

PART 1 - PUBLIC

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**Decision Maker:**      **Development Control Committee**

**Date:**                      **14 February 2012**

**Decision Type:**      Non-Urgent                      Non-Executive                      Non-Key

**Title:**                      **CONSULTATION ON THE IMPLEMENTATION OF THE  
SUSTAINABLE DRAINAGE SYSTEMS PROVISIONS OF THE  
FLOOD AND WATER MANAGEMENT ACT 2010**

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**Chief Officer:**              Bob McQuillan, Chief Planner

**Ward:**                      Boroughwide

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1.      Reason for report  
The Department for Environment Food and Rural Affairs is consulting on implementation of the Sustainable Drainage Systems provisions of the Flood Water Management Act 2010, which will involve the Council (its existing Lead Local Flood Authority role) approving and adopting sustainable urban drainage systems (SUDS).

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**2.      RECOMMENDATION(S)**

- 2.1      Members consider the report and agree the suggested responses to the consultation questions.
- 2.2      The report including the responses be referred to the Environment Portfolio Holder and PDS Committee to note and for comment.
- 2.3      The formal responses to the Consultation questions be agreed by the Chief Planner in consultation with Committee's Chairman once the Environment Portfolio Holder and PDS Committee have considered this report, for submission by the deadline.

### Corporate Policy

1. Policy Status: Existing policy.
  2. BBB Priority: Quality Environment.
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### Financial

1. Cost of proposal: No cost as report deals with response to consultation
  2. Ongoing costs: N/A.
  3. Budget head/performance centre: N/A
  4. Total current budget for this head: £N?A
  5. Source of funding: N?A
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### Staff

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory requirement. Flood and Water Management Act 2010
  2. Call-in: Call-in is not applicable.
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Boroughwide
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 This consultation concerns proposals to implement Schedule 3 of the Flood and Water Management Act 2010 (FWMA). This requires that any construction work with drainage implications has its systems for managing surface water run off approved. Local authorities will need to establish a SUDS Approving Body (SAB) to approve, and where appropriate adopt, sustainable Urban Drainage Systems - basically SUDS serving more than 1 property will be adopted. The consultation closes on 13 March.
- 3.2 The consultation includes proposed National Standards for the design, construction, operation and maintenance of SUDS, statutory instruments (Regulations and Orders) which together provide details of how the process will work, including -
- approval and adoption
  - enforcement of the requirement for SAB approval
  - appeals against SAB decisions.

The Impact Assessment included in the consultation explains why government intervention is necessary as follows -

- “Flooding from surface runoff costs England an estimated £1.3bn to £2.2bn per year, 29% of which falls to business. The risk of flooding is on the rise owing to climate change and urbanisation. Surface runoff can be a major source of pollution; both directly and from drowned sewers discharging into our rivers; and major investment is needed to tackle it. Today the majority of surface runoff drains into our sewers, even from new developments and demands major investment - an estimated £600m per year. Extra pressure to take action stems from compliance with EU legislation, in particular the Water Framework Directive. The market is failing to provide a sustainable approach to draining surface runoff from the majority of new development.”

It sets out the costs and benefits of the options put forward for implementation of Schedule 3 of the FWMA, including for LLFAs operating the SAB role.

- 3.3 The FWMA is the Government’s response to Sir Michael Pitt’s report on the 2007 floods. Parts of it have already been enacted including the duty of local authorities to take on the role of Local Lead Flood Authority (LLFA) which includes the following responsibilities -
- flood mapping (GIS based)
  - compiling an “asset register” of surface water drainage infrastructure - public sewers, highway drainage, ditches, ordinary watercourses and main rivers
  - preparing a Preliminary Flood Risk Management Assessment (PFRA) (completed) and a Surface Water Management Plan (SWMP).
- 3.4 There is a duty on other agencies (including water companies) to co-operate in dealing with the requirements of the FWMA. Much of the Council’s work so far has been facilitated by the Drain London Forum (part of the GLA) and enabled by Defra grant - Bromley’s grant is £141k in 2011-12 and 253k in following years until 2015. The Director of Environmental Services has delegated responsibilities in relation to the FWMA. There is planning input in relation to relevant policy and by implementation through the development control process, mainly through imposition of planning conditions regarding surface water drainage.

