



Llywodraeth Cymru  
Welsh Government

# Implementation of Schedule 3 to the Flood and Water Management Act 2010 for mandatory Sustainable Drainage Systems (SuDS) on new developments

(DRAFT) Frequently Asked Questions

Guidance for local authorities,  
developers, and statutory and  
non-statutory consultees

Frequently Asked Questions

# Glossary

A number of terms and definitions are used throughout this document:

## **The legislation for sustainable drainage**

The legislation for sustainable drainage mean Schedule 3 to the Flood and Water Management Act 2010 (see section 2 of these FAQs).

## **The regulations for sustainable drainage**

The regulations for sustainable drainage mean the regulatory framework for SAB approval, adoption and enforcement of SuDS on new developments and for appeals against certain SAB decisions (see section 2 of these FAQs).

## **Statutory SuDS Standards**

Statutory SuDS Standards means the Statutory standards for sustainable drainage systems – for the design, construction, operation and maintenance of surface water drainage systems (2018). The Statutory SuDS Standards is available on the Welsh Government's website<sup>1</sup>.

## **Statutory Guidance**

Statutory guidance means the Sustainable Drainage (SuDS) Statutory Guidance for local authorities. The statutory guidance is available on the Welsh Government's website<sup>2</sup>.

## **Drainage System**

Drainage system means a structure designed to receive rainwater. It includes any part of an existing or proposed structure and any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater.

It does not include a public sewer or a natural water course such as a river or stream.

## **Sustainable Drainage**

Sustainable drainage also known as SuDS means 'Sustainable drainage' for the management of rainwater (including snow and other precipitation) with the aim of; reducing damage from flooding, improving water quality, protecting and improving the environment, protecting health and safety and ensuring the stability and durability of drainage systems.

The SAB adoption duty applies to '**sustainable drainage systems**' which for this purpose means those parts of a drainage system that are not vested in a sewerage undertaker under section 104 agreement of the water Industry Act 1991.

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<sup>1</sup> The Statutory SuDS Standards is available at;  
<https://gov.wales/topics/environmentcountryside/epq/flooding/drainage/?lang=en>

<sup>2</sup>The statutory guidance is available at;  
<https://gov.wales/topics/environmentcountryside/epq/flooding/drainage/?lang=en>

## **The SAB**

The **SuDS Approving Body** is the local authority responsible for the evaluation and approval of drainage applications for new developments and in certain circumstances for adopting and maintaining SuDS schemes.

## **Application**

Means the SuDS application for approval made to the SAB by the developer.

## **Approval**

Means approval for the proposed drainage system, given by the SAB on successful determination of the application.

## **Developer**

Means the person who has applied for SAB approval of the proposed drainage system.

## **Statutory consultee**

Before determining an SuDS application for approval the SAB must consult with various statutory consultees. The statutory consultees are; the sewerage undertaker, Natural Resources Wales (also the Internal Drainage Board), the relevant local Highway Authority, and the Canal and Rivers Trust.

## **LA**

The **Local Authority** has responsibility for the SAB function along with other statutory functions.

## **LLFA**

The **Lead Local Flood Authority** is the local authority with the lead role for managing flood risk from surface water, ground water and ordinary water courses for a particular area.

## **LPA**

A **Local Planning Authority** is the local authority responsible for exercising statutory town planning functions for a particular area.

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## **Section 1 : Context**

### **1.1 What is the status of this document?**

This document provides suggested answers to the most frequently asked questions (FAQs) about the SuDS approval and adoption process and highlights the statutory requirements and obligations on all parties.

Local authorities may also develop local guidance in its role as the SAB. Under the legislation it is open to SABs to determine certain requirements, including the form and information to be provided with the SuDS application for approval and any conditions of SAB approval.

This guidance supplements but is not a replacement for the statutory guidance for local authorities on the implementation of Schedule 3 to the Flood and Water Management Act 2010. Local authorities must have regard to the Welsh Government's statutory guidance.

### **1.2 Why do we need mandatory SuDS on new developments?**

Surface water flooding is a serious problem, identified in our National Strategy for Flood and Coastal Erosion Risk Management<sup>3</sup> 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. In particular, local flooding, due to the overloading of volume constrained drainage systems and sewers, is of increasing concern. Under the terms of the Flood and Water Management Act 2010, LLFAs are responsible for managing local flood risk which includes that from surface water.

Surface water runoff can be also a source of diffuse pollution. The potential damage to our groundwater and rivers from polluted surface water runoff increases with each new development.

The justification for, and use of, SuDS is well established in the planning system, which includes TAN 15 and Approved Document H of the Building Regulations, as well as voluntary standards such as the Home Quality Mark. However, despite publishing Welsh Government recommended standards for SuDS in February 2016 the uptake of SuDS remained low, limiting the potential contribution of SuDS to mitigating flood risk from surface run-off and the risk of sewer overload, or to protecting water quality.

Research on the costs and benefits of SuDs on new developments commissioned by the Welsh Government (published January 2017) found the market has been slow in voluntary integrating SuDS into development plans largely because of:

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<sup>3</sup> National Strategy for Flood and Coastal Erosion Risk Management, available at; <http://gov.wales/docs/desh/publications/120412nssummaryen.pdf>

- Information failure, there was found to be a lack of consistent use of recommended standards and a perception that SuDS are expensive and entail non-essential costs.
- Lack of a statutory requirement and uncertainty around adoption and ongoing operation and maintenance.

In order to address the market constraints the Welsh Government has commenced legislation providing for the mandatory use of SuDs on new developments with effect from 7 January 2019. The policy has been subject to a [Regulatory Impact Assessment](#) and informed by a series of consultations and stakeholder workshops and with input from the external stakeholder forum, the SuDS Advisory Group.

### 1.3 What is the SAB?

Schedule 3 to the Flood and Water Management Act 2010 establishes SABs in local authorities. The legislation gives those bodies statutory responsibility for approving and in specified circumstances, adopting the approved drainage systems.

The SAB is established to:

- Evaluate and approve drainage applications for new developments where construction work has drainage implications, and
- Adopt and maintain SuDS schemes, subject to the conditions and exemptions specified in the legislation.

### 1.4 What is a SuDS drainage application?

An application demonstrating compliance with the Statutory SuDS Standards for the design, construction, operation and maintenance of surface water drainage systems serving new developments, **must** be submitted to the SAB.

Applications may be submitted to the SAB for determination either directly as a free standing application or alongside the planning application via the LPA.

It is important to note that construction work which has drainage implications **must not be commenced** unless the drainage system for the work has been approved by the SAB.

## 1.5 When does the use of SuDS and their approval by the SAB become mandatory?

From 7<sup>th</sup> January 2019, all new developments of more than 1 dwelling house or where the construction area is 100 square meters or more, will require SuDS for surface water.

From this date onwards, SuDS on new developments must be designed and built in accordance with [Statutory SuDS Standards](#) published by the Welsh Ministers and SuDS Schemes must be approved by the local authority acting in its SAB role, **before construction work begins.**

## Section 2 : Implementation

### 2.1 What are the key statutory provisions for sustainable drainage?

The legislative provisions for sustainable drainage are set out in [Schedule 3 to the Flood and Water Management Act 2010](#). This legislation:

- Establishes the SAB in the local authority.
- Provides that drainage systems for managing rainwater (including rainwater, snow and other precipitations) for new developments **must be approved by the SAB before construction begins**.
- Requires the Welsh Ministers to publish National SuDS Standards (Statutory SuDS Standards) for the design, construction, operation and maintenance of SuDS. In order to be approved by the SAB the proposed drainage system must meet the Statutory SuDS Standards.
- Places a duty on the SAB to adopt and maintain approved SuDS that serve more than one property. In order to be adopted by the SAB the drainage system must be constructed and function as approved in accordance with the Statutory SuDs Standards.
- Inserts a new section 106A into the Water Industry Act 1991 which supplements the existing provisions in section 106 of that Act making the right to connect surface water to public sewers conditional on the drainage system being approved by the SAB as meeting the Statutory SuDS Standards.
- Sets out Sewerage Undertakers, Natural Resources Wales, British Waterways and Highway Authorities as statutory consultees to the SAB.
- Provides for a SAB enforcement and appeals regime.
- Provides a mechanism for the recovery of reasonable costs incurred by the SAB in carrying out its function.

### 2.2 What are the regulations for SuDS approval, adoption, enforcement and appeals?

There are five statutory instruments made under the legislation which deal with:

- Approval and Adoption ([The Sustainable Drainage \(Approval and Adoption\) \(Wales\) Order 2018](#)),
- Procedural matters relating to approval and adoption ([The Sustainable Drainage \(Approval and Adoption Procedure\) \(Wales\) Regulations](#)

[2018](#)),

- Fees ([The Sustainable Drainage \(Application for Approval Fees\) Wales Regulations 2018](#)),
- Enforcement of the requirement for approval by the SuDS Approving Body ([The Sustainable Drainage \(Enforcement\) \(Wales\) Order 2018](#)); and
- Appeals against decisions of the SuDS Approving Body ([The Sustainable Drainage \(Appeals\) \(Wales\) Regulations 2018](#)).

