

## Contractual Interpretation – No.14 Asset Transfer



<b>Purpose</b>	Position Paper
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Item: 14

Category: Contractual Interpretation

Issue: When does the asset transfer to SW for operation and maintenance?

### Summary Proposal

From a review of statute and the SW/CEC Agreement there is no particular documented process for asset transfer. CEC propose that in this instance the responsibility for operation and maintenance of the asset passes to SW when the flows are returned to the sewer or water main. At this stage the asset is returned to the network and becomes the responsibility for SW to operate and maintain. CEC acknowledge that the works will not necessarily be completed at this stage however the process to control formal completion/acceptance is detailed in Position paper 12.

### Background

This paper addresses the above issue between City of Edinburgh Council (CEC) and Scottish Water (SW) with respect to the handover of water and wastewater asset diversions from the trams project.

There is some ambiguity as to what acceptance and defects obligations CEC have, and also at what point asset transfer takes place. These issues need to be addressed with respect to CEC's obligations as the Authorised Undertaker. They are dealt with in position papers No.12, 13 and 14 respectively, in order to make a proposal for discussion and agreement between the parties on defining CEC's obligations.

### Authorised Undertaker

CEC are defined as the "Authorised Undertaker" in the Edinburgh Tram Act 2006 and are empowered as follows:

- Clause 1.3(e) which is the power to alter the position of other undertakers' apparatus, including water mains and sewers, etc.

These are based on model clauses from the UK Transportation (Tramways & Light Rail) Act 1997 which also, in sections 224 to 227, confers the, "Power to extinguish rights of statutory undertakers, etc."

The New Roads & Streetworks Act (NRSWA) then extends the powers in Section 150(1), in defining that these authorised "Transport Undertakings" should be considered the "Authority" in respect of the rest of the Act. Section 143 and various other provisions of NRSWA require that the undertakers cooperate with the authority to carry out the "necessary measures" (i.e. in the same way that SW and the roads authority would work together on any project).

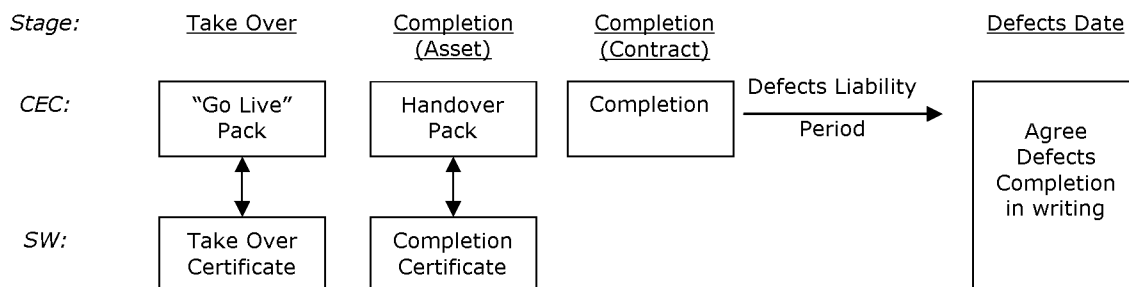
Unfortunately, neither of the above pieces of legislation defines any specific acceptance, defects or asset transfer obligations between the parties.

### Asset Transfer

There is also no specific asset transfer point set out in the CEC-SW Agreement.

The absence of specific guidance opens up for making a reasonable interpretation, and CEC would cite a precedent for this in the CEC/SW Agreement Clause 8.4.4, which offers SW the same protection as they would ordinarily expect to be indemnified under any contract entered into by it with a contractor to carry out diversionary works. CEC would offer to SW the same level of protection as is provided to CEC within the terms of the individual delivery contract.

Therefore through the ongoing cooperation between SW, CEC and Turner and Townsend, the following process has been developed:



<i>Represents:</i>	Turn of flow Water into service Sewer in service Beneficial use Asset Transfer	Acceptance (Asset) Handover deliverables	Acceptance (Contract)	End of Defects Liability Period.
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In relation to the question of the asset transfer point, we propose that the asset transfer to SW to operate and maintain the individual asset is at the point that flows return to the SW network. At this stage SW are in operational control of the asset.