

Decision Maker: 1. Environment Portfolio Holder

2. Executive

**For Pre-decision Scrutiny by the Environment PDS
Committee on 28th February 2012 and the Executive and
Resources PDS Committee 4th April 2012**

Date: 11th April 2012 for Executive

Decision Type: Non-Urgent Executive Non-Key

Title: **UPDATE ON THE IMPLEMENTATION OF THE FLOODING
AND WATER ACT 2010**

Contact Officer: Garry Warner, Head of Highway Network Management & Traffic Manager
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Chief Officer: Nigel Davies - Director of Environmental Services

Ward: All

1. Reason for report

- 1.1 Updates Members on the Council's first years operation as a Lead Local Flood Authority
 - 1.2 Advises members of the DEFRA consultation on the implementation of the Lead Local Flood Authority role of the SUDS Approving Body (see 3.13)
 - 1.3 The government have provided grant monies for the remainder of this CSR period to cover the cost of implementing this legislation.
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2. RECOMMENDATIONS

2.1 That the Environment Portfolio Holder:

- (i) approves the proposals for Sustainable Urban Drainage and SUDS Approval Body (SAB) and
- (ii) approves the draft response to the DEFRA Consultation on the implementation of the Sustainable Drainage Systems provisions of the Flooding and Water Management Act.

2.2 That the Executive release a sum of £220,000 from the 2012/13 Central Contingency Sum to implement the proposals detailed in the report.

Corporate Policy

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

1. Cost of proposal: Estimated cost £220k
 2. Ongoing costs: Recurring cost. £220k in 2012/13
 3. Budget head/performance centre: DEFRA grant held in central contingency for Flooding & Water Management Act
 4. Total current budget for this head: £253k
 5. Source of funding: Grant funding from DEFRA for Flooding & Water Management Act
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Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory requirement. Flooding and Water Management Act 2010
 2. Call-in: Call-in is applicable
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Customer Impact

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

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: n/a

3. COMMENTARY

Background

- 3.1 The Flooding and Water Management Act 2010 (FWMA) requires the London Borough of Bromley, as a Lead Local Flood Authority (LLFA), to develop, maintain, apply and monitor a strategy for local flood risk management in its area. A report was considered by the Environment Portfolio Holder in April 2011, when all responsibilities for the FWMA were delegated to the Director of Environmental Services.
- 3.2 The initial requirement of the FWMA was the production of a Preliminary Flood Risk Assessment for the borough. This was achieved in association with the Drain London Project and Bromley's PRFA was published on the Environment Agency Web site in December 2011.
- 3.3 The LLFA has a duty to identify the causes of surface water flooding and determine those organisations or Authorities that have a role in mitigating the flood risk. The report reviews progress in the role of LLFA and considers responsibilities and work stream for the coming year.
- 3.4 During the last year good progress has been made on implementing the FWMA;
- 3.5 **South East London Flood Risk Partnership** – For the purpose of the FWMA the capital was originally divided into eight sub-groups, with LB Bromley in Group Six along with the London boroughs of Bexley, Lewisham and Greenwich. The South East London Flood Risk Partnership provides a forum at which Officers and Elected Members from the four boroughs come together to exchange information, share experiences and identify opportunities for partnership working. Representatives from the Environment Agency and Thames Water can also attend together with any other authority or organisation that has an interest in flood risk within the catchments.
- 3.6 **Flood reporting** – a flood register has been established and populated with historic data on known flooding incidences. This will be used to record all future reports of flooding across the borough and in subsequent investigations.
- 3.7 **Flood Asset Register** – As the LLFA we have a statutory responsibility to maintain a register of significant surface water drainage assets which may have an impact on future flooding in the borough. As the Highway Authority we already have a detailed inventory of gullies and other highway drainage assets. Many of the assets owned and maintained by the Environment Agency or Thames Water Utilities are already recorded, but this needs to be extended to include all other surface water drainage assets in third party ownership such as ordinary water courses and piped water courses etc.
- 3.8 A template for the Flood Asset Register has been developed in collaboration with London Borough of Bexley and initial surveys are underway to identify the location and extent of these assets in areas of known flooding and other high risk areas.
- 3.9 **Condition Surveys** – the condition of surface water drainage assets determine their effectiveness during storm conditions. As part of the asset survey, the condition of these assets has been recorded to identify any cleaning or other maintenance works that may be required. These will include soakaways, catchpits and ponds, as well as part of a critical pipe network controlled by Thames Water.
- 3.10 **Drainage Asset Management Plan** – A Drainage Asset Management Plan (DAMP) is being produced to formalise existing maintenance strategies and levels of service for the Council's surface water drainage assets and develop new maintenance policies for all assets identified in the Flood asset register. The DAMP has also been produced in collaboration with London Borough of Bexley.