### 2.3 What are the Statutory SuDS Standards?

Under the legislation new developments must include SuDS features that comply with national standards.

The [Welsh Government Statutory Standards for sustainable drainage systems, 2018](#) are for the **design, construction, operation and maintenance of SuDS** serving new developments.

The statutory SuDS standards come into effect from the 7 January 2019 onwards and apply to all new developments of more than 1 dwelling or where the construction work equals or exceeds 100 square metres.

Drainage systems should be considered at the earliest stages of site design, developers and the SAB should discuss potential drainage options before an application is made for SuDS approval. As set out in the principles section of the statutory SuDS standards, developers will need to demonstrate compliance with the statutory SuDS standards in submitting drainage applications for SAB approval.

On considering an application for approval the SAB will:

- grant it, if satisfied that the drainage system if constructed as proposed will comply with the Statutory SuDS Standards; or
- refuse it if not satisfied.

### 2.4 What statutory guidance is there for local authorities?

The Sustainable Drainage (SuDS) Statutory Guidance for local authorities is Welsh Government guidance to which local authorities must have regard in relation to their SAB role.

### 2.5 What transitional arrangements are there for developments in progress?

At the time of commencing the mandatory requirements for SuDs some developments will be at an advanced stage of planning. There are transitional

arrangements in place to avoid incurring additional work for developments which are already in progress.

The requirement for SAB approval and adoption agreements for surface water drainage applies only to new developments and is not retrospective. Existing sites and developments with planning permission granted or deemed to be granted (unless subject to reserved matters – see below), or for which a valid application had been received but not determined by 7 January 2019 will not be required to apply for SAB approval.

Permitted developments of 100 square meters or more which are notified after 7 January 2019 will require SAB approval.

SAB approval will be required if the planning permission was granted subject to a condition as to a reserved matter and an application for approval of the reserved matter is not made before 7 January 2020.

Whilst some developments which are already in progress as of 7 January may not require SAB approval and adoption, we believe the benefits of the new process mean it would none the less be advantageous for both developers and the SAB to consider voluntary agreements for these sites.

## **2.6 What exemptions are there from the requirement for SAB approval?**

SAB approval is not required for:

- Permitted development covering an area of land under 100 square metres.
- Developments with drainage implications of a single dwelling and the area of land covered by the construction work is less than 100 square metres, or
- In the case of any other type of construction work, the area of land covered is less than 100 square metres.

The legislation for sustainable drainage exempts from the need for SAB approval, work requiring development consent as a nationally significant infrastructure project.

The legislation allows Welsh Ministers to make orders about further exemptions. Accordingly, the following construction works are exempt from the need for SAB approval:

- construction work carried out by an internal drainage board (Natural Resources Wales) in exercise of its functions under the Land Drainage Act 1991;
- construction work carried out for the purpose of, or in connection with, the construction of—

- (i) a road for which the Welsh Ministers are the highway authority,
- (ii) a railway by Network Rail.

## 2.7 What is the legal definition of Sustainable Drainage?

Under the legislation sustainable drainage is defined as managing rainwater (including snow and other precipitation) with the aim of:

- Reducing damage from flooding,
- Improving water quality,
- Protecting and improving the environment,
- Protecting health and safety, and
- Ensuring the stability and durability of drainage systems.

The Statutory SuDS Standards provide the framework for evaluating whether a drainage system is a sustainable drainage system.

## 2.8 What is the definition of construction work and construction area?

SuDS can be used effectively in both rural and urban areas to support new development and redevelopment, whilst reducing the risk of surface water flooding and creating opportunities for improved water quality, bio-diverse rich habitats and new community recreational spaces.

The requirement for SAB approval applies to **all construction work which has drainage implications** where the development or redevelopment is more than a single dwelling house or involves the construction of a building or other structure covering an area of land equal to or greater than 100 square meters (unless it falls under one of the specific exemptions or transitional arrangements also listed in these FAQs).

In the legislation for sustainable drainage:

- **Construction work** means anything done by way of, in connection with or in preparation for the creation of a building or other structure, and
- Construction work has **drainage implications** if the building or structure will affect the ability of the land to absorb rainwater.

**Construction area** is generally defined in the regulations for sustainable drainage as the construction of a building or other structure covering an area of land of 100 square metres or more.

## 2.9 What is the definition of single property drainage systems?

Single property drainage systems are exempt from the SAB adoption duty. For this purpose single property means a drainage system that is owned, managed and controlled by a single person or two or more persons together.



## **2.10 What happens where a development is cross-border in Wales and in England?**

Under the legislation for sustainable drainage, where a drainage system is partly in Wales and partly in England each part is to be treated as a separate system. Except that decisions in relation to one part may be made having regard to the existence and effect of the other part.

## **2.11 What happens where a development is cross-border in the area of more than one SAB?**

Under the legislation for sustainable drainage the SAB is the local authority for the area in which the SuDS is to be constructed.

Where a drainage system is within the geographical area of more than one SAB each part for administrative purposes is to be treated as a separate system (i.e. an application for SuDS approval along with the application fee will need to be made to each respective SAB). However SAB approval may be subject to conditions that decisions in relation to one part may be made having regard to the existence and effect of the other part.

SABs are not statutory consultees under the legislation, effective communication channels between SABs will therefore need to be established. SABs may wish to consider having local agreements in place to helpfully set out how neighbouring SABs will work together.

## **2.12 What happens where a development is phased having multiple build stages and/or multiple developers?**

For large phased developments which could have sites with multiple build stages involving multiple developers, the SAB, LPA and developers should establish an agreed overall strategic approach to sustainable drainage design. This should involve agreeing strategic wide drainage principles for the development and build phases, which are consistent with the Statutory SuDS Standards and relevant local policies.

This will help avoid potential problems such as inconsistencies of delivering drainage solutions, which could lead to an increased flood risk or inability to deliver compliant sustainable drainage systems and cause undue delay in the construction of later build phases.

At the point when the drainage application is made, the SAB may wish to reference the agreed strategic wide drainage principles for the development in the SAB conditions of approval.

See also the Statutory SuDS Standard especially Standard 6 (S6) and the CIRIA SuDS Manual, which includes detailed guidance on planning a SuDS scheme.

## 2.13 What happens where a development is for a change of use?

The requirement for SAB approval applies to **all construction work which has drainage implications** where the development or redevelopment is more than a single dwelling house or involves the construction of a building or other structure covering an area of land equal to or greater than 100 square meters.

In the context of new development falling under the [Town and Country Planning \(Use Classes\) Order 1987](#) (as amended) the guidelines below may be helpful for SABs in undertaking their approval function.

The guidelines below concerning change of use are suggested, not prescriptive. Developers should in all cases seek definitive advice directly from the relevant SAB for the area at an early stage in the development proposal.

- Change of use where original footprint and building are retained : where there is no construction work to be done in connection with or in preparation for the creation of a building or other structure, there is no requirement for SAB approval.
- Change of use where original building is retained and original footprint extended by less than 100 square meters : where the construction is for a single dwelling and/or the construction area is less than the 100 square meters threshold, there is no requirement for SAB approval.
- Change of use where original building is retained and original footprint extended by 100 square metres or more : where the construction work is equal to or greater than the threshold for the construction area, SAB approval will be required (consideration will need to be given to the most effective way to integrate SuDs within the overall scheme design).
- Change of use where original building is knocked down and new construction erected : where the construction work is for more than a single dwelling house and/or the construction area is for a 100 square meters or more, SAB approval will be required.

## 2.14 Does the legislation for sustainable drainage apply to foul drainage?

No. The legislation only applies to surface water drainage. The statutory SuDS standards for the design, construction, maintenance and operation of SuDS prohibit surface runoff to be connected to a foul drain.

For foul drainage, section 42 to the Flood and Water Management Act 2010 requires developers who want to connect to a public sewer to enter into a binding agreement for the adoption of new connecting sewers by the undertaker (under section 104 of the Water Industry Act 1991). The agreement must specify that new sewers will be built to a standard published by the Welsh Ministers or other such standard as may be agreed.

## Section 3 : SAB Approval and Adoption Role

### 3.1 Why does the SAB function sit in local authorities?

The legislation for sustainable drainage places SuDS approval and adoption responsibilities with local authorities. This fits well alongside their existing responsibilities for highways, planning, as well as their LLFA role also set out in the Flood and Water Management Act 2010. They have a strategic overview of surface water and flooding issues which will be critical in ensuring well designed, effective and sustainable drainage responding to the catchment rather than an end of pipe approach.

