

## CABINET

<b>Date of Meeting</b>	Tuesday, 25 <sup>th</sup> September 2018
<b>Report Subject</b>	Sustainable Drainage (SuDS) Approval Body (SAB)
<b>Cabinet Member</b>	Cabinet Member for Planning and Public Protection
<b>Report Author</b>	Chief Officer (Planning, Environment and Economy)
<b>Type of Report</b>	Strategic

### **EXECUTIVE SUMMARY**

The Commencement Order for implementing Schedule 3 of the Flood and Water Management Act 2010 was signed 1 May 2018. This sets a start date of the 7<sup>th</sup> January 2019 upon which Flintshire County Council will be required to undertake the role of a 'Sustainable Drainage (SuDS) Approving Body' (SAB).

Under this new statutory function the SAB is required to undertake the technical review and approval of surface water management systems serving new development to ensure compliance with new mandatory National Standards. For the majority of developments, the SAB will also have a statutory duty to inspect the construction of, and subsequently adopt and manage the systems over the lifetime of development. Those affected by this change will include developers and their designers, consulting engineers, local authority planners, highways and drainage engineers, statutory consultees and those responsible for green space management.

The SAB will be an independent body within the Local Authority, to which applications for approval of surface water drainage on new developments will need to be made. While this process will be separate from the planning application function a lack of adequate integration between the two could lead to the conflicting scenarios of SAB approval not being granted where planning permission has been or vice versa. For this reason the SAB application procedure has been designed to allow developers to apply either directly to the SAB or via a combined application with the planning approval application. It is important that the SAB delivery model in Flintshire accounts for the relationship between the SAB approval and planning approval processes. There will need to be particular emphasis on pre-application discussion and consultation between the Local Planning Authority (LPA), the SAB, the Highway Authority, Dwr Cymru/Welsh Water and developers to ensure site layouts can facilitate SuDs designs compliant with National Standards and ultimately

obtain SAB approval.

## RECOMMENDATIONS

1	That approval is given to establish the SuDS Approving Body (SAB) to undertake this new statutory function upon commencement of Schedule 3 of the Flood and Water Management Act on the 7 <sup>th</sup> Jan 2019.
2	A letter is sent to the relevant Cabinet Secretary to seek an extension to the implementation date and to properly resource Local Authorities to enable them to successfully plan and implement effective SABs.
3	That this letter is circulated widely amongst other Local Authorities to encourage common support for such an extension of time.
4	A Members and Officer seminar/workshop is undertaken in addition to a Developer Forum to raise awareness of the upcoming changes.

## REPORT DETAILS

<b>1.00</b>	<b>THE IMPLEMENTATION OF SCHEDULE 3 OF THE FLOOD &amp; WATER MANAGEMENT ACT 2010 ON JAN 7<sup>TH</sup> 2019 – PLACING A NEW STATUTORY DUTY ON THE COUNCIL TO BECOME THE SUSTAINABLE DRAINAGE (SUDS) BODY (SAB)</b>
1.01	The management of the surface water drainage for new development, has historically been undertaken through the planning process whereby statutory and non-statutory consultees such as Welsh Water, Natural Resources Wales and the Flood Risk Management Team within Flintshire provide feedback to planning applications. This approach has long been considered problematic with issues arising in relation to inconsistent design standards, construction quality and maintenance regimes.
1.02	Conventional drainage which aimed to convey water away from a development as quickly as possible through piped systems, often causes excessive flows in watercourses downstream exacerbating flooding elsewhere. The SuDS approach aims to deal with rainwater using techniques such as infiltration, and above ground retention that mimic runoff from a site in its natural state and provide opportunity to incorporate amenity, biodiversity, and pollution reduction elements into the design.
1.03	The 2008 Pitt Review highlighted surface water management from developments as a factor contributing to wider flood risk problems within the UK. Subsequently Schedule 3 of the Flood and Water Management Act 2010 made provisions for the establishment of a SuDS Approving Body (SAB) to address this issue. In England instead of passing Schedule 3, the government made amendments to the National Planning Policy Framework to stipulate that decisions on planning applications relating to major developments should ensure that SuDS are put in place, unless demonstrated to be inappropriate. The Local Planning Authority in

