

KILDARE COUNTY COUNCIL
TAKING IN CHARGE POLICY & SPECIFICATIONS

Appendix 16

Memorandum of Understanding

Q2 2023

Memorandum of Understanding

IRISH WATER

MEMORANDUM OF UNDERSTANDING

in connection with the development of a process

for the taking in charge of residential estates connected to the Irish Water owned or controlled water and wastewater network and excluding Developer Provided Infrastructure

("MoU")

Memorandum of Understanding

1.0 Introduction

This Memorandum of Understanding (MoU) between the parties covers the process for Taking in Charge of water services assets of residential estates to the point of transfer of the water service assets to Irish Water. This MoU and associated protocol should be implemented in conjunction with existing Local Authority Taking in Charge policies.

The MoU relates to the Taking in Charge of water services assets within the attendant grounds of the development provided by Developers that connects directly to public water/wastewater infrastructure and excludes stand alone developer provided water services infrastructure.

In the preparation of the MoU it is accepted that the parties are dealing with a range of legacy issues that exist on housing developments nationally that are either unfinished, inadequately completed and/or not taken in charge and progress has been further complicated by liquidations, receiverships, negotiations with surety providers and other matters.

The parties to this MoU recognise and agree that the taking in charge of residential estates connected to the public network will result in infrastructure at varying levels of compliance with standards or conditions attached to grants of planning permission being taken in charge. The parties note and agree the respective responsibilities as outlined in DECLG circular PL 5/2014, dated 5th November 2014, under which this MoU has been prepared. The MoU has been prepared to comply with current legislation. Where there is any conflict the legislation shall prevail.

2.0 Mechanism for Taking in Charge

The local authorities (LAs) shall take in charge the residential estates pursuant to Section 180 of the Planning and Development Act 2000 (as amended), having regard to the contents of the DECLG circular PL5/2014, dated 5th November 2014.

The Local Authority and Irish Water will work together to advance Taking in Charge of an estate with reference to the Planning Permission, existing Taking in Charge Policies and Department guidelines as applicable.

The water and wastewater assets shall then be transferred to Irish Water (IW) by Ministerial Order under the Water Services (No 2) Act 2013 Part 2 Section 12.

3.0 Implementation of Taking in Charge

To facilitate the Taking in Charge and transfer of water services assets to IW a working group has been established comprising representatives from the LAs and IW. The role of the working group was to develop the MoU and associated protocol for Taking in Charge of the water services assets of residential estates.

The LAs shall consult and work with IW to ensure the implementation of the agreed protocol for the Taking in Charge process and transfer of water services assets within the attendant grounds of the development to IW.

The protocol attached to this MoU outlines the procedure for taking in Charge that should be followed.

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4.0 Categories of Residential Estates

All applications are to be assessed prior to categorisation. The following Categories of residential estates to be Taken in Charge have been identified;

Category	Action
A Estates satisfactorily completed in accordance with Planning Permission; including those subject to Special Resolution Fund	Commence the statutory process to take in charge and subsequent transfer of water services assets to IW.
B Estates not completed to the satisfaction of the Planning Authority in accordance with the Planning Permission	Assess condition and agree a resolution plan if required to allow the taking in charge process to commence

5.0 Resolution Plan (relates only to estates which fall under Category B as detailed in Section 4.0 above)

A resolution plan between the local authority and Irish Water shall be prepared for the residential estates setting out a clear methodology for Taking in Charge and will be carried out on an estate by estate basis. This shall become a written agreement between the LA and IW and the agreement shall ensure that;

- there is a reasonable and equitable approach in relation to funding from sources such as the development bonds or other planning security and developer/receiver, for remedial works to the development.
- the integrity of the public infrastructure is ensured and acceptable service levels are achieved for the residents of the estate.

For the avoidance of doubt the remediation costs in relation to water services will be addressed by IW and the remediation costs for roads, surface water, footpaths, public lighting and open space will be addressed by the relevant LA.

In accordance with best practice every endeavour shall be made to carry out the IW and LA related remediation works concurrently. Both parties acknowledge that is an option whereby one party may undertake works independent of the other.

6.0 Process for Taking in Charge

The process for Taking in Charge is defined in the protocol attached to this MoU.