### 3.2 What drainage systems are not approved or adopted by the SAB?

The SAB does not approve and as a consequence does not adopt drainage systems which:

- Fall within the transitional arrangements for developments already in progress.
- Serves permitted development where the construction area is less than 100 square metres.
- Serves development of a single dwelling house and the construction area is less than 100 square meters. Or, any other type of development where the construction area is less than 100 square metres.
- Forms part of the strategic road network (for which the Welsh Ministers are the Highways Authority).
- Forms part of the national rail network.
- Forms part of a harbour.
- Is constructed by the internal drainage board (Natural Resources Wales) in delivery of its functions under the Land Drainage Act 1991.

### 3.3 What drainage systems are approved and adopted by the SAB?

The SAB:

- Approves any part of a drainage system where the construction is for more than a single dwelling or the construction area is equal to or greater than 100 square meters, and
- Adopts (subject to certain conditions of adoption set in the legislation for sustainable drainage) any part of a drainage system that serves more than a single property drainage system.

See definition of; construction, construction area, single property drainage systems and types of development that might be single property drainage systems, also listed in these FAQs.

### **3.4 What drainage systems are approved but not adopted by the SAB?**

Under the legislation for sustainable drainage the SAB approves but does not adopt where the drainage system:

- Serves a single property drainage system.
- Is a publically maintained road to which Section 41 of the Highways Act 1980 applies.

See definition of; single property drainage systems and types of developments that might be single property drainage systems, also listed in these FAQs.

### **3.5 Do local authority roads require SAB approval?**

Construction of new local authority roads will require SAB approval. The SAB does not however adopt a publically maintained road to which Section 41 of the Highways Act 1980 applies.

### **3.6 Does the requirement for SAB approval apply to retro-fitting of SuDS?**

The requirement for SAB approval applies only to the use of SuDS on new developments and re-developments.

The Statutory SuDS Standards can still however be used voluntarily by developers as a useful framework for the delivery of retro-fit SuDS schemes.

### **3.7 What types of development might be single property drainage systems, falling outside of the SAB duty to adopt?**

The SAB duty to adopt does not apply if the SuDS serves a single property drainage system (defined in the regulations for sustainable drainage as a site which is controlled by a single person or two or more persons together).

Examples of development types could include:

- Residential buildings with multiple flats.
- Single dwelling house
- Retirement complex
- Office or commercial building
- Industrial development or commercial estate
- School or university campus
- Sports club

- Hospital or other medical facility

This list is not exclusive, ultimately it will be for the SAB to determine what constitutes a 'single property system' under the legislation.

### **3.8 Will other organisations or bodies be able to maintain adopted SuDS?**

The legislation for sustainable drainage places the SuDS approval and adoption powers and duties with the SAB, which is within local authorities.

In the Statutory SuDS Standards applications for SAB approval should be accompanied by proposals for a maintenance plan for the SuDS scheme and the means of funding for the scheme for its design life. Ultimately it is for the SAB to determine whether the proposals are appropriate under the Statutory SuDS Standards and any local policies.

The legislation does not prevent the SAB from transferring maintenance of adopted SuDS to other organisations or bodies, by agreement. However the SAB will retain responsibility and liability for the adopted SuDS, to ensure it continues to operate in compliance with the Statutory SuDS Standards .

### **3.9 How does SAB approval fit with existing local policies?**

Under the Statutory SuDS Standards, development design should take account of any relevant local planning documents.

In particular a number of LPAs have adopted guidance on sustainable drainage which should be taken into account in any development proposal.

Existing flood risk policies in the Local Flood Risk Management Strategy, any flood consequence assessments, surface water management plans, the catchment flood management plan and the river basin management plan, will also be of particular relevance and should be taken into account.

### **3.10 How does SAB approval fit with flood risk management?**

It is important for developers to contact their local authority in their role as LLFAs to obtain relevant information to assist them in developing their SuDS design criteria for the site.

LLFAs are required, under the Flood and Water Management Act 2010, to develop a Local Flood Risk Management Strategy (LFRMS) for their area. The LFRMS will take account of environmental characteristics, development pressure, geology, soils and the interaction with river and coastal flooding. Reference to the current flood risk management plans, Local Flood Risk Management Strategy and flood maps will help to inform SuDS design<sup>4</sup>.

Welsh Government Technical Advice Note 15 on Development and Flood Risk sets out the relevant planning policy. The Development Advice Map will

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<sup>4</sup> <https://naturalresources.wales/evidence-and-data/maps/long-term-flood-risk/?lang=en>

help identify sites that are potentially at risk of flooding from rivers and the sea. In these areas developers are required to submit a Flood Consequence Assessment to address risks associated with the proposed development.

### **3.11 How does SAB approval fit with applications for planning permission?**

SAB approval is independent of planning permission, however as the SuDS scheme must be approved by the SAB **before any construction work begins** it is vital that drainage solutions are considered at the outline planning stage. This early consideration will ensure proposed drainage solutions are both compliant with the Statutory SuDS Standards and appropriate for the site, which will help avoid undue delay in construction.

The LPA is not a statutory consultee under the legislation for sustainable drainage. Effective communication channels between the SAB and the LPA will therefore need to be established. Local agreements may be helpful in setting out how these local authority departments will work together.

Developers should demonstrate compliance with the Statutory SuDS Standards and local policy when submitting planning applications. There is likely to be a continuing role for planning permission to be granted subject to section 106 conditions under the Town and Country Planning Act 1990 designed to ensure adequate drainage arrangements for surface and foul water are in place.

Developers may submit their application to the SAB for determination, either directly to the SAB as a free standing application or alongside the planning application via the LPA.

### **3.12 How does SAB approval fit with TAN15 Planning Policy for Wales?**

Technical Advice Note (TAN15) provides guidance which supplements the policy set out in Planning Policy Wales in relation to development and flooding.

It sets out requirements for the use of Development Advice Maps and for developers to submit Flood Consequence Assessment to address risks associated with the proposed development.

### **3.13 How does SAB approval and adoption fit with Highways Authorities?**

Opportunities for SuDS will be maximised through cooperative working between the SAB and Highway Authorities. It is recommended that the SAB liaises with the relevant Highway Authority as early as possible at pre-application stage, to determine which parts of the SuDS scheme for any new development may be subject to approval and adoption.

- The SAB does not approve or adopt SuDS schemes which form part of a road for which the Welsh Ministers are the Highways Authority (as defined in section 1(1) of the Highways Act 1980).

- The SAB approves but does not adopt SuDS schemes which form part of a 'publicly-maintained road' (meaning a highway to which the duty under section 41 of the Highways Act 1980 applies (maintenance at public expense). Where a Highway Authority adopts a road maintainable at public expense, they must act in accordance with the approved drainage design, including the maintenance regime, in compliance with the Statutory SuDS Standards. Highway adoption policies should be reviewed to reflect this.

The SAB is exempt from adopting any part of a sustainable drainage system for which the Highway Authority is already responsible or for which it could be responsible for maintenance.

### **3.14 How does SAB approval fit with building regulations?**

Developers are encouraged to undertake early engagement with their Building Control body (Local Authority Building Control or private Approved Inspector) in order that they can be aware of the proposed SuDs scheme.

Approved Document H (Drainage and waste disposal)<sup>5</sup>, Section H3, of the Building Regulations 2010 provides guidance on meeting the technical requirements of surface water drainage. These will continue to apply within the curtilage of the property.

The Approved Document H sets out a hierarchical preference for the discharge of rainwater which is compatible with the Statutory SuDS Standards, with discharge into a sewer as the last and least preferred option.

### **3.15 How does SAB approval fit with the National Infrastructure for Wales?**

SuDS can support objectives of the National Infrastructure Commission for Wales, which advises on matters around all economic and environmental infrastructure including drainage, water and sewerage and flood management along with other matters such as energy, transport and digital communications.

### **3.16 How does SAB approval support local authorities to deliver the biodiversity duty?**

The Biodiversity and Resilience of Ecosystems Duty (Section 6 Duty under the Environment (Wales) Act 2016) requires all public authorities to maintain and enhance biodiversity in the exercise of their functions.

In summary, SuDS should be designed to maximise biodiversity value by:

- Supporting and promoting natural local habitat and species,
- Contributing to the delivery of local biodiversity objectives,

<sup>5</sup> <http://gov.wales/topics/planning/buildingregs/approved-documents/part-h-drainage/?lang=en>

- Contributing to habitat connectivity, delivering wider biodiversity benefits,
- Creating diverse, self-sustaining, resilient local ecosystems,

And, by having regard to:

- The list of habitats of principal importance for Wales, published under Section 7 of the Environment (Wales) Act 2016,
- The State of Natural Resources Report (SoNaRR), published by NRW, and
- Any Area Statement that covers all or part of the area in which the authority exercises its functions.

The Statutory SuDS Standards (see Standard S5 – Biodiversity) provides the framework for SAB evaluation of the SuDS scheme and sets out how SuDS should be designed to maximise biodiversity benefits.

### **3.17 How does SAB approval support LAs to deliver Well-being Goals?**

All public bodies must work towards delivering the 7 Well-being Goals (the Well-being of Future Generations (Wales) Act 2015).

