

# **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

## **Streetscene & Engineering Cabinet Board**

**7<sup>th</sup> September 2018**

### **Report of the Head of Engineering & Transport**

**D. W. Griffiths**

#### **Matter for Decision**

**Wards Affected:** All

**To delegate Authority to Officers in undertaking the statutory and regulatory duties of Schedule 3 of the Flood and Water Management Act (FWMA) 2010 and associated Orders and Regulations**

#### **Purpose of Report**

1. To seek Members approval to grant delegated authority to the Director of Environment and Head of Engineering & Transport and the Head of Streetcare in respect to the statutory and regulatory duties within and associated with Schedule 3 of the Flood and Water Management Act 2010.

#### **Executive Summary**

2. The commencement of Schedule 3 of the FWMA 2010 by the Welsh Government in May 2018 will place a new statutory and regulatory duty on Local Authorities as Sustainable-Drainage Authorising Bodies (SABs) in relation to Sustainable Drainage Systems for new developments in parallel with or separate to planning applications. This new legislation comes fully into effect in January 2019 relating to Sustainable Urban Drainage Systems (SuDS), with transition arrangements starting now.
3. The Highway Development Control Section will be responsible for administering the Council's new statutory duty to act as a SuDS Approving Body (SAB).
4. This will involve the Authority granting permission for sustainable drainage systems for new developments to be built, carry out inspection and enforcement of the works, and undertake appeals

together with the adoption and maintenance of these sustainable drainage systems

5. As part of the new statutory duty, additional input will be required from the Drainage and Biodiversity Sections, creating additional workloads in these sections as well as in Highways Development Control.
6. All developments that meet the legislative criteria will be required to submit sustainable drainage applications and will need approval by the SAB prior to commencing work on site. This is a separate statutory process to the Planning Approval process.
7. Due to the time frames involved and not to conflict with the planning process delegated powers are sought to allow officers to determine, inspect, enforce, adopt and maintain proposed sustainable drainage systems in line with Schedule 3 of the Flood and Water Management Act 2010, national sustainable drainage Standards, local design guides and any future amendments to the Act, Standards or local guides.

## **Background**

8. Schedule 3 of the Flood and Water Management Act (FWMA) 2010 requires surface water drainage for new developments to comply with mandatory National Standards for Sustainable Drainage Systems (SuDS). It also requires surface water drainage systems to be approved by a SuDS Approving Body (SAB) before construction work with drainage implications may begin.
9. In order to deliver the aims of the Act, there are requirements to:
  - Make unitary authorities in Wales the responsible SuDS Approving Body (SAB) to approve new drainage systems before construction can commence.
  - Compel the SAB, where appropriate, to adopt drainage systems serving multiple properties, making it responsible for ensuring a surface water drainage system adopted by the SAB is maintained in accordance with the mandatory National Standards.
  - Enable secondary legislation to be made relating to various matters concerning approval and adoption.

- Establish the role of statutory consultees in the approval process.
10. The responsibility for delivery of the SAB functions rests with the 22 local authorities in Wales alongside their duties as Lead Local Flood Authority (LLFA). The Commencement Order for the new legislation was signed by Welsh Government on the 1 May 2018 and Schedule 3 of the FWMA becomes law as from 7 January 2019.
11. The SAB will contribute to the following Well-Being Goals within the Well-Being of Future Generations (Wales) Act 2015:
- A prosperous Wales
  - A resilient Wales
  - A healthier Wales
  - A more equal Wales
  - A Wales of cohesive communities, and
  - A globally responsible Wales
12. The SAB links to the Authority's Well Being Objective: To develop the local economy and environment so that the well-being of people can be improved.
13. The implementation of Schedule 3 of the Flood and Water Management Act 2010 will compel the SAB, where appropriate, to adopt sustainable drainage systems serving multiple properties, making it responsible for ensuring a surface water drainage system adopted by the SAB is maintained in accordance with the mandatory National Standards.
14. Surface water flooding is a serious problem, identified in the National Strategy for Flood and Coastal Erosion Risk management as a major cause of flooding of homes. The impact on citizens, communities and cost to the Welsh economy is significant. The risk of flooding is on the rise owing to climate change and urbanisation. Local flooding, due to the overloading of volume constrained drainage systems and sewers, is also of increasing concern.

