

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is not a Key Decision within the Council's definition and has been included in the relevant Forward Plan

REPORT OF THE EXECUTIVE DIRECTOR – PLACE

Protocol for Arrangements to Deal with Sustainable Drainage Systems Used on New Major Developments

1. PURPOSE OF REPORT

- 1.1. To inform the Council of appropriate arrangements required for the management of surface water using Sustainable Drainage System (SuDS) in new major developments pursuant to the Flood and Water Management Act 2010 and the National Planning Policy Guidance. These arrangements will form the protocol for Council officers to use and formulate relevant procedures for SuDS, as part of the planning consent arrangement. This protocol cannot be applied to existing developments or those that have already been through the planning process but not yet commenced on site.
- 1.2. The protocol will apply to future new, major developments where SuDS form the surface water management system, with the exception of any SuDS that form part of the highway drainage system and that can be adopted as part of the highway adoption process, pursuant to the Highways Act 1980.
- 1.3. This protocol applies only to SuDS that serve the properties on a development, for example, a dry pond in public open space. It is not intended to apply to a SuDS feature that is within the boundary of an individual property on a development.

2. RECOMMENDATIONS

- 2.1. **To endorse the principle that the Council does not adopt and therefore will not undertake the liability for maintenance of SuDS for new major developments within the Borough, immediately following their construction. The exception to this is any SuDS required to be adopted as part of the formal highway adoption process.**
- 2.2. **Where, as part of a planning application, there is a proposal to provide a SuDS solution to serve properties (i.e. not a SuDS within a property's boundary), that the responsibility for the long term maintenance of the SuDS should remain with the landowner. This responsibility may be discharged directly by the landowner (initially likely to be the developer) or transferred to a 3rd party, such as a Management Company. Should the maintenance responsibilities fail to be performed, the ultimate responsibility will still remain with the landowner, on which the SuDS is located.**
- 2.3. **In order to safeguard the on-going maintenance of the SuDS, in the event that the established maintenance regime fails, the Director of Legal and Governance will seek to secure the longer term maintenance of SUDS by**

agreeing appropriate clauses within a s106 agreement pursuant to the Town and Country Planning Act 1990. Upon failure of the established maintenance regime, the Council will seek to ensure it has the power to undertake maintenance of the SuDS directly, with the costs of this undertaking being funded by property owners on the development which the SuDS serves making periodic payments.

- 2.4. That the Director of Finance, Assets and Information Services be authorised to collect and process any periodic charges that arise through implementation of any s106 agreement.**
- 2.5. That the Service Directors of Environment & Transport and Economic Regeneration be authorised to create a Guidance Document for SuDS for developers of new major developments. Upon adoption of the Local Plan, a formal Supplementary Planning Document will be produced to replace the Guidance Document.**

3. INTRODUCTION

- 3.1. A SuDS is a drainage system designed to deal with surface water from a development in such a way as to mimic the natural drainage of the site. For example, this could be by capturing surface water and allowing it to soak into the ground naturally or to discharge into a watercourse at a rate to mimic natural run-off. This is an alternative to taking a more conventional approach of dealing with surface water by discharging it into underground piped systems.
- 3.2 Changes to planning policy have led to the strengthening National Planning Policy Guidance which now places a requirement for SuDS to be considered as a mechanism to control surface water run-off on new major developments through the planning process. A “major development” means development involving any one or more of the following:
 - (a) the winning and working of minerals or the use of land for mineral-working deposits;
 - (b) waste development;
 - (c) the provision of dwellinghouses where:
 - (i) the number of dwellinghouses to be provided is 10 or more;
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
 - (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more;
 - (e) development carried out on a site having an area of 1 hectare or more.
- 3.3 A SuDS solution to controlling surface water run-off has the benefit of not taking up vital available capacity in underground piped systems, adds aesthetic and environmental value to developments and enhances biodiversity.