SuDS designed to comply with the Statutory SuDS Standards will directly contribute to well-being goals for cohesive, resilient and healthier communities.

The Statutory SuDS Standards (see in particular Standard S4 – Amenity and Standard S5 – Biodiversity) provides the framework for SAB evaluation of the SuDS scheme and sets out how SuDS should be designed to maximise multiple-benefits for people and nature.

### **3.18 How does SAB approval fit with Water Quality Directives?**

Surface water discharges must be managed to mitigate their impact on the receiving environment and must therefore be designed taking into account relevant river basin management plans.

As with conventional drainage systems, SuDS must meet the requirements of the Water Framework Directive and the Groundwater Daughter Directive which aim to protect, enhance and restore surface water and groundwater bodies.

## Section 4 : The design, construction, operation and maintenance of surface water systems

### 4.1 What are the relevant requirements for mandatory SuDS?

At the earliest opportunity in the conceptual stage for the new development, the developer should integrate the relevant requirements for mandatory SuDS.

The relevant requirements for the design, construction, operation and maintenance of mandatory SuDS are set out in the [Statutory SuDS Standards](#). These should be considered together with existing EU and national legislation and regulations, and any relevant locally adopted policies of the LPA and LLFA.

Relevant EU Directives include:

- **EU Water Framework Directive**, and the Groundwater Daughter Directive, as with traditional drainage, SuDS must meet the requirements which aim to protect, enhance and restore surface water and groundwater bodies. Also enables SuDS to be used in river basin management plans.
- **EU Urban Waste Water Treatment Directive**, protects the environment from the adverse effects of urban waste water discharges and concerns amongst other things the collection, treatment and discharge of domestic waste water.
- **EU Bathing Water Directive**, requires popular bathing waters in fresh and coastal waters to meet water quality criteria.
- **EU Floods Directive**, requires all water courses and coast line to be assessed for flood risk, the extent of the flood risk to be mapped and adequate and coordinated measures to be taken to reduce the flood risk.

Relevant national legislation and policy includes:

- **The Flood and Water Management Act 2010**, includes Schedule 3 and other provisions for sustainable drainage.
- **The Planning (Wales) Act 2015**, Section 2 imposes duties requiring 'sustainable development' consistent with SuDS features on new developments. Also makes water companies statutory consultees on new developments as part of the planning process.
- **The Well-being of Future Generations (Wales) Act 2015**, sets out well-being goals and 'sustainable development' principles.
- **The Environment (Wales) Act 2016**, under Section 6 a public authority must seek to maintain and enhance biodiversity and promote

the resilience of ecosystems in exercising functions (such as SuDS approval and adoption).

- Objectives of the **National Infrastructure Commission for Wales**, which advises on matters around all economic and environmental infrastructure including drainage, water and sewerage and flood management.

Relevant regulations and local policy includes:

- **Flood risk management strategies**, LLFAs are required to develop a Local Flood Risk Management Strategy (LFRMS) for their area. SuDS can play an important and significant role in helping to reduce flood risk and support flood risk management. The [Development Advice Map](#) will help identify sites that are potentially at risk of flooding from rivers and the sea. In these areas developers are required to submit a **Flood Consequence Assessment** to address risks associated with the proposed development.
- **Technical Advice Note (TAN15)**, provides guidance which supplements the policy set out in Planning Policy Wales in relation to development and flooding. It sets out requirements for the use of Development Advice Maps and for developers to submit Flood Consequence Assessment to address risks associated with the proposed development.
- **Building Regulations 2010, Approved Document H** (drainage and waste disposal) provides guidance on meeting the technical requirements of surface water drainage. These will continue to apply within the curtilage of the property.
- **Locally adopted policies**, may also include specific local requirements set by the SAB and LPA.

#### 4.2 How do the Statutory SuDS Standards work and what do developers need to do to demonstrate compliance?

The [Statutory SuDS Standards](#) are aimed at ensuring that compliant and effective drainage schemes are delivered, for protecting and enhancing both the natural and built environment. Developers will need to demonstrate in their application to the SAB how the proposed surface water drainage design for the site complies with the following mandatory requirements:

##### Principles for SuDS Schemes<sup>6</sup>

These high level Principles must be used to underpin the design of SuDS schemes to meet the Standards.

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<sup>6</sup> Page 7 of the Statutory SuDS Standards

To be compliant with the Standards, developers will need to demonstrate how they have applied the principles to the design of the proposed SuDS scheme or provide justification for any departures.

#### Hierarchy Standard 1 (S1), which also has Priority Levels from 1 to 5<sup>7</sup>

Standard S1 must be used to prioritise the choice of surface water runoff destination for the proposed SuDS scheme. The aim is to ensure that runoff is treated as a resource and managed in a way that minimises the negative impact of the new development on flood risk and the environment.

To be compliant with the Standards, developers will need to demonstrate how they have applied the hierarchy criteria from the preferred priority Levels 1, 2 and 3 (surface water collected for use, infiltrated to the ground, discharged to a surface water body). And what the exceptional circumstances are, if the least preferred priority Levels 4, 5 are proposed (discharge to a drainage system or combined sewer).

Different Levels may be appropriate for different parts of the site.

#### Fixed Standards, which start at Standard 2 (S2) to Standard 6 (S6)<sup>8</sup>

Standards S2 to S6 state the minimum design criteria that all SuDS must satisfy and how they should be constructed, maintained and operated.

To be compliant with the Standards, developers will need to demonstrate how the proposed SuDS scheme satisfies the criteria in each of the fixed Standards S2 to S6. There are no exceptions or prioritised levels.

### **4.3 What additional useful information on SuDS is available?**

Additional references and useful sources of information are provided in the Statutory SuDS Standards<sup>9</sup>.

The Statutory SuDS Standards may be used in conjunction with the [CIRIA SuDS Manual](#), a key technical document for the use of SuDS.

**Case studies available on the [CIRIA Susdrain website](#) provide numerous examples of SuDS project details, which can be helpfully filtered by component and development type.**

**A number of case studies on the [CIRIA Susdrain website](#) have been [peer reviewed](#). These provide numerous truly inspirational examples of how SuDS schemes have been successfully implemented, improving both the built and natural environment on small scale and large scale new build developments.**

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<sup>7</sup> Page 8 to 18 of the Statutory SuDS Standards

<sup>8</sup> Page 18 to 46 of the Statutory SuDS Standards

<sup>9</sup> See page 62 of the Statutory SuDS Standards.

#### **4.4 Can construction on the development start, before or without SAB approval?**

**No.** From 7<sup>th</sup> January 2019 onwards, all new developments of more than 1 dwelling house or where the construction area is 100 square meters or more, will require SuDS for surface water (except where it falls under a specific exemption or transition also listed in these FAQs).

From this date onwards, SuDS on new developments must be designed and built in accordance with Statutory SuDS Standards published by the Welsh Ministers and SuDS Schemes must be approved by the local authority acting in its SAB role, **before any construction work on the development begins.**

#### **4.5 At what stage should outline proposals be discussed?**

It is highly recommended the developer contacts the SAB at the earliest opportunity in the design stage to engage in pre-application discussions.

Involving the LPA and other relevant statutory and non-statutory consultees who may have an interest early in the design stage is also vital. It will help minimise undue delay in SuDS approval and the commencement of construction by ensuring from the outset that developers understand both what is expected of them and the SuDS design criteria for the site.

#### **4.6 Can SABs and relevant consultees charge for pre-application advice?**

Developers should check with the individual organisations concerned as to whether there will be a charge for pre-application advice. Whilst there are no specific provisions for such charges in the legislation for sustainable drainage organisations might have in place their own arrangements.

#### **4.7 What procedural aspects might be discussed at pre-application?**

Developers may want to discuss the following procedural matters with the SAB before making an application:

- Completing the SuDS application form, the technical information that the developer will need to submit with the application together with any additional information that a SAB may require to meet local requirements.
- Whether or not the application relates to a development that is the subject of an Environmental Impact Assessment under Town and Country Planning legislation. If so the time limit for SAB determination of the application for approval will be 12 weeks instead of the usual 7 weeks.
- The application fee, which the developer must submit with the SuDS application (see; fees the SAB can charge, also listed in these FAQs).

- The statutory consultees, with whom the SAB will need to consult.
- Conditions which may be attached by the SAB to the SuDS approval. Conditions enable the SAB and developer to ensure the drainage system is constructed as approved, they are either adhered to by the applicant or enforceable action may be taken by the SAB. (see; conditions to approval, also listed in these FAQs)
- Non-performance bonds, which the SAB may require as a condition of approval to ensure the SAB has the financial means to remediate poorly constructed or incomplete SuDS. (see; non-performance bonds, also listed in these FAQs)
- The number of inspections that the SAB may require (See; fees the SAB can charge, also listed in these FAQs).

