

**SUSTAINABLE DRAINAGE APPROVAL BODY (SAB) - ADOPTION AND
FUTURE MAINTENANCE OF SUSTAINABLE DRAINAGE (SuDS) FEATURES
REPORT: PRE-DECISION**

Purpose of the Report

1. To provide Members with background information to aid scrutiny of the draft report to Cabinet regarding the Council's responsibility as the Sustainable Drainage Approval Body (SAB) for the adoption and future maintenance of Sustainable Drainage Systems (SuDS) Features, which is due to be considered by Cabinet at their meeting on 18 November 2021.

Scope of Scrutiny

2. The draft report to Cabinet entitled 'Sustainable Drainage Approval Body (SAB) - Adoption and Future Maintenance of Sustainable Drainage (SuDS) Features' is attached at **Appendix A** with its corresponding Equalities Impact Assessment attached at **Appendix A1**.
3. During this scrutiny, Members have the opportunity to explore:
 - i) The proposed approach for the maintenance of SuDS features;
 - ii) The implications for the Council in relation to Finance and Resources;
 - iii) The implication for private developers;
 - iv) Whether there are any risks to the Council;
 - v) The recommendations to Cabinet.

Background

4. The Flood and Water Management Act 2010 (Schedule 3), which came into effect in Wales on 7 January 2019, requires new developments to include Sustainable Drainage Systems (SuDS) features that comply with national standards.

5. According to the Welsh Government's Sustainable Drainage Systems Standards for Wales¹, from 7 January 2019, new developments of more than one dwelling or where the area covered by construction work equals or exceeds 100 square metres require approval before construction can commence from the SuDS Approval Body (SAB). Adoption and management arrangements, including a funding mechanism for maintenance of SuDS infrastructure and all drainage elements are to be agreed by the SAB as part of this approval. This will ensure that SuDS infrastructure is properly maintained and functions effectively for its design life.
6. The Standards also state that although these they apply to new developments, the SuDS approach is increasingly being applied to existing developments to address sewerage capacity and local flood risk problems. These standards can provide a useful framework for the delivery of such "retro-fit" schemes.
7. Cabinet received a report titled Sustainable Drainage Systems (SuDS) in 21st February 2019, the purpose of which was 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. It also sought Cabinet approval for the creation of the SuDS Approval Body (SAB) and advised Cabinet on the statutory responsibilities that Cardiff Council, acting in its capacity as a SAB, is now required to undertake.
8. The attached Cabinet report sets out these requirements that the Council, acting in its capacity as a SAB, has to follow.
9. The SuDS approach mimics natural drainage, managing surface runoff at or close to the surface and as close to its source as practicable, controlling the flow (volume and rate of runoff) and providing a range of additional benefits. These include:
 - contributing to the delivery of Water Framework Directive, local flood risk management, Local Biodiversity Action Plan objectives and sustainable development consistent with the Planning (Wales) Act 2015; They are also an

¹ [statutory-national-standards-for-sustainable-drainage-systems.pdf \(gov.wales\)](https://gov.wales/statutory-national-standards-for-sustainable-drainage-systems.pdf)

important way for a public authority, such as a local planning authority to demonstrate their enhanced biodiversity and resilience of ecosystems duty (section 6 duty) under the Environment (Wales) Act 2016;

- add social, economic and environmental value by improving the quality of urban design, adding enhanced amenity space and providing habitats and wildlife corridors;
- contribute to health and wellbeing through access to green space, reduced urban temperatures, improved air quality and noise buffering;
- help strengthen communities, providing a focus for environmental education and public engagement in environmental protection close to home;
- help improve the adaptability of the drainage system to development pressures; and
- support development resilience to climate change, reducing the risk of localised surface water flooding, mitigating pollution that may arise from surface water runoff and helping to safeguard water supplies.

10. According to the Welsh Government's SUDS Standards for Wales, it is essential that arrangements are put in place for the future maintenance of SuDS features. Where they serve a single property, such as a house, warehouse or retail complex, maintenance will remain the responsibility of the owner. For SuDS serving more than one property, the SAB will adopt and be responsible for the maintenance of, the system so that the SuDS continues to comply with SuDS Standards. In order to be adopted by the SAB the drainage system must be constructed and function as approved in accordance with the SuDS Standards and any conditions of approval stipulated by the SAB.

Issues identified in the Cabinet Report

11. As stated in the Cabinet report at **point 14**, whilst the Welsh Government's SUDS Standards for Wales place a requirement on the SAB to manage and maintain the drainage system, it does not provide for a mechanism for maintenance for doing this. It instead provides two min suggested options:

- a) In-house Local Authority Maintenance utilising Commuted Maintenance Sums (CMS)**
- b) Private Management Company**

12. Having considered the relative merits of the options, it is proposed in the Cabinet report to proceed with Option a), the reasons for which are detailed at **point 15** of the report.

13. **Point 17**, however identifies some exceptional circumstances where the use of Management Companies is acceptable.

Proposed Recommendations to Cabinet

14. The report to Cabinet contains the following recommendation:

Support the mandatory requirement to adopt SuDS features and the in-house service model to manage and maintain these features on all qualifying developments funded by commuted maintenance sums.

Way Forward

15. Councillor Michael Michael, Cabinet Member for Clean Streets, Recycling and Environment as well as Andrew Gregory, Director of Planning, Transport and Environment have been invited to make a statement. They will be supported by further representatives from the Planning, Transport and Environment Directorate.

Legal Implications

16. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

17. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i) Consider the information in this report, its appendices and the information presented at the meeting;
- ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter in time for its meeting on 18 November 2021; and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

DAVINA FIORE

Director of Governance & Legal Services

5th November 2021