damage which hasn't been rectified.
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# Declaration of Vesting (Clause 11)

The WC will email to the SLP a Declaration of Vesting certificate within 5 working days of Final Connection which confirms the Adoption Date. The Adoption Date is the date of Final Connection.

- The WC will adopt the Self-Laid Main (including accessories); and
- Communication Pipes and any chambers or associated apparatus ; will subsequently vest automatically in the WC.



# Presumption that SLPs Correct Defects (cl. 13)

Contractual obligation to remedy Defects, at SLP cost, within the defined 12 or 24 month liability period.

- WCs are entitled to ask SLPs to search for a Defect. This is entirely at the WCs risk as to costs if no Defect is found.
- SLPs and Developers must either remedy Defects or reimburse WCs in the limited circumstances where the WC carries out the work.

Defect Corrections - Undertaken by SLPs in most circumstances (MWAA clause 13.4).

- WCs must permit SLPs to carry out defect correction work (if SLPs chose to) unless: it will interfere with, or deviate, the water supply in the existing water main; it's emergency work; the SLP says it's unwilling or unable to carry out the rectification or the parties are in a dispute under Schedule 5.
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## Inspection & Testing (Cl.8)

WCs have given a contractual Delivery Date. So how likely is it that a WC is going to risk breaching that date by causing SLP inspection delay?

The MWAA complies with the Code insofar as WCs may make inspections (at their cost risk) but are not permitted to 'approve' work before the SLP can progress once the design has been accepted by the WC. Ultimately, the parties must balance the SLPs right under its Accreditation to progress work, with the WCs duty not to adopt sub-standard infrastructure.



# What Remedies Does The SLP Have?

## Pre Adoption

- The WCs are required by a combination of statute and regulation (the Code) to assist SLPs in reaching a signed MWAA. WCs must comply with the WSG, the Levels of Service etc.

### **What if they don't deliver the service before the Agreement is entered?**

- Depending on the non-compliance, the SLP has a number of options starting with the Redress process in the WSG to raising a complaint/dispute and seeking damages for direct loss, using the WCs complaints process. This isn't a fiction. WC customer service and legal departments routinely settle genuine claims this way and SLPs will have a clear cause of action for WC failures.



# What Remedies Does The SLP Have?

## Post Signing MWAA

- In addition to the combination of statutory and regulatory (the Code) obligations, the WCs are now subject to a contractual obligation to deliver.

### **What if they don't deliver the service after the Agreement has been signed?**

- Once the MWAA contract is signed, arguably the breach on which the SLP would base a claim becomes even clearer. In addition to possible breach of statute and regulation, the SLP can now add breach of contract. The remedy is known as common law damages i.e. to put the SLP in the position it would have been in if the contract had not been breached. As required by the Code, the escalating Disputes procedure (leading to mediation) in Schedule 5 is there to assist the parties in resolving their disagreement.



# The new Design and Construction Specification

Mike Thornley, Southern Water &  
Lee Green, South West Water



# Key Changes

- ▶ Enhanced document to specification status
  - ▶ The document has been renamed as the Specification under which Self-lay Works are to be delivered and assessed relative to adoption.
  - ▶ legally binding document
  - ▶ Further Standardised
  - ▶ Provides a consistent template for all Water Companies to use
  - ▶ Terminology matches model adoption agreement
  - ▶ SLP and Water Company comments taken on board and implemented where possible
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# Key Changes Overview

- ▶ PoC Clarification on responsibility and cost

Section 10.3 - When a Water Company requires to deviate from these guidelines in determining a suitable PoC (e.g. inadequate capacity in the Network or Site-specific constraints including the condition of existing assets) then such additional work would be categorised as Network Reinforcement and funded by the Water Company in accordance with Ofwat guidelines.

- ▶ Process for deviating from national guidance

Section 11.2 Routing and Positioning principles, section standardised on the process for agreeing deviations, allowing flexibility from NJUG if required

# Key Changes Overview

- ▶ Introduction of commissioning requirements

Section 18 provides an overview of the expectations for the commissioning of the self-laid main and services commissioning

- ▶ Permissible Materials and construction clarification allows for a separation of these details into a version able to be referred to onsite (details enhanced level of relevant construction details specific to a Water Company region)
  - ▶ Substantially reduced scope for individual company deviation – 18 further items standards
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# ACS Clarifications(Annual Contestability Table)

- The text relative to the ACS in the WSG is mirrored within the DCS. This allows for those designing and constructing the work to view the criteria covering contestable and non-contestable work within the DCS for ease of reference
  - Revisions to ACS summarised in Appendix B
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# Summary

- ▶ In response to consultation feedback we have further standardised the DCS where possible and enhanced the construction and commissioning requirements and obligations.
  - ▶ We have reviewed the DCS to be compatible with the other documents (i.e. Agreement) for consistent terminology
  - ▶ Clearly re-assessed and better defined responsibilities and the link with the ACS.
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Thank you for your time

Any Questions?



