

## ROTHERHAM BOROUGH COUNCIL REPORT TO MEMBERS

1.	<b>Meeting:</b>	<b>Cabinet Member and Advisers for Regeneration and Development</b>
2.	<b>Date:</b>	<b>Monday 22<sup>nd</sup> April 2013</b>
3.	<b>Title:</b>	<b>Rotherham's Sustainable Urban Drainage Approving Body (SAB)</b>  <b>All Wards</b>
4.	<b>Programme Area:</b>	<b>Environment and Development Services</b>

### 5. Summary

Under the requirements of the Flood Risk Regulations 2009 and the Floods and Water Management Act 2010 (Act), it is a duty of the Council as the Lead Local Flood Authority (LLFA) to establish and implement a Sustainable Urban Drainage Approving Body (SAB).

The SAB will have the power to approve, supervise, adopt and maintain Sustainable Urban Drainage Systems (SUDs), and determine how surface water is managed on new development and redevelopment sites.

It is proposed that the Council's SAB will be established and implemented by April 2014.

### 6. Recommendations

**It is recommended that Cabinet Member:**

- 6.1 Approves the establishment of the Council's Sustainable Urban Drainage Approving Body (SAB).**
  - 6.2 Approves the Council's SAB roles and duties.**
  - 6.3 Agrees for the completion of a Local Design Guide for Sustainable Urban Drainage Systems (SUDs) to meet National Standards and to assist the Council's SAB and Services and the public.**
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## 7. Proposals and Details

In 2013 Defra is proposing to finalise the requirements and duties of SABs for all Lead Local Flood Authorities under the Flood Risk Regulations 2009 and the Floods and Water Management Act 2010 (Act). It will be a duty of the Council to establish and implement a Local Sustainable Urban Drainage Approving Body (SAB) by April 2014. It is estimated that the preparation and establishment of SAB, including finalising all adoption requirements for Sustainable Urban Drainage Systems (SUDs), could take approximately 12 months.

For information purposes the definition of SUDs can include drainage systems such as soakaways, swales, balancing ponds and reservoirs, green roofs, oversized pipes and tanks, permeable car parks etc. Sustainable urban drainage should maintain a good public health barrier, avoid local or distant pollution of the environment, minimise the utilisation of natural resources (e.g. water, energy, materials), and be operable in the long-term and adaptable to future requirements.

The Act requires the SAB to approve SUDs before construction commences for drainage systems in new developments and redevelopments. All proposed SUDs will have to meet National Standards for the design, construction, operation and maintenance. Water and Sewerage Companies, the Environment Agency, the Canal and Rivers Trust, Internal Drainage Boards and the Highways Authority will all be statutory consultees to the SAB. The SAB will be a statutory consultee to the planning process.

The proposed process and guidance for the Council's SAB is summarised in Appendix 1.

The proposed establishment of the Council's SAB and proposed key personnel are as follows:-

- **Chair** – Director of the Service within EDS
- **Members** - Managers from EDS consisting of Drainage, Planning, Leisure and Green Spaces and Legal Services (where considered necessary).
- **Technical Support** – Officers from various services where additional technical advice will be required to assist SAB.

It is proposed that the above key personnel would only meet and approve large and complex SUDs e.g. reservoirs, balancing ponds, dry basins, green roofs, and/or systems considered to have major implications (e.g. complex systems, substantial financial matters, legal implications, resource issues, water quality requirements and any contentious issues) which are likely to impact on the Council.

For smaller or less complex SUDs, it is proposed that the adoption of SUDs would be the responsibility of key technical officers i.e. consisting of Drainage, Planning, Leisure and Green Spaces and Legal Services who would have delegated power to adopt SUDs. A report would be presented to SAB updating them on all SUDs adoptions completed through this process.

The Council will have powers to design check, supervise, adopt and maintain all SUD systems within the Borough that are offered to the Council, for adoption.