Memorandum of Understanding

7.0 Finance

The financing options available to complete outstanding work and facilitate Taking in Charge are as follows;

- Option 1** Where the developer, receiver or other party is still in place he shall complete the outstanding work and LA will facilitate Taking in Charge in accordance with the Planning and Development Act 2000 (as amended).
- Option 2** Where the developer, receiver or other party has not completed the outstanding works the LA shall draw on developer bonds, sureties and including pursuing enforcement action if viable in order to complete outstanding work.
- Option 3** Where there are no funds available or there is a shortfall in finances from option 2 above the LA shall consult with IW and agree the best course of action and the apportionment of costs for the completion of outstanding works with regard to the respective liabilities of the parties and all in accordance with Circular PL5/14, dated 5th November 2014.

8.0 Exclusions

The following developments are excluded from this MoU

- Residential estates that are served by stand alone infrastructure such as wells, water treatment plants and wastewater treatment plants and associated pumping stations that were provided by developers as part of housing developments and where such infrastructure cannot be connected to the water and wastewater networks for which Irish Water is responsible.
- Holiday developments, gated developments, multi-used (mixed use) developments of other such developments or other such developments precluded by the LA's Taking in Charge policies or Development Plans.

9.0 Disputes

Should any disagreement arise pertaining to this MoU or its implementation the parties should first meet in an attempt to resolve the issue. Should no agreement arise both parties shall refer to section 12 of the SLA on dispute avoidance and resolution.

