Communities and Local Government

New burden assessment

Details of the proposal	
1. Name of lead department.	Department for Environment, Food and Rural Affairs
2. Working level contact in lead department (include telephone number and email address).	Moira Redmond 0207 238 3108 moira.redmond@defra.gsi.gov.uk
3. Name of policy/duty/expectation.	**Policy:** Making the Lead Local Authority a statutory consultee, in planning, for major development, in relation to surface water drainage. **Duty:** a statutory duty will be placed on the 152 upper tier (county and unitary) authorities (Lead Local Flood Authorities) to provide technical advice on surface water drainage, within prescribed deadlines, to local planning authorities on planning applications, for major developments, with surface water drainage implications.
4. Description of the policy objective.	A local planning authority is required to consult a statutory consultee on planning applications relating to the type of development specified. The statutory consultee is required to report to Government on their performance in responding to those consultations within the 21 day prescribed period. In this case, the lead local flood authority will be asked by the local planning authority for advice on the proposals for surface water drainage in major development, so that the local planning authority is able to satisfy itself that sustainable drainage systems (SuDS) are put in place, unless demonstrated to be inappropriate, and are designed to ensure that the maintenance and operation requirements are economically proportionate. This policy sits alongside

	changes to planning policy coming into effect from 06 April 2015.
5. Stage proposal is at (e.g. initial draft, consultation document, Cabinet clearance, etc.). If first draft, please state when update will be submitted.	Formal Cabinet clearance for the change to planning policy and agreement to consult on making the Lead Local Flood Authorities statutory consultees was secured jointly by Defra and DCLG on **17 December 2014.** A Written Ministerial Statement was made to Parliament on **18 December 2014** (by the Secretary of State for Communities and Local Government) announcing the changes to planning policy to come into effect from 06 April 2015. A public consultation seeking views on the Government's intention to make the Lead Local Flood Authorities statutory consultees was open between **18 December 2014 and 29 January 2015**.
6. Brief expected timeline of the forthcoming key stages, including committee clearance.	Expected lay date for SI making Lead Local Flood Authorities statutory authorities: **26 March 2015 (tbc)** Coming into force date for SI: **16 April 2015 tbc** Come into force date for change to planning policy**: 06 April 2015**
7. What the proposal requires local authorities to do, and how this differs from what they are doing now. If there is no difference, why is the new power/duty/ expectation being made?	The National Planning Policy Framework sets out the expectation that, in determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere, and in areas at risk of flooding that development is resilient and safe and priority is given to the use of sustainable drainage systems for surface water management. On 18 December, the Government laid a Written Ministerial Statement, strengthening existing planning policy, to expect the provision of sustainable drainage systems for all major development where appropriate. The policy will take effect from 06 April 2015 and should be read in conjunction with the policies in the National Planning Policy Framework. Lead Local Flood Authorities (county councils and unitary authorities) have responsibility for local flood risk management under the Flood

	and Water Management Act 2010. LLFAs are funded by central government in respect of their responsibilities and duties set out in that Act, including to develop, to maintain, to apply and to monitor strategies for local flood risk management in their areas. To this end, LLFAs can provide advice to local planning authorities about localised flood risk and the impact of proposed developments on that risk To ensure that local planning authorities have timely access to the technical expertise needed to assess the locally-specific surface water drainage proposals which should be part of planning applications, Lead Local Flood Authorities are to be made statutory consultees for major development planning applications in relation to surface water drainage. A local planning authority may currently choose to seek the views of the relevant Lead Local Flood Authority on the merits of a surface water drainage proposal in a planning application. The difference that the policy makes to the existing position would be the requirement on the Lead Local Flood Authorities to report to Government on their performance in responding to planning applications. Statutory consultees are under a duty to provide a substantive response on the merits of the relevant part of a planning application[1] within 21 days.
8. Expected date the policy impacts on local authorities. If implementation is to be phased in, please give estimated dates for each phase.	**06 April 2015** for change in planning policy.
9. Is an impact assessment being completed? If this shows that the policy impacts on the private sector in the same way with no disproportionate impact on local authorities, contact the Communities and Local Government New Burdens Team to confirm that the new burdens rules do not apply in this case - this does not mean there are no	Delivering sustainable drainage systems via the planning system is not a regulatory change and consequently is not subject to the "one-in two-out" rule for new regulation. There is no net cost to businesses arising from a requirement in planning to use SuDS for surface water management where appropriate, because SuDS are usually cheaper to construct than conventional surface water