#### 4.8 What relevant technical aspects might be discussed at pre-application?

It may be helpful for the developer, SAB, LPA and relevant consultees to discuss key technical matters before an application is made to the SAB.

**Developers should aim to consider and discuss the following matters early on** (this is not a prescriptive list, however doing so may help to ensure that drainage design is more likely to meet the relevant statutory criteria along with local policy requirements and that any specific site constraints, discharge and consent requirements are understood):

##### **Relevant criteria**

- The conceptual drainage plan and its synergy with principles in the Statutory SuDS Standards.
- Drainage hierarchy and the proposed final discharge destination along with the means of outfall and location (S1 in the Statutory SuDS Standards).
- Initial discussions on surface water runoff hydraulic controls, protection against flood risk and preventing pollution (S2 and S3 in the Statutory SuDS Standards).
- Designing SuDS to maximise opportunities for amenity and biodiversity (S4 and S5 in the Statutory SuDS Standards).
- Designing SuDS so they can be easily and safely constructed, maintained and operated (S6 in the Statutory SuDS Standards).
- Future maintenance needs, consideration of the proposed maintenance plan and means of funding it for the design life of the development.

##### **Local policy**

- How any SAB, LLFA and LPA local policy requirements have been integrated to the conceptual drainage plan.
- Have initial discussions with the LLFA and LPA taken place, where issues may need to be considered as part of the SuDS Scheme?

### **Site constraints**

- What the anticipated development programme is for the site. Is development phased, one-off or cumulative and are multiple developers likely to be involved? If so, the SuDS Scheme may require phasing.
- Have site-constraints been identified within and outside the development that may have an impact on the SuDS scheme (which could include issues around soil geology, topography, groundwater etc.)
- Whether proposed surface water discharge is to a water body? If so, have discussions taken place on the consent to discharge?

### **Discharges and consents**

- Whether proposed discharge is to a highway drains and drain? If so, have discussions taken place with the relevant Highways Authority around the interaction of managing the surface water?
- Whether proposed surface water discharge is to a sewer public sewerage network? If so, have discussions taken place with the relevant sewerage undertaker?
- Whether proposals include surface infiltrating to the ground? If so, have discussions taken place with Natural Resources Wales and / or the relevant water company in relation to pollution risk and underlying aquifers?
- Are there any temporary drainage arrangements likely to be required during construction phase(s)?

## **4.9 What technical information might be relevant to the SuDS application?**

Depending on local conditions, a SAB may have a specific set of requirements to determine an application. The following information is likely to be needed, but developers should check with the relevant SAB for the area for a definitive list of all the information required to be submitted with the application:

### **Surveys**

- A topographical survey of the site, including cross-sections of any adjacent water courses for appropriate distance upstream and down stream of discharge point if appropriate (as agreed with the SAB)

- Details of the existing site layout, drainage system and catchment areas, if appropriate.
- Details of the existing geology and hydrogeology.
- Ground investigations (including ground water and contamination) and infiltration tests, where appropriate.
- Surveys of any existing drainage systems or water bodies to which the SuDs may discharge.

### **Plans**

- A detailed site layout at an identified scale (as agreed with the SAB) with a North point of the proposed drainage system with catchment areas.
- Long and cross sections for the proposed drainage system including impermeable areas (at a scale agreed with the SAB)
- A plan for the management of construction to include; phasing and maintaining the system (including access arrangements, operational characteristics and energy requirements for constructing and maintaining all proposed systems) and details of any offsite works required together with any necessary consents and any impacts.
- A health and safety plan, if appropriate, considering areas of open water and confined space entry.
- Suitable construction details and details of connections (including flow control devices) to water courses, sewers, public surface water sewers, highway drains and drainage systems.
- Landscape planting scheme if proposing vegetated drainage system.
- A proposed maintenance plan setting out how to maintain the full drainage system and the means of finding it for the design life following construction (whether adopted or not).

### **Assessments**

- An assessment demonstrating flooded areas for the 1 in 100 year return period, when system is at capacity and demonstrating flow paths for design and exceedance.
- Full design calculations and design parameters to demonstrate conformity with the design criteria for the site.
- Design criteria in relation to/from ground contamination, infiltration tests, ground water assessments and soil stability.

- Any requirements for temporary drainage features or discharge points during construction.

#### Evidence and reports

- Confirmation of discharge consents.
- Confirmation of discharge locations.
- Discharge capacity.
- Agreements with other owners and authorities.

#### **4.10 What information might be relevant to the maintenance plan and its funding?**

The developer is expected to provide with the SuDS application, the proposed maintenance plan and the means of funding for the scheme for its design life.

The principle for this is set out in the Statutory SuDS Standards. In addition the SAB has broad discretion to impose conditions of approval, which may be used to ensure that the sustainable drainage systems will be maintained for the lifetime of the development.

Depending on local conditions, a SAB may have a specific set of requirements. The following information is likely to be needed, but developers should check with the relevant SAB for the area for a definitive list of all the information required:

- The type of maintenance activities that are required to ensure that the drainage system operates as designed to manage flood risk and deliver multiple benefits,
- The anticipated frequencies of those activities,
- The estimated duration of those activities,
- Any specific plant and equipment required to undertake those activities,
- The estimated costs to complete those activities,
- A site plan showing maintenance areas, access routes and the locations where maintenance activities are anticipated,
- A statement describing any secondary function (e.g. recreation area) above or within the SuDS component and details describing how this function is to be managed and by whom.

The SAB may choose to rely on existing powers available to local authorities under local government legislation in order to secure agreements to support

maintenance arrangements, including any commuted sum or maintenance funding.

#### **4.11 What discharge consents might be relevant and how should these be evidenced?**

The developer will need to ensure the relevant consents for the proposed surface water discharge are in place. Whilst not in any way a prescriptive list, the following in particular should be considered:

- Whether proposed surface water discharge is to a water body? If so, have discussions taken place on the consent to discharge?
- Whether proposed discharge is to a highway drains and drain? If so, have discussions taken place with the relevant Highways Authority around the interaction of managing the surface water?
- Whether proposed surface water discharge is to a sewer public sewerage network? If so, have discussions taken place with the relevant sewerage undertaker?
- Whether proposals include surface infiltrating to the ground? If so, have discussions taken place with Natural Resources Wales and / or the relevant water company in relation to pollution risk and underlying aquifers?

Depending on local conditions, a SAB may have a specific set of requirements to determine an application. The following evidence and reports in relation to discharge consents is likely to be needed, but developers should check with the relevant SAB for the area before making an application:

- Confirmation of discharge consents.
- Confirmation of discharge locations.
- Discharge capacity.
- Agreements with other owners and authorities.

#### **4.12 How will the most appropriate and suitable SuDS for a site be approved?**

A SuDS application for approval by the SAB **must be designed to comply with the Statutory SuDS Standards**. The SAB will evaluate the SuDS application to determine whether the proposed drainage system will comply with the Statutory SuDS Standards and what if any conditions of SAB approval may be necessary to ensure the SuDS scheme is constructed and functions as approved in the proposals.

The Statutory SuDS Standards take a hierarchical approach for where runoff can be discharged and set criteria for the rate and volume of runoff which will

allow flexibility for site specific circumstances so the most practicable and cost effective drainage solution for a site is built.

The Statutory SuDS Standards also set out how the SuDS should be designed to maximise amenity (see Standard S4) and biodiversity (see Standard S5) benefits. The SuDS Standards encourage SuDS techniques such as wetlands, swales, ponds and vegetated systems which can create opportunities for habitats and wildlife and can help increase access to shared community green spaces.

Developers should contact the SAB at the earliest stages of site design so that the SAB can assist in developing compliant SuDS design criteria for the site.

#### **4.13 What consideration is given to affordable and cost-effective SuDS schemes?**

Overall evidence suggests that SuDS are cheaper to build and operate in comparison to conventional drainage. Across the 110,000 new homes planned for Wales by 2021 the use of landscaped SuDS on new developments that are compliant with the Statutory SuDS Standards could save nearly £1 billion in capital construction costs and generate benefits of over £20 million per year<sup>10</sup>.

Clearly costs and benefits vary according to the development site and measures used for drainage systems, but these are capped in the Statutory SuDS Standards by a test for affordability:

- A principle aim for compliant SuDS (see the Principles in the Statutory SuDS Standards) is that schemes should be affordable, taking into account both construction and long term maintenance costs and the additional environmental and social benefits associated with the SuDS scheme.
- The Statutory SuDS Standards also set out (see Standard S6) that all elements of the SuDS scheme should be designed so that they can be constructed and maintained cost effectively.

#### **4.14 What if the proposed design is modified before approval by the SAB?**

Where an application is modified by agreement between the SAB and developer before determination by the SAB, the SAB may not charge a fee in relation to the agreed modification

#### **4.15 What if the design already approved by the SAB needs to be modified?**

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<sup>10</sup> See Sustainable Drainage Systems on new developments, Analysis of evidence including costs and benefits of SuDS construction and adoption, report for the Welsh Government, January 2017

An application can be made to the SAB vary an approval. The SAB may charge a fee for each application and for each alternative proposal for the drainage system made in a single application (the fee for applications involving alternative proposals is set in regulations and also listed in these FAQs).

