

**SUSTAINABLE DRAINAGE SYSTEMS (SuDS)**

**CLEAN STREETS, RECYCLING & ENVIRONMENT  
(COUNCILLOR MICHAEL MICHAEL)**

**AGENDA ITEM: 3**

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**Reasons for this Report**

1. To advise members on the implementation of Schedule 3 of the Flood and Water Management Act 2010 (FWMA) for the use of SuDS in new developments.
2. To approve the creation of the SuDS Approval Body as described in this report and advise on the statutory responsibilities that Cardiff Council, acting in its capacity as a SAB, are required to undertake.

**Background**

3. The Welsh Government laid the commencement order on the 1<sup>st</sup> May 2018 for the new legislation to come into force on the 7<sup>th</sup> January 2019. From this date onwards:
  - All new developments of more than 1 house or where the construction area is 100m<sup>2</sup> or more, will require sustainable drainage systems (SuDS) for managing surface water;
  - Drainage systems for all new developments must be designed and built in accordance with statutory SuDS standards;
  - Local authorities will become SuDS Approval Bodies (SAB);
  - SuDS schemes must be approved by the local authority acting in its SAB role before construction works begin. The SAB will have a duty to adopt compliant SuDS so long as it is built and functions in accordance with the approved proposals, including any SAB conditions of approval.

4. Though flooding is unavoidable in extreme weather conditions, the early consideration of flooding on new development through sustainable solutions can reduce the frequency and impact of flooding, whilst increasing green infrastructure and improving well-being.
5. The Welsh Government’s National Strategy for Flood and Coastal Risk Erosion Risk Management in Wales identifies SuDS in two national objectives. These are identified in the table below.

National Objective	Sub Objective	Measure
Reducing the impacts on individuals, communities, businesses and the environment from flooding and coastal erosion	Develop policies for effective land use management and enhanced development control procedures where appropriate	Approval and adoption of SuDS drainage system by the SuDS Approval Body
Raising awareness of and engaging people in the response to flood and coastal erosion risk	Enhance property and community level reliance	Ensure property level flood resilience measures and the requirements for SuDS are incorporated into Building Regulations

6. Capital Ambition commits to improve air and water quality along with green and blue spaces. This and a strong leaning towards sustainable communities, with new communities being built and maintained to the highest quality promotes the use of sustainable drainage in Cardiff.
7. The establishment of the SAB and requirement for Sustainable Drainage on all new development promotes and helps achieve the goals of the Welsh Government well-being objectives.
8. The commencement of Schedule 3 will provide for the establishment of the SuDS Approval Body for the adoption and maintenance of sustainable drainage systems. The purpose of Schedule 3 is to create a Sustainable Drainage Approval Body that provides technical approval of the drainage system on new developments in accordance with statutory standards prior to the commencement of construction. The technical approval will be undertaken by a delegated officer decision and is independent of the planning process.
9. Schedule 3 of The Act made the provision of the SuDS Approval Body, defined as “*The unitary authority for the area in which it is, or in which it is to be constructed*”. Cardiff Council is the SuDS Approval Body for their administrative area.
10. Schedule 3 provides a legislative definition of sustainable drainage:

*Sustainable drainage means managing rainwater (including snow and other precipitation) with the aim of-*

- a) Reducing damage from flooding,*
- b) Improving water quality,*
- c) Protecting and improving the environment*
- d) Protecting health and safety, and*
- e) Ensuring the stability and durability of drainage systems.*

#### Application Review Process

11. There is a mandatory requirement for the SAB to adopt drainage systems that:
  - are constructed and function in accordance with approved proposals, including any conditions of approval; and
  - that the drainage system is a “sustainable drainage system”, meaning those parts of a drainage system that are not vested in a sewerage undertaker under a section 104 agreement of the Water Industry Act 2991.
12. The SAB are not required to adopt drainage systems when:
  - They serve a single property
  - Any part of a SuDS for which the highway authority would already be responsible for maintaining
13. Where a road is not adopted highway the SAB will be responsible for the sustainable drainage systems only.
14. Where an approving body adopts a drainage system, it must ensure the drainage system is maintained in line with the National Standards.
15. The statutory consultees for the SAB application process are:
  - Natural Resources Wales;
  - The sewerage undertaker whose public sewer may be impacted;
  - The Canal and Rivers Trust;
  - The relevant Highway Authority.

#### Validity of SuDS application

16. It is for the SAB to determine what constitutes a valid SuDS application for approval. Cardiff Council intends to offer a suite of pre-application proposals to promote early consideration of opportunities and constraints. Cardiff Council therefore will require full technical submission to validate a SuDS application for approval.
17. The SAB will have 7 weeks to determine a valid application other than those that are subject to an Environmental Impact Assessment, which will have 12 weeks.

18. The SAB must inform the applicant of the decision as soon as reasonably practicable. If the application is refused, the applicant may appeal the decision. The appeals process will be managed in the same manner as the planning appeals process, as set out in The Sustainable Drainage (Appeals) (Wales) Regulations 2018.
19. The SAB may grant approval subject to conditions. Welsh Government consider conditions should only imposed where they are:
  - necessary,
  - relevant to the SAB approval and adoption process,
  - relevant to the development to be approved,
  - enforceable,
  - precise, and
  - reasonable in all other aspects.
20. Any breach of a condition of approval can be enforced under the drainage enforcement regulations.

