

## **Appendix 1**

### **Legal Advice**

#### **The summary of the legal advice below is as follows:**

##### **(Legal Advice passed on by Newport Council)**

*A management company would be appointed to maintain the SuDS on behalf of the SAB. Service charges would be levied on new residents to cover the necessary operations. The SAB would have step-in rights (and the ability to recover monies) if the management company failed to maintain the SuDS. Ultimate control would be exercised by the SAB.*

*A commuted sum will be required to ensure the correct and proper funding of all future maintenance for 60 years for SuDS features.*

*The SAB does not need to maintain SuDS at the public expense. It can contract out maintenance to a management company. In this case, the SAB would be overseeing the management company. The SAB would not collect and spend the service charge itself; that would be down to the management company. Alternatively, the SAB has the broad power under s. 2 of the Local Government Act 2000 to do anything likely to achieve the environmental well-being of their area including entering into arrangements or agreements with any person.*

*The legal duty of maintenance ultimately lies with the SAB (Sch 3 para 22 of the 2010 Act). There is no express provision within the legislation to allow the SAB to levy a service charge. The Guidance (which the SAB is legally obliged to have regard to by virtue of Sch 3 para 15 of the 2010 Act) makes clear that SuDS adopted by the SAB can be maintained by a management company (paras 4.26 and 4.28) and that the SAB can recover the costs of maintenance using existing powers under local government legislation.*

*Ultimately, any outsourcing (whether to a management company or other body) will need to include provision for the SAB to intervene in the event of the failure of the company (para 4.24) since the SAB remains responsible for ensuring the system is maintained in compliance with SuDS standards.*

*However, section 3(2) of the LGA 2000 makes clear that the wellbeing power does not extend to raising money "by precept, borrowing or otherwise". What is being sought from residents here is exactly that: an individual precept to cover the cost of a service which the local authority has a statutory obligation to provide and ultimately (absent any other agreement) fund out of taxation. Assuming a resident does not agree to pay a service charge for the maintenance of SuDS and challenges the management company or Council in this regard, I do not see how the Council would have any power to force them to do so. Even if they have signed a contract upon purchase of their property to pay such a charge, if the Council has no legal power to collect such sums from them, then it may well be unenforceable.*

*The difficulty with the proposal is that I do not consider that the SAB would be in a position to demand the payment of a service charge from residents. Thus, even if*

*residents are contractually bound to pay it, the SAB would be acting unlawfully from benefitting from that payment because there is no power for them to receive such money from residents.*

*Furthermore, were the maintenance company to fail, the SAB would have no power to step in and levy a charge against residents themselves.*

**In summary, in my view the proposed mechanism of charging residents for SuDS maintenance via a service charge is unlawful because the Council has no power to levy an individual charge against residents for a service it is statutorily obliged to provide. Raising money in this way is expressly excluded from the LGA 2000 by s. 3(2).**

**I consider that the appropriate method is either a commuted sum paid to the Council which then funds the maintenance (whether it be outsourced or not) or an ongoing maintenance charge paid by the developer and its successor (if that is practical).**