

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

21 APRIL 2016

**REPORT OF SENIOR
MANAGEMENT TEAM**

CABINET DECISION

Environment – Lead Cabinet Member – Councillor Mike Smith

FLOOD AND WATER MANAGEMENT – SUSTAINABLE DRAINAGE SYSTEMS

Summary

In April 2015, one of the final parts of the Flood and Water Management Act 2010 was amended and enacted, with the introduction of a new statutory consultee role, for the Lead Local Flood Authority to respond to the Local Planning Authority (LPA) with advice on flood risk and sustainable drainage. The Act also sets out ways in which the sustainable drainage system may be maintained. This report sets out the implications for the Authority, examines the options for maintenance and suggests a way forward, with the least financial risk.

Recommendations

1. Members note the new statutory consultee role and additional responsibility on the Authority in providing technical approval for sustainable drainage systems and an ongoing role in site supervision and inspections where appropriate.
2. Members consider the options for the long term maintenance of sustainable drainage systems, as set out in Appendix A and approve the preferred option 1, as recommended in the report.
3. Members note the extension of the lead authority arrangement with Darlington.

Reasons for the Recommendations/Decision(s)

The Lead local Flood Authority (LLFA) has a statutory duty under the Flood and Water Management Act 2010 for local flood risk management within its area. A clear policy on future maintenance of sustainable drainage systems will help ensure that flood risk is managed on new development within the Borough, protecting both the development itself and the surrounding area.

Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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RECOMMENDATIONS

It is recommended:

1. Members note the new statutory consultee role and additional responsibility on the Authority in providing technical approval for sustainable drainage systems and an ongoing role in site supervision and inspections where appropriate.
2. Members consider the options for the long term maintenance of sustainable drainage systems, as set out in Appendix A and approve the preferred option 1, as recommended in the report.
3. Members note the extension of the lead authority arrangement with Darlington.

BACKGROUND

1. On 15th April 2015 one of the final parts of the Flood and Water Management Act 2010 commenced. The Act changes the previous right of a developer to connect surface water drainage systems to the public sewerage system and makes it conditional on meeting new standards, as follows;

Surface water not collected for use must be discharged to one or more of the following, listed in order of priority:

1. *Discharge into the ground (infiltration); or where not reasonably practicable,*
2. *Discharge to a surface water body; or where not reasonably practicable,*
3. *Discharge to a surface water sewer, highway drain or another drainage system; or where not reasonably practicable,*
4. *Discharge to a combined sewer.*

Discharge into a water body will also need to be attenuated to prevent a risk of flooding. The attenuation can take many different forms from ponds, swales and basins to oversized pipes and attenuation tanks.

2. The National Planning Policy Framework (NPPF) sets out the Government's policy that planning should proactively help mitigation of, and adaptation to climate change including the management of water and flood risk. The NPPF states that when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and gives priority to the use of sustainable drainage systems.
3. The Department of the Environment Flood and Rural Affairs (DEFRA) has developed national standards in order to manage surface water run-off in accordance with schedule 3 of the Act. The National Standards are a very high level guide to design, construction and maintenance of sustainable drainage systems.
4. The Government consultation and response on delivering Sustainable Drainage Systems, published on the 18th December 2014 set out major revisions to the proposed Schedule 3 of the Flood and Water Management Act 2010, the revisions to the Act commenced on 15th April 2015.

Summary of the Key points from the document:

- Planning system strengthened – SUDs become a material planning consideration.
 - Planning enforcement already possess powers for non-compliance of conditions, which could be used for SUDs.
 - Utilise existing National Standards and supportive guidance, as per schedule 3 approach.
 - Flood Risk Management (LLFA) to become a statutory consultee of the planning process. This is a new duty placed on the LLFA, to respond to the LPA & report on performance on providing a substantive response within legislative deadlines.
 - The changes apply to major developments only. LPA's are still expected to consider flood risk on all developments.
 - The LPA can only consider implementation of SUDs is not appropriate, if the maintenance costs would impair the deliverability of a development. This is highly unlikely; generally the cost of SUDs is less than conventional drainage. An example would be where a small site, had an unusually complex drainage system which caused the development not to be economically viable.
 - As surface water disposal is required on a permanent basis, throughout the whole life of the development, maintenance and fees would apply in perpetuity.
 - Developers are allowed flexibility in maintenance arrangements, the options available are a management company or the developer themselves, the Local Authority, or Northumbrian Water.
 - Developers are responsible for securing maintenance arrangements as a requirement of a planning condition.
 - Commuted sums are only be used in a very limited number of cases. Generally maintenance fees are to be charged to householders.
5. The five Tees Valley Authorities have jointly produced a design guide of local standards, for the design, construction and maintenance of SUD's.

