Consultation Response – Defra Delivering Sustainable Drainage Systems

Q1. Do you agree that the proposed revision to planning policy would deliver sustainable drainage which will be maintained? If not, why?

Kent County Council strongly disagrees that the proposed revisions will deliver sustainable drainage which will be maintained.

The proposal ensures strengthened consideration of sustainable drainage, within the context of a Strategic Flood Risk Assessment and adopted Local Plan which is appropriate and a positive reinforcement; however, strengthening planning policy is not sufficient to increase the inclusion of SuDS within development schemes and ensure they are maintained in good working order in perpetuity. Defra's own consultation document for SuDS issued in December 2011, said: "Government policy already encourages developers to build SuDS. However, we estimate that as few as 40% of new developments and redevelopments are drained by SuDS of some sort; and uptake has been slow." The proposed changes to planning policy are unlikely to change this.

By not providing a statutory requirement to include sustainable drainage, leaving the automatic right to connect and by not designating an adopting authority, all of which are proposed in Schedule 3, there will not be an environment that encourages sustainable drainage and the current problems will continue.

For example, within Southeast England, if a developer wants to ensure an adopted system by a WASC, the system proposed would usually include an off-line below ground attenuation on a conventional piped sewer system prior to connection to the public sewer system. No open features in the adopted drainage is justified by Southern Water as they require that no land drainage (e.g. from a pond or vegetated surface drainage measures) is accepted within the adopted system. Though this provides attenuated flow it cannot be considered a fully a sustainable drainage system and it has many of the disadvantages of both types of drainage (high cost of installation and maintenance with no benefits of amenity or habitat of a conventional system and a multi-part system that is more complex to design of a SuDS scheme). The WASC will only adopt the system which serves the 1 in 30 year storm event with any attenuation storage, to provide up to the 1 in 100 year storm, will be managed by a private management company or be provided in private areas.

Sewerage Undertakers are unlikely to promote SuDS with multiple benefits, as would be promoted by the planning authority. SuDS differ significantly from the core assets sewerage undertakers currently maintain that they are unlikely to universally promote open, vegetated SuDS or soakaways.

The maintenance conditions as proposed cannot guarantee maintenance into the future if there is any involvement of a commercial non-regulated entity. Of the options proposed:

a) Management companies are not regulated, audited or have any government over-sight. There is no certainty over any particular company continuing into the future

in perpetuity from a financial perspective and no backup provided for any commercial failure. LPAs have indicated to KCC that additional bonds would be required within S106 payments to insure against any maintenance failure on significant schemes.

b) Charitable trusts, applicable only to development of significant scale have been pursued as an option by one Kent borough council. The future sustainability of the organisation and business case are very delicate, dependent upon S106 contributions with key concerns on how maintenance for piped systems or any complex measure would be funded.

Therefore third party adoption is likely to increase costs of the development and potentially add delays to planning.

The proposal does not provide sufficient detail on how these sustainable drainage systems may interact with highway systems. If the proposed system is to be adopted by a service management company, Kent County Council will be unlikely to adopt any associated highways within the proposed development due to the potential risk to the highway system of the failure of the management company to undertake necessary maintenance and therefore result in ongoing costs to the developer more than any costs associated with drainage.

There are significant caveats throughout the proposal which mean that sustainable drainage would not be included within development design or delivered either due to costs or an inability to identify an adopting body. In a worst case scenario, the proposal will lead to a proliferation of piped systems with below grade attenuation tanks adopted by a sewerage undertaker, which is more costly in the long term.

The current proposals do not make any significant changes from the current regime in respect of maintenance. If the planning system was capable of resolving the issue of the long-term maintenance of SuDS it would have already done so in Kent's district councils and boroughs where the planning authority actively promotes SuDS. In these localities the primary obstacle to the provision of SuDS is the lack of effective long-term maintenance, not the willingness of the planning authority or the lack of planning policy to promote it.

The Pitt Review made specific recommendations to deliver SuDS and ensure that the systems were recorded and maintained. The intent was to address the flooding problems which arose through lack of maintenance and lack of accountability for particular measures. The consultation proposal does not address these concerns. This is a major concern for Kent County Council as a county with one of highest number of houses impacted by surface flooding and where growth is looking to deliver a substantial number of housing in the coming 20 years. The lack of inclusion of SuDS and the lack of ensuring appropriate maintenance has the potential to increase the flood risk for residents within our communities through inadequate design, construction and maintenance of new drainage systems.

