

UPDATE ON THE SUSTAINABLE DRAINAGE APPROVAL BODY

To: **Cabinet**

Date: **15th April 2014**

From: **Executive Director: Economy, Transport and Environment**

Electoral division(s): **All**

Forward Plan ref: **N/a** *Key decision:* **No**

Purpose: **To agree the approach on the next steps in preparation and options development for the Sustainable Drainage Approval Body.**

Recommendation: **Cabinet is asked to approve:**

a) Continued working with partners and internal teams as outlined in this report to develop the role.

b) A pre-application fee of £55 per hour (minimum 1 hour) for sustainable drainage advice from 1st April 2014, to be increased annually in line with inflation.

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1. BACKGROUND

- 1.1 The Department for Environment, Food and Rural Affairs (DEFRA) will shortly be implementing the sustainable drainage provisions as required in the Flood and Water Management Act 2010.
- 1.2 Schedule 3 of the Flood and Water Management Act 2010 sets out a duty on Local Authorities to approve, adopt and maintain Sustainable Drainage Systems (SuDS), if serving more than one property, through a SuDS Approving Body (SAB). The Approving Body will be the responsibility of the County Council under its Lead Local Flood Authority (LLFA) duties.
- 1.3 The SAB process will work separately and additionally to the planning process and will act as the technical check on the suitability of drainage systems, along with promoting sustainable drainage systems which seek to reduce the risk of local surface water flooding and improve water quality and amenity. SuDS constructed in line with approvals will be adopted and maintained by the SAB.

2. MAIN ISSUES

Timeframe for implementation

- 2.1 It was anticipated that guidance for the SAB would have been published in advance of the Cabinet meeting, but delays within DEFRA have occurred, owing to the complicated nature of the legislation. Whilst this report provides an update on the direction Central Government is pursuing, there have been no confirmed decisions on many aspects.
- 2.2 DEFRA remain committed to implementing the SuDS legislation and will be putting secondary legislation to Parliament by April 2014. As soon as DEFRA confirm the date on the legislation will become operational, stakeholders will be notified, which in turn will put County Councils on notice to finalise their arrangements.
- 2.3 The National Standards once published will contain design principles and processes for approval, adoption and maintenance of the SuDS. DEFRA will shortly be submitting the draft National Standards for a final consultation alongside a formal notification to the European Commission, a technical process which includes a mandatory 3-month stand-still period. The National Standards will be formally published after that.

Transitional arrangements

- 2.4 During the transitional period it is expected that if full planning applications are made prior to commencement of the legislation, then drainage approval from the SAB will not be required. If, however, conditions or reserved matters are not discharged within 12 months following commencement of the legislation, then drainage approval will need to be sought at that future date.
- 2.5 DEFRA are looking at how these arrangements will work alongside the changes in planning to ensure that the SAB and planning processes are as streamlined as possible. In this interim period this Council will continue to work closely with the Environment Agency as the statutory consultee on surface water drainage aspects prior to the commencement of the legislation.

Phasing

- 2.6 There will be a two-tiered phased approach to rolling out SuDS policy. The first phase lasting three years will require all major applications, more than 10 houses or larger than 0.5 hectares, to seek SAB approval. After this period of time SAB will apply to all minor and major applications, unless exempt.
- 2.7 Phased implementation will reduce the number of applications in the first three years, allowing frameworks and processes to be established to minimise the burden as well as build up the County's capacity. The phasing parameters are consistent with current planning application definitions.

Application Process

- 2.8 Applications can either be freestanding and sent to the County Council or a developer can choose to submit via a combined planning application to the Local Planning Authority. DEFRA is working with the Planning Portal to include the option of a SuDS application within the planning application process, to further streamline the application processes for developers.
- 2.9 SuDS approval is independent of the Local Planning Authority's decision on planning permission; however a development cannot begin on site until SuDS approval has been granted. Training will be given to Local Planning Authorities to ensure this point is communicated clearly on decision notices.
- 2.10 The Council as the Approving Body must consult on an application (SuDS) with statutory consultees for at least 21 days. These include existing partners such as the sewerage undertaker, Environment Agency, Internal Drainage Boards and Highway Authority.
- 2.11 The SAB must determine SuDS applications for major developments within 12 weeks and for other development within 7 weeks, and approvals can be granted with conditions that will need to be discharged.
- 2.12 The SAB will be able to charge application fees to developers which are in proportion to the size of the development. This fee will be based on a partial cost recovery basis only, and a grant is being provided by Government to make up the shortfall in the short term. DEFRA has set out the initial pricing structure and proposes to keep to that structure for a three year period after which the Council can set its own charges:

