

15 February 2018

**NRW response to consultation:**

**Welsh Government Consultation Document Ref. 32961, Implementation of Sustainable Drainage Systems on New Developments: Part 2 – Draft Statutory Instruments and Draft National Standards for Sustainable drainage for consultation**

Thank you for the opportunity to provide comments on the Welsh Government's consultation regarding Implementation of Sustainable Drainage Systems (SuDS) on New Developments.

Please find comments from Hydrogeology, Flood Risk Planning and Planning and Energy Team, Evidence, Policy and Permitting, Natural Resources Wales.

**Question 1: We propose to commence Schedule 3 in Wales and bring forward the related Statutory Instruments in May 2018. Do you agree this is reasonable? If not please give reasons.**

**Section 6 Implementation, Impact Assessment and Timing**

We refer to Section 6, which makes provision for the implementation of Schedule 3 of the Flood and Water Management Act 2010, which explains that the new statutory instruments will be laid before the National Assembly for Wales in May with the intention of coming into force in November 2018. While we appreciate that much work has already taken place in agreeing if and how Schedule 3 should be implemented, a short timescale (6 months) has been provided for public bodies and statutory consultees to set up, agree ways of working and implement the new consenting regime.

Regarding comments made in paragraph 6.1 of the current consultation document, we note and welcome that the Welsh Government will work with stakeholders to further develop the evidence base on the costs and benefits of implementing SuDS on new developments. We would also welcome discussion on ways of working.

We refer to the earlier Regulatory Impact Assessment (RIA) undertaken (WG ref. 31801, Annex 1, May 2017). The RIA does not appear to reflect or address the resource implications for NRW's new statutory duty i.e. both SAB application routes (free-standing or combined application) require consultation with NRW as a statutory consultee.

Section 8 of this RIA sets out a cost benefit analysis of the preferred option ((2) to implement Schedule 3 of the Flood and Water Management Act 2010) accruing to organisations, including NRW. A summary of impacts assessed can be found in Table 5 and NRW is identified as a regulator. The impact to us is described as improved ability to tackle diffuse pollution, surface water flood risk and delivery of ecosystem benefits. The impact is identified as being of benefit to NRW and is recurrent. No value has been attributed to this impact in the RIA and it comments that not enough evidence to identify or quantify impact robustly. While most groups

have been included in the assessment of positively valued impacts (PV) and annual impact of Suds this excludes the impact on consultees including NRW.

As we do not currently have a specific duty as a specialist consultee in the planning system for schemes involving a drainage system, which directly or indirectly involves the discharge of water into a watercourse, we do not have records on the number of applications that we are likely to deal with. We can confirm that in delivering our new duty, we would need to introduce a new way of working or adapt existing processes. We believe that there would be initial start-up costs, costs associated in setting up processes e.g. pre-application discussions, in preparing and agreeing a bespoke response or Standing Advice, and in processing appeals and enforcement requests. We would also need to identify training needs for NRW employees to ensure that they understand the new consenting regime, what it means in responding to the SAB, planning consultations and in carrying out our regulatory role in Environmental Permitting. These costs are not reflected in the RIA. There appears to be an unfunded burden on NRW because the resource implications from the proposed new activity have not been recognised

We also refer you to our comments in response to Question 5.

**Question 2: We propose SAB approval will not be required for the first 12 months for:**

- **Developments that were already granted planning permission before commencement; or**
- **Developments with one or more reserve matters where an application for approval of the reserve matter(s) is made; or**
- **A valid planning application had been submitted before commencement.**

**Do you agree with this approach for transitional arrangements?  
If not please give reasons.**

If the 'valid planning application' is for outline, opportunities to include good quality SuDS could be missed.

**Question 3: What, if any, areas in addition to those listed above should the guidance cover?**

**Guidance**

We would agree with the list of areas that the guidance might cover, as indicated in paragraph 6.6.

**Planning**

Comments in paragraph 6.8, planning, refer to Planning Policy Wales and Technical Advice Note 15 Development and Flood Risk. Any guidance for SuDS should also be reviewed and updated because of future changes to PPW and Technical Advice Notes. Comments in paragraph 6.8, are restricted to flood risk management matters. We would suggest SuDS should not only be considered from a flood risk perspective but also as this relates to multi-benefits, for example, amenity, health and wellbeing, enhancement of a biodiverse natural environment with healthy functioning

ecosystems that support social, economic and ecological resilience and the capacity to adapt to change.