#### **4.16 What inspections might the SAB require?**

The SAB may request inspections to take place before during and on completion of construction of the drainage system.

Inspections will need to be stipulated by the SAB in a condition to the approval.

The SAB may charge a fee for each inspection (See; fees, also listed in these FAQs).

#### **4.17 Is connection to a foul or combined sewer prohibited?**

The Statutory SuDS Standards recognise the need to avoid foul flooding and accordingly **prohibit connection of a SuDS to a foul sewer.**

A key expectation of the Statutory SuDS Standards is that the use of effective compliant SuDS on new developments will reduce the flow of runoff to the public sewer network.

The discharge to a combined sewer, if proposed as part of the drainage plans, must be evidenced as the choice of last resort. For example, where opportunities for infiltration or discharge to a watercourse are not available or in redeveloped areas where there are no separate surface water sewers.

Any connection to a sewer may require both a Water Industry Act 1991 Section 104 (adoption) and Section 106 (connection) agreements from the sewerage undertaker. Under the legislation for sustainable drainage the Section 106a right to connect may only be exercised by the developer where the SAB has approved the proposed SuDS scheme and the approved design included the proposed communication with the sewer.

#### **4. 18 How has the right to connect surface water to the public sewer network changed?**

The automatic right to connect surface water to the public network has been amended to make it conditional on receiving approval from the SAB that the proposed drainage system meets the Statutory SuDS Standards for sustainable drainage.

Under the legislation for sustainable drainage the right to connect may only be exercised by the developer where the SAB has approved the proposed SuDS scheme and the approved design included the proposed communication with the sewer.

If the developer wants to connect a surface water system to the public sewer, it **must** make that explicit in its proposals for SAB approval.

Developers and the SAB should engage sewerage undertakers at the earliest opportunity in the pre-application stages. This will enable developers to take a holistic view of the design of foul and surface water drainage systems. Such discussions are important if the surface water will enter the public sewer network at any stage.

The sewerage undertaker may not refuse connection on the grounds that the drainage system absorbs water from more than one set of premises or sewer or from land that is neither premises nor a sewer (section 106A(3) of the Water Industry Act 1991 refers).

#### **4.19 How has the right to connect surface water from publically maintained roads to the public sewer network changed?**

Provisions permitting sewerage undertakers and highways authorities to enter into an agreement to utilise one another's sewers for the purposes of draining water from highways (but not where 3<sup>rd</sup> party connections occur) has changed.

Under the legislation for sustainable drainage a sewerage undertaker must accept any surface water from a publically maintained road which is in accordance with drainage approved by the SAB as complying with the Statutory SuDS Standards.

This means that where SuDS approval is given for a drainage system, which drains via a highways drain into the public sewer, the sewerage undertaker may not refuse to accept any connection from the road or highway drain which is part of the drainage plan approved by the SAB.

If the surface water is intended to enter the public sewer network at any stage, it is essential that developers and the SAB engage sewerage undertakers at the earliest opportunity in the pre-application stages.

#### **4.20 Does the SAB have the power to compulsory purchase land?**

The legislation for sustainable drainage does not provide the SAB with any specific powers to compulsory purchase land.

However, the SAB may be able to rely on existing powers available to local authorities under land drainage legislation<sup>11</sup> to enable pipes which are part of the drainage system to be built and compulsory acquire easements. The SAB would only be able to rely on these powers if the conditions, also set in the land drainage legislation, were satisfied.

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<sup>11</sup> See Section 14 of the Land Drainage Act 1991.

#### **4.21 Does the developer have powers to access third party land?**

The legislation for sustainable drainage does not provide developers with any specific powers to access third party land.

However developers who need access over third party land (as would have been the case before the implementation of mandatory SuDS in order to connect their run-off to public sewers or nearby water bodies) will still need to approach those third parties to obtain the necessary property rights.

Where developers are unable to reach agreement with third parties to obtain the necessary property rights, then the same kind of options that existed before commencement of the legislation for sustainable drainage remain open to them.

#### **4.22 Who maintains the SuDS before SAB adoption?**

Before adoption, the developer is responsible for maintaining the approved drainage system. The SAB may wish to take this into account before approval when setting any non-performance bond.

#### **4.23 Who maintains SuDS which are in or beside a publically maintained road?**

Highways authorities are already responsible for the drainage and maintenance of publically maintained roads. Under the legislation for sustainable drainage the SAB is exempt from adopting any part of a SuDS which is a publically maintained road.

The maintaining authority (i.e. the relevant Highways Authority) is required to act in accordance with any drainage and maintenance plan as approved by the SAB and in accordance with the Statutory SuDS Standards.

#### **4.24 Who maintains a SuDS in a private road?**

The SAB is required to adopt approved SuDS in or alongside private roads that serve more than a single dwelling.

Before adoption the developer is responsible for the maintenance of the SuDS. The SAB may wish to take this into account before approval when setting any non-performance bond.

Once adopted, the SAB is responsible for maintaining the SuDS. If in the future the road becomes a publically maintained road, then the relevant Highways Authority will be responsible for maintenance.

#### **4.25 How will a SuDS be maintained where there is no easy access to it?**

The mandatory use of SuDS applies to new developments and re-developments, the developer and the SAB should aim to ensure that matters such as ensuring access for maintenance are agreed before SAB approval.

If the SAB is having difficulty accessing the site to maintain an adopted SuDS then it may be able to rely on existing powers available to local authorities under land drainage legislation<sup>12</sup> to gain access.

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<sup>12</sup> See Section 14 of the Land Drainage Act 1991.

## Section 5 : Statutory and non-statutory consultees

### 5.1 Who are the statutory consultees to the SAB and what is their role?

Before determining an application, the SAB must consult with statutory consultees specified in the legislation for sustainable drainage. These bodies were given a statutory role in the SAB approval process in recognition of the potential impact of surface water drainage discharges on their assets or on interests falling within their regulatory remit.

The requirement to consult with one or more of the following consultees is triggered if an application for approval may impact upon that consultee:

- **Sewerage Undertaker** with whose public sewer the drainage system is proposed to communicate.
- **Natural Resources Wales (NRW)** if the proposed drainage system directly or indirectly involves the discharge of water into a watercourse or groundwater. NRW will also have an interest if the drainage system discharges to the ground or a sensitive water body.
- **Relevant Highways Authority** for a road and associated drainage system which may be affected by the proposed drainage system.
- **Internal Drainage Board (NRW)** where the proposed drainage system directly or indirectly involves the discharge of water into an ordinary watercourse within the board's district.

For clarity, statutory consultees may wish produce supplementary information as to specific matters it would expect to be consulted on and to establish criteria in relation to the potential impact, location, destination and size of applications to priorities those most likely to be relevant to their interests.

The comments of statutory consultees should be regarded as a material consideration by the SAB. If the statutory consultee raises an objection to the proposals the SAB, the developer and the statutory consultee are expected to find a workable solution.

Once the SAB has determined the application for approval it must notify any statutory consultees who it consulted of the approval decision.

### 5.2 At what stage should developers involve statutory consultees?

Statutory consultees are encouraged to participate in pre-application discussions with the SAB and developer. To help avoid undue delay later on in the approvals process, developers should aim to engage statutory consultees along with other key stakeholders at the earliest opportunity in the pre-application stages.

Early engagement with sewerage undertakers in particular will enable developers to take a holistic view of the design of foul and surface water drainage systems.

### **5.3 What information should the SAB send to statutory consultees?**

To avoid undue delay in the SAB approvals process and for the purposes of the consultation the SAB will want to consider the information needs of the statutory consultees and how best to share the information.

Where the SuDS application may have a direct or indirect impact on the interests of the statutory consultee it is expected as minimum that the SAB should provide the following information to a statutory consultee for the purposes of or in connection with the consultation:

- a copy of the application form relating to a relevant application,
- the reference number allocated by the SAB to the application,
- any plans or drawings in connection with the relevant application;
- any proposals concerning where and when the application may be inspected,
- any reports and or supporting information in connection with the relevant application which is issued to the SAB,
- and any other information the SAB considers appropriate.

In sharing information the SAB will need to ensure as with other local authority services that any necessary GDPR compliant systems are in place.

### **5.4 What is the time-limit for statutory consultees to respond to the SAB?**

In the regulations for sustainable drainage statutory consultees must provide a response to the SAB within a three-week timescale or seek an agreed extension. The SAB may disregard any comments received after the deadline or after any agreed extension period.

### **5.5 How does the statutory consultees advice fit with the Statutory SuDS Standards?**

The Statutory SuDS Standards are a mandatory requirement that the SAB is under a duty to comply with when approving, adopting or maintaining SuDS.

When providing their advice statutory consultees should take account of the Principles, Standards and Guidance in the Statutory SuDS Standards.