6. The Lead Local Flood Authority became a statutory consultee of the planning process, on 15th April 2015.
7. The advice of an Ecologist is an important part of the process. SBC doesn't have an in house Ecologist therefore there is an opportunity to share Darlington's resource on a needs basis. This has been trialled over the last few months and is proving successful.
8. Darlington Borough Council has asked that SBC take on the statutory consultee role for their Authority under the existing contractual arrangements.
9. The three main options available to developers to provide long term maintenance of the sustainable drainage system;
 - Request that the Local Authority (LA) maintains the system. The LA would then need to levy a charge per property on the residents of the development for surface water disposal, in respect of maintaining the system. The charge must not be for profit. This may enable a reduction in the usual charge from a water company, though this is unlikely unless the system is specifically separate from the sewerage system. The LA does not have to agree to this request.
 - Request that the Water and Sewerage Company (WaSC) maintain the system. The WaSC can then impose an appropriate surface water disposal charge in place of the conventional surface water disposal charge. The WaSC does not have to agree to this request.
 - Elect to use a management company and impose a surface water charge, along with other maintenance charges, the LPA will approve the maintenance arrangements by way of a planning condition.

Of the three options above, there is no adverse impact on the Local Authority if the WaSC decide to adopt the system and this would be the lowest risk to the Council of all the approaches. However the WaSC may not want to adopt the system and then the developer will need an alternative approach. If the developer sets up a management company and remains the landowner, the Council has powers under the Land Drainage Act 1991 to ensure flood risk is managed correctly; notice can be served on the landowner who can either carry out the work themselves within a specified timeframe or the Council can intervene, carrying out the work and recovering the costs. The drainage system can also be designated under the Flood Water Management Act 2010, as a flood risk asset, preventing anyone from altering it without consent from the Council. This approach is the second lowest risk to the Council and the preferred option, should the WaSC not adopt the system.

However there are different methods of adoption and financing, should the developer either request the Local Authority to maintain the SUD's or if they opt for a management company to maintain the SUD's; these methods are explored in detail in Appendix A, with associated risks.

FINANCIAL IMPLICATIONS

10. The new roles of statutory consultee to the Local Planning Authority and delivering sustainable drainage systems puts significant responsibility on the Authority. It was predicted that this would amount to approximately 100+ major applications per year for Council Officers to provide a response as a statutory consultee. (Approximately 70 to 75 for Stockton and 30 for Darlington). However actual figures from 15/4/15 to 19/10/15 (approximately 6 months), the flood risk team has provided advice on 111 applications in Stockton Borough and 47 in Darlington, equating to three times the predicted figure. This includes pre-application advice and discharge of conditions. By comparison in the same period; Middlesbrough had provided advice on 7 applications and Redcar and Cleveland 6 applications.
11. The Government has carried out a new burdens assessment on the proposals and provides a one-off payment of £57,358.56 to the Authority to implement the proposals. This funding has been used to purchase the required software and training to undertake the role.
12. The Government has suggested that on-going maintenance costs are covered by a surface water disposal charge on properties on the development. The charge can be levied by the authority responsible for maintenance, which will either be a management company the local authority or the water and sewerage company.
13. The Council will also assess the design, calculations and maintenance plan to ensure that any flood risk is managed in the new development and the flood risk is not increased to neighbouring sites.
14. Opportunities to create a billing system have been explored with Xentrall. Xentrall are able to create a billing system to suit the requirements but have warned of the large administrative burden this would create on the Local Authority.
15. Currently there are 2 developments in Stockton Borough where sustainable drainage is being constructed and many more developments pending. The two current developments are Morley Carr in Yarm, where a pond is proposed and Swainby Road in Stockton, where detention basins are proposed. Both of these developments are to be maintained by management companies. The cost per household for the Swainby Road development is quoted as approximately £100 per annum and Morley Carr is £80 per household per annum. All charges are specific to a certain development, they vary depending on the whole life cost of maintain that system and the number of properties on the development.
16. The risks associated with each option are detailed in Appendix A; option 1 is the preferred option as it is the least risk for the Authority; all the other options carry a large financial risk and administrative burden. There may be very rare cases where it is within the Authority's interest to maintain the system and flexibility should be maintained in such an instance.
17. Other Lead Local Flood Authorities are also considering their options; Hartlepool Borough Council and Newcastle City Council have both decided to take on the same process as recommended in this report. Middlesbrough Council has one site which is being maintained by the developer in a similar way to this recommendation (although in that case they are also the land owner), Redcar and Cleveland is unknown. Durham County Council however has

taken a different approach and set up a billing system to charge its residents for maintenance carried out in house.

LEGAL IMPLICATIONS

18. The Flood and Water Management Act 2010

RISK ASSESSMENT

19. The recommended option for maintenance of sustainable drainage systems low risk (see Appendix A) and controlled by the mechanisms contained within it, which govern flood risk policy ensuring that the Authority continues to do everything within its power to manage flood risk in the Borough.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

20. Contributes to the adaptation element of the climate change objectives within the strategy.

ECONOMIC REGENERATION AND TRANSPORT

21. Contributes to the reduction in risk of flooding which can impact upon the economic stability of the area, it will also safeguard the transport infrastructure.