### **Standardised Forms and Templates**

It would be helpful if determining bodies would agree to use standardised forms and templates, e.g. for submission of an application, conditions, plans and agreements. This would have the benefit of enabling consistency of approach and process; and may allow for efficiency savings. This would also provide certainty to developers and assist consultees in responding to consultations.

### **Maintenance of Adopted SUDs and Inspections**

A maintenance plan should be submitted with a SAB application and should include details of lifetime costs to maintain and enhance the scheme, if required.

We would suggest that the guidance provide a template of a basic maintenance plan. This would assist an applicant in preparing a maintenance plan for submission and enable the SAB to appraise the plan, decide if it is satisfied with the details provided and assist in the inspection of a scheme.

### **Training Needs**

Comments in paragraph 6.7 refer to the consideration of training needs, which include training of SAB officers in assessing applications and the adoption process. We would ask that this training be extended to statutory consultees, including NRW.

### **Question 4: Do you agree with the proposed exemption for Lead Local Flood Authorities? Can you provide evidence to support an exemption?**

NRW has no comments.

### **Question 5: What information should the SAB be required to submit as part of a review mechanism of SAB approval costs?**

#### **How often should the review take place, once every year or once every two years?**

Regarding the review mechanism and timescales, we have no comments to provide because these directly relate to the SAB and not NRW as a statutory consultee. However, we provide the following comments which are also relevant to this section.

### **Pre-application discussions**

In paragraph 7.9, there is provision for voluntary pre-application engagement and discussions. Within the Development Management Orders for Town and Country Planning there is a statutory requirement for pre-application discussions to take place for major development and Developments of National Significance; and before the submission of a formal planning application to the Local Planning Authority. We would suggest that for consistency consideration is given to a statutory pre-application stage for SuDS approval.

We would suggest that provision is made to ensure that the pre-application stage is undertaken by a developer for both SAB application routes i.e. free-standing and combined application. Timescales for validation of a pre-application and consultation, and any evidence to be submitted should be specified, for example, requisite notice, a plan showing the existing and proposed drainage for an area and how this relates to the development and SuDS scheme. As a statutory consultee, we would seek confirmation on those reasons for consultation with us, the type of response expected from us and the timescales for us to submit a response.

We would also seek clarity on whether a pre-application consultation report will need to be submitted at the next stage, which would explain how an applicant has addressed those matters raised.

Any pre-application discussions we might have about SuDS would need to be considered in the context of our discretionary advice charging scheme.

### **Determination of application**

As commented in our response to the Welsh Government's consultation ref.31801, we suggest that determination processes and timescales for SAB approval and for development management purposes are aligned as far as possible so that any potential delays in decision making are prevented. Differences in pre-application and application processes and timescales for Developments of National Significance and major development should be considered. This should include how drainage schemes are approved and inform planning decisions.

As planning and drainage approval are separate processes, there could be cases where planning permission cannot be implemented until SAB approval is achieved. This would seem to support the need to gain SAB approval prior to planning permission where possible to achieve an optimal SuDS design which maximises multiple benefits. Planning permission in advance of SAB approval may limit drainage options and may result in compromises.

### **Question 6: We propose to give enforcement powers to the SuDS Approving Body and the local planning authority. Do you agree?**

#### **Statutory Consultees**

We have no adverse comments in direct answer to question 6, however, we provide comments relevant to paragraphs 7.26-7.31, which refer to statutory consultees. These comments have been highlighted in our response and in earlier discussions with the Welsh Government (consultation ref. 31801).

#### Criteria for consultation with NRW

Some of the criterion may overlap with interests of the determining bodies and other statutory consultees and we would seek to avoid potential duplication of effort. We therefore recommend that the reason for consulting statutory consultees should be amended and it should be made clear in accompanying regulations and/or guidance so that consultors, consultees, and determining authorities have a shared and consistent understanding of roles.

There are two criteria, which specify when to consult NRW in respect of a SAB application, i.e.