### **5.6 Can the SAB ignore advice from a statutory consultee?**

It is an established principle that consultation must be carried out properly in order to satisfy the common law principles of procedural fairness.

If a statutory consultee raises an objection to a proposal we would expect the SAB, the consultee and the developer to find a workable solution.

If the SAB decided to ignore the advice of a statutory consultee it would be expected to explain why.

#### **5.7 Can statutory consultees charge a fee for providing advice?**

There is nothing in the legislation for sustainable drainage which enables statutory consultees to charge a fee for costs incurred in relation to pre-application discussions and SuDS approval.

Developers should however please check directly with the organisation concerned as fees may still be chargeable by the organisation under separate arrangements.

#### **5.8 Will the SAB reimburse statutory consultees for any costs incurred?**

No, there are no provisions for the SAB to reimburse statutory consultees.

#### **5.9 What voluntary consultation might be helpful?**

Developers and the SAB may wish to consult additional non-statutory consultees where appropriate. Where the SAB consults it should aim to do so within the same time-scale for statutory consultees.

Potential interested non-statutory consultees will need to be considered on a site by site bases, but by way of example this might include:

- Neighbouring SABs
- LPAs
- LLFAs
- Other LA departments (highways, building regulations, parks, public rights of way)
- Wildlife trusts
- RSPB
- Rivers Trusts
- Local community groups
- Community and town councils
- Riparian owners

## Section 6 : SuDS application process

### 6.1 What is the application process?

A flow chart summarising the SuDS application process is at **Annex 1** to these FAQs

### 6.2 What should developers do to make an application?

Developers should:

- Refer to the **relevant requirements** for mandatory SuDS.
- Enter into **pre-application discussions**,
- Ensure all **relevant information** to the application is compiled (a SAB may have specific requirements as to the information to be submitted with the application).
- Complete the **SuDS application** (a SAB may have specific requirements as to the form to be used for making an application).
- **Calculate the application fee**, which must be submitted with the SuDS application.

(See the specific FAQs on each of these matters also listed in this document.)

### 6.3 What must be submitted with the application?

The application must be made using the application form required by the SAB and it must be submitted together with any information required by the SAB.

FAQs setting out the **relevant requirements** and suggested **relevant information** may be helpful, but developers should check with the relevant SAB for the area for definitive advice.

The application must be submitted with correct application fee.

The application should be submitted with a proposed maintenance plan and the means of funding it for the design life.

### 6.4 How is an application for drainage approval submitted to the SAB?

A drainage application to the SAB can be made **either** in combination with the planning application (a “combined” application) **or** directly to the SAB (a “freestanding” application).

- A drainage application “**combined**” or in other words submitted via the LPA with a planning application, may be submitted by the developer where planning permission is also required. The LPA will forward the SuDS application and the fee onto the SAB for a decision on the drainage application. The SABs decision on the drainage application should be notified to the developer by the LPA.
- A “**freestanding**” drainage application may be submitted by the developer directly to the relevant SAB. This route can be used when planning approval is not required or when the developer wants SAB approval before submitting the full planning permission application.

## **6.5 How can I get a copy of the application form?**

With effect from the 7<sup>th</sup> January 2019, the Planning Application Service Wales will contain a link to the SAB application form for SuDS approval. Developers should also contact the SAB for the area to check for any local requirements.

## **6.6 Do all SuDS applications for SAB approval also require planning permission?**

No. Applications for construction with drainage implications which require approval by the SAB may not require planning permission from the LPA e.g. because it does not constitute development or it is “permitted development”.

In some circumstances a developer may wish to agree drainage provisions for a development in advance of the submission for planning approval. Therefore there are two application routes to the SAB, either a “freestanding” application or an application which is “combined” or in other words submitted via the LPA with the planning application.

## **6.7 How long will approval by the SAB take?**

From the first working day after the SAB receives a validly made application the SAB will determine (approve or not) within:

- 7 weeks, or
- 12 weeks, where the application is the subject of an Environmental Impact Assessment under Town and Country Planning legislation.

The SAB and developer may agree an extension of the approval period.

Where a SAB fails to determine an application within the relevant time period, the applicant may appeal the decision.

## **6.8 What fees can the SAB charge?**

The SAB will charge a fee calculated using the rates set out below for applications and for inspections.

The SAB may also choose to rely on powers available under local government legislation to charge for pre-application advice.

### **Application fee**

The SAB will charge £350 for each application, plus (up to a maximum of £7,500):

- for every additional 0.1 hectare (ha) up to 0.5 ha - £70
- for every additional 0.1 ha between 0.5 ha and 1 ha - £50
- for every additional 0.1 ha between 1 ha and 5 ha - £20
- for every additional 0.1 ha above 5 ha - £10

The fees are proportionate to the size of the construction area.

The developer must submit the correct fee with the application.

### **Discounted application fees**

Discounted application fees are to be charged by the SAB in circumstances where:

- Two or more applications or alternative proposals in a single application are made. The SAB can charge the application fee for the proposal which would attract the highest fee, plus half the sum of the fee chargeable for each of the remaining applications and/or alternative proposals.
- The applicant is a town or community council. The SAB can charge a fee that is half the amount of the application fee.

### **Modified applications**

The SAB may not charge a fee in relation to the modification of an application, where before determination by the SAB, an application for approval is modified by agreement between the SAB and the developer.

### **Fees for applications that are resubmitted**

The SAB may charge a fee based on half the amount of the application fee charged for a previously approved application, where SAB approval was given within the preceding 12 months and the subsequent application relates wholly or mainly to the previously approved SuDS scheme (including construction proposals and conditions of approval of the previous application).

The SAB may not charge a fee in relation to a subsequent application for approval where the application relates only to a condition of approval. Unless

the condition is in relation to the construction of the SuDS scheme and was made under the previously approved application.

### **Inspection fee**

Where the SAB approves an application subject to a condition that an inspection(s) of the SuDS scheme are undertaken, it can charge an inspection fee of £168 for each inspection.

## **6.9 What does the SAB do once it receives a valid application?**

On receipt of an application the SAB should validate the application. To check that it meets the specific requirements (as set by the SAB) as to the form to be used for the application and as to any information it requires to be provided with the applications for approval.

**If everything is correct** that the application has been validly made the SAB has 7 weeks to determine the application or 12 weeks if the application is subject to an Environmental Impact Assessment under Town and Country Planning legislation.

To determine the application the SAB will evaluate the proposals against the **relevant requirements** for mandatory SuDS. These include the Statutory SuDS Standards for the drainage design, construction, operation and maintenance together with existing EU and national legislation, and any relevant locally adopted policies of the LPA and LLFA.

The SAB must also consult relevant statutory consultees and it may set non-performance bond and conditions of SAB approval.

A flow chart setting out all stages of the application process is at Annex 1 of these FAQs

## **6.10 What happens if the SuDS application is invalid?**

On receipt of an application the SAB should validate the application. To check that it meets all may set any specific requirements as to the form and any information it requires for applications for approval.

**If the application has minor deficiencies**, the SAB may wish to contact the developer to advise of the missing material and agree a period of time within which it must be submitted.

**If the application has more substantial deficiencies**, the SAB may wish to contact the developer to advise of the action needed to remedy the deficiencies. In doing so the SAB may also wish to negotiate with the developer an extension of the time-period for determining the application, which will need to be confirmed in writing. (Any extension of time agreed for determining a SAB application does not extend the timeframe for the determination of any planning application.

If the application has significant substantial deficiencies or the developer has failed to submit the information requested by the SAB, the SAB may choose to reject the application. In doing so the SAB must notify the developer as soon as practicable of its decision and the reasons for its decision and return the application fee.

#### **6.11 What statutory and non statutory consultation might the SAB undertake?**

(See the specific FAQs on each of these matters also listed in this document).

#### **6.12 What conditions to approval might the SAB make?**

Conditions attached to the SuDS approval are either simply adhered to by the developer or enforceable action may be taken by the SAB. They tend to fall away on adoption and do not need to be discharged, as in the case of planning conditions.

Approval conditions are not mandatory but enable the SAB and developer to make sure all components of the drainage application are constructed appropriately.

All conditions should be appropriate to the scale and nature of the works and be:

- necessary,
- relevant to the SAB approval and adoption process,
- relevant to the development to be approved,
- enforceable,
- precise, and
- reasonable in all other aspects.

Conditions should not duplicate requirements of other legislation.

#### **6.13 What non-performance bond might the SAB require?**

A non-performance bond may be requested by the SAB. The requirements of the bond will be stipulated as a condition of approval, where the value of the bond cannot exceed the estimate of the construction costs of the work that is required to accord with the approved proposals.

Assessing the value of the bond is expected to be the subject of detailed discussions between the SAB and developer, before the bond value and its manner of release is set as a condition of approval. Were available industry standard guidance should be used to calculate costs.