Q2. How should the Local Planning Authority obtain expert advice on sustainable drainage systems and their maintenance? What are the costs/benefits of different approaches?

Local planning authorities within Kent could seek advice from Kent County Council as they are the Lead Local Flood Authority (LLFA) and the Highway Authority. It would be advisable that we are consulted on new drainage, as being the body with responsibility for local flooding and the highway, drainage provision is one of the most significant factors that affect us. No other consultee provided within the consultation proposal has responsibility for surface water flooding and ground water flooding.

The planning and policy work that Kent as the LLFA has already undertaken with the PFRA, LFRMS, SWMPs and our role as Highway Authority, means that Kent County Council holds the latest information on local flood risk within our communities and has the best understanding of the potential effects of new drainage.

Consulting KCC would ensure that appropriate technical review is provided from a drainage and flood risk perspective and could be considered in connection with any highway adoption. If KCC provided expert advice, it would ensure there is a consistent approach across Kent to drainage provision and also ensure compliance with a satisfactory standard of design and construction.

Costs associated with Kent County Council providing this technical advice would be recovered through charging of the applicant. Kent County Council currently provides advice on an ad hoc basis to councils who request support and for developers who seek adoption of drainage through Section 38 highway adoption. Staffing for this advice is absorbed within our LLFA role but we do not have sufficient resources to serve the anticipated 540 major applications that occur across Kent annually.

This service would need to be funded in order for KCC to provide the service and it would represent a new burden. It would be possible to charge the applicant for advice as was originally proposed under the drainage application fee for Schedule 3 at both a pre-application stage, for review at technical approval and inspection with construction.

With the exception of Internal Drainage Boards (which only have a small national coverage), none of the proposed consultees would be able to provide practical advice about the long-term maintenance required for these systems, which was the primary barrier the Pitt Review identified for the widespread use of SuDS.

Other parties within the development industry have suggested:

a) utilisation of WASCS – the limitation of WASC adoption has been discussed in our response to Question 1; and,
b) utilisation of building control – which has specific experience only in relation in and around individual buildings and would have experience on site or regional facilities or in relation to highways and does not have experienced in responding within planning timeframes.

For any proposal of technical review, the review advice must bear weight if it is applied in the context of a planning decision, must be mandatory for approval and provided for all applications. Within Kent, we have recent examples where approval has been granted for a planning application, and where it is now apparent drainage may be inadequate with a potentially high impact to downstream flood risk. The LLFA were not consulted on the planning application and though the EA did not object, they highlighted the lack of information provided and the importance of ensuring this information was provided. This has been conditioned but the assumptions which have been made inappropriately about drainage design have significant ramifications for the site design.

It is clear that this example will be a common occurrence going into the future, if Defra does not address the need for appropriate technical review within planning. Approvals in relation to a drainage system are not subjective and the failure of any system may pose significant risk to public safety in the immediate vicinity of the proposed site as well as significant impacts to flood risk within the wider community. The community, the developer and the government will bear these costs if appropriate technical review is not considered in any decision.

Q3. What are the impacts of different approaches for Local Planning Authorities to secure expert advice within the timescales set for determining planning applications?

LPAs must make a determination within 8 weeks for minor applications and 13 weeks for major applications. Within this time frame, consultees need to be contacted and their responses considered.

If an LPA has internal drainage resources to provide advice, it would be able to control timeframes within the planning process and pick up questions on drainage where input is needed at an early stage of planning; however, this is reliant on LPAs having an internal resource. In recent years there has been a continual loss of drainage engineers from local councils, with only three district councils of the 12 within Kent maintaining drainage expertise. This would result in a significant resource commitment for each district council to address the lack of internal experience.

The Environment Agency are likely to be able to respond within the timeframe, however this response will only be for sites in excess of 1 ha, which will exclude many major developments and for sites less than 5 ha the response will be standing advice not bespoke to the site and development in question. The Environment Agency's advice will also only be on the flood risk aspects of the proposed development, they do not have the expertise to provide detailed advice on drainage or maintenance. This will not affect planning delivery but it will affect the quality of the drainage.

WASCs will provide advice if they are adopting the drainage or it is discharging to the public sewer, but their advice is likely to promote a scheme that is compliant with sewers for adoption and not necessarily sustainable drainage. If they are adopting the scheme it is

possible that the negotiations will continue after the planning decision has been made, so they may not be an opportunity to influence the final scheme.