- 3.4. On development sites, the following hierarchy of drainage solutions are used for controlling discharge surface water run-off:
1. Infiltration into the ground;
 2. Discharging into a surface water body such as a water course;
 3. Discharging into an underground piped system;
- 3.5. For all new major developments, a SUDS solution will not always possible and a conventional underground piped system may be a more appropriate solution. Where a SuDS solution is proposed, the Local Planning Authority (LPA) is required to provide approval for the SuDS.
- 3.6. The absence of national SuDS guidance requires each local authority to determine and implement their own minimum standards for SuDS. In order to provide a consistent approach to SuDS locally, consultations have been undertaken with neighbouring authorities and the local water company and statutory undertaker, Yorkshire Water plc (YW).
- 3.7. Examples of SuDS are:
- Above Ground – detention basins, retention basis (ponds), swales and filter strips;
 - Below Ground – geo-cellular structures and permeable paving.
- 3.8. All SuDS require periodic maintenance, the frequency of which will vary and depend on the particular SuDS. At the design stage, the developer is required to consider the arrangements for the maintenance of all the features within the SuDS system.
- 3.9. In order to advise prospective developers of the Council's requirements in relation to SuDS for new major developments, a Guidance Document for SuDS will be produced. Upon adoption of the Local Plan, a formal Supplementary Planning Document will be produced to replace the Guidance Document. This approach will allow clear SuDS guidance to be issued to developers enabling proposals for new developments to continue to come forward and progress without unnecessary delay.
- 3.10. As a local water company and statutory undertaker, YW has indicated a willingness to adopt certain types of SuDS. In order to mitigate the risk of maintenance regime failure by the land owner or 3rd party management company, it is proposed to promote to developers the opportunity to discharge responsibility for any SuDS maintenance to YW. Consequently, it is proposed that the Guidance Document for SuDS is based on the YW requirements for SuDS adoption.

4. PROPOSAL AND JUSTIFICATION

- 4.1. It is proposed that the Council does not adopt and therefore will not undertake the liability for maintenance of SuDS for new major developments within the Borough, immediately following their construction. The exception to this is any SuDS required to be adopted as part of the formal highway adoption process.
- 4.2. It is the liability for the maintenance of SuDS that is key to the recommendation for the Council not to adopt any SuDS serving a development. The responsibility and liabilities associated with adopting SuDS as additional drainage assets is impractical in terms of resources and financially prohibitive, in terms of securing commuted

sums which could be of such magnitude, given the longevity of any maintenance regime, to jeopardise the financial viability of the development.

- 4.3. Where there is a proposal to provide a SuDS solution to serve properties (i.e. not a SuDS within a property's boundary), the responsibility for the long term maintenance of the SuDS should remain with the landowner. This responsibility may be discharged directly by the landowner (initially likely to be the developer) or transferred to a 3rd party, such as a Management Company. Should the maintenance responsibilities fail to be performed, the ultimate responsibility will still remain with the landowner, on which the SuDS is located.
- 4.4. Some developments have only a small number of properties, such as in commercial or industrial developments, so the responsibility the management and maintenance of the SuDS will be clear as the beneficiaries can be easily identified. It is feasible that the beneficiaries could collaborate to create a new maintenance regime through a legal arrangement, to reduce the flood risk to their properties.
- 4.5. On residential developments, the flood risk through failure of the maintenance regime will be increased and apply to a large number of property owners. It is possible that the property owners could put in place a mechanism to fund and operate the continued maintenance of the SuDS, although 100% agreement could be unlikely.
- 4.6. Through social responsibility, following the failure of the established maintenance regime and any alternative being put in place by the property owners, the Council could safeguard the on-going maintenance of the SuDS, by using appropriate clauses within a s106 agreement pursuant to the Town and Country Planning Act 1990. The failure of the established maintenance regime would trigger the Council ultimately having the power to undertake maintenance of the SuDS directly, with the costs of this undertaking being funded by periodic payments by the property owners on the development which the SuDS serves.

5. CONSIDERATION OF ALTERNATIVE APPROACHES

- 5.1. **Council Adoption of SuDS:** This requires the Council to adopt SuDS which are constructed as part of new major developments. This means that the Council will take on all maintenance responsibilities for the drainage asset once it is constructed and adopted.
- 5.2. In order to ensure the cost does not become a burden to the Council finances, the developer will have to pay a commuted sum to the Council, to cover all costs associated with the anticipated future maintenance of SuDS. The value of the commuted sum would be based on the approved SuDS design, the management plan and maintenance schedule and would be calculated for the lifetime of the development; circa 100 years equivalent to the life of a residential development.
- 5.3. The responsibility and liabilities associated with adopting SuDS as additional drainage assets is impractical in terms of resources and financially prohibitive, in terms of securing commuted sums which could be of such magnitude, given the longevity of any maintenance regime, to jeopardise the financial viability of the development, for example: £5k/annum for 100 years would be £500k and could significantly affect the viability of the development. This may discourage developers from operating within the Borough, although it does mean that the Council can be sure that the SuDS are properly maintained.