The bond will be payable to the SAB if it certifies that the drainage system:

- has been constructed in a manner that is not in accordance with the approved proposals; or

- is unlikely to be completed.

Where the bond has not been drawn down and the SAB is satisfied that the drainage system has been constructed and functions in accordance with approved proposals, the SAB must release the bond:

- within 4 weeks beginning on the first day after the SAB has given notice of its decision to adopt, or
- within 4 weeks of its decision in response to a request to adopt.

#### **6.14 Will the development site be inspected before being approved by the SAB?**

The SAB may request inspections, where inspection are stipulated as a condition of approval it may charge a set fee for each inspection. The SAB may wish to inspect before, during and after construction to ensure the SuDS is built as approved. It may also wish to inspect post construction and prior to adopting, to ensure the SuDS is functioning as approved.

#### **6.15 What agreements might the SAB require to support adoption?**

When an application is submitted, the SAB and developer should also discuss a legal agreement as a formal means of setting out any detailed arrangements concerning; the maintenance of the sustainable drainage system for the life-time of the development, the means of funding for the SuDS scheme for its design life (including any commuted sum or maintenance funding) .

In relation to securing agreements to ensure the SuDS remains compliant for the design life of the development, the SAB may wish to rely on existing powers available to local authorities under local government legislation.

Legal agreements may also need to cover:

- the transfer of land,
- easements,
- access.

#### **6.16 What decision can the SAB give and what should the developer do?**

The SAB should notify the developer, the LPA and statutory consultees of the decision for both stand alone and combined applications.

If approved, the developer should:

- Review the conditions of approval and if necessary discuss how to address these with the SAB.
- Set up a non-performance bond agreement, if required.

If refused, the developer should:

- Examine the reasons why the application has been refused and discuss these with the SAB.
- Re-apply for SAB approval if appropriate.

If refused, the developer may appeal against the SABs decision.

#### **6.17 What happens to the planning application if SAB approval is refused?**

Where the SAB refuses a drainage application, the planning authority could still grant planning permission and inform the applicant of its own decision within the allocated timeframe for planning. However, without SAB approval construction could not commence and connection to the sewer, where proposed, would not be possible.

The planning authority should therefore still inform the applicant of its own decision on the planning application thereby meeting its own deadline for response. Any appeal resulting from the non-determination of the SuDS application would be against the SAB and not the planning authority.

## **Section 7 : SuDS adoption process**

### **7.1 What is the process for adoption by the SAB?**

Once the terms of the approval and any SAB conditions of approval have been met, including any time period required for the establishment of vegetation, the SAB can adopt drainage systems:

- On its own initiative, or
- at the request of the developer (made using any form required by the SAB).

Where the SAB is under a duty to adopt, subject to the conditions being met it should in most cases undertake to adopt the SuDS on its own initiative.

In the case of voluntary adoptions or disputes about whether the conditions for adoption have been met the SAB may be requested to adopt a drainage system.

### **7.2 What SuDS systems are not adopted by the SAB?**

The SAB does not adopt SuDS that serve single properties or publically maintained roads.

The SAB does not adopt drainage systems that are not subject to the requirement for SAB approval.

### **7.3 What is the effect of adoption?**

Where the SAB adopts a SuDS it becomes ultimately responsible for ensuring the maintenance of the system so that it functions in accordance with the Statutory SuDS Standards.

### **7.4 Can a request for adoption be made?**

Once the terms of the approval have been met, including any period required for the establishment of vegetation, the SAB can either decide to adopt the drainage system itself or respond to a request from the developer

Any requests for adoption must be made in the form required by the SAB and determined by the SAB within 8 weeks.

### **7.5 What is the time-frame for a decision to adopt?**

Where the SAB adopts on its own initiative, it must notify the developer of its decision as soon as is reasonably practicable.

The SAB must determine requests for adoption within 8 weeks from receiving the request unless a longer time period is agreed between the SAB and developer.

## **7.6 What happens if the SAB fails to meet the time-frame for a decision to adopt?**

Failure to determine the request within the time-period will be taken as a refusal to adopt, unless the SAB and developer have agreed beforehand to extend the time period.

Where the SAB fails to meet the time-scale for determining the request to adopt, it will remain obliged to make a decision and to notify the applicant of that decision. However if the applicant so wishes the application will be deemed to have been refused by the SAB for the purposes of appeal and it will be open to the applicant to bring an appeal.

## **7.7 How is a decision to adopt made by the SAB and what happens?**

To determine whether to adopt either on its own initiative or as a request, the SAB may carry out any inspections set out in the conditions of approval.

Any request for adoption must be made using the form required by the SAB and determined by the SAB within 8 weeks, beginning the first working day after receiving the request (unless an extended period has been agreed between the SAB and the developer).

Where the SAB adopts on its own initiative or in response to a request, it must notify the developer as soon as is practicable after making a decision concerning adoption.

The notification must specify the reasons for the decision and the date of the decision. It should also specify the extent of the drainage system being adopted.

The SAB will copy this notice to:

- the sewerage undertaker,
- any person who appears to own or occupy land on which the drainage system is (including details of any arrangements under the approved proposals for access and maintenance,
- any other person whom the approving body were obliged to consult on the application for approval,
- any person who appears to own or occupy land from which water will be drained by the system.

If the SuDS has not been constructed in accordance with the approved proposals, the duty to adopt will not commence. Enforcement action may be initiated by the SAB and the non-performance bond may be used.

Where a drainage system has been approved for adoption and a non-performance bond has been put in place, any unused bond will be released within 4 weeks after giving the notice.

## **7.8 What adoption conditions must be satisfied?**

The SAB will adopt drainage systems which satisfy certain conditions, these are:

- that the drainage system was constructed and functions in accordance with approved proposals, including any conditions of approval, and
- that the drainage system is a “sustainable drainage system”, meaning those parts of a drainage system that are not vested in a sewerage undertaker under a section 104 agreement of the Water Industry Act 1991.

## **7.9 Can the SAB voluntarily adopt SuDS?**

The SAB may voluntarily adopt SuDS where it is not under a statutory duty to do so. This means the SAB would also be responsible for the maintenance of the adopted SuDS. Any funding regarding the maintenance would need to be agreed separately.

The SAB must notify any sewerage undertaker or person impacted by its decision to adopt. The notice specifying the reason for adoption and the date of adoption must be given as soon as is practicable after making a decision concerning adoption

## **7.10 What registers does the SAB need to maintain for adopted SuDS assets?**

Within 4 weeks of giving notice of its decision to adopt, the SAB will arrange for:

- The LLFA to include the drainage system (whether adopted or not) in the register of structures or features likely to have a significant effect on the flood risk in an area
- The provisional designation for those parts of the drainage systems that are not owned by the SAB, and are eligible for designation with the designating authority
- The designation under section 63 of the New Roads and Street Works Act 1991 (streets with special engineering difficulties) of any adopted part of the drainage system that is a street, within the meaning of section 48

of that Act.

### **7.11 Who is accountable for ensuring the maintenance of the adopted SuDS?**

Where the SAB has adopted a drainage system it becomes responsible for maintaining that system. The SAB must comply with the Statutory SuDS Standards in maintaining the system. A maintenance plan and the means of funding for the scheme for its design life should have been set out to the SAB at approval.

One of the reasons the SuDS approval and adoption functions are located with local authorities is because local authorities are democratically responsible and accountable. This is especially true if the SuDS fall into a state of disrepair, fail and cause local flooding. As LLFAs they also have wider responsibilities for effectively managing surface water.

Sewerage undertakers and Natural Resources Wales may also identify areas where maintenance to the SuDS was not being carried out, where it has a knock on effect on sewers or watercourses.

Should the SAB fail to carry out its statutory functions in relation to SuDS, the local authority would be subject to judicial review in the same way it would if it failed to carry out other statutory functions.

### **7.12 How will the maintenance of adopted SuDS be funded?**

Taking a flexible and open approach to how SuDS maintenance will be funded will enable the SAB, developers and communities to find the best solution to long term funded maintenance for each site.

A maintenance plan and the means of funding for the scheme for its design life should have been proposed in the application and agreed with the SAB as part of the approval.

To put in place arrangements the SAB may wish to rely on existing powers available to local authorities under local government legislation.

There are many possible options for achieving successful arrangements for long term maintenance supported by a continuous and sustainable income stream.

**Case studies available on the [CIRIA Susdrain website](#) provide numerous examples of SuDs project details, including information about maintenance and operation.**

By way of a quick example, arrangements could include:

- The use of commuted sums, to ensure the SAB has the resources to cover the upkeep and where appropriate the replacement of the assets it has adopted. For consistency the use of the Commuted Sums for

Maintaining Infrastructure Assets, by the County Surveyors Society is recommended to calculate a commuted sums for all drainage assets.

- Service management companies
- Transfer of the SuDS into the management and maintenance of local authorities, upon payment of a commuted sum and/or payment of a maintenance charge.

# Annex 1 – SuDS application process (diagram)

