

**REPORT TO:** Environment and Urban Renewal Policy  
and Performance Board

**DATE:** 14<sup>th</sup> March 2012

**REPORTING OFFICER:** Strategic Director Policy and Resources

**PORTFOLIO:** Transportation

**SUBJECT:** Sustainable Drainage Systems (SuDS)  
Defra Consultation

**WARDS:** Boroughwide

## **1.0 PURPOSE OF THE REPORT**

1.1 To inform members of the planned implementation of the Sustainable Drainage System provisions of the Flood and Water Management Act 2010 and the response to the Defra consultation prepared jointly with partners from the Cheshire and Mid Mersey regional sub group of Lead Local Flood Authorities.

## **2.0 RECOMMENDATION: That**

- (1) the Board notes the key points relating to the proposals for the implementation of the Sustainable Drainage Systems (SuDS) provisions of the Flood and Water Management Act 2010 and the main issues that have currently been identified with these proposals; and**
- (2) the Board endorses the joint response of the Cheshire and Mid Mersey regional sub-group to the Defra consultation.**

## **3.0 SUPPORTING INFORMATION**

### **3.1 Introduction**

At the January meeting of the Board, Members were informed that Defra were consulting on a package of measures to implement the Sustainable Drainage Systems (SuDS) provisions of the Flood and Water Management Act 2010. Under the legislation, Halton will become a SuDS Approval Body (SAB).

In the consultation, Defra has sought views on

- New National Standards for SuDS,
- Four proposed Statutory Instruments and
- The impact assessment.

The consultation documents were published on 21<sup>st</sup> December 2011 and responses were required by 13 March 2012. Halton officers have been

working closely with colleagues within the Cheshire and Mid Mersey regional sub-group to formulate a joint response to the consultation.

The consultation questions are listed in Appendix 1 and a copy of the response, which has been approved by the Portfolio Holder, will be available for Members at the meeting.

The earliest implementation date for the enactment the SuDS provisions is 1<sup>st</sup> October 2012, however, within the consultation, Defra have asked for views on possible later implementation dates.

### 3.2 Background

The SuDS approach is designed to reduce flood risk and improve water quality. The overarching principle is that rainwater should be managed close to its source and on the surface where possible, making use of techniques, such as infiltration and retention, which mimic runoff from the site in its natural state. As a result rainwater is stored and released slowly. Examples of SuDS techniques include permeable paving, soakaways, green roofs, swales and ponds.

The Government wants to increase the use of SuDS in new developments and redevelopments. Halton, as a SAB, will be required to receive and process developers' SuDS applications for approval and, where appropriate, adopt and maintain SuDS in the future. This is a completely new area of work for Councils and has significant operational, legal and resource implications.

### 3.3 Key Points of the Proposals

- The existing planning system has been used as a model to develop proposals for SuDS consenting, with similar timescales for the consideration, consultation and determination of applications;
- There will be both transitional and phasing-in arrangements in place for developments in an advanced state of planning and for smaller developments respectively;
- In order for drainage applications to be approved, the SAB must ensure that the applicant has designed the SuDS in accordance with the National Standards;
- A key principle in implementing a SuDS scheme within a development, will be its affordability in comparison with conventional drainage design;
- Construction work which has drainage implications cannot commence unless the drainage system has been approved by the SAB;

- The SAB must adopt and maintain approved SuDS that are functioning properly and serve more than one property (the definition of one property includes a block of flats, a hospital, office or industrial unit);
- The proposed legislation provides enforcement powers (powers of entry, power to issue stop notices & enforcement notices) to both the SAB and the Local Planning Authority. Criminal sanctions are also proposed.

Government estimates that between 1 and 9 staff (FTE) will be needed to implement SuDS, dependent on Local Authority size and development activity. This is to be funded through applications fees (at fixed values for 3 years) and separate inspection fees on a cost-recovery basis. SABs may require non-performance bonds as a condition of SuDS approval. In the short-term, maintenance of adopted SuDS will be funded by Government. A range of options for funding of maintenance in the future is being considered.

### 3.4 Main Issues Raised in Consultation Response

At the time of writing this report, officers were still considering the detailed proposals contained within the SuDS consultation documents, together with partners within the Cheshire and Mid Mersey regional sub group of Lead Local Flood Authorities.