SAB cannot adopt SUDs retrospectively.

Managers from EDS consisting of Drainage, Planning, Leisure and Green Spaces and Managers from Legal Services were consulted regarding the preparation and implementation of SAB. Feedback information from the Managers is detailed in Appendix 2 and has been incorporated within this report.

## **8. Finance**

In January 2011 the Environment Secretary confirmed that in 2011/2012 grants of £21m rising to £36m for 2012/2013 and subsequent years, would be made available to help Councils protect and support their own community when managing flood risk.

Defra has allocated £120,200 in 2013/2014 to Rotherham which will enable the Council to carry out its new duties under the Floods and Water Management Act 2010.

Defra has announced that the funding allocated to Lead Local Flood Authorities should be in addition to the funding provided by Defra through the Formula Grant funding or similar, for Flood and Coastal Erosion Risk Management within the Environmental, Protection and Cultural Services.

There is some uncertainty that future funding will be provided by Defra after 2015, this could apply additional pressures on the Council to obtain future funding to fulfil its roles and responsibilities under the Act and to continue with its SAB duties.

At an early stage various funding options have been considered to fund SAB and future SUDs, these options are identified in Appendix 1 (Item 5) under Approval Guidance for SAB. Defra has indicated that future funding will be subject to Government Spending Reviews, it is imperative therefore that the Council explore opportunities to obtain future funding.

Please note any requirements for additional revenue funding are not reflected in the current medium term financial strategy.

## **9. Risks and Uncertainties**

Under the Flood and Water Management Act 2010 the Council as the Lead Local Flood Authority for Rotherham, will be expected to carry out its new SAB roles and future duties for SUDs that are offered to the Council for adoption. It is likely that there will be additional pressures on the Council's resources to carry out its SAB duties.

There is some uncertainty that future funding will be provided by Defra after 2015, this could apply additional pressures on the Council to obtain future funding.

It is likely that the adoption of SUDs and the ongoing maintenance responsibilities will have a major impact on the Council's resources and future funding arrangements. Some of the larger adopted SUDs will have significant implications on the Council's limited resources given that the Council will be expected to maintain and fund all adopted SUDs in perpetuity.

Some of the Council's policies and procedures may need some amendments or additions to include the duties and delegated powers of SAB associated SUDs requirements. It is not envisaged that the proposed SAB policy will supersede existing Council policies or procedures.

## **10. Policy and Performance Agenda Implications**

The issues contained within this report support the Council's main Corporate Priorities specifically ***Improving the environment***, and by ensuring that Rotherham is prepared for present and future climate change.

## **11. Background Papers and Consultation**

- Appendix 1 - Proposed Approval Guidance for SAB
- Appendix 2 – Feedback after consultation with Managers from EDS consisting of Drainage, Planning, Leisure and Green Spaces and Managers from Legal Services.

Ward Members in the Wards listed above have not been consulted.

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## **APPENDIX 1**

### **Proposed Approval Guidance for SAB**

#### **1. Approval Route 1 - Where planning permission is required.**

- i) Pre-application discussion.
- ii) Planning application and SUDS application submitted to Local Planning Authority (LPA).
- iii) LPA forwards SUDS applications to SAB.
- iv) SAB considers whether application meets National Standards and consults its statutory consultees.
- v) SAB returns its decision to LPA who informs applicant of planning decision and the SAB decision (including conditions).
- vi) SAB decision independent of planning decision.

#### **2. Approval Route 2 - Direct to SAB where planning permission is not required.**

- i) Stand alone SUDS application made direct to SAB.
- ii) SAB consults its statutory consultees, where relevant.
- iii) SAB considers whether application meets National Standards.
- iv) SAB informs applicant of decision and any conditions.