10.0 The Parties

Names and Addresses of the parties including to person responsible

Signed for and on behalf of

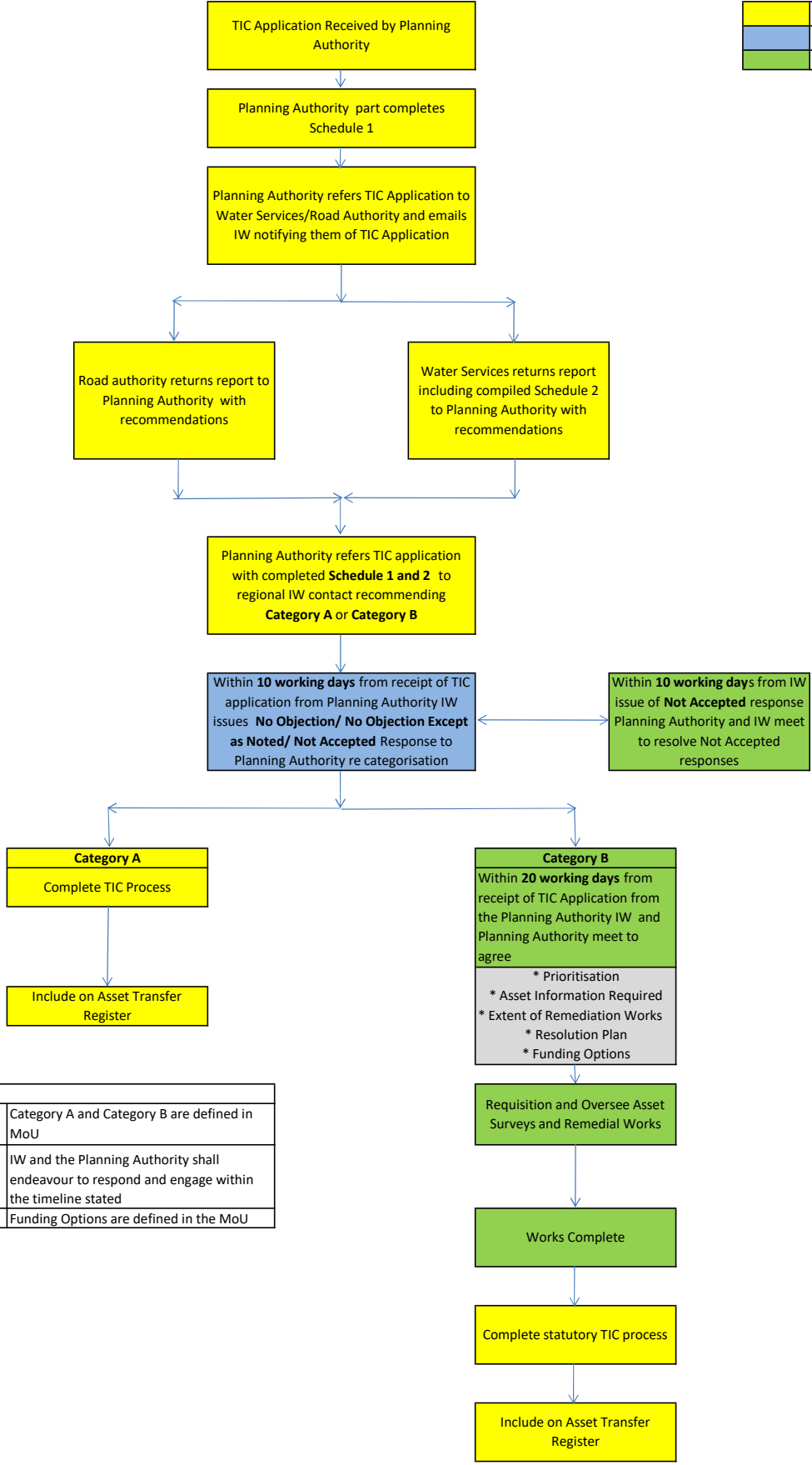
Signed for and behalf of Irish Water

Taking in Charge Protocol

Lead	Procedure
Planning Authority	1. Taking in Charge application received by Planning Authority.
Planning Authority	2. Planning Authority part completes Schedule 1.
Planning Authority	3. Planning Authority refers TIC application to Water Services / Roads etc for comments and sends email to IW notifying of receipt of TIC Application.
Water Services on behalf of IW	4. Water Services carry out inspection using Schedule 2 checklist - Complete form with available information.
Water Services on behalf of IW	5. Water Services return completed Schedule 2 to Planning Authority with recommendation and Planning Authority complete Schedule 1.
Planning Authority	6. Planning Authority refer application with completed Schedule 1 and Schedule 2 to nominated Irish Water representative with recommendation as to whether application is Category 1 or Category 2 as outlined in the Memorandum of Understanding.
Irish Water	IW Issue No-objection (NO), No objection except as noted (NON) or Not Accepted (NA) response to Planning Authority with regard to categorisation.
Planning Authority	Category A: On receipt of NO or NON response Planning Authority to proceed with bringing application to Council for approval.
Irish Water / Planning Authority	Category B: On receipt of NO or NON response from IW Nominated representative in Irish Water engage with Planning Authority to agree appropriate steps for taking in charge - resolution plan etc.
Irish Water / Planning Authority	On receipt of NA response re categorisation from IW the Planning Authority and Nominated Representative of IW engage to resolve NA issues.
Irish Water	IW will endeavour to engage with the Planning Authority within the following timeframes. Category A: IW to respond within 10 working days of notification. Category B: IW to commence engagement with Planning Authority within 20 working days of notification. Not Accepted (NA) responses. IW to commence engagement with Planning Authority within 10 working days from issue of NA response and Planning Authority and IW to agree category within a further 10 days.

Taking in Charge Protocol - Flow Diagram

	Planning Authority
	Irish Water
	Joint



Notes	
1	Category A and Category B are defined in MoU
2	IW and the Planning Authority shall endeavour to respond and engage within the timeline stated
3	Funding Options are defined in the MoU

To be Completed by the Planning Section of the Local Authority and forwarded to Irish Water with recommendations of whether estate is Category A or B, along with the Schedule 2 form which the Water Services Section completed following their assessment of the Water Services infrastructure

Planning Authority: _____

Developer Name: _____

Name of Development/Housing Estate: _____

Location of Development: _____

Parent Planning Reference No:

Map Outlining proposed area to be considered for TIC including all relevant Planning Permission references:

Attached –	Yes	<input type="text" value="yes"/>	No	<input type="text"/>
Site Location Map:	Attached –	Yes	No	<input type="text"/>
Site Layout:	Attached –	Yes	No	<input type="text"/>

Number of Houses Constructed: _____

Geo References (Site Centroid): _____

Length of Roadway (if available): _____

Is there a current Bond in Place: Yes No

If Yes:

Value of the Bond: _____

Phase of Bond if relevant: _____

Bond type, Cash/Insurance/Other: _____

Expiry Date of Bond Claims: _____

Name of Financial Institution: _____

Comment if applicable: _____

Is Enforcement Action an option? Yes No

Comments as applicable: _____

Schedule 1

the following data/detail will be available to the Planning Authority)

Application received from:

Developer:	Yes	<input type="text" value="y"/>	No	<input type="text"/>
Majority of residents:	Yes	<input type="text"/>	No	<input type="text" value="n"/>

