

REPORT TO:	Executive Board
REPORT NO:	HEP/01/19
DATE:	8 January 2019
LEAD MEMBER:	Councillor David A Bithell (Place – Environment and Transport)
CONTACT OFFICER:	Neil Taunt (Tel: 729734)
SUBJECT:	Flood and Water Management - Sustainable Drainage Approving Body Implementation
WARD:	All

1 PURPOSE OF THE REPORT

To seek approval in relation to the creation of a Sustainable Drainage Approving Body, which will act as an independent body within the Local Authority to deal with the statutory technical approval process for Sustainable Drainage Systems.

2 EXECUTIVE SUMMARY

- 2.1 The Commencement Order for implementing Schedule 3 of the Flood and Water Management Act 2010 was signed on 1 May 2018. This sets a start date of 7 January 2019 upon which Wrexham County Borough Council will be required to undertake the role of a Sustainable Drainage Approving Body. From this date, all new developments of more than one dwelling house or where the construction area is 100 square meters or more, will require a sustainable drainage system.
- 2.2 This new statutory duty requires the Sustainable Drainage Approving Body to undertake the technical review and approval of surface water management systems serving new developments to ensure compliance with new mandatory National Standards.
- 2.3 For the majority of developments, the Sustainable Drainage Approving Body will also have a statutory duty to inspect the construction of, and subsequently adopt and manage the systems over the lifetime of development.
- 2.4 In its role as Lead Local Flood Authority, Wrexham County Borough Council will initially set up the Sustainable Drainage Approving Body as an independent body within the Local Authority, to which applications for approval of surface water drainage on new developments will need to be made. This process, whilst entirely separate from the planning function within the Authority, will only be successful if the

two services work in parallel to ensure the requirements of all services are given full and timely consideration.

3 RECOMMENDATIONS

That Members approve:-

- 3.1 Wrexham County Borough Council will become the Sustainable Drainage Approving Body on 7 January 2019 following commencement of Schedule 3 of the Flood and Water Management Act 2010 and delegate to the Head of Environment and Planning the necessary operational responsibilities of the Sustainable Drainage Approval Body and the powers to determine applications for approval.**
- 3.2 That this matter be dealt with as an urgent item of business in accordance with Standing Order 43 (1) of the Council's Standing Orders.**

REASONS FOR RECOMMENDATIONS

- (i) To allow the necessary arrangements to be implemented providing Wrexham County Borough Council with the ability to fulfil the new statutory responsibility as a Sustainable Drainage Approval Body as required under the Flood and Water Management Act 2010.
- (ii) The late availability of Welsh Government guidance and statutory instruments has significantly delayed the delivery of this report to the Executive Board. This new duty is live from 7 January 2019. Delegated powers need to be formalised as a matter of urgency to enable the immediate establishment and function of the Sustainable Drainage Approving Body within Wrexham County Borough Council.

4 BACKGROUND INFORMATION

- 4.1 Surface water flooding is a serious problem, identified in Wrexham County Borough Council's Local Flood Risk Management Strategy and Flood Risk Management Plan as one of the most significant source of flood risk to the County Borough. The impact on residents, communities and cost to the economy is significant with the risk of flooding on the rise owing to climate change and urbanisation. In particular, local flooding, due to the overloading of drainage systems and sewers, is of increasing concern.
- 4.2 Under the terms of the Flood and Water Management Act 2010, Wrexham County Borough Council, as Lead Local Flood Authority, is responsible for managing local flood risk which includes that from surface water.
- 4.3 Historically, the management of the surface water drainage for new developments has been secured through the planning process whereby statutory and non-statutory consultees such as Dwr Cymru, Natural Resources Wales and the Flood and Water Management Team within Wrexham County Borough Council provide a consultation service and expert advice to individual planning applications. This approach has long been considered problematic with issues arising in relation to inconsistent design standards, construction quality and maintenance regimes.
- 4.4 Schedule 3 to the Flood And Water Management Act 2010 establishes Sustainable Drainage Approving Bodies in local authorities. The legislation gives the Sustainable

Drainage Approving Body statutory responsibility for approving and, in specified circumstances, adopting the approved drainage systems. The Sustainable Drainage Approving Body is established to:

- Evaluate and approve drainage applications for new developments where construction work has drainage implications, and
- Adopt and maintain Sustainable Drainage Systems schemes, subject to the conditions and exemptions specified in the 2010 Act.

4.5 Welsh Ministers signed the Commencement Order for Schedule 3 on 1 May 2018. This sets a start date of 7 January 2019 upon which Welsh Councils will be required to undertake the Sustainable Drainage Approving Body duty.

4.6 From this date:

- All new developments of more than one dwelling house or where the construction area is 100 square meters or more, will require Sustainable Drainage Approving Body approval. This includes “permitted development”.
- The Sustainable Drainage Systems must be designed and built in accordance with Statutory Sustainable Drainage Systems Standards published by the Welsh Ministers and Sustainable Drainage Systems Schemes must be approved by the Local Authority acting in its Sustainable Drainage Approving Body role, before construction work begins.
- The Sustainable Drainage Approving Body must adopt Sustainable Drainage Systems that serve two or more properties. The duty to adopt does not apply if the system serves a site which is controlled by a single person or two or more persons together, as defined in regulations.

