

CYNGOR SIR POWYS COUNTY COUNCIL.

**CABINET EXECUTIVE
18th September 2018**

REPORT AUTHOR: County Councillor Phyl Davies
Portfolio Holder for Highways, Recycling and Assets

SUBJECT: Sustainable Drainage Approval Body (SAB)

REPORT FOR: Decision

1. Summary

- 1.1 This report provides an update and seeks approvals in relation to the creation of a Sustainable Drainage Approval Body (SAB) under Schedule 3 of the Flood and Water Management Act 2010.
- 1.2 The SAB will be an independent body within the local authority that will deal with the statutory technical approval process for Sustainable Drainage Systems (SuDS). The proposals will generally apply to developments of over 100 square metres with some exceptions.
- 1.3 All new planning applications made from 7th January 2019 will need SAB approval, where the proposal has drainage implications.

2. Proposal

- 2.1 On 7th January 2019 Powys County Council will become the Sustainable Drainage Approval Body (SAB) for the region under Section 32 and Schedule 3 of the Flood and Water Management Act 2010. It is proposed that these duties will be managed through an extended land drainage team within the Highways, Transport and Recycling Service.
- 2.2 Growing concerns over pollution and damage to the environment from surface water flooding are highlighted in "Water Strategy for Wales" published by Welsh Government. An extract is included at Appendix A.
- 2.2 Welsh Government have consulted on sustainable drainage systems on new developments and details can be found at:
<https://beta.gov.wales/implementation-sustainable-drainage-systems-new-developments-draft-regulations-and-national>
- 2.3 Surface water drainage issues are currently considered by the land drainage team through the planning process but under the new arrangements this will transfer to a new Sustainable Drainage Systems (SuDS) Approving Body (SAB). The Local Planning Authority (LPA) will

still continue to consult the land drainage team over advise on local flood risk issues through the planning process.

- 2.4 Welsh Government, through the Welsh Local Government Association (WLGA) have sought to develop and encourage a joint approach across Wales between SABs. Powys continue to contribute to the various groups and are currently working on developing a joint application form. WLGA have co-ordinated familiarisation and training sessions.
- 2.5 The SAB process will be a stand-alone one and SAB approval will most likely be required before Planning Consent can be granted. There is provision for the LPA to grant planning consent without SAB approval where deemed appropriate. The legislation does provide for a “joint” application for SAB and Planning consents. The SAB process will therefore need to be developed to account for joint applications to both Powys County Council and the Brecon Beacons National Park Planning Authorities.
- 2.6 The design of Sustainable Drainage Systems (SuDS) will seek to make best use of the natural environment to manage surface water where it cannot be collected for use. Welsh Government have previously published “Recommended non-statutory standards for sustainable drainage (SuDS) in Wales – designing, constructing, operating and maintaining surface water drainage systems”. The standard identifies priority levels for surface water runoff destination as follows:
 1. Priority Level 1: Surface water runoff is collected for use;
 2. Priority Level 2: Surface water runoff is infiltrated to ground;
 3. Priority Level 3: Surface water runoff is discharged to a surface water body;
 4. Priority Level 4: Surface water runoff is discharged to a surface water sewer, highway drain, or another drainage system;
 5. Priority Level 5: Surface water runoff is discharged to a combined sewer.Note that Priority Level 1 is the preferred (highest priority) and that 4 and 5 should only be used in exceptional circumstances.

Welsh Government have indicated in the consultation outcome that *“...SuDS Standards will be published as Statutory Standards under Schedule 3 of the Act at the end of June 2018. The Welsh Government guidance on Schedule 3, “Sustainable drainage (SuDS) in Wales” will be published at the same time. This will be a “living” document which will be updated in the light of experience as needed.”* These will replace the Recommended non-statutory standards.

