

To: Kent Flood Risk Management Committee – 18 November 2013

From: David Brazier, Cabinet Member, Transport and Environment
Paul Crick, Director Planning and Environment

Subject: Flood and Water Management Act and sustainable drainage

Classification: Unrestricted

Summary: To update the Kent Flood Risk Management Committee on details of KCC's responsibilities under Schedule 3 Flood and Water Management Act with respect to Sustainable Drainage approval.

1. Background

- 1.1 The Flood and Water Management Act 2010 (the Act) provides new legislation for the management of flood and coastal erosion risk in England and Wales. Schedule 3 of the Act requires construction work with drainage implications to have drainage systems approved before construction may begin and promotes the utilisation of sustainable drainage systems (SuDS).
- 1.2 Sustainable drainage systems provide a more natural approach to managing water close to its source, where it falls. SuDS schemes can reduce the impact of development by slowing runoff, encouraging infiltration, trapping pollutants, providing biodiversity and increasing amenity for residents through provision of open space. SuDS components can be both landscaped features, including green roofs, ponds, wetlands, and swales, as well as engineering features, such as permeable pavement and soakaways.
- 1.3 The Act also establishes County Councils and Unitary Authorities as the "approving body" for drainage (also known as SAB, the SuDS approving body). The SAB must ensure that the applicant has designed the SuDS in accordance with the National Standards, which are set by Defra. Once approved, the SAB must adopt and maintain those SuDs that are functioning properly and serving more than one property.
- 1.4 Defra published consultation documents for secondary legislation to support Schedule 3 in December 2011. The consultation received an unexpected 320 responses. Defra has subsequently convened Task & Finish groups to provide input into further development of the approval process, national standards for sustainable drainage and funding to resolve the issues raised by the consultation.
- 1.5 Defra have stated that they intend to commence this legislation on 6 April 2014 for major developments (planning applications for 10 or more units), proceeding to all developments involving more than one property after three years.
- 1.6 Defra had previously indicated that six months notice of commencement would be provided to allow authorities sufficient time to prepare and resource

these new responsibilities. Unfortunately due to the necessary consultations within Westminster this cannot be accommodated as the regulations are not expected to be laid before Parliament before December 2013.

- 1.7 The topic of approving body has been discussed at the Environment, Highways and Waste Cabinet Committee on 10 January 2013, as well as a number of previous Flood Risk Management Committees, most recently 16 March 2012. This paper adds details about the process required by Defra.

2. Delivering the SAB role

- 2.1 In order to undertake the new SAB responsibilities, County Councils will be required to undertake consultation, technical review, approval, inspection and maintenance functions:
 - a. **Pre-application Consultation:** The SAB will need to provide pre-application advice to developers on preferred approaches and drainage considerations.
 - b. **Approval and Adoption:** On receipt of applications for drainage approval the SAB will be required to determine if the proposed drainage strategies meet the National standards, consult with statutory consultees, make a decision and advise the applicant on approval or refusal following this technical review. Once drainage systems have been approved the SAB will be required to undertake inspections of systems requested for adoption and inform maintenance teams of anticipated maintenance requirements.
 - c. **Maintenance:** The SAB will be required to adopt and maintain those SuDS that serve more than one property. As SuDS systems are constructed, they will be added to a suitable asset management system and maintained to ensure that it continues to function as designed.
- 2.2 KCC has undertaken an assessment of how these new responsibilities could be undertaken, including the resources and skills currently available. Under the Act we can delegate this role to another public body, but this option is not proposed as there is no other body with the skills or resources that covers the whole county that could take on this task. Delegating it to several other bodies (for example Internal Drainage Boards or District Councils) would not provide an even coverage of the county with the required skills and would require considerable coordination to ensure it is consistently delivered.
- 2.3 Following the assessment of resources it is proposed that Highways & Transportation (H&T) is best placed within KCC to deliver the SAB role. H&T currently undertakes highway technical approval and drainage functions similar to the tasks required of the SAB. The SAB processes will broaden these responsibilities to include the management of non-highway water and associated infrastructure.
- 2.4 The resourcing requirements for the SAB are dependent upon the extent of construction which has drainage implications and the time it takes to process each application. A consultation package issued by Defra in December 2011

gave estimated application process times for differing sizes of development. From an assessment of historic planning applications it is estimated that 500 major applications are made annually across the County. On the basis of these figures it is estimated that the new role will require as many as 12 staff to review applications, approve and inspect new assets for major applications alone. It is anticipated that the staff will be self-funded by the fees collected from the approval process.

- 2.5 It is currently proposed that KCC will build up to the required staffing level. Initially a small number of staff will be assigned to the SAB function, and these will be supported by KCC's technical contractor. This will allow the resource implications to be fully understood before appointing more staff.
- 2.6 In addition to staff, new tools for application processing, asset management and inventory will be required. Training has already commenced for building understanding of new drainage approach. Supporting documentation is being developed. KCC coordinated the production of planning guidance on masterplanning for sustainable drainage with the SE7 (a group of all the county and unitary authorities in the southeast) to support planners from consultancies and local district councils.

3. Financial Implications

- 3.1 The draft supporting regulations for Schedule 3 provides an application process with associated fees for pre-application discussions, application submission and an on-going maintenance charge. The intention of the legislation is that once embedded, activities undertaken would be self-funding and the whole process should be self-supporting.
- 3.2 The fee schedule for drainage applications as defined by Defra is fixed for three years, after which the SAB is able to adopt its own fee schedule, so long as it is on a cost recovery basis.
- 3.3 Pre-application fees will be able to be claimed on a cost recovery basis as set out in the Local Government Act 2000. Pre-application discussions have been identified as key to ensuring both efficient implementation of the regulation and appropriate inclusion of SuDS measures.
- 3.4 The most critical financial issue is that the Act and supporting legislation does not define the funding mechanism for on-going maintenance of these new assets which will be adopted by KCC. Defra had originally proposed to fund maintenance initially through a grant for the first three years. This has subsequently been dropped from the proposals. Defra is still considering the options for maintenance funding and discussing these with other departments.

4. Summary

- 4.1 The Act gives KCC a statutory duty to approve, and in certain circumstances adopt and maintain, drainage systems for new developments.
- 4.2 KCC has a strong skill set in flood management and drainage. It is proposed that these skills are built upon to deliver the SAB role.
- 4.3 It is expected that the SAB will be self-funding through pre-application charges, application fees and maintenance fees. However, the charging and fee structures have not been fully announced by Defra.

5. Recommendations

5.1 That Members:

- Note the new responsibilities which may soon commence with respect to drainage approvals; and
- Contribute any additional matters arising from debate by the Committee.

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Background documents:

Draft National Standards and statutory instruments are available online at:
<http://www.defra.gov.uk/consult/2011/12/20/sustainable-drainage-systems-1112/>

Flood and Water Management Act 2010 is available online at:
<http://www.legislation.gov.uk/ukpga/2010/29/contents>