[1] This duty to respond applies in the instances set out on Article 20, DMPO.

local government finance matters that might need to be addressed.	drainage and if the capital costs of building SuDS would be higher than costs for building conventional drainage, developers may construct drainage with more traditional pipework (or by using a combination of traditional solutions and sustainable drainage), and still fulfil the requirements of the policy. DCLG advises that no IA is needed for this policy approach. An Impact Assessment (IA) was prepared by Defra to support the implementation of Schedule 3 to the Flood and Water Management Act 2010 (an earlier policy approach for SuDS) which was rated as 'fit for purpose' by the Regulatory Policy Committee in February 2014. Where possible, the underlying assumptions used in this New Burden Assessment are derived from those used for that earlier Impact Assessment unless there are more up-to-date figures available which are used instead.
Estimated costs/savings	
10. Has the proposal been appraised in accordance with HM Treasury *Green Book* principles? What was the outcome of the appraisal?	Yes. The Impact Assessment referred to above has informed the policy choice. The preferred Schedule 3 approach was highly cost-beneficial for many reasons not least because of the savings achieved through effective surface water flood risk reductions but involved a separate consenting regime for SuDS approval to sit along planning. The revised implementation route using the planning system is assessed to be similarly economically worthwhile, because SuDS constructed under either regime will secure flood risk mitigations savings, and the planning approach removes the need for developers and local government to work within two consenting regimes. The l IA suggested maximum economic benefit would be achieved if all major and minor development was within scope. For now, the change to planning will apply to major development only but the policy will be kept under review.

<table>
<tr><td>11. Best estimate of reasonable costs and savings involved for local authorities for each individual year. Please give breakdown <u>by financial year</u> and state whether costs are revenue or capital.</td><td>All costs and savings are revenue and aggregates for all Local Authorities in £m (2014 prices). More detail is provided in the following boxes.

<table><tr><td>Year</td><td>Cost / £m</td><td>Saving / £m</td></tr><tr><td>2015/16</td><td>£7.434*</td><td>0**</td></tr><tr><td>2016/17</td><td>£1.969</td><td>0.138</td></tr><tr><td>2017/18</td><td>£1.969</td><td>0.270</td></tr></table>
* includes one off costs associated with the policy in addition to the recurring costs element. LLFAs have already received funding of £6m in 2013/14 for one off and preparatory costs for SuDS.

**savings set out in Annex B will not be realised until year two (2016/17)</td></tr>
<tr><td>(a) Overall <u>additional</u> total costs to local authorities for each year.</td><td>The total burden to local government in year 1 is estimated at £7.434 million with employer contributions and overhead costs, and including one off costs[2]. This equates to a total cost of providing expert advice on planning applications for drainage in year 1 at £48.9k per LLFA on average, of which £26.4k is the cost of fulfilling the statutory duty during that year and the remainder is the cost to prepare IT and internal systems, train key internal and external stakeholders, raise awareness and develop locally specific standing advice to reduce the burden in future years.. In year 2 onwards the total burden to local government is estimated at £1.969m per annum (i.e. £13k per LLFA on average). This figure reflects the provision of technical advice, and administration required by the LLFA in delivering and presenting this advice for that year. (See Annex A for the breakdown of these figures).</td></tr>
<tr><td>i. Element attributable to 'one off' implementation costs.</td><td>Estimated at £3.419 m for Year 1 (2015/16). (Details set out in Annex A.) .</td></tr>
<tr><td>ii. Recurring costs element (for the first 3 years).</td><td>As in section 11(a) above.</td></tr>
</table>

[2] LLFAs received £6m (total) in grant-in-aid in 2013/14 for SuDS implementation preparation to take into account for Year 1 burden.