- a) if the drainage system directly or indirectly involves the discharge of water into a watercourse;
- b) where the discharge could affect an ordinary watercourse within the Internal Drainage Board's District. In Wales, all internal drainage boards currently operate under the remit of Natural Resources Wales.

Our view is that the specified criteria directing the SAB and LPAs to consult us places a new role and duty on NRW. The criterion (a) suggests that consultation with NRW is on discharges to **all** watercourses and we would recommend that this is amended because this does not clearly identify our current ways of working. By way of explanation;

#### *Definitions and interpretation*

As in earlier correspondence to consultation (ref. WG31801), NRW seeks clarity over the interpretation of 'indirect discharge' to a watercourse is required. Technically speaking discharging to groundwater is likely to indirectly reach a watercourse eventually. Or will SuDS only be considered within a defined proximity to watercourses as 'indirect'?

#### *Flood Risk Management*

From a flood risk management perspective, under the Flood and Water Management Act, the Lead Local Flood Authority is responsible for managing risk of flooding from ordinary watercourses and surface water drainage. NRW does not currently provide advice on surface water drainage to ordinary water courses or main rivers, surface water flood risk or any localised flood risk issues from an ordinary watercourse. This advice should be sought from the relevant Lead Local Flood Authority (LLFA). Is there scope to amend the criterion to clarify that consultation with NRW should only be for discharges to those watercourses located in an Internal Drainage District?

#### *Other reasons for consultation with NRW*

It is also not clear if NRW is being consulted on SuDS for other reasons, for example;

- on the ability of the SuDS to provide suitable treatment and to minimise adverse impacts on sensitive receptors including water quality and biodiversity interests;
- where the SAB or LPA has identified a deterioration to a water body and an assessment has been undertaken Under Water Framework Directive;
- if a SuDS is located within a Source Protection Zone;
- on the ability of the SuDS to remediate a site if constrained by contamination and located in a Source Protection Zone, Principal or Secondary Bedrock Aquifer; and,
- on the potential impact on our ability to manage assets maintained by NRW.

#### *Risks to groundwater*

Risks to groundwater is not reflected in the consultation proposals even though this is included in the National Statutory Standards. For example, the standards and our [groundwater protection policies](#) identify that discharges of anything other than clean roof water in sensitive groundwater locations (such as source protection zone 1) need to be supported by a risk assessment. Will SABs be assessing those? Will

there be a need for the SA to consult NRW for those SuDS located in a sensitive groundwater location or will this be consulted only as part of the planning application?

We are conscious of avoiding scenarios, e.g. where a SuDS discharges into sensitive groundwater, may be approved by a SAB but NRW refuse to either grant an Environmental Permit or raise concerns at the planning application stage (because we may not have been specifically consulted by the SAB as per the wording of the Regulations).

Equally if SuDS are planned on land that may have the potential to be contaminated, will the SAB have the necessary expertise and skills to ensure the SuDS does not mobilise any contamination? If not, again how would NRW engage in the conversation without the appropriate criteria for consultation and process being identified?

We are also not clear how Environmental Permitting interacts with the SAB process. For example, some surface water discharges into ground will require a Permit if it has the potential to be contaminated, for example run-off from lorry parks. There is a risk of the SAB authorising a scheme that NRW may then decide to refuse in determining an Environmental Permit. We seek to avoid the extra burden on NRW where the same scheme is being considered three times i.e. NRW receives formal consultation from the SAB, formal consultation from the Local Planning Authority and an applicant seeks an Environment Permit in our regulatory role. We would suggest that those aspects which are to be considered by the SAB approval process and those aspects which are to be considered as part of planning decision processes and environmental permitting are clearly distinguished to prevent duplication of effort and control.

#### *Internal Drainage District*

If NRW (as the Internal Drainage Board) felt the conditions imposed by the SAB weren't strict enough potentially resulting in more pumping costs for NRW, would there be a mechanism to appeal? This could conflict with certain Byelaws which control the flow of water into streams in the IDD.