- 2.7 The most significant best practice guidance documents to aid design are at present produced by CIRIA in the form of “The SuDS Manual” (C753) and “Guidance on the construction of SuDS” (C768). Web links to the documents are provided at the foot of this report. It is proposed that the work of the SAB will be based on Welsh Government led and industry

standard guidance such as The SuDs Manuals linked with information on land drainage and flood risk data currently available through Natural Resources Wales (NRW) and others. In addition Welsh Government are supporting the CIRIA website "www.susdrain.org" aimed at providing a compendium of information.

- 2.8 Based on current information from Welsh Government the Cabinet Executive will have responsibility for the SAB. It will be necessary to reflect this in the constitutional arrangements and it is proposed to delegate the responsibilities of the SAB to the Planning, Taxi Licensing and Rights of Way Committee with sub-delegation to the Director of Environment and / or the Head of Highways, Transport and Recycling with the ability to further sub-delegate. Delegated powers will be subject to conditions and/or limitations (see Constitution Section 13 A1 Columns 3, 4 & 5 as an example) and will be supported by a SAB protocol developed in-line with the Planning Protocol.
- 2.9 Charges for applications have been set by Welsh Government and comprise a flat rate fee of £350 plus a sliding scale element based on the affected site area. The minimum charge will therefore be £420 exclusive of any VAT that may be payable. Other fees may also be payable including inspection fees. These will generally be set on a cost-recovery basis. The Council has the option to offer pre-application advice but this will be at appropriate re-charge rates set by the Council.
- 2.10 Under the legislation the SAB will be required to adopt approved qualifying SuDS. Details relating to this are still being developed by Welsh Government but will include for: design; construction; operation and maintenance requirements. Information is awaited about funding options for maintenance which may include for commuted sums.
- 2.11 In processing applications the SAB will be required to receive, consider and consult on the applications in much the same way as planning applications are dealt with at present. Processes for appeals and enforcement will also be built-in by Welsh Government.

3. Options Considered / Available

- 3.1 Option1 – Do Nothing
The requirements for a SAB are set out in legislation which has been enacted in Wales under a Welsh Statutory Instrument. The council therefore has a legal duty to perform the function.
- 3.2 Option 2 – Out-source delivery of the SAB function
A number of South Wales Councils are considering delivery through a consortium type arrangement. This would entail a lead council receiving, processing and delivering applications on behalf of Powys County Council under agreed terms and conditions.
- 3.3 Option 3 – Deliver the SAB through the in-house team

Powys County Council has an in-house Land Drainage service that currently responds to Planning Applications; provides advice on land drainage matters and discharges the responsibilities of the Council as Lead Local Flood Authority (LLFA).

4. Preferred Choice and Reasons

- 4.1 The preferred choice is Option 3. The Council is under a duty to act as the SAB for the region and therefore must make appropriate provision. As a Land Drainage and LLFA the Council has gained considerable knowledge of such matters which would be beneficial to determining SuDS applications. Likewise going forwards information from SuDS consents will be important for the work of the Lead Local Flood Authority.
- 4.2 As a predominantly technical approval body much of the work of the SAB can be delegated to suitably experienced officers, subject to the necessary constitutional and protocols being in place.
- 4.3 The existing Land Drainage and LLFA service comprises two permanent staff currently supported by a temporary technician position. Assessment of historical planning applications suggests that additional resource will be required to discharge the duties of the SAB and that income from the process will be sufficient to support this. It is therefore proposed initially to expand the permanent team to five staff comprising a lead officer, two area officers and two technicians. This expanded team will assist in providing more robust services on drainage and flooding matters.

5. Impact Assessment

- 5.1 Is an impact assessment required? ~~Yes~~/No

6. Corporate Improvement Plan

- 6.1 The proposal supports the Corporate Improvement Plan by ensuring that the council discharges its statutory and common law duties.

7. Local Member(s)

- 7.1 Local Members will play a role in the approval process and will be able to input as a consultee on individual applications.