15. The local authority as a SAB will administer a technical statutory and regulatory approval process and can charge for services within this process. Examples of chargeable aspects are:
  - SAB pre-applications – It is a key function of the SAB to engage with developers for technical pre-application discussions. This will steer developments to comply with the National Standards. When Schedule 3 of the FWMA is implemented the SAB will be able to charge for pre-application comments. The charge proposed for pre-application enquiries is £250.
  - Outline/Full Applications – the latest information is that only developments of two properties and above, (or with an area greater than 100m<sup>2</sup> or which otherwise have drainage implications) would require SAB approval. This process is chargeable at the rates set by Welsh Government. A fee of £350 per application is chargeable with an additional amount up to a maximum of £7500 depending on the area of land developed. There will be a reduction of 50% in a fee if an application is made for the same site within a 12 months of a previous application being determined.
  - Although for the first 24 months the Welsh Government have decided that single dwellings will be exempt from requiring approval, charges are likely to be applied after this time.
  - Inspection of assets – SuDS schemes will need to be inspected by the SAB during construction, to ensure they are built to an appropriate standard. The SAB may charge an inspection fee based on cost recovery, which includes hourly rates and numbers of hours.
  - Adoption arrangement – SuDS that meet the specified criteria will be adopted by the SAB via a bespoke legal agreement and commuted sums will be required which reflects the maintenance/replacement plan required for the lifetime of the development.
16. There are time frames involved in which to determine an application, namely the SAB will have seven weeks to determine a submitted sustainable drainage system to enable them to grant or refuse permission prior to planning permission being determined. Where an application requires an Environmental Impact Assessment the application will have to be determined within 12 weeks of being validated. Any application not determined within this time frame will be automatically refused.

17. Within this new legislation officers will have to undertake duties of approving or refusing applications, take enforcement actions if systems are not constructed correctly and inspect all works undertaken which are to be adopted. As part of this process if an application is refused then the developer can appeal to the planning inspectorate, through an appeal process. The SAB will then be responsible for any future maintenance of the drainage system which will be subject to commuted sums for future maintenance.
18. Even if planning permission is granted a developer would not be able to commence work on site until approval has been granted by the SAB. The sustainable drainage system shall ensure both water quality and quantity is dealt with using the correct management train of surface water generated by the development.
19. The introduction of this legislation will place additional pressures on resources within the Environment Directorate but until the legislation commences it will be difficult to assess its true impact. There will however be limited fees for each application and commuted sums for ongoing maintenance of adopted systems, which will assist in some of the impact to resources.
20. In carrying out this function it will cut across three service areas which are seen as important in the delivery of this new legislation. Highway Development Control section, the Drainage section and Biodiversity section, where additional staff have been identified.

## **Financial Impact**

21. The costs of the additional posts is £130,225 and a one-off set up costs of £8,000 for new software and associated licences. This cost will be partly met by income fees from the approval process of applications made to develop land although, as with cost of the planning process and associated nationally set fees, there is likely to be a shortfall in income versus expenditure. The anticipated fee income has been estimated using data from the last three financial years for planning applications and sites that would require SAB approval.
22. There may be no shortfall dependent on development activity and fee income levels, and, as noted above, additional fees to single

dwellings may become payable. However given the current prediction, as part of ongoing Forward Financial Planning £27,000 has been highlighted as a potential pressure for the new statutory duties going forward. In reality there will be no shortfall in the current year as employment costs will only be pro-rata with date of appointment.

## **Equality Impact Assessment**

23. A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment, it has been determined that this function does not require an Equality Impact Assessment.

## **Workforce Impacts**

24. There are no workforce impacts associated with this report which seeks delegated authority only.
25. However there will be impacts requiring additional staff and training across a number of sections in the delivery of this new statutory duty.

## **Legal Impacts**

26. There are no legal impacts associated with this report, as the report seeks to deliver delegated authority to officers to deal with discharging new specific legal duties.
27. However members need to be made aware that the Authority will now be taking on the responsibility of new sewer storm water sewerage for new developments: in accordance with the implementation of this new legislation.

## **Risk Management**

28. If delegated powers are not given to officers there would be a risk of applications being turned down by default, where the submitted sustainable drainage scheme will not present the best opportunity to enhance the wellbeing of residents or improve water quality.

29. Through delegated powers being granted it would allow officers to decide whether submitted schemes are allowed or refused through decision rather than refused by default due to possible waiting period for a committee decision on a technical matter.
30. Failure through default to ensure a submitted scheme is suitable for that area of land being developed would then place an additional burden on the planning process as the SAB would not have given a valid decision on a submitted scheme.
31. Therefore this failure would not be in keeping with the sustainable and wellbeing of communities which includes water quality within the Council's agreed Risk Management Policy.
32. The Council has a legal duty under Section 2 of the Well-being of Future Generations (Wales) Act 2015 in carrying out all its duties by providing "sustainable development": means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals..
33. This will form part of the Council's flood management strategy and improve water quality through the management of surface water from new developments. It will aim to ensure resilient drainage systems which provide multiple benefits for water quality, flood risk reduction, amenity, well-being and biodiversity installed for all new developments in both urban and rural areas.