# Procedures and Levels of Services

Gareth Davies, United Utilities



# Procedures – What was the feedback?

- Too much scope for deviation by Water Companies
- Suggestion of more timescales to provide certainty for developers
- Lack of cross-referencing with the MWAA
- Overly complex and confusing
- Doesn't demonstrate a clear choice for developers



# Procedures – What has changed?

- No longer legally binding – document status has been reduced to guidance
- Document has been simplified to give clarity on timescales and pre-requisites
- Simplified “Procedures on a Page” produced which shows clear comparison with the requisition route
- “Delivery Date” concept introduced, contractually obliging Water Companies to deliver a Source of Water (SoW) connection by a pre-agreed date



We have created the “Procedures on a Page” for both requisitions and adoptions to give developers a clear choice.

This will form part of the Water Sector Guidance.

High-Level Requisition Process			
	Developer	Water Company / NAV	WC Service Delivery (contractor)
Pre-planning enquiry	<ul style="list-style-type: none"> <li>Self-serve costings using water company published charges</li> <li>Supply outline plan of site</li> <li>Expected planning categories</li> <li>Prior usage of site</li> <li>Apply design criteria to expected usage</li> <li>Can go to water company directly, or consultant or SLP to act on their behalf</li> </ul>	<ul style="list-style-type: none"> <li>Process pre-planning enquiry</li> <li>Provide point of connection details</li> <li>Ensure network has sufficient capacity to supply site</li> <li>Investigate and highlight any existing assets that could affect the site (diversions etc.)</li> </ul>	
Determination of costs	<ul style="list-style-type: none"> <li>Confirm detailed plan of site</li> <li>Provide all requisite documentation to SLP e.g. 5i and remediation report</li> <li>Request water company to provide costs of requisition via application process</li> <li>Appraise water company submissions and compare with other offerings (e.g. SLP)</li> </ul>	<ul style="list-style-type: none"> <li>Confirm or determine point of connection</li> <li>Carry out design and provide drawing</li> <li>Confirm costs and provide transferable quote</li> <li>Carry out detailed study where reinforcement / diversions are required on site including completed investment</li> </ul>	
Construction of mains	<ul style="list-style-type: none"> <li>Agree schedule of work with water company</li> <li>Provide call-off of main laying work and agree delivery dates with water company</li> <li>Communicate any layout changes to all parties</li> </ul>	<ul style="list-style-type: none"> <li>Agree schedule of work with developer</li> <li>Instruct service delivery arm / fixed term contractor to carry out construction work</li> </ul>	
Construction of services	<ul style="list-style-type: none"> <li>Install private side pipework and provide WIAPS certificate and postal addresses to water company</li> <li>Provide call-off of service connections and meter fits</li> <li>Ensure that meters remain in situ once fitted</li> <li>Ensure protection of assets while Site remains live</li> </ul>	<ul style="list-style-type: none"> <li>Arrange meter fit if requested so within agreed timescales</li> <li>Set up billing account for new customer</li> </ul>	
Closedown	<ul style="list-style-type: none"> <li>Provide new occupier with all details required to set up water billing account</li> <li>Reconcile all payments and charges</li> </ul>	<ul style="list-style-type: none"> <li>Reconcile all payments and charges</li> <li>Complete final walk-off of site complete to ensure assets remain operable</li> </ul>	
Adoption Process			
	Developer	Water Company / NAV	SLP
Pre-planning enquiry	<ul style="list-style-type: none"> <li>Supply outline plan of site</li> <li>Expected planning categories</li> <li>Prior usage of site</li> <li>Submit pre-planning enquiry</li> <li>Calculate costs based on water company published charges</li> <li>Can go to water company directly, or consultant or SLP to act on their behalf</li> </ul>	<ul style="list-style-type: none"> <li>Process pre-planning enquiry</li> <li>Provide point of connection details</li> <li>Ensure network has sufficient capacity to supply site</li> <li>Investigate and respond highlighting any existing assets that could affect the site (diversions etc.)</li> </ul>	<ul style="list-style-type: none"> <li>This activity could be carried out by SLP or consultant</li> <li>Apply design criteria to expected usage</li> <li>Submit pre-planning enquiry to water company on behalf of developer</li> <li>Calculate costs for tendering based on outline design</li> </ul>
Determination of project cost	<ul style="list-style-type: none"> <li>Confirm detailed plan of site</li> <li>Provide all requisite documentation to SLP e.g. 5i and remediation report</li> <li>Request SLPs tender for work and provide results of pre-planning enquiry to SLPs</li> <li>Appraise SLP submissions and appoint chosen SLP</li> </ul>	<ul style="list-style-type: none"> <li>Process point of connection enquiry (51/1)</li> <li>Carry out detailed study where reinforcement / diversions are required on site including scope of works to be undertaken by SLP</li> <li>Confirm / determine point of connection (51/2)</li> <li>Confirm non-contestable works</li> </ul>	<ul style="list-style-type: none"> <li>Submit point of connection request to water company</li> <li>Price work to be done</li> <li>Submit tender to developer and await decision</li> </ul>
Design approval and agreement	<ul style="list-style-type: none"> <li>Sign and return Water Adoption Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Confirm application (52/1a)</li> <li>Agree design with SLP</li> <li>Agree fixed costs (52/1b)</li> <li>Agree Delivery Date via negotiation if necessary</li> <li>Issue Water Adoption Agreement (53)</li> <li>Sign Water Adoption Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Provide all requisite documentation to water company</li> <li>Propose Delivery Date for Source of Water to site</li> <li>Agree design with water company</li> <li>Sign Water Adoption Agreement and return 28 days prior to Delivery Date</li> </ul>
Construction of mains	<ul style="list-style-type: none"> <li>Agree schedule of work with SLP</li> <li>Provide call-off of main laying work and agree delivery dates with SLP</li> <li>Communicate any layout changes to all parties</li> </ul>	<ul style="list-style-type: none"> <li>Provide source of water by agreed Delivery Date (54/1)</li> <li>Approve mains connection (55A/1) or connect mains (54/3)</li> <li>Vest mains by making declaration (56/1)</li> </ul>	<ul style="list-style-type: none"> <li>Construct mains</li> <li>Provide all minimum information, notifying water company of requirement / intention to connect mains (54/2)</li> <li>Connect mains on agreed date if accredited and authorised to do so (55A/2)</li> </ul>
Construction of services	<ul style="list-style-type: none"> <li>Install private side pipework and provide Approved Plumbers Scheme certificate and postal addresses to SLP</li> <li>Provide call-off of service connections and meter fits</li> <li>Ensure that meters remain in situ once fitted</li> <li>Ensure protection of assets while site remains live</li> </ul>	<ul style="list-style-type: none"> <li>Make connection and fit meter if requested to do so within agreed timescales (57/3)</li> <li>Set up billing account for new customer</li> </ul>	<ul style="list-style-type: none"> <li>Inform Water Company of intention to connect services (57/1)</li> <li>Connect compliant service pipes to newly installed mains</li> <li>Arrange meter fit in line with Water Company Local Practice</li> <li>Inform water company of service connection (57/2)</li> </ul>
Closedown	<ul style="list-style-type: none"> <li>Provide new occupier with</li> <li>Reconcile all payments and</li> </ul>	<ul style="list-style-type: none"> <li>Reconcile all payments and</li> </ul>	<ul style="list-style-type: none"> <li>Reconcile all payments and</li> </ul>