#### **3. Approval Process**

- i) SAB may charge the applicant a fee for the application for drainage approval.
- ii) Applicant may be charged a non-performance bond for cost of bringing SUDS up to National Standard if not built as 'approved'.
- iii) If residual sewer connection is needed, this is allowed after SAB approval.
- iv) Secondary legislation will set out, for example;
  - The fee the SAB can charge for consideration of drainage applications.
  - The powers available to SAB to enforce the requirement for approval.
  - Appeals.

#### **4. Adoption Process**

- i) To adopt and maintain SUDS to National Standards, that serves more than one property.
- ii) To adopt SUDS as approved.
- iii) To adopt at SAB's own initiative or at the developer's request.
- iv) Highway Authorities responsible for maintaining SUDS in adopted roads.
- v) On adoption SAB must designate SUDS on private property (adopted or private), via local land charge.
- vi) SAB to place SUDS on local authority risk register.
- vii) SAB releases bond if not used.

## 5. Funding Options

- i) SAB can charge fees for applications and inspections on a cost recovery basis.
- ii) The funding for SUDS adoption and maintenance could be covered for the first few years through savings to local authorities from the transfer of private sewers to water companies (possible risk to the Council).
- iii) Defra currently developing an allocation mechanism to distribute the money to Lead Local Flood Authorities.
- iv) Long-term funding for SUDS maintenance is yet to be decided by Defra.
- v) Other options for consideration
  - commuted sums - cost for developers.
  - council tax for householder served by SUDS.
  - other mechanisms to charge beneficiaries.

## 6. Proposed establishment of the Council's SAB and proposed key personnel:-

- Chair – Director of the Service within EDS
- Body Members - Managers from EDS consisting of Drainage, Planning, Leisure and Green Spaces and Legal (where considered necessary).
- Technical Support – Officers from various services where additional technical advice will be required to assist SAB.

## APPENDIX 2

### **Feedback Information after consultation from EDS (Drainage, Planning, Leisure and Green Spaces) and from Legal Services.**

In general there was no objection to the issues and information provided as part of the initial consultation. There were some issues and concerns raised as part of the SAB process which has been captured below:

#### Drainage Comments

It is likely that the implementation of SAB and the adoption of SUDs are going to have a major impact on the Council. It is important for the Council to prepare and establish the Council's SAB before April 2014.

There will be challenges to the Council before and after introduction of SAB and SUDs such as the impact on existing Council policies and procedures, resources, and finance. There is a need to explore every opportunity to address these challenges.

#### Planning, Regeneration and Culture Comments

Consideration should be given into how it is dealt with in terms of 'scheme of delegation' and how this fits with Elected Members, and how it will comply with the current determination of most planning application via the Officer route.

In terms of moving it forward we would be interested in:

- Timescales of determination of SABs applications and how we meaningfully feed this in to the planning process,
- The submission of applications via the LPA – in relation to our paperless office approach - the system should be set up as an electronic submission system and
- how in the future this would affect our budget – in relation to how the fees to accompany SAB applications will be used and how this will affect the officer time fees we currently pay for consideration of drainage issues as part of planning application.

#### Leisure and Green Spaces Comments

Initial thought is that it would be helpful to know:

- What level of understanding / experience is required from a member of the SAB?
- How often will the group meet?
- What is likely to be the quantity and type of work (particular ref to: *consults its statutory consultees*) expected from members of the SAB?

## Legal and Electoral Services

There are some additional points which might be included or considered which are:

1. The National Planning Policy Framework (2012)

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)) mentions this at para.103:

'When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:

- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.

*[The Floods and Water Management Act 2010 establishes a Sustainable Drainage Systems Approving Body in unitary or county councils. This body must approve drainage systems in new developments and re-developments before construction begins.]*

2. s.106 Water Industry Act 1991 has been amended to make the right to connect surface run-off to public sewers conditional on the drainage system being approved by the SAB.

3. Under Approval Route 1 – Where the planning permission application is submitted with the SUDs application, as the decisions are to be sent together, we would have to adhere to the planning permission time limit for the SUD application too.