Future Responsibilities and Work Streams

- 3.11 **Local Flood Risk Strategy** – During 2012/13 all LLFA's will be required to produce a 'Local Flood Risk Strategy' to provide a clear vision for managing flood risks in their area, consistent with the National Strategy. This is a mandatory document that must be submitted to the Environment Agency for publication.
- 3.12 LLFA's cannot delegate their duty to produce a Local Strategy but there is no prohibition on developing a joint strategy that covers a number of different LLFA's. It is therefore proposed that LB Bromley work with one or more boroughs from the South East London Flood Risk Partnership to produce our Local Flood Risk Strategy document.
- 3.13 **SUDS Approving Body (SAB)** – Sustainable Urban Drainage Systems (SUDS) are considered to be the most effective method of managing surface water within new developments, where rainwater is retained on site as an environmental asset, drained via filtration back to the sub soil or attenuated and released to the river system over a protracted period so as to reduce the risk of flooding. The FWMA proposes that developers automatic right to connect to public surface water sewers be withdrawn so that every application to undertake construction work can be obliged to seriously consider the use of SUDS.
- 3.14 In order to manage these requirements, all LLFA's are to establish a SUDS Approving Body (SAB). The SAB does not only have the duty to examine each application, but in cases where the development meets National Standards the SAB then has a duty to adopt and maintain the SUDS assets.
- 3.15 This element of the FWMA is due to be enacted in October 2012, and DEFRA are currently consulting stakeholders on proposals. A draft of Officers comments on the proposals is shown at Appendix 'A'. The consultation closes on 13th March 2012.
- 3.16 The role of the SAB is closely aligned to the development control process, and although responsibility for the LLFA role now rests within Environmental Services, the Development Control Committee have been asked to comment on the proposals, and a copy of their report is shown at Appendix 'B'.
- 3.17 There is a proposal for a phased introduction of the SUD's requirements. For the first three years of operation the full SAB measures are likely to be restricted to developments that are defined within the planning process as major, in essence 10 or more dwellings. The number of major applications that will need to be considered by the SAB is likely to be between 30 to 50 per annum.
- 3.18 In the case of planning applications that do not meet the 'major' criteria, existing development control policies will still be applied apply, including the requirement that all construction that adds to the impermeable area should be considered by the SAB.
- 3.19 **Review of impounded water bodies** – the FWMA is going to introduce new standards for the management of reservoirs, and there will be new requirements to assess the risk associated with failure of the reservoir structure. There are 18 sites within the borough that may require regular statutory inspections under the FWMA, half of which are within LBB owned land. Asset and condition details of each site will be included in the DAMP.
- 3.20 **Public Engagement** – Within the FWMA providing flood risk information is stressed as a LLFA responsibility. Public interest in flood risk is driven by flood events and the cost of flood insurance, and where flood risk cannot be alleviated by infrastructure the level of risk should be communicated to residents so that they can understand the risk and where appropriate take their own domestic level resilience measures.