	consultation with the Lead Local Flood Authority needs to approve drainage schemes (in line with non-statutory standards) and ensure they are appropriately maintained.												
1.04	<p>Commencement of Schedule 3 has been long anticipated. The principle of SuDS and the creation of the SAB is supported by Flintshire as a Lead Local Flood Risk Authority (LLFA) as reflected in measure 5.3 of Flintshire's Local Flood Risk Management Strategy (LFRMS).</p> <table border="1" data-bbox="327 470 1212 795"> <tr> <td style="background-color: #ADD8E6;"><b>5</b></td> <td><b>To ensure that planning decisions are properly informed by flooding issues and the impact future planning may have on flood risk management and long term developments</b></td> </tr> <tr> <td>5.1</td> <td>Develop clear guidance for the Planning Department when assessing planning applications;</td> </tr> <tr> <td>5.2</td> <td>Develop a process with the Planning Department to create clear advice and direction to developers on FRMS and drainage (including incorporation of SuDS into new developments);</td> </tr> <tr> <td>5.3</td> <td>Establish a SuDS Approval Body (SAB);</td> </tr> <tr> <td>5.4</td> <td>Keep the Planning Department informed and up-to-date with information relating to flood risk areas in the County; and</td> </tr> <tr> <td>5.5</td> <td>Develop policies, development management and procedures which take account of flooding issues.</td> </tr> </table>	<b>5</b>	<b>To ensure that planning decisions are properly informed by flooding issues and the impact future planning may have on flood risk management and long term developments</b>	5.1	Develop clear guidance for the Planning Department when assessing planning applications;	5.2	Develop a process with the Planning Department to create clear advice and direction to developers on FRMS and drainage (including incorporation of SuDS into new developments);	5.3	Establish a SuDS Approval Body (SAB);	5.4	Keep the Planning Department informed and up-to-date with information relating to flood risk areas in the County; and	5.5	Develop policies, development management and procedures which take account of flooding issues.
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1.05	In Wales, the Commencement Order for Schedule 3 of the Flood and Water Management Act 2010 was signed by the Minister on 1 May 2018. This sets a start date of 7 January 2019 upon which Welsh Councils will be required to undertake the SAB duty.												
1.06	<p>A series of 'Sustainable Drainage Newsletters' <sup>1</sup> providing updates on the implementation of Schedule 3 have been published.</p> <p>Given the Jan 2019 start date, the Orders and Regulations for the legislation to take effect were intended to have been finalised and approved by the National Assembly in June 2018. These Welsh Statutory Instruments will clarify details in relation to: application and approval procedures, timescales, fees, enforcement powers and appeals mechanisms. At the present time they remain outstanding. Supporting Welsh Government guidance documents, training workshop details, and communication plans have yet to be provided. The Welsh Local Government Association (WLGA) have are seeking legal opinion with respect to several elements of the SAB approval, adoption and maintenance processes in addition to developing a national application form and associated guidance.</p>												
1.07	Flintshire's Flood Risk Management Team are represented on the Welsh Government's SAB Advisory Group and have been considering the potential implications and delivery options as further details of standards, procedures and processes have emerged. A regional SAB working group has been established with officers from the six North Wales based LLFAs attending regularly to explore how collaborative and/or consistent approaches can be put in place regionally.												

<b>2.00</b>	<b>RESOURCE IMPLICATIONS</b>
2.01	Welsh Government have advised that the SAB is intended to be self-funding through the associated application, inspection and long-term maintenance

	<p>fees and charges. It is understood that the application and site inspection fees will be set nationally and there is the opportunity for additional fees in relation to pre-application discussions. The funding mechanism to cover costs associated with the maintenance for the lifetime of the development upon adoption remains unclear and is expected to be left to individual Authorities to resolve.</p> <p>Estimates of the expected number of applications in Flintshire make it difficult to understand how the SAB would be initially self-funding, and shortfalls of income should be expected in the early stages/years. No funding or resource has been made available to support individual Councils to set up their respective SABs. To date, resource from within the Flood Risk Management Team has been diverted to prepare for the new duty which has not been without disruption to other duties and workloads.</p>
2.02	<p>The present lack of detail means there is a high degree of uncertainty against which to accurately consider the resources, costs and best delivery mechanisms for the new function. Greater certainty will develop as details are clarified over the coming months. Beyond the Flood Risk Management Team additional resource demands can be reasonably expected in relation to Admin and Customer Support, Communications, Finance, Legal, Enforcement and Maintenance requirements.</p>
2.03	<p>Historic planning applications have been reviewed and indicate the number of SAB applications could be in the region of 150 annually and would generate a potential income of £100k. Further analysis is required to refine these estimates. There is less certainty in relation to the corresponding costs. A key factor will be whether the Council has existing adequate systems, methods of working and knowledge to deal with applications received. The short lead in time and the fact that the processes and Regulations are untested will result in more time and effort in the short term.</p> <p>A 'Business Case' may be necessary in 2019/20 to reflect the cost of implementing this legislation. Once an initial a SAB delivery model has been designed there will be scope to further assess actual costs with future reviews as necessary once the SAB is functioning.</p>