Initial indications are that the main issues for the sub-group in relation to the Draft SuDS National Standards and the implementation proposals will include:

- Concerns over the transitional arrangements and how they apply to developers proposals with prior approval for connection to the sewerage systems and to developments with outline planning permission;
- Request for clarity surrounding the how the costs of SuDS are to be calculated (for estimating purposes) to ensure the case for affordability can be examined appropriately for each application;
- Request for a review of the level of fees after the first year of implementation;
- Concerns over the potential for compensation claims against SABs, particularly in respect of Powers of Entry, which could involve financial risk to the Authority;
- Request for clarity on the defined extent of SuDS systems to be adopted and the timescale for adoption;

- Issues surrounding the ‘voluntary’ adoption of SuDS that are already in existence or have been constructed or without SAB approval.

Defra were due to hold a Capacity Building Workshop to discuss the SuDS implementation proposals and their implications at the end of February which would be attended by officers. Following the workshop, a final joint response was to be prepared, approved by the Portfolio Holder for Transportation (Surface Water and Flood Management Lead) and sent to Defra to meet the consultation closing date of 13<sup>th</sup> March.

Details of the response to the Consultation questions and other issues raised will be available for Members at the meeting and they will be asked to endorse this response.

#### **4.0 POLICY IMPLICATIONS**

There are no specific policy implications in relation to this report. However, once implemented, the sustainable drainage provisions of the Flood and Water Management Act may require the development of local policy surrounding fees and charges, enforcement and adoption.

#### **5.0 OTHER IMPLICATIONS**

##### **5.1 Resource Implications**

Once fully implemented (i.e. following any transitional and phasing-in arrangements that may form part of the legislation), the Government estimate that between 1 and 9 FTE staff will be needed to implement SuDS, dependent on Local Authority size and development activity required. The consultation proposes that for applications and approvals, cost will be recovered through fixed fees (for 3 years) Fees for inspections, required prior to adoption are proposed on a cost-recovery basis.

##### **5.2 Legal Implications**

The implementation of the Sustainable Drainage System provisions of the Flood and Water Management Act 2010 will introduce new statutory duties for Halton as a SAB. The proposals contain consenting, enforcement - including criminal sanctions and appeals processes, adoption and formal designation of SuDS schemes.

#### **6.0 IMPLICATIONS FOR THE COUNCIL’S PRIORITIES**

##### **6.1 Children and Young People in Halton**

There are no implications associated with this report.

##### **6.2 Employment, Learning and Skills in Halton**

There are no implications associated with this report.

**6.3 A Healthy Halton**

There are no implications associated with this report.

**6.4 A Safer Halton**

There are no implications associated with this report.

**6.5 Halton's Urban Renewal**

The implementation of the Sustainable Drainage System provisions will be of considerable value in improving flood risk management and potentially improving water quality in watercourses across the Borough. Developers will be required to manage surface water runoff from their sites close to its source and on the surface where possible. This may involve provision of soakaways, green roofs, swales and ponds within their developments which will enhance the urban fabric of Halton.

**7.0 RISK ANALYSIS**

There are no specific risks in relation to this report.

**8.0 EQUALITY AND DIVERSITY ISSUES**

There are no Equality and Diversity issues in relation to this report.

**9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
<p>Consultation on the Implementation of the Sustainable Drainage Systems provisions in Schedule 3 F&amp;WMA 2010. Defra; December 2011</p>	<p>Highways Office Rutland House, Halton Lea, Runcorn</p>	<p>Dave Cunliffe</p>
<p>National Standards for sustainable drainage systems. Defra; December 2011</p>	<p>Highways Office Rutland House, Halton Lea, Runcorn</p>	<p>Dave Cunliffe</p>
<p>4No. Consultation Draft Statutory Instruments: The Sustainable Drainage:</p> <ul style="list-style-type: none"> <li>• Procedure;</li> <li>• Approval and Adoption;</li> <li>• Enforcement;</li> <li>• Appeals.</li> </ul> <p>Orders 2012</p>	<p>Highways Office Rutland House, Halton Lea, Runcorn</p>	<p>Dave Cunliffe</p>

**Consultation on implementation of the Sustainable Drainage Systems (SuDS) provisions in Schedule 3 of the Flood and Water Management Act 2010: Full list of consultation questions**

**Question 1**

We have based our proposals on the evidence, outlined in our Impact Assessment, of the impact of surface runoff on future development and the benefits of SuDS. Do you have any additional evidence that may alter the recommendations of the Impact Assessment?

**Question 2**

We propose that SAB approval will not be required for the first 12 months:

- for developments that already granted planning permission before commencement; or
- for developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or
- for which a valid planning application has been submitted before commencement

Do you agree with this approach for transitional arrangements, if not please explain why?