- 3.21 In July 2013 a voluntary agreement between the ABI and government comes to an end. From that date properties assessed to be a high flood risk could find it increasingly difficult to find an insurance company that will cover their home.
- 3.22 Retrofitting of SUD's – It is proposed that £10k of the funding is used to subsidise the provision of water butts (two sizes) to residents. Reduced price water butts would be made available through the existing home composting campaign arrangements. It is anticipated that projected sales of 731 butts (2012/13) would avoid almost 700,000 litres of run-off, alleviating flood risk and providing sustainable water for gardening and a financial saving to residents.
- 3.23 Although this figure is not significant in terms of flood reduction when considered over a borough the size of Bromley, the initiative promotes the concept of water harvesting at source reducing run of to the river network and will also engage residents in a longer-term dialogue on the need to conserve water and reduce flood risk.

4. POLICY IMPLICATIONS

- 4.1 In order for the Council to fulfil the requirements of the FWMA, the Director of Environmental services has delegated responsibilities for co-ordinating the tasks with other Council departments. With the introduction of the additional responsibilities of a SUDS Approval Body, it is proposed that this arrangement continues.
- 4.2 The Environmental Services Portfolio Plan includes a commitment to minimise the risk of flooding through the role of Lead Local Flood Authority.

5. FINANCIAL IMPLICATIONS

- 5.1 The grants have been provided by DEFRA to fully cover their costs in putting into place and carrying out the new responsibilities under the FWMA. The Government has provided funding, as part of 2012/13 Local Government settlement, of £252,700. The funding is not “ringfenced” but does however recognize the financial support required to reflect the new responsibilities. To reduce exposure to the risk of litigation LBB will be expected to demonstrate that the monies allocated have been effectively spent.
- 5.2 A sum of £252,700 has been set aside in the Council's 2012/13 Central Contingency Sum. With the additional duties imposed on the Council from the FWMA, it will be necessary to provide additional resources to manage these responsibilities, as detailed in Section 6. It is proposed that £220,000 is drawn down from the 2012/13 Central Contingency Sum – this will require the approval of the Executive. A sum of £32,700 would remain in the 2011/12 Central Contingency Sum which may be realised as a saving once the detailed implications of the new responsibilities are known.
- 5.3 The proposed budget for the FWMA is shown below;

	2012/13 (£'000)
Produce Local Development Framework	20
Asset & condition survey of surface water drainage assets	30
Maintenance of surface water drainage assets	70
Produce Local Flood Risk Strategy	25
Impounded water body review	15
Contribution to retro fitted SUDS to existing residential properties – water butts	10
Specialist consultancy support	50
	220

- 5.4 The statutory fees for considering SAB applications from developers will be in the region of £700 for each major site. Records suggest that there may be 30 to 50 such developments each year, resulting in an income of between £21k and £35k in a full year. Should the regulations start in October 2012, income during 2012/13 will be between £11k to £17k. It is expected that this income should cover the additional costs of planning administration dealing with the applications.
- 5.5 Additional costs will be incurred during the construction process for professional advice for the inspection/adoption processes and these will be fully recoverable from the developer.

6 PERSONNEL IMPLICATIONS

- 6.1 The specialist skills required to successfully manage complex drainage assets in most London boroughs were transferred to Thames Water Utilities in 1998. LBB have been working with the other boroughs in Group Six to evaluate where FWMA duties and responsibilities can be shared.
- 6.2 An existing Project Engineer post within Transport & Highways has responsibility for surface water drainage policy and flooding issues, while advice on planning applications for Development Control has also been provided by a Drainage Engineer working on a part time basis within Transport & Highways. To date additional resources required to meet the requirements of the FWMA have been met from a joint consultancy arrangement with LB Bexley.
- 6.3 With the additional responsibilities of the SAB it is proposed that the existing Drainage Engineer post is increased to a full time position to assess SUD's applications and manage the asset / condition surveys. This post would be funded from SAB application fees and the FWMA budget. During the construction of SUD's assets by developers, the SAB will also be responsible for monitoring the works and testing assets before they are adopted at the expense of the Developer. These duties will initially be undertaken by the Drainage Engineer, with the Council's term consultant being employed should workload increase in the future. Any additional resources required for one-off projects will continue to be procured in collaboration with other Group Six boroughs.