<table>
<tr><td>(b) Estimated specific and identified <u>savings</u> for each year - these must be additional to the annual savings authorities are expected to make and their treatment consistent with the appropriate HM Treasury guidance on efficiency.</td><td>A high level aggregate estimate of savings to local authorities due to SuDS reducing flood risk in new build property is £0.14m for the second year, £0.27m in the third year and £0.41m in the fourth year. Please refer to Annex B.

Note these savings will not start to be realised until year two (2016/17) because the savings accrue from reduced flood risk due to SuDS constructed and in use.</td></tr>
<tr><td>(c) What are the direct and indirect impacts on local authorities pay and pensions costs?</td><td>Cost increases as set out in Section 11 (a) above</td></tr>
<tr><td>(d) Overall estimate of the <u>Net</u> Additional Cost (costs-savings) to local authorities for each year.</td><td>The aggregate net additional cost is as follows (£m):

<table><tr><td>Year</td><td>Net cost / £m</td></tr><tr><td>2015/16</td><td>7.434</td></tr><tr><td>2016/17</td><td>1.831</td></tr><tr><td>2017/18</td><td>1.699</td></tr></table></td></tr>
<tr><td colspan="2">Discussion with authorities</td></tr>
<tr><td>12. What discussions have taken place with local authority associations, e.g. with the LGA or LC? If there is no planned contact with local authorities through representative bodies, please explain why.</td><td>Defra and DCLG have publicly consulted on the policy approach.

Defra and DCLG have held meetings with the LGA to discuss the scope and magnitude of the new burden.</td></tr>
<tr><td>13. Give a brief description of the authorities' views, particularly on costs and financing (note: there is no obligation to agree final finance assessments with them).</td><td>The LGA have indicated that if there is a requirement for Lead Local Flood Authorities to provide this advice this would need to be fully funded by government under the new burdens regime.</td></tr>
<tr><td colspan="2">Providing the resources</td></tr>
<tr><td>14. If there are net additional costs, has the lead department identified where the funding for this new burden is coming from and agreed</td><td>Defra has identified sufficient funds within the Water programme to fund the burden in 2015/16. Funding for future years must be secured as part of future Defra/LG SR</td></tr>
</table>

to fully fund them? Please give details.	settlement(s). *
15. What costing evidence/analysis do you have/are you going to undertake to demonstrate that the funding is sufficient, and when will you be providing this?	Please refer to Annex A.
16. If costs are to be met by charging, do these cover the full net additional costs, and do authorities have the freedom to determine the fee levels consistent with recovering reasonable costs?	n/a
17. If your assessment is that the proposal will result in no additional costs being placed on local authorities, how will you ensure that this is the case?	n/a
DCLG New Burdens Team Sign Off	
18. Have you shared your assessment with the New Burdens Team?	Yes
Departmental Finance Director Sign Off	
19. Please state if this is a first or a final assessment of your proposal. If first please indicate when a final assessment will be submitted.	first
20. Certification that the estimated net additional costs falling on local authorities has been assessed in accordance with the guidance on new burdens and that this will be fully funded. That to the best of finance director's knowledge the estimates are a true and fair assessment of the net additional costs falling on authorities. Confirmation that their department is aware that if the proposed policy or initiative is implemented, there may be an independent post-implementation scrutiny carried out (paid for from within their department's existing resources) and that under or over-payments of grant revealed by the scrutiny may	**Signed:** **Name:** **Date:** **Telephone Number:** **Address:**

inform future decisions on funding.	

For completion by the DCLG New Burdens Team:

Date received: …… Reference number: ……

Annex A: The extent of the new burden for local government and the existing responsibilities of the Local Planning Authorities and the Lead Local Flood Authorities

Existing relevant burdens on LPAs and LLFAs

The existing National Planning Policy Framework sets out planning policy on flooding. Requirements for local government in respect of flood risk management and a 'presumption in favour of sustainable development' predate the changes to planning and the new duty for Lead Local Flood Authorities to provide advice in a given period of time to the Local Planning Authorities on surface water management proposals which are part of major development planning applications.

Specifically, the NPPF (paragraph 103) requires planning applications to demonstrate that priority is given to the use of SuDS in all developments which are located in flood risk areas.

Section 9 of the Flood and Water Management Act 2010 requires each Lead Local Flood Authority to develop, maintain, apply and monitor a strategy for local flood risk management in its area, which includes flood risk from surface runoff, groundwater, and ordinary watercourses.