**Question 3**

We propose implementing on the common commencement date of 1 October 2012, do you agree this is reasonable? If not would you prefer an implementation date of April 2013, October 2013 or after 2013?

**Question 4**

We understand that there may be capacity issues for SABs to meet their new duty to approve drainage. We are therefore considering whether to phase implementation of the requirement for approval. Do you think a phased approach is necessary?

**Question 5**

Do you agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval?

**Question 6**

Drainage for surface runoff should be sustainable and affordable to build and maintain. Do the National Standards deliver this, if not please explain why?

**Question 7**

Affordable sustainable drainage systems for surface runoff are comparable in costs with conventional alternatives. Do you agree?

**Question 8**

We propose that the SuDS Approving Body must determine an application for approval within 12 weeks where it relates to major development or a county

matter and 7 weeks where it relates to other development. But could applications be determined in less time?

If yes, please specify reduced time to consider applications:

1 week less

3 weeks less

Page 3 of 5

5 weeks less

**Question 9**

Do you think guidance for calculating the amount required for a non-performance bond is necessary?

**Question 10**

Do you agree with our proposals to set approval fees for three years? If you disagree, please explain why and provide any supporting evidence.

**Question 11**

We propose that the fee for each inspection of the drainage system should be set on a cost recovery basis rather than to a fixed fee. Do you agree with this proposal?

**Question 12**

We propose to make arrangements for fees for applications to vary an approval, re-submitted applications, discounted fees, fees for cross area approvals as well as the refunds of application fees. Do you agree that this covers all the scenarios for which fees are likely to be needed? If not, please explain what is missing and provide further explanation if required.

**Question 13**

We propose setting a time limit of 21 days for statutory consultees to respond to the SAB. Do you agree with the timeframe proposed?

**Question 14**

We propose to give enforcement powers to the SuDS Approving Body and the local planning authority. Do you agree?

**Question 15**

Do you agree that the proposed powers of entry are reasonable and proportionate, if not please explain why?

**Question 16**

We propose that claims for compensation related to powers of entry and temporary stop notices must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ ceasing to have effect. Do you agree, if not please explain why?

**Question 17**

We propose that, as in planning, a time limit of four years is set for when the SuDS Approving Body is able to give an enforcement notice? Do you agree, if not please explain why.



**Question 18**

Are the criminal offences proposed in the draft statutory instrument appropriate and proportionate?

**Question 19**

We propose to provide similar procedures for appeals against SuDS enforcement notices to those which currently apply to planning enforcement appeals (written representation, hearing or inquiry). Do you agree, if not please explain why?

**Question 20**

We propose a register of SuDS enforcement notices which mirrors the register for planning enforcement notices. Do you agree?

**Question 21**

For the purpose of the SuDS Approving Body's duty to adopt, "sustainable drainage system" means those parts of a drainage system that are not vested in a sewerage undertaker.

Do you agree this provides certainty and clarity on what is adoptable by the SuDS Approving Body? If not please provide an alternative definition.

**Question 22**

The SuDS Approving Body's duty to adopt does not apply to a single property drainage system.

We propose that "a drainage system or any part of a drainage system is to be treated as designed only to provide drainage for a single property if it is designed to provide drainage for any buildings or other structures that, following completion of the construction work, will be owned, managed or controlled by a single person or two or more persons together".

Is our definition clear on what will or will not be adopted? if not please provide an alternative definition.

**Question 23**

We propose that the SuDS Approving Body should determine a request for adoption within 8 weeks of receiving the request. Do you agree with this timeframe?

**Question 24**

We propose for the SuDS Approving Body to have a 28 day time limit for administrative processes (for example return of bonds, the process of registration or designations). This time limit applies throughout the SuDS process. Do you agree with this timeframe, if not please explain why?

**Question 25**

We propose that all Statutory Undertakers must notify the SuDS Approving Body at least four weeks in advance of works that may affect the SuDS' operation. Do you agree with this timeframe?

**Question 26**

We propose upon completion of the works, the SuDS Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the National Standards. Do you agree? Do you agree, if not please explain why?

**Question 27**

We propose that an appeal must be made within six months of the SuDS Approving Body's decision or within six months of when the decision was due. Do you agree?

**Question 28**

We propose to adopt similar procedures for SuDS appeals to those which currently apply to planning appeals (written representation, hearing or inquiry). Do you agree, if not please explain why?

**Question 29**

Should we take action to avoid the increase of un-adopted SuDS? If your answer is no, please explain why?