7 LEGAL IMPLICATIONS

- 7.1 The London Borough of Bromley has a statutory duty under the Flooding and Water Management Act 2010, as a Lead Local Flood Authority, to develop, maintain, apply and monitor a strategy for local flood risk management within the borough.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	Flooding and Water Management Act 2010

Department for Environment, Food and Rural Affairs

December 2011

Consultation on implementation of the Sustainable Drainage Systems (SuDS) provisions in Schedule 3 of the Flood and Water Management Act 2010: Full list of consultation questions

Question 1

We have based our proposals on the evidence, outlined in our Impact Assessment, of the impact of surface runoff on future development and the benefits of SuDS. Do you have any additional evidence that may alter the recommendations of the Impact Assessment?

No, but it is agreed that additional controls are necessary in view of the very real flood risks that exist.

Question 2

We propose that SAB approval will not be required for the first 12 months:

- for developments that already granted planning permission before commencement; or
- for developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or
- for which a valid planning application has been submitted before commencement
- do you agree with this approach for transitional arrangements, if not please explain why?

Yes

Question 3

We propose implementing on the common commencement date of 1 October 2012, do you agree this is reasonable? If not would you prefer an implementation date of April 2013, October 2013 or after 2013?

A later date would be preferred e.g. April 2013 at the earliest

Question 4

We understand that there may be capacity issues for SABs to meet their new duty to approve drainage. We are therefore considering whether to phase implementation of the requirement for approval. Do you think a phased approach is necessary?

Yes, the initial need for SAB approval only for major developments for the first 3 years is considered appropriate.

Question 5

Do you agree that development under a Neighbourhood Development Order should be exempt from the requirement of SAB approval?

Development under an NDO will not necessarily include sustainable drainage, so the view is taken that this exemption is not appropriate.

Question 6

Drainage for surface runoff should be sustainable and affordable to build and maintain. Do the National Standards deliver this, if not please explain why?

Surface water disposal that is “affordable” in terms of construction cost compared with a conventional system will not necessarily deliver sustainable drainage. A broader view of affordability should be taken, to include the benefits of less flooding and pollution.

Question 7

Affordable sustainable drainage systems for surface runoff are comparable in costs with conventional alternatives. Do you agree?

No. Effective sustainable drainage systems dealing with run-off at source may be more expensive than conventional drainage due to various factors, including the need to set aside land for SuDS (that then cannot be built on), to provide for underground tanks or other forms of attenuation, and due to maintenance costs (including commuted sums).

Question 8

We propose that the SuDS Approving Body must determine an application for approval within 12 weeks where it relates to major development or a county matter and 7 weeks where it relates to other development. But could applications be determined in less time?

If yes, please specify reduced time to consider applications:

- 1 week less
- 3 weeks less
- 5 weeks less

No. These time periods will allow for careful consideration, and may permit negotiation before a decision is made.

Question 9

Do you think guidance for calculating the amount required for a non-performance bond is necessary?

Yes, it would be desirable for there to be national guidance.

Question 10

Do you agree with our proposals to set approval fees for three years? If you disagree, please explain why and provide any supporting evidence.

Yes, this would be the right approach as this is new legislation. Fees should rise annually in line with inflation.

Question 11

We propose that the fee for each inspection of the drainage system should be set on a cost recovery basis rather than to a fixed fee. Do you agree with this proposal?

Yes

Question 12

We propose to make arrangements for fees for applications to vary an approval, re-submitted applications, discounted fees, fees for cross area approvals as well as the refunds of application fees. Do you agree that this covers all the scenarios for which fees are likely to be needed? If not, please explain what is missing and provide further explanation if required.

Other scenarios cannot be envisaged at present.