New Burden on LPAs

There is no new burden for the Local Planning Authorities (LPAs) as a result of the change.to policy to which this assessment refers. The rationale follows:-

Assessing planning applications

LPAs already determine major planning applications and the change to policy will have no impact on the number of planning applications to be determined by the LPAs. Similarly, LPAs are also required to seek and to take account of the views of statutory consultees, as set out in Schedule 5 to the Town and Country Planning (Development Management Procedure) Order 2010 (as amended). Current planning guidance supporting the National Planning Policy Framework already encourages local planning authorities to seek agreement with Lead Local Flood Authorities on obtaining Lead Local Flood Authority advice on surface water flood risk issues. The policy introduces Lead local Flood Authorities as statutory consultees on surface water drainage but removes a similar statutory requirement on the Environment Agency.

Enforcement

There is no evidence to presuppose that planning conditions imposed as a result of the change to planning policy for surface water management are more likely to be breached than any other condition that the LPA may attach to a planning permission. Similarly, there is no requirement on LPAs to put in place bespoke monitoring arrangements. In the circumstance, no new burden is identified for LPAs on enforcement.

New Burden on LLFAs

Over-arching assumptions

The calculations which follow use the number of decisions on major developments made by LPAs, in 2013/14, as a baseline to establish the new burden for Lead Local Flood Authorities (in providing timely advice on surface water management in respect of planning applications for major development), as opposed to just using the number of planning applications submitted.

There will be planning applications submitted which do not reach decision stage and therefore not included in the number of decisions in any year. However the number of withdrawn or otherwise failed applications which are sufficiently developed to seek the advice of a statutory consultee and are not re-submitted at a future date, and hence never included in the number of decisions in any year, would be negligible for major developments. Therefore, for major developments, there would be good correlation between the number of decisions and the number of applications referred to a statutory consultee, assuming all applications are referred to that statutory consultee.

The year ending March 2014 (which is the latest year for which statistics are available from DCLG), saw 471,900 planning applications and 349,400 decisions[3] of which 14,825 decisions (P126)[4] (4.2%) were for major developments as defined by the DMPO - that is Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010).

Under the change in policy there is a statutory requirement only for the Lead Local Flood Authority to be consulted on surface water drainage issues for major developments.

The DMPO definition for major development will include proposals for developments which do not have surface water management implications and therefore adjustments do have to be made to any statistics to take account of those where there are no or minimal surface water management implications.

It is anticipated in the calculations which follow that LPAs, especially during the first year, may request advice for major developments which do not have surface water management implications, or where it is unclear to them whether there are surface water management implications. Adjustments are made to ensure that LLFAs are funded for the small level of administration required to handle such requests. In due course, LLFAs may advise LPAs through standing advice in respect of types of major development where there are no or minimal surface water management implications and this would reduce level of consultation. Further, itt is anticipated that in future years LPAs will be less likely to unnecessarily refer cases to the LLFAs.

The average cost per Full-Time Equivalent (FTE) for an administrator is £36,072 with employer contributions and overheads (i.e. accommodation costs). This estimate is based on national Defra pay costs for an “AA” grade (as a proxy for LA staff costs).

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[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329996/140619_Planning_Applications_January_to_March_2014_England_-_final.pdf

[4] https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics

The average cost per FTE for an engineer is £76,295 with employer contributions and overheads. This estimate is based on ICE salary scales plus Defra overhead rates (as a proxy for LA costs).

A full time employee works 1,570 hours per year allowing for holiday etc.

Year 1 (2015/16)

In Year 1, we are anticipating that LLFAs will have up-front start-up costs, including for developing or adapting existing IT systems; capacity building and awareness raising for key internal and external stakeholders; and developing bespoke standing advice on locally-specific surface water management issues, which will serve to minimise the time needed to technically assess applications in Year 2 and in subsequent years. The one-off start-up costs for Year 1 are set out on page 14.