Size of Development	Calculation
< or = 0.5 hectares	£350 + 70 for each 0.1 hectare
> 0.5 and < or = 1 hectares	£700 + £50 for each 0.1 hectare
>1 and < or = 5 hectares	£950 + £20 for each 0.1 hectare
> 5 hectares	£1750 + £10 for each 0.1 hectare up to a maximum of £7500

Key: < Less than, > Greater than, = Equal to

- 2.13 There is no mandatory pre-application process. However, we will encourage developers to engage with the County Council at an early pre-application stage alongside preparing their planning application, to ensure future applications to the Council are compliant and thereby reduce the cost of delays.
- 2.14 Local authorities are able to charge for the time taken in pre-application discussions under the Localism Act. A pre-application fee will be introduced at a rate of £55 per hour which will be index linked (RPI) which is consistent with the pre-application fee structure set for other advice the Council provides on planning issues.
- 2.15 The Council has prepared a 'Cambridgeshire's SuDS Handbook', which was produced in conjunction with key stakeholders to assist staff, developers and other authorities. The Flood and Water Team will also hold a workshop which will look to finalise the content of the handbook for approval and use by the Local Planning Authorities. The County Council will also hold developer seminars to inform them about the new processes and requirements of SAB approval.

Maintenance and adoption

- 2.16 As the Approving Body, the Council has a duty to adopt drainage systems if the drain is constructed and functions in accordance with the approved scheme and is a sustainable drainage system. Any SuDS that has been approved by the SAB must be adopted by the SAB unless they are exempt, and/or serving just one property. Examples of a single property include:
- Residential building with multiple flats
 - Single dwelling house
 - Retirement village
 - Office or commercial building
 - Industrial development or commercial estate
 - School or university campus
 - Hospital or other medical facility.
- 2.17 The Council has the statutory ability to adopt the drainage system in situations where it is not under a duty to do so (e.g. a single property).
- 2.18 Highways Authorities will adopt the drainage systems for publicly maintained highways. However, in relation to private roads the Council, in its SAB role has a duty to adopt SuDS that serve more than one property in private roads. Water and sewerage companies cannot adopt those SuDS and the SAB does not have the discretion to delegate the adoption duty.
- 2.19 The Council will also be required to determine requests for SuDS adoption from developers within 8 weeks. A non-performance bond can be sought, with the bond not exceeding the overall cost of the drainage works. The SAB can charge for any necessary site visits or compliance checks during construction.
- 2.20 It is expected Government will require the Council to charge householders and premises served by SuDS for their share of the SuDS maintenance costs.

DEFRA has developed a proportionate charging formula and will be issuing a consultation document shortly. At a later stage the Council will need to establish a new householder charging function once this element is confirmed.

- 2.21 Officers are currently working to assess the options for utilising existing highway maintenance contracts for maintaining adopted SuDS in the future.

3. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

3.1 Developing the local economy for the benefit of all

Our aim is to safeguard the local economy for the benefit of all by developing a clear framework between partners and developers for future legislative requirements. This will allow a streamlined approach to be established alongside existing planning processes, ensuring new developments do not increase the economic damage caused by flooding events.

3.2 Helping people live healthy and independent lives

The consequences of flood risk impact on everyone, particularly the most vulnerable in society. Inappropriate or badly designed drainage infrastructure increases flood risk locally. The introduction of this new body will help to ensure the risks from new development are minimised even further.

3.3 Supporting and protecting vulnerable people

The next steps will allow the County Council to continue to progress the implementation of a new duty in conjunction with affected stakeholders which is likely to benefit vulnerable people who live in areas of greatest flood risk.

3.4 Ways of working

The County Council is the Lead Local Flood Authority. The continued preparation towards SAB implementation will support the County Council's ways of working through:

Partnership working with key stakeholders such as the local planning authorities in preparation for our new duties – *Developing our leadership role*

Ensuring that the most appropriate processes are taken forward for the benefit of flood risk management in local communities – *Working at a local level*

4. SIGNIFICANT IMPLICATIONS

4.1 Resource and Performance Implications

There are no direct financial implications arising from this report; the SAB is designed to be self-funding. DEFRA have indicated there will be a gap between confirmation of the approval process and a decision being made on funding for maintenance of the SuDS. The financial implications will be assessed once the decisions are laid out by DEFRA.

4.2 Statutory, Risk and Legal Implications

Schedule 3 of the Flood and Water Management Act 2010 requires the County Council to become the SAB (see sections 1.2 and 1.3). This duty comes with an expectation that the County Council will develop the necessary structures and processes to enable it comply with the legislation.

4.3 Equality and Diversity Implications

There are no significant implications from this report.

4.4 **Engagement and Consultation Implications**

As part of the next steps we will be consulting with the key partners who will be affected by the implementation of the SAB (see section 2.16).

4.5 **Public Health Implications**

There are no significant implications from this report.

Source Documents	Location
None	