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? Yes/~~No~~

- 8.1 The recommendations will impact on the Local Planning Authorities (Powys County Council and Brecon Beacons National Park). Discussions have already taken place with these and will continue as the new requirements are implemented.

9. Communications

Have Communications seen a copy of this report? Yes/~~No~~

Communications comment:

No proactive communications action required at this stage.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

10.1 Legal : The recommendations can be supported from a legal point of view.

10.2 Finance – The Finance Manager Place and Resources notes the contents of the report. Work has been undertaken by the service to estimate the annual income that would be generated, based on current planning applications received. The analysis demonstrates that the extra staff required to provide the service would be funded from income generated from applications processed.

The requirement under legislation for the SAB to adopt approved qualifying SuDS will generate ongoing maintenance costs which would be the Council's liability. Details relating to the funding of this are still being developed by Welsh Government and it is envisaged that the costs will be funded from commuted sums but this has not been agreed and if no funding is provided will be a cost to the Council.

11. Scrutiny

Has this report been scrutinised? ~~Yes~~ / No?

12. Statutory Officers

12.1 The Solicitor to the Council (Monitoring Officer) commented as follows :
“ I note the legal comments and have nothing to add to the report.”

12.2 The Head of Financial Services (Deputy 151 Officer) notes the comments of the Finance Manager. The question of funding to meet the potential ongoing maintenance costs needs to be resolved with Welsh Government. Until agreed this represents a financial risk for the Council which could be significant.

13. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

| Recommendations: | Reason for Recommendation: |
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| 1. Cabinet Executive accept the proposal to discharge the statutory duties of the Sustainable Drainage Approval Body (SAB) through the Planning, Taxi Licensing and Rights of Way Committee | 1. To ensure that the Council discharges its statutory duty. |
| 2. To delegate the responsibilities of the SAB to the Planning, Taxi Licensing and Rights of Way Committee with sub-delegation to the Director of Environment and / or the Head of Highways, Transport and Recycling with the ability to further sub-delegate. Delegated powers will be subject to conditions and/or limitations and will be supported by a SAB protocol developed in-line with the Planning Protocol. | 2. To ensure appropriate processes are in place to support the discharge of the function. |

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| Relevant Policy (ies): | |
| Within Policy: | Y / N |
| Within Budget: | Y / N |

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| Relevant Local Member(s): | None (Local Members will be part of the consultation process for each application to the SAB) |
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| Person(s) To Implement Decision: | Head of Highways, Transport and Recycling |
| Date By When Decision To Be Implemented: | Cabinet Approval |

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Background Papers used to prepare Report:

“Water Strategy for Wales” published by Welsh Government
<https://gov.wales/docs/desh/publications/150521-water-strategy-for-wales-en.pdf>

Welsh Government Ministerial Statement
<https://gov.wales/about/cabinet/cabinetstatements/2017/sustainabledrainage/?lang=en>

Schedule 3 of the Flood and Water Management Act 2010.

<https://www.legislation.gov.uk/ukpga/2010/29/contents>

Welsh Statutory Instrument 2018 No. 557 (W. 96) (C. 45)

FLOOD RISK MANAGEMENT, WALES

The Flood and Water Management Act 2010 (Commencement No. 2) (Wales)
Order 2018

https://www.legislation.gov.uk/wsi/2018/557/pdfs/wsi_20180557_mi.pdf

Recommended non-statutory standards for sustainable drainage (SuDS) in
Wales – designing, constructing, operating and maintaining surface water
drainage systems

<https://gov.wales/docs/desh/publications/151230-suds-standards-en.pdf>

CIRIA – The SuDS Manual (C753)

https://www.ciria.org/Resources/Free_publications/SuDS_manual_C753.aspx

CIRIA - Guidance on the construction of SuDS (C768)

https://www.ciria.org/Resources/Free_publications/Guidance_on_the_construction_of_SuDS_-_C768.aspx

CIRIA website “The community for sustainable drainage” www.susdrain.org

CABINET REPORT TEMPLATE VERSION 5