6. IMPLICATIONS FOR LOCAL PEOPLE/SERVICE USERS

- 6.1. Where SuDS fail to perform, there is a risk that property-level flooding may occur both within the development and also in areas outside of the site boundary. The impact of flooding to property will inevitably be disruptive and may mean that property owners are unable to occupy their property for many months whilst repairs works are completed.
- 6.2. The effects of flooding caused by the failure of SuDS through lack of maintenance could impact on local infrastructure such as roads in the area, causing disruption to highway users.
- 6.3. A further unintended consequence would be the reputational damage to the Council which would be adversely affected as the incorrect perception would be that the responsibility for the upkeep and maintenance of the SuDS drainage systems rests with the Council.

7. FINANCIAL IMPLICATIONS

- 7.1. Consultations on the financial implications have taken place with representatives of the Director of Finance, Assets & IT.
- 7.2. If the recommended option for non- adoption of SuDS is approved, there will be no immediate financial implications for the Authority.
- 7.3. However, if the Council has to step in to undertake the duties which should be carried out by a 3rd party management company during a flooding emergency, or because of the failure, bankruptcy or dissolution of the responsible maintenance body, this may create a financial implication for the Authority.
- 7.4. As a minimum, the costs incurred for this type of retrospective intervention would include staff costs to manage any reactive works required, along with the costs associated with the engagement of a geotechnical specialist to assess any damage that may have been caused.
- 7.5. It is unclear at this stage what the precise financial impact on the Council may be, but there is the potential for the costs to include the following;
 - **Emergency Remediation Works to Repair the SuDS** – The cost associated with any work that is required to return the SuDS asset back to an adequate working condition e.g., clearing blockages, de-weeding of ponds, dredging works, reconstruction of the storage tanks/system etc.,
 - **Funding the Council Emergency Response** – The temporary accommodation for those residents of the homes which have been flooded as a consequence of the failure of the SuDS asset.
 - **Ongoing Maintenance** – To ensure the SuDS assets remains in a functioning condition whilst permanent arrangements can be made with the responsible parties i.e., the properties or beneficiaries of the SuDS for them to resume their maintenance activities.
- 7.6. The cost implication also has the potential to be multiplied many times to reflect the number of sites which may be affected as more and more SuDS systems are constructed in order to fulfil the Authority's declared planning obligations.
- 7.7. To mitigate any cost implication for the Council therefore it is proposed to place a S106 charge on property owners to cover the costs of ongoing maintenance and administrative costs similar to where a management company is used. The charge

to property owners will vary between developments, depending on the different scale and type of SuDS implemented. Although it is difficult to predict in advance, a typical example of the charge through a s106 agreement could be in the region of £30 per house per annum, collected once every 5 years, i.e. £150 per property, to ensure a nil cost to the Council for that development.

- 7.8. It in order to minimise these risks it is essential that the Highways and Planning Departments liaise closely with developers at an early stage to ensure the correct advice is given accordingly.

8. EMPLOYEE IMPLICATIONS

- 8.1. The design, evaluation, construction and inspection of SuDS systems is a specialised activity and the existing resource may need to be supplemented with additional information or resources. It is anticipated that these will be funded through additional developer contributions.

9. COMMUNICATIONS IMPLICATIONS

- 9.1. The LPA, in consultation with Highways, Engineering and Transportation Service, will develop a Guidance Document for SuDS to be used by developers, architects and other professional partners when making planning submissions for new major developments.
- 9.2. The guidance will be sufficiently robust to positively promote the Council's position of 'not adopting' SuDS, whilst continuing to attract development into the borough.
- 9.3. Upon adoption of the Local Plan, a formal Supplementary Planning Document will be produced to replace the Guidance Document.

10. CONSULTATIONS

- 10.1. **BMBC:** Internal services were consulted on the proposal for this protocol. These included service leads from the Highway Authority, the Planning Authority, Asset Management and Legal Services. The outcome of these discussions has been used to formulate the proposal contained in this report.
- 10.2. **Yorkshire Water:** YW have been consulted in their capacity as the local water company and statutory undertaker. YW have advised that they intend to introduce revised arrangements for surface water attenuation systems in the near future.
- 10.3. Any planning submission will have to comply with the Council's Guidance Document, which will be based on YW's detailed construction specifications for SuDS.
- 10.4. Where a developer opts to use YW to discharge the maintenance liability for a SuDS, a separate agreement between the two parties will support the formal adoption arrangements.
- 10.5. **Local Authority SuDS Review:** A survey was conducted of all local Authorities within the Yorkshire & Humber Region's Flood Risk Managers Group, to understand the current approaches which are being employed by each authority. The results, shown below, confirmed that the neighbouring authorities have yet to formally establish a defined SuDS procedure for their area, although 'informal' working arrangements are in place for SuDS.