Date of receipt of application: 16th May 2018

As Constructed Site Layout: Yes No

As Constructed Plan & Section Watermain: Yes No

As Constructed Plan & Section Sewers: Yes No

Surveys Wastewater Network: Yes No

Surveys Water Network: Yes No

Test Certificates: Yes No

Wayleaves: Yes No

Engineer/Architects Certificates: Yes No

Overall comments:

Planning recommendation to be completed after return of Schedule 2

Planning Recommendation:

Development Category (reference Section 4 of MoU)	Category A	<input type="text" value="A"/>
	Category B	<input type="text"/>

Financing Option (reference Section 7 of MoU)	Option 1	<input type="text" value="y"/>
	Option 2	<input type="text"/>
	Option 3	<input type="text"/>

Signed: _____

Title: _____

Date: _____

Schedule 2 - Inspection Form

To be completed by Water Services - This inspection form is to assess condition and compliance with standards of water services assets for the transfer of assets to Irish Water on conclusion of the taking in charge process. It is a visual survey and unless otherwise indicated no testing of the infrastructure was undertaken.

Planning Authority: _____

Planning Ref. No(s) _____

Number of Units: _____

Development Name: _____

Address: _____

Name of Developer: _____

Agent (if applicable): _____

Date of Inspection: _____ **Initial:** **Follow up:**

The table hereunder is a checklist to be utilised to assist in the site inspection and is a measure of the information on water services assets required by Irish Water.

Engineers and Architects Certificates	Available			Comment
	Yes	No	N/A	
Copies of submitted certificates			n/a	
Copies of submitted reports			n/a	
As Constructed Drawings	n/a			Number
	Yes	No	N/A	
Electronic copy submitted	Yes			
Hard Copies	Yes			
Site Layout Drawings	Available			Comment
	Yes	No	N/A	
Indicate extent of roads and lands to be taken in charge	Yes			
Indicates House Numbers where applicable	Yes			
Details pre-existing topography, services, water courses etc.		No		
Existing wayleaves or other burdens on lands		No		
Watermains	Available			Comment
	Yes	No	N/A	
Plan of watermain	Yes		n/a	
Longitudinal sections of watermains		No		
Locations of all sluice valves, scour valves, air valves, hydrants, meters, water service control units are clearly indicated	yes			

Schedule 2 - Inspection Form

Route, diameter and class of water pipelines indicated	yes			
Indicate details of bulk meter type (electronic or mechanical) and bypass arrangements if applicable		No		
Inspect depth of water services for adequacy of cover	Yes			
Foul Sewers	Available			Comment
	Yes	No	N/A	
Plan of sewers	Yes			
Longitudinal sections showing gradient of pipeline, pipe diameter and pipe type		No		
Location of manholes including finished ground/cover level and invert level are identified on plan	yes			
Comment on the grade, standard and condition of all covers and frames		No		
Indicate location and route of all connections from sewers to individual properties		No		
Test Certificates	Available			Comment
	Yes	No	N/A	
Water pipelines - pressure tests (at 1.5 times working pressure)	Yes			
Water Losses (minimum night flow should not exceed 6l/dwelling/hour)		No		
Sewer pipelines - Air tests to BE EN 1610				
Surveys	Available			Comment
Water Network	Yes	No	N/A	
All valves and hydrants to be opened and checked for compliance with standards and dipped to crown of pipe to ascertain adequacy of cover.	Yes			
1:10 stop valves to be opened and checked for compliance with specification and depth	Yes			
Surveys	Available			Comment
Wastewater Network	Yes	No	N/A	
CCTV Survey-with reports including classification of all defects and defect	yes			
Manhole Survey-visual check on benching, infiltration, cover and biscuit integrity and flushness with surface, accessibility, subsidence, cracking, ponding.	Yes			
Dye tests- 1 in 10 premises to be subject to dye test		No		