## **Consultation**

34. There is no requirement under the Constitution for external consultation on this item.

## **Recommendations**

It is recommended that:-

35. Members grant delegated powers to the Director of Environment, Head of Engineering and Transport, Head of Streetcare, Highway Development Control Manager and Highway Development Control

Team Leaders, in respect to the legislation and standards set out below, in accordance with the delegated scheme set out in Appendix 1 hereto:

- Schedule 3 of the Flood and Water Management Act 2010.
  - The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018
  - The Sustainable Drainage (Application for Approval Fees)(Wales) Regulations 2018
  - The Sustainable Drainage (Enforcement) (Wales) Order 2018
  - The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018
  - The Sustainable Drainage (Appeals) (Wales) Regulations 2018
  - Sustainable Drainage Systems Standards for Wales.
  - Welsh Government Statutory Guidance for local authorities on the implementation of Schedule 3 of the Flood and Water Management Act 2010, the mandatory use of SuDS on new developments and approval and adoption by the SuDS approving body (the SAB).
  - Design guides deemed appropriate by this Authority.
  - Subsequent updated orders, regulations, standards, statutory guidance and design guides.
36. It is recommended that Members grant delegated powers to the Director of Environment to establish a pre-application service to deal with all sustainable drainage related queries for proposed developments.
37. The Street Scene and Engineering Board recommend that the Council amend the constitution in due course to reflect the new delegation arrangements in Appendix 1.

### **Reasons for Proposed Decision**

38. This would allow officers to determine submitted sustainable drainage systems within the time frames set in the legislation avoiding possible refusals of application by default: as it could fall outside the seven and 12 weeks determination period if it had to go to a committee.
39. The establishment of a pre-application service would enable officers to give advice (both written and verbally) to applicants, prior to any application being submitted, to assist in reducing time

frames a formal application would take, by front loading the system.

## **Implementation of Decision**

40. The decision is proposed for implementation after the three-day call-in period.

## **Appendices**

41. Appendix 1 – Delegated Arrangements

## **List of Background Papers**

42. None

## **Wards Affected**

43. All

## **Officer Contact**

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## **Appendix 1**

### **Delegated Arrangements**

#### **1. Normal Delegated Powers**

The Director of Environment, Head of Engineering & Transport, the Highway Development Control Manager and the two Highway Development Control Team Leaders (Senior Highway Development Engineers) are each authorised to determine 'Normal Delegated Matters' without seeking authorisation from Elected Members.

#### **2. Normal Delegated Matters**

Normal Delegated Matters are those applications or matters which are not required to be determined by the Delegated Panel (see 3 below).

The Director of Environment, the Head of Engineering & Transport, Highway Development Control Manager and the two Highway Development Control Team Leaders (Senior Highway Development Engineers) are each granted Delegated Powers: -

- (i) To determine all applications in respect of Schedule 3 of the Flood and Water Management Act 2010.
- (ii) To authorise the issue of any enforcement action (with the exception of Enforcement Notices or Stop Notices) with respect to Schedule 3 of the Flood and Water Management Act 2010.
- (iii) To authorise individual Officers to act as Inspectors/Authorised Officers/Enforcement Officers under legislation contained in the Flood and Water Management Act 2010 and associated orders and regulations under Schedule 3 as stated below:
  - The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018
  - The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018
  - The Sustainable Drainage (Enforcement) (Wales) Order 2018

- The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018
  - The Sustainable Drainage (Appeals) (Wales) Regulations 2018
- (iv) In consultation with the Head of Legal Services/solicitor to the Council, to institute legal proceedings on behalf of the Council in respect of any offence under the FWMA 2010.
- (v) Rights of Entry

To authorise rights of entry to relevant Officers in respect of the following legislation:-

- Flood and Water Management Act 2010, Schedule 3,
- The Sustainable Drainage (Approval and Adoption Procedure) (Wales) Regulations 2018
- The Sustainable Drainage (Application for Approval Fees) (Wales) Regulations 2018
- The Sustainable Drainage (Enforcement) (Wales) Order 2018
- The Sustainable Drainage (Approval and Adoption) (Wales) Order 2018
- The Sustainable Drainage (Appeals) (Wales) Regulations 2018
- Highways Act 1980 – Section 293;
- Road Traffic Regulation Act 1984 – Section 71.

### **3. Delegated Panel Procedure**

#### **A. Determination of Matters**

The Delegated Panel shall determine applications/reports relating to the following matters:

- Applications/matters where three or more objections are received on valid drainage grounds
- Refusal of Applications (where officers are minded to refuse an application)
- Developments in excess of 10 dwellings (either in full or outline) which do not already have the benefit of a live planning permission

- Developments (either in full or outline) creating new floor space in excess of 1000 sq.m. in respect of industrial, agricultural, commercial or non-commercial buildings.
- Authorisation to serve an Enforcement Notice or Stop Notice
- Approval of Reserved Matters
- Approval of Discharge of Conditions applications

B. Constitution of Panel

- (i) The Delegated Panel shall consist of a panel of at least three senior officers drawn from the following:

Director of Environment  
Head of Engineering & Transport  
Highway Development Control Manager and  
Highway Development Control Team Leaders

- (ii) The Panel must include either the Director of Environment or the Head of Engineering & Transport or the Highway Development Control Manager when it makes a determination of an application or matter.

**4. Reporting**

All matters dealt with by delegated officers or the Delegated Panel (including appeals and enforcement) will be reported to the Street-scene and Engineering Cabinet Board for information.