The cost to the LLFAs of providing advice to the LPAs on surface water management in Year 1 is calculated using the additional following assumptions:

- That, in the absence of the locally-specific standing advice which LLFAs will be best-placed to develop during Year 1, and employ in subsequent years:
    - 70% of major planning applications will require a statutory consultee to spend an average of 6 hours undertaking technical assessment for surface water drainage implications, and
    - 30% of major applications will require a statutory consultee to spend an average of 3 hours undertaking technical assessment.
    - These percentage rates are based on the experience of the existing statutory consultee, the Environment Agency;

That each application submitted to the LLFA for advice (as a statutory consultee) will involve the LLFA undertaking 1 hour of administration (based on an assessment for the time taken as set out in Defra's Impact Assessment for the implementation of Schedule 3 to the Flood and Water Management Act 2010 which was verified by the independent Regulatory Policy Committee). This includes the time taken to report annually to the Secretary of State on how the LLFA performs against the duty.

Years 2 & 3

In Year 2 and subsequently, we are anticipating increased savings for local government as a result of increased flood risk mitigations due to SuDS constructed under this change in policy.

For Year 2 and subsequently, the number of major development decisions used is amended to make greater allowance for those related solely to waste and minerals developments as these rarely involve surface water management implications for which sustainable drainage systems (SuDS) is required, and are not the focus for this change in policy. Of those major development decisions in 2013/14 (the last year for which statistics are available), 1419 were identified as relating to minerals and waste. In recognition that LPAs may still submit such applications to LLFAs for advice, a small administrative allowance is made to ensure that LLFAs are funded to respond.

The cost to the LLFAs of providing advice to the LPAs on surface water management in Year 2 (and in subsequent years) is calculated using the additional following assumptions:

- For year 2 onwards it is assumed that the LLFA will employ locally-specific surface water standing advice (funded in Year 1) reducing the hours needed for technical assessment and the following level is assumed –
    - 10% of major planning applications will require a statutory consultee to spend an average of 6 hours undertaking technical assessment for surface water drainage implications,
    - 50% of major planning applications will require an average of 3 hours for technical assessment, and
    - 40% of major planning applications can be addressed through standing advice for which an allowance of 1 hour for technical assessment is made.
- 1 hour of admin time per decision (based on the same assumption as before).

Year 1	**Decisions**	**Hours**	**FTE** (hours/1570)	**Cost (£k)** (£76295/FTE technical, £36072/FTE admin)
Total planning decisions (major)	14,825			
of which:				
taking 6 hours of technical scrutiny (70% of cases)	10,378	62,265	39.7	3,026
taking 3 hours of technical scrutiny (30% of cases)	4,448	13,343	8.5	648
taking 1 hour of admin (100% of cases)	14,825	14,825	9.4	341
Totals		90,433	57.6	**4,015**

Year 2	**Decisions**	**Hours**	**FTE** (hours/1570)	**Cost (£k)** (£76295/FTE technical, £36072/FTE admin)
Total planning decisions with exemptions (major)	13,406			
of which:				
taking 6 hours of technical scrutiny (10% of cases)	1,341	8,043	5.1	391
taking 3 hours of technical scrutiny (50% of cases)	6,703	20,109	12.8	977
taking 1 hour of technical scrutiny (40% of cases)	5,362	5362	3.4	261
taking 1 hour of admin (100% of cases)	13,406	13,406	8.5	308
admin time for minerals & waste	1,419	1419	0.9	33
Totals		46,921	29.9	**1,969**

Total burden to local government

Year 1 (2015/16)

The total burden for year one is **£7,434,000**.

This includes costs for both providing technical advice all major development planning applications (£4,015,000) and one-off costs for LLFAs to prepare for their new statutory duty and the requirement to provide technical advice within a deadline (£3,419,000) in year one (2015/16). These upfront tasks are:

- Establishing the necessary IT systems / computer software – estimated at around £500k[5]
- Building capacity and awareness of SuDS based upon local area requirements – estimated at £2.28m[6];
- Targeted training and awareness raising for senior officials with LLFAs - £39k[7]
- Development of standing advice – estimated at £600k[8];

Years 2 & 3

The total burden from year 2 onwards would be £1,969,000 per annum less the savings set out in Annex B. These savings are accrued as a result of reduced flood risk secured through the use of effective SuDS. These savings are only realised as the SuDS are constructed.

The adjusted burden for year two and year three will therefore be **£1,831,000** and **£1,699,000** respectively.