SAFER COMMUNITIES

22. Reduces the risk of flooding thereby creating a safer environment in which to live and work.

CHILDREN AND YOUNG PEOPLE

23. Reducing flood risk can safeguard access to, and risk of damage to our education facilities.

HEALTH AND WELLBEING

24. Flooding from surface water has potentially significant health risks as it is usually contaminated water from the sewerage system that is involved. Therefore to reduce the risk of flooding is to reduce the health impacts as well.

ENVIRONMENT AND HOUSING

25. Contributes to the adaptation element of the climate change objectives within the strategy.

EQUALITIES IMPACT ASSESSMENT

26. The proposals in this report will not result in any changes to the impact on equality issues.

CONSULTATION INCLUDING WARD/COUNCILLORS

27. The Government recently consulted all LLFA's on 'Delivering Sustainable Drainage Systems' and 'Further changes to the statutory consultee arrangements for the planning application process', the Council provided a response to both consultations

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Education related? No

Background Papers

Flood and Water Management Act 2010

Ward(s) and Ward Councillors:

All Wards are affected by this proposal.

Property

Not affected

Appendix A - Maintenance Options for Sustainable Drainage
Sustainable Drainage Maintenance Options

Maintenance Option	Funding Arrangement	Advantages	Disadvantages	Risks
<p>1. Developer owns SUDs or transfers ownership to a management company with the developer/ management company responsible for carrying out maintenance</p>	<p>Annual charge on each property. (owner liable for charge not tenant)</p>	<ul style="list-style-type: none"> • All liability and responsibility remains with the land owner. • Landowner responsible for collecting funds. • Public perception of paying a charge, more acceptable if not SBC • Powers under the Land Drainage Act 1991, allow SBC to serve notice on the landowner if system is not maintained and poses a flood risk. SBC can intervene and seek costs from the landowner, if they fail to remove the flood risk. • SUD's features in private land can be designated under the Flood and Water Management Act 2010. This means they cannot be modified without the consent of the local Authority. • No administration burden of billing. • Maintenance to be secured through planning conditions 	<ul style="list-style-type: none"> • No control over fee charged. • Inspections fees cannot be charged during construction. • If the management company became insolvent the land would revert to the Crown. • A large development will be phased, may have a number of developers and could have different charges. • Enforcement of breach of planning conditions 	<ul style="list-style-type: none"> • LOW RISK • In a small number of cases liability could pass to SBC, without resources
<p>2. SUD's owned/ adopted by SBC, outsources maintenance to a management company</p>	<p>Annual charge on each property. (owner liable for charge not tenant)</p>	<ul style="list-style-type: none"> • SBC have control over level of funding • SBC would have control over the contract with the management company • Can be incorporated with green space and amenity. • Can charge an inspection fee. 	<ul style="list-style-type: none"> • Large administrative burden of the billing system. • Enforcement of non-payment • Annual data submission questionnaire to residents required • Named person required for billing, difficulties in obtaining this information. 	<ul style="list-style-type: none"> • HIGH RISK • Administrative burden • Financial risk from default • Cost of setting up financial system • Additional staff required • Maintenance liability on SBC

			<ul style="list-style-type: none"> • Strict site supervision required • Public perception of 'another' Council charge • Contract administration/ framework • Reliant on developers to inform purchases of charge 	
3. SUD's owned/ adopted by SBC with maintenance carried out in house	Annual charge on each property. (owner liable for charge not tenant)	<ul style="list-style-type: none"> • SBC would have full control over billing activities and fee levels • SBC would have full control over maintenance activities • Can charge an inspection fee. 	<ul style="list-style-type: none"> • Large administrative burden of the billing system. • Enforcement of non-payment • Annual data submission questionnaire to residents required • Named person required for billing, difficulties in obtaining this information. • Strict site supervision required • Public perception of 'another' Council charge • Contract administration/ framework • Reliant on developers to inform purchases of charge 	<ul style="list-style-type: none"> • HIGH RISK • Administrative burden • Financial risk from default • Cost of setting up financial system • Additional staff required • Maintenance liability on SBC
4. SUD's owned/ adopted by SBC with maintenance carried out in house.	Secure a commuted lump sum for maintenance.	<ul style="list-style-type: none"> • Upfront funding less of an administration burden. • Can charge an inspection fee. 	<ul style="list-style-type: none"> • Finite pot of money for maintenance in perpetuity • Defra against using this type of funding as the norm. • Large sums would make a development unviable. – Sums will be large when calculated over a number of years. • Strict site supervision required 	<ul style="list-style-type: none"> • MEDIUM RISK • Major future maintenance liability • Future funding of maintenance beyond lump sum. • Liability on SBC • Not supported by Government • Could make development unviable and force developers into neighbouring areas