Authority	Policy (Yes /No)	Adoption of Highway SuDS (Yes /No)	Adoption of Non-Highway SuDS (Yes /No)	Comments
Barnsley	NO	YES*	NO	* Adoption of h/way SuDS with a commuted sum
Doncaster	NO	YES*	NO	* Adoption of h/way SuDS with a commuted sum
Rotherham	NO	YES*	NO	Evolving arrangements are in place * Adoption of h/way SuDS with a commuted sum
Sheffield	NO	YES*	NO	SCC are adopting non-h/way SuDS that are within the city Council-owned land * Adoption of h/way SuDS with a commuted sum
Derbyshire CC	NO	YES*	N/A	Some of the district authorities with the county are adopting SuDS but as DCC are not the planning authority they have no intention to adopt non-h/way SuDS * Adoption of h/way SuDS with a commuted sum

10.6 Most authorities in the Yorkshire & Humber region have put in place informal 'working arrangements' as an interim measure in lieu of a formal procedure to manage SuDS requests from developers. A summary of this survey is in Appendix 1.

11. THE CORPORATE PLAN AND THE COUNCIL'S PERFORMANCE MANAGEMENT FRAMEWORK

- 11.1. The provision and management of SuDS will assist the delivery of the Council's economic objectives by attracting business to Barnsley as detailed in the Corporate Plan. Effective management of these drainage assets will ensure that the employment opportunities created on new major development are sustained through this period of development.
- 11.2. SuDS have the opportunity to enhance the borough's 'green' infrastructure footprint whilst also creating additional 'blue' infrastructure e.g. wet pond areas which act as local drainage features whilst providing environmental, ecological, educational and amenity benefits that enhance local areas across the Borough.
- 11.3. There is a potential to use these SuDS feature to link these drainage assets to existing features with Barnsley such as the Trans-Pennine trail to further enhance

them and also to provide public health benefits to complement the social and demographic aspirations in the Corporate Plan.

12. PROMOTING EQUALITY, DIVERSITY AND SOCIAL INCLUSION

- 12.1. Future development within the borough should be done in a manner which will ensure the effective management of drainage aspects to minimise the risk of flooding and the inevitable consequences that are brought about by flooding events.
- 12.2. Effective water management on major developments can be used to ensure surface water runoff is managed within the development and also does not exacerbate flooding elsewhere in areas away from the development site.
- 12.3. The impact of flooding will be felt by all those within the inundation area as flooding events have no respect for demographics on grounds of equality, diversity or economic status. SuDS has the ability to effectively reduce the risk of flooding but this will only be achieved if the maintenance of all SuDS assets are effectively maintained and managed throughout its lifetime.

13. TACKLING THE IMPACT OF POVERTY

- 13.1 This report has no impact on poverty.

14. TACKLING HEALTH INEQUALITIES

- 14.1. The impact on health and wellbeing that a well-designed SuDS has, particularly those that are visible at ground level, should not be underestimated as they also provide an attractive amenity which has an educational value to a wide range of members in the community.
- 14.2. Conversely the impact of flooding in a community can have devastating health impacts ranging from stress issues, insomnia along with respiratory and other physical medical issues associated with the long-term effects of flooding.
- 14.3. These effects have a long-term impact well after the flood waters have receded and can affect all members of the families including young children who often are fearful of rain events as they associate heavy rain with flooding and the devastation which it causes to the family home and also the family unit.
- 14.4. The most effective way of addressing this is to mitigate the risk of flooding by ensuring measures are in place to ensure continued maintenance of SuDS to ensure that the SuDS remain functioning effectively and fit for purpose.

15. REDUCTION OF CRIME AND DISORDER

- 15.1. The SuDS assets, particularly wet ponds and detention basins will naturally attract interest from all members of the community it is hope that these will provide an amenity and educational benefit the local area.
- 15.2. It is envisaged that the awareness and understanding of the SuDS will be clearly understood by all local users and this will minimise any anticipated crime, disorder and anti-social activities which may affect its function and performance.