[5] There is little evidence to inform this estimate but estimates from Defra Network bodies in modifying IT systems to add flood defence consents to the national environmental permitting system (between £100k and £300k, depending on option) have informed the figure. We have assumed a higher national cost due to reduced economies of scale for LLFAs.
[6] Assuming cost to deliver one capacity building workshop per LLFA
[7] Based upon 1 hour each of CEO and relevant Director with allowance for 1hour admin time
[8] Assuming 10 days of technical development and 2 days administrative time for preparing and drafting per LLFA.

Annex B – Deriving savings to Local Authorities from SuDS

- £101 million local authorities' spend on flood and coastal risk management, 2010-11[9]

- Some 5.2 million properties are at risk of flooding in England.

- Over 2.4 million properties are at risk of flooding from rivers or the sea in England.

- One million of these are also vulnerable to surface water flooding with a further 2.8 million properties susceptible to surface water flooding alone[10]

- With 3.8 million properties at risk of surface water flooding (73% of all properties at risk of flooding in England), 54% of all properties are at risk of surface water flooding alone and assuming an even split of LA spending on different flood risks (73% of £101m = £73.7m; 54% of £101m = £54.5m), local authorities in England spend between **£54.5m and £73.7m annually** on surface water flooding risk management.

- Using the lower figure, assuming that flood damage will grow between 60% and 220% in next 50 years (Source: Defra Impact Assessment, Dec 2013), and assuming that proportion of properties at risk of surface water flooding is unchanged, spending on surface water flood risk will increase as follows.
    - 2010-11 - £54.5m
    - 2060-61 - (+60% =) £87.2m to (+220% =) £174.4m

- **SuDS measures reduce damages by ~30%.** (Source: Defra IA evidence base, Dec 2013). With SuDS, surface water flooding risk managements costs in 2060-61 would therefore be reduced to £61.0m to £122.08m

- As a first approximation therefore, SuDS could mean an annual saving to LAs by 2060-61 of £26.2m to £52.32m (in total).

- **However** the numbers above are not representative of future flood risk to **new properties in major developments only**, which are the only ones required to have SuDS once measures are implemented.

- Population is expected to rise 25% by 2060. Assume the same rise in the total number of properties (mostly driven by households but this could be more, e.g. DCLG projecting 27% rise in households in England by 2033[11] . This

[9] http://www.nao.org.uk/wp-content/uploads/2011/10/10121521.pdf
[10] Source - HoC note: Flood defence spending in England http://www.parliament.uk/business/publications/research/briefing-papers/SN05755/flood-defence-spending-in-england
[11] https://www.gov.uk/government/publications/household-projections-2008-to-2033-in-england

increase in properties represents a fifth of the total in existence by 2060, and the increase accounted for by major developments represents 16%[12].

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- Potential savings associated with major new build only (not other properties to which they might drain) might therefore be about 16% of the "first approximation" estimates above:

- **Annual savings to LAs by 2060-61 due to SuDS reducing flood risk in major new build only = £4.2m to £8.4m**

- In terms of a time profile of LA savings, we assume this takes a similar form as the total (national) flood damages avoided from SuDS, as estimated in Defra's Impact Assessment (December 2013). Total flood damage avoided estimated in that IA rose from £3.7m in year 1 of implementation (assume 2015/16) to £172m in year 46 (equivalent to 2060/61). In index terms and taking 2060/61=100, the first three years of savings equal 2.2, 4.3 and 6.5.

- Using this index, estimates of the savings to LAs in early years from SuDS implementation are as follows (£k). Note that we estimate it will be year 2 before savings begin to be realised:

Estimated savings to LAs from SuDS implementation (early years)

£k	Low	High	**Central (midpoint)**
Year 1			**0**
Year 2	92	184	**138**
Year 3	180	360	**270**
Year 4	272	544	**408**

- Note this is a high-level assessment given the general uncertainty in future development levels and flood risk.

[12] In index terms, if the starting household number = 100, then by 2060 it has risen 25% to 125. In proportionate terms, this increase is 25/125 or 20% of the 2060 total. If major developments account for 80% of this increase (i.e. 20/125), this is 16% of the 2060 total.