

REPORT TO THE CABINET

{26/11/2018}

Cabinet Member: Gareth Griffith

Subject: Establishing a regime to deal with the Council's duties as a Sustainable Drainage Systems (SuDS) Approval Body (SAB), under the Flood and Water Management Act, 2010.

Officer contact: Emlyn Jones, Senior Manager, YGC

The decision sought

1. That implementing the statutory duties of the SuDS Approval Body (SAB) is attributed to the Consultancy Service.
 2. To delegate the powers of the SAB under Schedule 3 of the Flood and Water Management Act 2010 to the head of the Consultancy Service, with the right for further delegation as necessary.
 3. To delegate the right to the Head of the Consultancy Service to establish a regime which decides on applications in line with statutory legislation and guidance.
 4. To delegate the right for the Monitoring Officer to amend the Delegation Plan within the Constitution to reflect this decision.
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Opinion of the local member

It is not a local member matter.

Introduction

Schedule 3 of the Flood and Water Management Act (FWMA) 2010 dictates that surface water drainage systems for new developments should conform with National Standards for sustainable drainage systems (SuDS). Schedule 3 FWMA 2010 also places a duty on local authorities acting as SuDS Approval Bodies (SAB's), to approve, adopt and maintain systems which are in accordance with Section 17 of the Schedule. Welsh Government have announced that Schedule 3 will become operational in Wales on the 7th of January 2019.

Therefore, from this date, there will be a need for sustainable drainage systems for all new developments of more than one dwelling, or where the construction area is 100m² or more. Drainage systems must be designed and built in accordance with the required standards for sustainable drainage published by the Welsh Ministers. A flow chart which further describes the process has been included in Attachment 1.

The systems must be approved by the local authority acting in its role as the SuDS Approval Body (SAB) before construction works starts. The SAB will have the right to charge a fee for the approval of applications, with the fee being set dependant on the size of the development. Fees will be consistent throughout Wales as they have been included with the Legislation. The SAB will also offer a pre-application service, with the fee for this service set by each individual authority, which reflects the current Planning procedures.

It is important to note that the Planning and SAB procedures are separate, with individual legislation. Having said this, the requirements of one can influence the other, and vice versa. Meaning that developers will need to consider the drainage requirements of the site at an earlier stage in project development. This message will be reiterated by the Council through the pre-application procedure.

The process of approving a SAB application is a technical one which needs specialization in that field. All applications will need to show that they meet the criteria set out in the National Standards before being approved. The SAB will have a duty to consult with relevant statutory consultees. In Gwynedd these will be Natural Resources Wales and Welsh Water.

Applications will be approved subject to conditions. While the conditions will be dependent on the nature and size of the development, they are likely to include the need for a series of inspections during and on completion of the work, as well as construction bonds which will be held by the SAB until the work is completed to the required standard. An appeals and enforcement procedure has also been established, which is very similar to current Planning arrangements.

There is a duty for the SAB to adopt systems which serve more than one property, as long as they have been built and are operating in line with the approved proposals, including any conditions approved by the SAB. As part of approving an application there will be a need to ensure that funded maintenance arrangements are in place and secured through a legal agreement. The most likely way of securing maintenance funds for

adopted systems will be through charging a cumulative sum to the developer, similar to what is currently used in highway adoption.

The Government Guidance was approved by the Assembly on the 13th of November and confirms that it is the expectation that developers finance the repair and Maintenance of the systems following adoption by the local authorities. Although the Guidance identifies possible arrangements for securing these contributions it is fair to say that further work is needed to identify the precise and appropriate framework for this element. The Council has raised the matter with the Welsh Government. With Legal Services we will continue discussions with Welsh Government on this aspect

The responsibility over flood and water matters in Gwynedd sits within the Consultancy Service. The responsibility with regards to the SAB currently sits with the Cabinet, however the intention is that the SAB responsibilities will be implemented by the Consultancy Service. Specified officers within Gwynedd Consultancy will have delegated rights to implement the regime on behalf of the Council.

It should be noted that the responsibility for lack of compliance is also the responsibility of the SAB.

Forming the SAB is a new statutory duty for local authorities, but no additional funding will be available from Welsh Government. Welsh Government assessments have noted that the SAB should be self-funding in the long term, with the application fees covering the running costs, a copy of the assessment is included as Attachment 2. Through looking at historic Planning applications we predict that approximately 300 applications will be received by the SAB on a yearly basis, and that 3 full time members of staff will be required.

A significant investment of staff is needed to establish the SAB, developing new processes and regimes to ensure that the Authority is in place to receive applications from January onwards.

We estimate that the 300 applications will create an income of £181,771 against the SAB implementation cost of £179,197. The intention is to recruit one full time staff member, employ a temporary member and re-structure the duties of one existing staff to meet the need. This re-structure defers a proposed cut to existing budget till as such a time when the financial model has been tested (possibly after year 1).

We have agreed a proposal with the Management Team to borrow (around £ 87,000) for the cost of the temporary resource (and will be repaying that amount from any income the new body will create). The third appointment will be made based on existing YGC workloads.

Reasons for recommending the decision

Assessing applications of this nature is a specialised field which needs experience and relevant technical training. The Council currently operates a similar regime for the assessment of building regulations applications and ordinary watercourse consents. We expect a significant number of highly technical applications and it is considered that the recommendations meet the statutory needs with regards to the decision making process.

Relevant Considerations

Giving the right to officers to make decisions would facilitate ability to meet the statutory requirement of reaching a decision on standard applications within 7 weeks, and applications which need an Environmental Impact Assessment within 11 weeks. These arrangements are consistent with those currently being established within other Local Authorities throughout Wales.

Next steps and timetable

The new requirements will be operational from the 7th of January 2019, therefore the statutory regime needs to be in place by this date.

Opinion of the statutory officers

The Chief Executive:

The Monitoring Officer:

It is noted that Schedule 3 of the Flood and Water Management Act 2010 comes into force in Wales on the 7th of January 2019. From this date the Council will have statutory responsibility to deal with applications for sustainable drainage. The statutory guidance for the arrangements was recently approved by the Assembly. Reference is made in the report to the repair and maintenance arrangements and we will be working with the Service in order to establish an appropriate mechanism in relation to these matters. I note that the report recommends that the system is delegated for administration through Consultancy Services to work as the SuDS Approving Body. This is considered to be appropriate in order to meet the technical statutory requirements referred to above and will be operated in accordance with the Council's scheme of delegation.

The Head of Finance:

There is a legal requirement for the Council to establish a SuDS Approving Body by 7 January 2019, which means that there is a need to make a decision sooner rather than later on the delegation scheme that will be adopted within the Council to establish such a body. I have no objection to the arrangements set out in the decision sought.

The Welsh Government's Regulatory Impact Assessment (which appears in the appendix) shows an expectation that local authorities will attract net income when the new Regulations come into force (whilst recognising that there will be start-up costs), and Regulations for setting fees will also come into force on 7 January 2019. Therefore, although income and expenditure flows will be unstable at the beginning, the Approving Body is expected to be self-financial in the longer term. In this regard, I note from both the report and from the comments of the Monitoring Officer that further discussion with the Welsh Government is necessary in relation to certain aspects. I will keep close contact with relevant officers so that Finance is aware of any changes in the forecasts for income and expenditure of the Approving Body and will take appropriate action to respond to that

Attachments

Attachment 1 – Flow Chart of the SuDS approval process.

Attachment 2 – Explanatory Memorandum and assessment of regulatory impact.