16. RISK MANAGEMENT ISSUES

- 16.1. This is a relatively new area that the Council has to undertake and there currently minimal resources to carryout enforcement, design checks, approval, inspection enforcement activities related during the construction of SuDS.
- 16.2. Complex legal arrangements associated with the management and maintenance of SuDS may lead to developers going elsewhere within the immediate sub-region and wider Yorkshire and Humberside region to promote their projects in areas which have 'less difficult' SuDS arrangements. However, the requirement for SuDS considerations will be pertinent to all qualifying developments in all regions, irrespective if their geographical location.

17. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES

- 17.1. Developers intending to utilise SuDS to manage surface water run-off from their sites in Barnsley will be required to comply with design principles and methods to minimise the safety risks with regard to children accessing ponds and presence of water that are required for SuDS.
- 17.2. This will include the gradients of banking, and the volume of water to be held during rain events of detention features (a pond that fills up and then empties) or of a retention features (a permanent 'wet' pond). The bank gradients will enable reasonable access and egress to a wet pond and will also incorporate plateaus to act as points of refuge around the pond perimeter.
- 17.3. Other additional measures may include the erection of fences, guard rails and also the inclusion of life belts. However these may detract from its visual impact as well-designed SuDS should incorporate effective health and safety features as an integral part of its design.

18. COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

- 18.1 This report has no implication on the European Convention on Human Rights.

19. CONSERVATION OF BIODIVERSITY

- 19.1. Consideration to bio-diversity, environment and ecological issues are currently an integral component of the planning process and there is no intention or requirement to change this process to accommodate the introduction of new procedures for SuDS.
- 19.2. The preparation of relevant management and maintenance plans for SuDS should take account of any bio-diversity issues for the SuDS and these should be factored in the maintenance arrangements from the outset at the design stage.

20. GLOSSARY

SuDS	Sustainable Drainage Systems
YW	Yorkshire Water plc
SPD	Supplementary Planning Document

21. LIST OF APPENDICES

- Appendix 1: SuDS Policy - Y & H Local Authority Arrangements.

22. BACKGROUND PAPERS

--

Officer Contact: Derek Bell **Tel. No:** 787654 **Date:** 10th February 2016

Financial Implications/Consultation

.....

*(To be signed by senior Financial Services officer where
no financial implications)*

Appendix 1

SuDS Policy -Y & H Local Authority Arrangements

Authority	SuDS Adoption	Comments
South Yorkshire		
Barnsley MBC	X	No agreed SuDS Policy in place.
Doncaster MBC	X	Not actively seeking to adopt SuDS at the present time
Rotherham MBC	X	No policy decision has been taken yet
Sheffield CC	✓	SuDS are being adopted in schemes where the land is owned by SCC and loans have been obtained for the construction of regional SuDS. Permeable paving on some sites also being adopted in Sheffield. Cost recovery is via increased land values and s106 agreements using the 'Durham Model' to recover costs via a rental charge for each property served by SuDS. SCC is currently developing a strategic policy for SuDS to formalise this approach.
West Yorkshire		
Bradford CC	X	No formal SuDS policy with but would consider adoption with a commuted sum based on 100 yrs.
Calderdale	N/A	No details available due to recent staff changes.
Leeds CC	X	No defined SuDS policy; therefore each site is determined on its merits but the commuted sum would be for the lifetime of the development (100 yrs.).
Kirklees Council	X	No defined policy but are not adopting SuDS assets but Flood Risk Manager would prefer to adopt. No process to establish maintenance plans with 3rd party managers. So, the SuDS are privately owned and 3.
Wakefield MDC	✓	YES – Adoption of SuDS with a commuted sum based on 100 yrs. Currently revenue expenditure is £80k-£100k per annum on SuDS maintenance. SuDS policy yet to be formalised.
North Yorkshire		
North Yorks CC	X	NYCC is not the Planning Authority therefore they have provided guidance to the LPAs on SuDS but not on adoption. This is to be determined by each of the 9 LPAs within the County Council. NYCC is not intending to become a SuDS adopting authority.
York CC	X	Not adopting and not promoting adopting due to resource implications. Developers are required to agree with other RMA's such as YW and the IDB
East Ridings		
East Riding Yorks Council	X	No defined SuDS policy but the ERYC have issue interim advice for SuDS for the lifetime of the development (100 yrs.). Separate s106 agreements and relevant commuted would be agreed under non-statutory agreements.
Hull CC	✓	Yes – Providing that the developer pays the pre-requisite commuted sum for the lifetime of the development (100 yrs.). The developer then prefers to meet YW standards for s104 agreements for 25 years.