Kent County Council as LLFA and highway authority has the expertise to provide technical advice to the district councils on drainage applications and has experience on specification and maintenance through highway drainage maintenance. Kent County could provide review of a drainage strategy to support a planning application within the timeframes excepting it would be challenged by the facts that:

a) this review would be dependent upon the level of information submitted and at present it is common that drainage submissions planning applications are strategic, outlined and not fully detailed; and,
b) pre-application discussions which can promote SuDS and overcome issues with initial concepts, have not been mandated within the consultation proposal and will likely absorb periods of time within the determination period.

Q4. Do you agree that minor size developments be exempt from the proposed revision to the planning policy and guidance? Do you think thresholds should be higher?

It is appropriate that planning policy changes in the first instance apply to major development, but Kent County Council disagrees that all minor development should be exempt given impacts which could occur to local drainage systems.

There is currently provision in planning policy for critical drainage areas to be identified where a flood risk assessment is then required for all developments, irrespective of their size. We suggest that a similar provision is made for the provision of SuDS, as these areas are particularly vulnerable to drainage problems and sustainable drainage is the only way to ensure that new development does not exacerbate the existing problems.

Q5. What other maintenance options could be viable? Do you have examples of their use?

The original consultation on implementation of Schedule 3 of the Flood and Water Management Act provided a body to undertake on-going maintenance. As a public body the Sustainable Drainage Approving Body would be sustainable, regulated, and be responsible to the community. Funding could be provided as originally proposed within the consultation in December 2011 that in the short-term maintenance of any adopted SuDS is funded by Government. This would allow an assessment of costs to be undertaken and a suitable charging regime and process identified.

The adoption of sustainable drainage need not follow a rigorous statutory approval process. As a highway authority we adopt highways, including highway draiange that can include SuDS elements, through a process that runs in parallel with planning process. Likewise the WASCs adopt new sewers through a similar process. A similar approach could be taken with SuDS, where an adopting authority is designated and they have to negotiate, against agreed

standards, with the developer the most appropriate drainage system for the site. This would provide a long-term maintenance regime for sustainable drainage that minimises costs.

The only other maintenance options available to developers have been available for some time, including at the time of the Pitt Review. If these could provide a sustainable solution for SuDS maintenance, the Pitt Review would not have recommended that the government resolve the issue of long-term maintenance of SuDS. Changes to planning policy are unlikely to change the maintenance options available, to do this other changes will be needed.

Q6. What evidence do you have of expected maintenance costs?

Kent County Council does not have any direct experience of SuDS adoption in larger schemes. To date we have been adopting SuDS (e.g. permeable pavements and soakaways) under S38 agreements and where necessary have been charging commuted sums. Commuted sums calculations have been based on day rates as specified through our technical framework and assessed against information provided within Cambridge City SuDS Adoption and Design Guide.

Q7. Do you expect the approach proposed to avoid increases in maintenance costs for households and developers? Would additional measures be justified to meet this aim or improve transparency of costs for households?

Much debate occurs as to whether SuDS cost more than conventional piped drainage. Maintenance is required for any system operation. The maintenance advantage for surface systems is that the need for maintenance can be assessed visually and undertaken as needed. Any failures are more easily investigated and corrected without substantial disruption or costs. The assessment of total costs therefore needs to include all actions and all parties who undertake maintenance activities. Some authorities perceive increases in charges because the transfer of cost applies to their own specific activities e.g. from sewer or drain maintenance to landscape maintenance.

Without removing the right to connect there will not be much incentive for developers to deliver genuinely sustainable drainage, as WASCs will continue to adopt drainage. Currently the WASCs only charge for a system which conveys the 1 in 30 year storm event and greater storms are managed through attenuation storage which is not maintained by the WASC but normally by a private management company. Therefore there will need to be two adopting bodies in order to achieve drainage that provides protection for the 1 in 100 year event and is acceptable to the highway authority. Residents are therefore charged by two entities, with associated administration charges.

Sustainable drainage that is adopted by a single body should not result in any increase to maintenance costs for householders. There may be efficiencies given the multiple benefit of some SuDS measures. For instance maintenance related to landscape areas can be associated with other maintenance requirements such as verge maintenance or amenity spaces. It would be difficult to separate costs in this instance and may be unnecessary.

If the highway authority was the same as the sustainable drainage adopting authority there would be an incentive to combine surface water and highway drainage in one system that would lead to savings for the developer in capital costs and reduces overall activities for maintenance to one system.