4.7 Wrexham’s Flood and Water Management Team have represented the North Wales authorities on the Welsh Government’s Sustainable Drainage Approving Body Advisory Group which has been considering the potential implications and delivery options as further details of standards, procedures and processes have emerged. A regional Sustainable Drainage Approving Body working group has been established with officers from the six North Wales based Lead Local Flood Authorities attending regularly to explore how collaborative and/or consistent approaches can be put in place regionally. This regional working group has also been used to establish anticipated workloads and income streams associated with the new duty. Regional working and collaboration options will continue to be developed and explored over the coming months as the impacts of the new duty are rolled out.

4.8 In its role as Lead Local Flood Authority, it is proposed that Wrexham County Borough Council will initially set up the Sustainable Drainage Approving Body as an independent body within the Environment Service of the Local Authority, to which applications for approval of surface water drainage on new developments will need to be made. This process, whilst entirely separate from the planning function within the Authority, will only be successful if the two services work in parallel to ensure the requirements of all services are given full and timely consideration. It is feasible that applications for both will not be made concurrently. A lack of adequate communication between the two could lead to the conflicting scenarios of Sustainable Drainage Approving Body approval not being granted where planning permission has been or vice versa.

4.9 Welsh Government did consult on their intention to implement Schedule 3 of the act, with Wrexham County Borough Council providing comments and feedback on both occasions. Whilst fully supporting the principle of the Sustainable Drainage

Approving Body and advocating the multiple benefits that this approach can deliver, the risks associated with not providing sufficient time or resource to adequately set up the Sustainable Drainage Approving Body were prominent concerns within our response.

- 4.10 Confirmation that the supporting Statutory Instruments required to deliver the Sustainable Drainage Approving Body duty, along with detailed guidance to Local Authorities was only made available (in draft format) on 14 November 2018. The stated intention was to give local authorities a 6 month period to establish Sustainable Drainage Approving Bodies after this fundamental guidance was made available. The late delivery of this information has given less than 2 months grace until the implementation date of 7 January 2019. The risks to successful delivery of the new functions were key themes in the consultation responses from most authorities, including Wrexham County Borough Council, on the new powers and these are increased due to the short time for preparatory work.
- 4.11 At the time of writing, it continues to be the Welsh Government's position that no additional funding or resource will be made available to assist in the setup of Sustainable Drainage Approving Bodies. Representations have been made and we remain in communication with the Welsh Government and the Minister for the Environment (letter from the Lead Member for Place – Environment and Transport dated 9 November 2018).
- 4.12 The commencement of schedule 3 of the Flood and Water Management Act 2010 provides for the setting of fees for applications for approval. The process is chargeable at rates set by Welsh Government through Regulation. Proposed fees have been consulted upon and will start from £350 (minimum) with an additional amount up to £7,500 (maximum) calculated by reference to the size of the construction area.).

Welsh Government's Fee Structure (by regulation)

- £70 for each 0.1 hectare or fraction of a 0.1 of a hectare, for the first 0.5 hectare;
 - £50 for each 0.1 hectare or fraction of a 0.1 of a hectare, from 0.5 hectare up to and including 1.0 hectare;
 - £20 for each 0.1 hectare or fraction of a 0.1 of a hectare, from 1.0 hectare up to and including 5.0 hectares; and
 - £10 for each additional 0.1 hectare or fraction of a 0.1 of a hectare.
- 4.13 Regulations also prescribe for an Inspection Fee as a condition of approval to enable cost recovering whilst ensure construction takes place in accordance with the Sustainable Drainage Approving Body approval. This has been set at £168 for each inspection undertaken.
- 4.14 The Sustainable Drainage Approving Body has the power to take enforcement action against a developer through powers of entry, temporary Stop Notices, Enforcement Notices or Stop Notices should they breach a requirement of the Approval or start construction prior to Approval being. The regulations do provide for a means of cost recovery through taking enforcement action.
- 4.15 In addition, there is the option to charge for discretionary services that could be provided to supplement a wider level of service to developers to support the formal approval process. It is proposed that these discretionary services can be delivered

through the Local Government Act 2003 paragraph 93. This could include a Sustainable Drainage Approving Body Pre-applications Advice Service that would be similar in nature to the existing planning application pre-application advice service.

- 4.16 A full review of discretionary services which could be provided by the Sustainable Drainage Approving Body will be undertaken as a matter of urgency once the delivery mechanism of the service has been established.
- 4.17 With the delayed publication of the draft guidance to local authorities all resource estimation has been made based on early indications of what the Sustainable Drainage Approving Body duty would comprise. A significant change is the now mandatory requirement for all development greater than 100m² to obtain Sustainable Drainage Approving Body approval from the outset.
- 4.18 A review of historic planning applications made to Wrexham County Borough Council has been undertaken to determine the anticipated workload associated with the new duty. Whilst the exact criteria that trigger the requirement for Sustainable Drainage Approving Body approval are not explicitly recorded, it is estimated in the region of 250 Sustainable Drainage Approving Body applications would be anticipated per year.
- 4.19 Assumptions have had to be made regarding the expected fee income that this workload would generate; this has included the size/scale of development applications and number of inspections required per approval. A conservative approach has been taken to the development size estimate to minimise the risk associated with overestimating income generation. Anticipated resourcing required to deliver this service are summarised in the Staffing section below.