#### Timescales for response by statutory consultees

We would suggest that response timescales for SAB approval and for development management purposes are aligned as far as possible so that any potential delays in decision making are prevented. We would ask you to consider the following items;

- The Town and Country Planning Development Management Orders sets out the timescales for statutory consultees to submit a substantive response to a pre-application and application consultation. These time periods are in calendar days and we suggest for consistency SAB timescales are also provided in days rather than weeks;
  - o For Developments of National Significance, at the pre-application stage, specialist consultees are required to respond within 42 days unless agreed otherwise. At the DNS application stage a response must be made in 21 days and unless agreed otherwise.
  - o For major development, at the pre-application stage, statutory consultees are required to respond within 28 days unless agreed otherwise. At the planning application stage a response must be made in 21 days and unless agreed otherwise.

- The agreed extension of time to respond to a pre-application or planning application may be outside of the determination period and this is different to the SAB process where an extension of time to respond must be within the set determination period of 7 weeks.
- We would also suggest that consultee response timescales should be aligned with the consultation requirements set out in Environmental Impact Regulations, including consultation on a scoping opinion.

#### Making our response to a SAB application and/or planning application

Under the Town and Country Development Management Orders, NRW is required to provide a substantive response and this is categorised. We seek clarity on whether statutory consultees will be expected to provide a view within a defined format in response to a SAB consultation. Would NRW be expected to provide certain categories of response? Would NRW be expected to provide a single response to a combined application (planning and SAB consultations)? We would also seek guidance on the type of advice to be submitted in response; and the distinctions between a planning representation and a response to a SAB application.

#### **Question 7: Do you agree that the proposed powers of entry are reasonable and proportionate, if not please explain why?**

We have no comments to provide.

#### **Question 8: We propose that claims for compensation related to powers of entry and temporary stop notices must be submitted within 12 months of the powers being exercised or the notice being withdrawn/ ceasing to have effect. Do you agree, if not please explain why?**

We have no comments to provide.

#### **Question 9: We propose that, as in planning, a time limit of four years is set for when the SuDS Approving Body is able to give an enforcement notice? Do you agree, if not please explain why.**

We have no comments to provide.

#### **Question 10: Are the proposed intervention powers and criminal offences provisions in the draft statutory instrument appropriate and proportionate?**

We have no comments to provide.

#### **Question 11: We propose to provide similar procedures for appeals against SuDS enforcement notices to those which currently apply to planning enforcement appeals (written representation, hearing or inquiry). Do you agree? If not please explain why?**

We have no comments to provide.

**Question 12: We propose a register of SuDS enforcement notices which mirrors the register for planning enforcement notices. Do you agree?**

We have no comments to provide.

**Question 13: Do you have any information or case studies which could help inform the guidance on this subject? If so, please provide details.**

We refer to the case study, below;

**CASE STUDY**

Augustenborg a neighbourhood in south-western part of Malmö (Sweden) suffered from floods caused by overflowing drainage systems, which resulted in damage to underground garages and basements, and restricted access to local roads and footpaths.



The physical improvements in Augustenborg and related projects totaled approximately 21 million Euro. Between 1998 and 2002, the 'Ekostaden Augustenborg' initiative retrofitted SuDS.

The project carried out collaboratively by the city council and the MKB social housing company, with extensive participation of the residents because the project involved significant physical changes in infrastructure. Green roofs, ditches, retention ponds, green spaces and wetlands were created.

Due to the installation of the SuDS, rainwater run-off has decreased by half. Benefits include improved water quality, reduced carbon emissions, aquifer recharge (relieving stress in water scarce areas), and increased biodiversity through the creation of new wetland habitats.

In the photograph, litter is immediately visible and removable from this "canal" in the SuDS at Augustenborg, Malmö, Sweden.

**Temporary use of SuDS in the construction phase of development**

During the 'construction' phase, many SUDS are temporarily used as a mitigation measure, for example, temporary lagoons to manage surface water run-off and silt pollutions to water. The applicant should be asked to submit a maintenance scheme, along with a construction management plan, associated method statements for use of SUDS during the construction phase. The applicant should also agree proposals to restore the SUDS to its original use or to the agreed operational design (post-construction) and demonstrate compliance with the agreed scheme.