## **Issues**

21. There is no prescriptive mechanism to secure the adoption of funding and the Flood and Coastal Risk Management Team are currently working on documentation to allow for the legal mechanism, fees and bonds to be secured. Developers will be required to work closely with the SAB and communities to develop maintenance options and a maintenance plan. Potential mechanisms for funding include considered by the FCRM team are:
  - Commuted Maintenance Sums
  - Charges on individual properties and the use of Private Management Companies
  - Charges on individual properties and management by Cardiff Council Operational Team
22. The SAB has the power to voluntarily adopt systems to which the duty does not apply. It is proposed that Cardiff Council actively undertake the voluntarily adoption of suitably qualified sustainable drainage systems where a sustainable funding mechanism is identified.
23. Adoption will require the developer to pay for the long term maintenance costs which is reflective of the maintenance plan for the lifetime of the SuDS. It is proposed that this will be set through a condition of approval.
24. The SAB must also update the Flood Asset register within four weeks after giving notice of its decision to adopt. This record must also include the maintenance plans associated with the drainage system.

## Delivering the requirements of being a SAB

25. This is a new technical aspect and therefore it is expected that there is little or no specialised SuDS technical assessment skillsets within the existing jobs market. However, a number of complementary skills including hydraulic and civil engineering will have potential for covering SAB requirements.
26. Processes for the SAB in Cardiff Council are still within development for pre-applications, inspections, enforcement, adoption, management and appeals.

### **Resources**

27. SAB application fees have been set by Welsh Government. The scale of fees is set at £350 for each application with an additional amount up to a maximum of £7,500 calculated by reference to the size of the construction area. The regulations identify construction area as the planning red line boundary, or if planning is not required, the area of land on which construction work is proposed to commence. The full breakdown is provided in Table 1 below.

**Table 1**

£350 for each application, plus (up to a maximum of £7,500):

- for every additional 0.1 hectare (ha) up to 0.5 ha - £70
- for every additional 0.1 ha between 0.5 ha and 1 ha - £50
- for every additional 0.1 ha between 1 ha and 5 ha - £20
- for every additional 0.1 ha above 5 ha - £10

28. To ensure that SuDS are constructed in accordance with approved plans Welsh Government have set inspection Fees at £168 per inspection. It is considered that the number of inspections required per development will be agreed as part of the conditioned legal agreement.
29. Welsh Government encourages pre-application discussion in advance of formal applications being made. The Flood and Coastal Risk Management Team are currently developing a suite of pre-application engagement. It is anticipated that the breakdown of values will be in accordance with current planning scales but the costs will be calculated independently.
30. A review of Planning applications from 2014-2017 indicates an average demand of approximately 266 SAB applications annually. An assessment of hours required for each application indicates that 2.4 additional technical assessment staff are required. This estimate is based solely on the technical review process and does not take into account other related SAB roles.

31. The existing Flood Risk & Coastal Management Team does not have adequate resource to cope with the anticipated demand. The Team currently have only one technical assessment role within the existing structure. It is proposed in the initial phase to create a new technical assessment role to assist with SAB application duties, in addition to a new technical administration role to support the process. This will be continually assessed and additional resource considered if justified by the anticipated workload.
32. The initial financial requirement for the posts below will be covered by income generated from anticipated application fees:
  - Grade 5 SAB Administration
  - Grade 7 Lead Officer SuDS Approval Body
33. It is considered that there will be a need for additional resource as adoption, inspection and enforcement duties increase. It is therefore proposed to undertake a continual review with regular reporting. The Flood and Coastal Risk Management Team are currently looking into resilience to allow for the phased approach. The Team are committed to the delivery of existing works programmes and will seek as far as possible to progress delivery within existing resources.

### **Financial Implications**

34. Initially two additional posts, as outlined above, will be required to manage the additional work arising from the creation of the SuDS Approval Body which will be funded from application fees. SuDS activity will be the subject of regular reviews and the Directorate consider that additional resources may be required as the duties increase with these resources again funded by fee income.

### **Legal Implications**

35. Section 32 and Schedule 3 of the Flood and Water Management Act 2010 come into force on 9 January 2019. The legal consequences for the Council in that regard are set out in the body of the report in terms of technical approval of proposed sustainable drainage systems and subsequent adoption of approved systems, together with enforcement powers in the event of default. The methods of recovering maintenance costs are also mentioned. An adoption agreement will be necessary and the Council will look to recover its legal costs from developers in much the same way as it does for highway adoption agreements.
36. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

37. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2018-21. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives. The well-being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them
- The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

### **HR Implications**

38. The roles identified in paragraph 32 of the report have been evaluated through the corporately agreed processes, and the Trade Unions have been consulted on the creation of the posts. The roles will be recruited using the corporately agreed recruitment and selection processes.

### **RECOMMENDATIONS**

Cabinet is recommended to:

1. Approve the establishment of the SuDS Approval Body within the Flood and Coastal Risk Management Team
2. Delegate the responsibility of the SuDs Approval Body to the Director of Planning, Transport and Environment to enable the further delegation of decisions

3. Delegate authority for the setting of levels of discretionary fees, relating to the approval body, to the Director of Planning, Transport and Environment in consultation with the Cabinet Member for Finance, Modernisation & Performance, Cabinet for Clean Streets, Recycling & Environment and the Section 151 Officer.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>ANDREW GREGORY</b>
	Director Planning, Transport & Environment
	15 February 2019

*The following background papers have been taken into account:*

Flood and Water Management Act 2010

<https://www.legislation.gov.uk/ukpga/2010/29/contents>

The Water and Water Management Act 2010 (Commencement No.2) (Wales) Order 2018 <http://www.legislation.gov.uk/wsi/2018/557/made>

Statutory National Standards for Sustainable Drainage Systems (SuDS)

<https://gov.wales/docs/desh/publications/181015-suds-statutory-standards-en.pdf>

The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations

2018 <http://www.assembly.wales/laid%20documents/sub-ld11778/sub-ld11778-e.pdf>