5 IMPLICATIONS

- 5.1 **Policy Framework** - Commencement of Schedule 3 is intended to:
 - Move provision of Sustainable Drainage Systems from a non-statutory to a statutory requirement;
 - Ensure compliance with and consistency of standards for long term surface water management;
 - Provide certainty for developers that Sustainable Drainage Systems will be adopted without the need for lengthy negotiation or significant expense;
 - Reduce the risk of localised, surface water flooding;
 - Mitigate pollution that may arise from surface water runoff;
 - Reduce extra load on public sewers and the need for additional capacity; and
 - Help safeguard water supplies.

The Welsh Government's National Strategy for Flood and Coastal Erosion Risk Management in Wales makes specific reference to the use of Sustainable Drainage Systems to provide effective land use management with specific measures relating to the approval and adoption of Sustainable Drainage Systems by the Sustainable Drainage Approving Body and ensure they are incorporated into building regulations.

Wrexham's Local Flood Risk Management Strategy clearly outlines the benefits associated with the use of Sustainable Drainage Systems on all development, with measures specifically advocating the use of Sustainable Drainage Systems on all developments to manage the risks associated with surface water. Measures are also

included that support a collaborative approach to the delivery of the Sustainable Drainage Approving Body duty.

An All Member briefing and workshop session is planned on 29 January 2019.

- 5.2 **Budget** – There is currently no budget allocated to the delivery of this new duty. Welsh Government's stated intention is that the establishment of Sustainable Drainage Approving Body should be cost neutral for local authorities. No additional funding or resource has been made available from WG for either the provision or set up of this new duty. The costs associated with setup and delivery of the duty, until such time as fees and charges are sufficient to deliver a cost neutral Sustainable Drainage Approving Body, will be taken from the Environment's Cash Limited Budget.
- 5.3 **Legal** - The commencement of schedule 3 of the Flood and Water Management Act 2010 was signed on 1 May 2018. This will mean that from 7 January 2019 any new developments that satisfy the criteria will require Sustainable Drainage Systems Approving Body approval prior to the commencement of development. The Sustainable Drainage Approving Body must then Adopt and maintain Sustainable Drainage Systems schemes, subject to the conditions and exemptions specified in the 2010 Act. Consideration is being given as to the scope for charging on a cost recovery basis for work undertaken in preparing the legal agreement.
- 5.3 **Staffing** – It is anticipated that this service will eventually require two FTE's to fulfil the Sustainable Drainage Approving Body duties. These include a Senior Engineer, Assistant Engineer/Inspector, self-funded from the application fee income. Initially, the service will provide engineering support utilising its existing resources to allow the new functions to mature and develop.
- 5.4 **Equality/Human Rights** – Members are advised of their duty to consider the full Equality Impact Assessment which is available at <http://vmwinqld/equalityisalive/Menu.aspx> report number EP/EIA00099/2018. Members of the public can request a copy of the full Equality Impact Assessment from the Contact Officer named in the header box of this report. A summary of the Equality Impact Assessment is attached as **Appendix 1**.
- 5.5 **Risks** – The risk associated with not having a functioning Sustainable Drainage Approving Body on 7 January 2019 has not been defined within Welsh Government guidance. No development with drainage implications will be able to commence without both Planning and Sustainable Drainage Approving Body approval in place (with the exception of permitted development where the construction area is 100 square meters or more). If a Sustainable Drainage Approving Body is not in place to determine applications within the defined timeframes applications are deemed refused to and applicants permitted to appeal the refusal. This would undoubtedly leave the Authority open to legal challenges and appeals from developers with associated cost implications. Miss-determination of applications for approval, or lack of determination, could have significant impacts on the deliverability of new development across the County Borough. Potential income associated with the delivery of the new duty have been summarised in the budget and staffing sections above. If insufficient resource is made available to the Sustainable Drainage Approving Body, this will limit the potential fee generation, but will also impact on the ability to influence and delivery of good quality Sustainable Drainage Systems that will ultimately fall under the responsibility of the Authority following adoption.

6. CONSULTATION

- 6.1 Internal consultation with officers in Planning, Finance, Legal, Building Control, Highways Development Control and Streetscene teams remains ongoing. A regional Sustainable Drainage Approving Body working group has been established with officers from the six North Wales based Lead Local Flood Authorities to share information, solutions and potential approaches to Sustainable Drainage Approving Body delivery. Communication with Welsh Government and the WLGA remains ongoing.

BACKGROUND PAPERS	LOCATION	WEBSITE INFO