<b>3.00</b>	<b>CONSULTATIONS REQUIRED / CARRIED OUT</b>
	<p>Internal consultation with officers in Planning, Finance, Legal, Building Control, Highways Development Control, Streetscene teams remains ongoing. A regional SAB working group has been established with officers from the six North Wales based LLFAs to share information, solutions and potential approaches to SAB delivery. Communication with Welsh Government and the WLGA remains ongoing.</p> <p>Consultation and engagement with Councillors will be required as further details emerge.</p>

<b>4.00</b>	<b>RISK MANAGEMENT</b>
4.01	The full extent of the risk of not having a functioning SAB on 7 <sup>th</sup> Jan 2019 remains largely unknown. This would be likely to leave the Authority open to legal challenges and appeals from developers with associated cost implications. In addition, there is a reputational risk to the authority if the service is not in place or if the SAB model is considered not fit for purpose.
4.02	There is the potential for knock on effects to Flintshire as the Local Planning Authority. These risks include, but are not limited to; slowing down of development and or a reduction in the amount of development should the developers consider the costs to implement SuDS too high. There is a risk of an increased number of planning applications coming forward prior to the Jan 2019 to avoid the new requirements.
4.03	The risk of SAB income not meeting costs has been highlighted in the section above. This risk must also be considered against the opportunity the new duty brings to generate income which may resource the delivery of existing LLFA statutory duties if an effective and efficient delivery model can be put in place.
4.04	Managing the risks (and opportunities) of the SAB duty requires a multi-service project team to plan and implement the best approach for the Council to deliver this function within the challenging deadline. This will require decisions to be made quickly as further clarifications of national standards, procedures, processes and other pertinent information become available over the coming months.

<b>5.00</b>	<b>APPENDICES</b>
5.01	<p>Sustainable Drainage Newsletter 1 Feb 2018:  <a href="https://www.susdrain.org/files/Blog/WG/schedule_3_newsletter_1.pdf">https://www.susdrain.org/files/Blog/WG/schedule_3_newsletter_1.pdf</a></p> <p>Sustainable Drainage Newsletter 2 April 2018:  <a href="https://www.susdrain.org/files/Blog/WG/schedule_3_newsletter_2.pdf">https://www.susdrain.org/files/Blog/WG/schedule_3_newsletter_2.pdf</a></p> <p>Sustainable Drainage Newsletter 3 July 2018:  <a href="https://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&amp;mid=665&amp;fileid=1742">https://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&amp;mid=665&amp;fileid=1742</a></p>

<b>6.00</b>	<b>LIST OF ACCESSIBLE BACKGROUND DOCUMENTS</b>
6.01	<p>Presentation by Minister to Wales National Flooding Forum:  <a href="https://www.ice.org.uk/getattachment/eventarchive/wales-national-flooding-conference-2018/Keynote-Address-Hannah-Blythyn.pdf.aspx">https://www.ice.org.uk/getattachment/eventarchive/wales-national-flooding-conference-2018/Keynote-Address-Hannah-Blythyn.pdf.aspx</a></p> <p><b>Contact Officer:</b> Ruairi Barry (Project Engineer – Flood &amp; Coastal Risk</p>

	Management) <b>Telephone:</b> 01352 704707 <b>E-mail:</b> <a href="mailto:Ruairi.Barry@Flintshire.gov.uk">Ruairi.Barry@Flintshire.gov.uk</a>
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<b>7.00</b>	<b>GLOSSARY OF TERMS</b>
7.01	<p><b>Sustainable Drainage Systems (SuDS)</b> - An approach to surface water management which helps to deal with excesses of water by mimicking natural drainage processes and patterns.</p> <p><b>SuDS Approving Body (SAB)</b> - The Welsh Government is proposing to commence Schedule 3 of the Flood and Water Management Act 2010 that calls for the establishment of a SuDS Approving Body (SAB) to be set up within lead local flood authorities (LLFAs). The Act requires SAB approval and adoption of new drainage systems serving development to be obtained before construction can commence. It also requires that the proposed drainage system meets national mandatory standards for sustainable drainage.</p> <p><b>Lead Local Flood Authority (LLFA)</b> - Unitary authorities or county councils who are responsible for developing, maintaining and applying a strategy for local flood risk management in their areas and for maintaining a register of flood risk assets. They also have lead responsibility for managing the risk of flooding from surface water, groundwater and ordinary watercourses</p> <p><b>Surface Water Drainage</b> - Drainage systems that deal with 'clean' rainwater only (as distinct from foul water or combined systems) and therefore is typically associated with managing runoff from hardstanding/impermeable areas such as roofs, roads, paving etc.</p>