# Introducing: Delivery Date

- The date within the contract by which a Water Company must provide the Source of Water for testing purposes
- Proposed by the SLP as part of the Design Acceptance application
- The minimum number of days between proposal and Delivery Date is 42 calendar days
- Can be a specific future date or a date yet to be determined that can be confirmed with 28 days notice
- SLPs can request that Water Companies start planning for the Delivery Date as soon as a Design Acceptance is submitted by written instruction (prior to the signing of the contract)



# Delivery Date

LoS: 2/1b

Design Acceptance

14 days maximum

0

14

LoS: S3/2

SoW provided

28 days from contract signing

42 (D)

- SLP formally requests Delivery Date “D” as part of Design Acceptance
- Water company issues adoption agreement with Design Acceptance; including “D” within it
- Water company starts to plan for SoW connection immediately

- SLP/ developer sign and return all paperwork a minimum of 28 days prior to the agreed Delivery Date
- Water company delivers service as agreed, failure to do so will activate Redress



# Levels of Service – What was the feedback?

- A lack of consistency and cross-reference with the MWAA
- Levels of Service are only provided for some procedures (not all)
- Unclear as to what “non-standard” might mean and therefore when deviation from the LoS / Procedures may occur
- Queries around “stop / start” metrics and whether they were used appropriately



# Levels of Service – What has changed?

- Specific timescales reflected in the MWAA cross-referenced with the LoS, ensuring that it is clear when a breach of contract occurs
- Following feedback, changed right day metric for “Target Date” to Delivery Date, clarifying the key date on the critical path to adoption
- Inserted 14 day LoS for provision of Final Connection
- Specified what is meant by exceptional circumstances in the WSG
- Only “stop / start” metric is 14 day for Design Acceptance to allow Water Companies a total of 14 days to review a clean water design





# Lunch



# Perspectives on the process so far and aspirations for future change

Martyn Speight, Fair  
Water Connections



# Next Steps and outstanding questions

David Strang,  
Water UK



# Thank you



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