Question 13

We propose setting a time limit of 21 days for statutory consultees to respond to the SAB. Do you agree with the timeframe proposed?

A 14 day period would enable the SAB to determine approval applications within 7/12 weeks.

Question 14

We propose to give enforcement powers to the SuDS Approving Body and the local planning authority. Do you agree?

Yes

Question 15

Do you agree that the proposed powers of entry are reasonable and proportionate, if not please explain why?

Yes

Question 16

We propose that claims for compensation related to powers of entry and temporary stop notices must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ ceasing to have effect. Do you agree, if not please explain why?

Yes

Question 17

We propose that, as in planning, a time limit of four years is set for when the SuDS Approving Body is able to give an enforcement notice? Do you agree, if not please explain why?

Yes

Question 18

Are the criminal offences proposed in the draft statutory instrument appropriate and proportionate?

Yes

Question 19

We propose to provide similar procedures for appeals against SuDS enforcement notices to those which currently apply to planning enforcement appeals (written representation, hearing or inquiry). Do you agree, if not please explain why?

Yes

Question 20

We propose a register of SuDS enforcement notices which mirrors the register for planning enforcement notices. Do you agree?

Yes

Question 21

For the purpose of the SuDS Approving Body's duty to adopt, "sustainable drainage system" means those parts of a drainage system that are not vested in a sewerage undertaker. Do you agree this provides certainty and clarity on what is adoptable by the SuDS Approving Body? If not please provide an alternative definition.

There needs to be a clear definition of what drainage assets are capable of being adopted by the SAB, they should not include gutters, downpipes, water butts or green roofs.

Question 22

The SuDS Approving Body's duty to adopt does not apply to a single property drainage system. We propose that "a drainage system or any part of a drainage system is to be treated as designed only to provide drainage for a single property if it is designed to provide drainage for any buildings or other structures that, following completion of the construction work, will be owned, managed or controlled by a single person or two or more persons together". Is our definition clear on what will or will not be adopted? if not please provide an alternative definition.

Yes

Question 23

We propose that the SuDS Approving Body should determine a request for adoption within 8 weeks of receiving the request. Do you agree with this timeframe?

No. This would not allow for a maintenance period. Until there is experience of undertaking the SAB role it will not be clear how long the adoption process will take - but it is suggested that a 12 month period during initial operation of the SAB role would be consistent with practice for adoption of roads and allow for experience to be gained.

Question 24

We propose for the SuDS Approving Body to have a 28 day time limit for administrative processes (for example return of bonds, the process of registration or designations). This time limit applies throughout the SuDS process. Do you agree with this timeframe, if not please explain why?

No. It is not clear that this will provide enough time. A longer timeframe would be appropriate to allow administrative processes to bed in and experience to be gained. This could be reviewed after an initial period.

Question 25

We propose that all Statutory Undertakers must notify the SuDS Approving Body at least four weeks in advance of works that may affect the SuDS' operation. Do you agree with this timeframe?

Yes, but in an emergency (eg gas leak) statutory undertakers could not be expected to give 4 weeks notice - clearly emergencies should be an exemption. There is likely to be an issue that statutory undertakers may not be aware of the existence of SuDS, and procedures/liaison should be put in place to ensure this is checked by them.

Question 26

We propose upon completion of the works, the SuDS Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the National Standards. Do you agree, if not please explain why?

Yes, but see response to 23. SuDS will need to be tested to demonstrate that they will function at times of heavy rainfall.

Question 27

We propose that an appeal must be made within six months of the SuDS Approving Body's decision or within six months of when the decision was due. Do you agree?

Yes

Question 28

We propose to adopt similar procedures for SuDS appeals to those which currently apply to planning appeals (written representation, hearing or inquiry). Do you agree, if not please explain why?

Yes

Question 29

Should we take action to avoid the increase of un-adopted SuDS? If your answer is no, please explain why?

Yes, SuDS that aren't maintained properly will not provide effective drainage.