Schedule 2 - Inspection Form

Infiltration test- Guideline: Infiltration shall not exceed 0.5 litres/linear metre of pipeline/metre nominal bores over a period of 30 minutes.		No		
Surveys	Available			Comment
Surface Water Network	Yes	No	N/A	
Random check of manholes for presence of foul sewage. (1/10).	yes			Surface water already taken in charge
Wayleaves and Easements	Available			Comment
	Yes	No	N/A	
Copies of all wayleaves, burdens, land transfers and other document pertinent to development to be submitted.		No		
Service History	Available			Comment
	Yes	No	N/A	
Detail significant watermain leaks / bursts / issues			n/a	
Detail significant sewer blockages / bursts / issues			n/a	
Flooding risk or potential			n/a	
Detail other known risks/issues (environmental/safety/other)			n/a	
Pumping Stations	Available			Comment
	Yes	No	N/A	
Water Pumping Station			n/a	
Wastewater Pumping Station			n/a	
As constructed drawings and specifications to include type and size of pumps; wiring diagrams for control panel and switch gear; telemetry system; lifting equipment including certification of same.			n/a	
Reports associated with supervision of installation			n/a	
Operational Arrangements (Council/Developer/Service Contract)			n/a	
Performance issues-Where Council have intervened			n/a	
MPRN and Account Holder Details from electricity account			n/a	
Actual or estimated annual consumption from Electricity bill.			n/a	

Sketches Attached (optional):

Yes

No

Conclusion:

This development is suitable for taking in charge

Schedule 2 - Inspection Form

Recommended time frame for execution of water service remedial works: n/a
Anticipated costs for remedial works to water service infrastructure:

Proceed to take in charge

or

Works required prior to taking in charge:

Signed: _____

Grade: _____

Date: _____

Note: Please attach copies of all reports, drawings, surveys etc with completed forms.

FAQs Taking in Charge (TIC) of Residential Estates and the transfer of Water Services Infrastructure to Irish Water (IW)

No.	Question	Answer
1	Is IW responsible for the TIC of water services infrastructure in residential estates?	IW is not responsible for the TIC of water infrastructure. The planning authority is responsible for TIC of residential estates including the water services infrastructure under the Planning and Development Act 2000 (as amended).
2	How and when do the water services infrastructure assets transfer to IW?	Once the planning authority has completed the statutory TIC process the water services assets transfer to IW under the Water Services (No 2) Act 2013, by Ministerial Order.
3	When will IW become responsible for operation and maintenance of the water services infrastructure?	IW is responsible for the operation and maintenance from the date of TIC of the estate by the planning authority.
4	How will IW be involved in the TIC process?	The DECLG issued Circular PL5/2014, dated 5th November 2014, to provide clarity to the TIC process. Accordingly, the planning authorities should consult with IW during the TIC process. In addition a Memorandum of Understanding and protocol has been developed jointly by the parties to enhance the clarity, efficiency and smoothness of the overall TIC process.
5	What water services assets will transfer to IW following the TIC process?	Only the water services assets within the attendant grounds of the development that connect directly to the public water and wastewater infrastructure will transfer to IW. It does not include stand alone infrastructure such as wells, water treatment plants and wastewater treatment plants provided by the developer.
6	What is the current situation regarding residential estates with their own water and/or wastewater treatment plants?	DECLG Circular PL5/2014, dated 5th November 2014, acknowledges that taking in charge of estates containing stand alone infrastructure such as wells, water treatment plants and wastewater treatment plants provided by the developer needs to be considered separately as in many cases the infrastructure serving these estates may require upgrading and remediation. The DECLG, WSTO and IW are currently working to put in place a national strategy including funding options to address deficiencies in these estates.
7	Will IW delay the TIC process?	IW will not delay the TIC process. The planning authority can proceed with the TIC of estates under Section 180 of the Planning and Development Act 2000 and consult with IW in accordance with DECLG Circular PL5/2014, dated 5th November 2014, during the process.
8	Who is responsible for carrying out the inspection of the water services element of the TIC process?	Water Service staff operating under the SLA will be carrying out the inspections as per Schedule 2.

FAQs Taking in Charge (TIC) of Residential Estates and the transfer of Water Services Infrastructure to Irish Water (IW)

9	Who is liable for the costs incurred for works carried out on an estate?	In the case where works have to be carried out in an estate both IW and LA will agree a resolution plan and agree the apportionment of costs for the water services element, roads etc. as outlined in section 5.0 of the MoU and Circular PL/5 2014, dated 5th November 2014.
10	Will the protocol and MoU be reviewed?	Yes it is planned to review the protocol and MoU after six months
11	Who will be the contact / support within IW to deal with queries?	IW are currently resourcing IW regional leads to deal with TIC, in the interim all queries are to be addressed to Malcolm Edger medger@water.ie who will co-ordinate all issues. Details of IW regional leads will be issued to each LA once confirmed.