3.5 Policy 5.13 of the London Plan concerns Sustainable Drainage and states that development should utilise SUDS and aim to achieve that development should utilise SUDS and aim to achieve greenfield run-off rates, managing it close to its source in line with the following hierarchy -

1. store rainwater for later use
2. use infiltration techniques, such as porous surfaces in non-clay areas
3. attenuate rainwater in ponds or open water features for gradual release
4. attenuate rainwater by storing in tanks or sealed water features for gradual release
5. discharge rainwater direct to a watercourse
6. discharge rainwater to a surface water sewer/drain
7. discharge rainwater to the combined sewer.

The policy states that SUDS should also be designed to deliver other planning policy objectives including water use efficiency and quality, biodiversity, amenity and recreation. Central Government guidance is set out in PPS25 “Development and Flood Risk” and its associated Practice Guide.

3.6 SUDS have been proposed as the way forward to address flood risk for a number of years. Implementation has been patchy, though has been achieved through negotiation on planning applications. However developers generally prefer to connect to the existing surface water system as construction and maintenance costs are considered to be lower and the latter are borne by public agencies and/or the sewerage undertaker rather than the property owners. This situation has caused developments to add incrementally to the load on the surface water drainage infrastructure with the result that flooding inevitably results from intense rainfall falling on urbanised areas - this is a national problem, hence Central Government’s action on the issue.

3.7 In view of the close links between the requirement for SAB approval and obtaining planning permission, the existing planning system has been used as a model for the proposed procedures. The SAB role is related to local authorities’ roles as highway authority and managers of public open spaces, as well as the LLFA role.

3.8 The consultation seeks responses to a list of 29 questions, and these are set out in the Appendix attached to this report. The questions set out the main aspects of the proposals in the consultation, and the responses are the result of officer discussions between Renewal and Recreation (Planning) and Environmental Services.

3.9 The consultation sets out the need for SAB approval as follows -

- construction work that requires planning permission and
- has drainage implications, subject to
- proposed phasing of implementation of Schedule 3.

It acknowledges that some “permitted development” has drainage implications and will require SAB approval, subject to the exceptions/phasing provisions which exclude the need for approval for the following developments -

- under a Neighbourhood Development Order
- by the Highways Agency or Network Rail
- permitted development < 100 sq m
- < 10 dwellings or an area of < 100 sq m.

The proposal is that SUDS approval is not required for non-Major applications for the first 3 years of operation of SABs.

3.10 The following sets out some of the features of the proposed SAB control regime, but also see the questions in the Appendix for a fuller picture of the proposals -

- drainage systems for managing rainwater have to be approved by the SAB before construction begins
- there will be a need for close co-operation between the SAB and the Local Planning Authority (LPA), and though determination of planning applications will be independent of SAB approval, the SAB will be a statutory consultee for applications that have drainage implications.
- A SUDS approval application can be combined with a planning application and lodged with the LPA, with the fee and SUDS application forwarded to the SAB - the SAB's decision will be notified to the applicant by the LPA
- The SAB can charge a statutory fee for approval applications and inspections (and fees can be charged for pre-application advice).

3.11 The SAB must do the following during processing of an application for SUDS approval -

- determine whether the SUDS meets the National Standards
- consult relevant statutory consultees (basically sewerage undertaker, Environment Agency, highway authority as appropriate)
- notify applicant of decision on "freestanding" applications
- notify LPA of decision on "combined" applications
- notify consulted statutory consultees of decisions.

3.12 The LPA needs to -

- inform SAB of its decision on planning applications which have drainage implications
- inform applicant of planning decision and SUDS application decisions on "combined applications" at the same time.

#### **4. POLICY IMPLICATIONS**

The relevant planning policy is 5.13 of the London Plan.

## 5. FINANCIAL IMPLICATIONS

Though there will be transitional arrangements, including that SUDS approval will only be required for major developments initially, there will be a need in Environmental Services for professional and administrative staff together with employment of consultants (particularly in relation to adoption). However the Defra grant (para 3.4 of this report) together with income raised from fees will be available to fund this additional work.

## 6. LEGAL IMPLICATIONS

The requirement to take on the SAB role is set out in Schedule 3 of the FWMA 2010.

## 7. PERSONNEL IMPLICATIONS

The personnel implications in Planning are not totally clear, but are not expected to be onerous. See 5 above regarding the SAB role to be undertaken in Environmental Services.

Background Documents: (Access via Contact Officer)	Consultation on the Implementation of the Sustainable Drainage Systems provisions in Schedule 3 - Flood and Water Management Act 2010 (with related Annexes - Draft National Standards for Sustainable Drainage, draft Orders and Regulations, Frequently Asked Questions etc).
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