**Question 14: Is our definition of a single property drainage system clear on what will or will not be adopted? If not please provide an alternative definition. Can you suggest additional examples for inclusion in guidance?**

We would agree that the definition of a single property drainage system appears to be clear on what will or will not be adopted.

**Question 15: We propose a 4-week time limit for administrative processes (for example return of bonds, the process of registration or designations) for the SuDS Approving Body. This time limit applies throughout the SuDS process. Do you agree with this timeframe? If not please explain why.**

We have no adverse comments on the proposed timeframe i.e. 4 weeks.

**Question 16: Are there any additional statutory works which should be included in this list?**

We have no adverse comments to make.

**Question 17: We propose that all Statutory Undertakers must notify the SuDS Approving Body at least four weeks in advance of works that may affect the SuDS operation. Do you agree with this timeframe? If not please explain why.**

We have no adverse comments to make.

**Question 18: We propose upon completion of the works; the SuDS Approving Body must decide within 12 months if it is satisfied that the SuDS functions in accordance with the SuDS Standards. Do you agree with this timescale? If not please explain why.**

We have no adverse comments to make.

**Question 19: We propose that an appeal must be made within six months of either the SuDS Approving Body's decision or the date the decision was due. Do you agree?**

We have no adverse comments to make.

**Question 20: We propose to adopt similar procedures for SuDS appeals to those which currently apply to planning appeals (including written representation, hearing or inquiry). Do you agree? If not please explain why.**

We have no adverse comments to make.

**Question 21: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed please do tell us about them.**

### **Section 2 Background and Section 5 Flood and Water Management Act 2010**

We note from comments in paragraphs 2.4 and 5.1 that a SuDS Approving Body will be established to determine applications for surface water drainage systems including adoption and maintenance that service more than one property. Please could you confirm whether the SAB will only be part of one authority or could a SAB be more than one Council i.e. joint working. This opportunity is not identified in the consultation proposals. And, if there is an overarching SAB covering several unitary authorities, would consultation at individual level be needed?

### **Material Planning Considerations**

It is not clear if drainage will remain as a material planning consideration in the determination of planning applications. We refer you to Welsh Government Circular 016/2014, the use of planning conditions for development management, which provides advice on use of conditions for sustainable drainage. We seek clarity on the type of model conditions to be applied in a SAB decision and how this will be distinct from the planning decision.

### **Local Development Plans**

The focus of the SAB new consenting process appears to be focused at the site level and on development management procedures e.g. planning application.

We seek clarity on how objectives, policies and delivery of SUDs will be embedded not only for development management purposes, but also for development planning purposes, e.g. local development plan policy and allocations, and supplementary planning guidance. The differences of what is expected to be submitted by as proposer for a LDP and what is to be delivered at a strategic level in comparison to a site level should be fully explained.

### **Monitoring**

We understand that the implementation of SuDS in accordance with Schedule 3 of the Flood and Water Management Act 2010 on a voluntary basis has been limited, however, there is a short time-period in or implementing the new consenting regime. There appears to be no period set aside to pilot the new consenting regime and we would therefore suggest that facilitated workshops may prove useful to test different scenarios and existing Groups (e.g. SuDS Wales Group, regional groups, WLGA and SEWSPG) could share best practice and identify any necessary improvements. We would also seek clarity on the role of Public Service Bodies in delivering the new regime.

### **Reporting Requirements**

We seek clarity on reporting requirements relating to public bodies and statutory consultees, including;

- What is the expected frequency of reporting i.e. annually?
- What are the targets and measures to be reported?

- Who will be responsible for reporting on individual measures?

### **Additional matters**

**4.2 (& 4.8)** – would again re-iterate that a ‘reduction in flood risk’ is preferred to ‘damage from flooding’, but note Welsh Government decision that no amendments to the definition will be made at this stage.

**11.5** – 2<sup>nd</sup> sentence would like to see stat consultees recognised e.g. “We recognise that we need to work closely with local authorities *and statutory consultees* to ensure clarity in the relationship between planning and SuDS approval.

### **Annex F – sustainable drainage standard for Wales**

We made groundwater specific comments when the non-statutory standards were published in 2016. These were included in the NRW response to Welsh Government dated 30<sup>th</sup> April 2015. The comments we made regarding Annex F looks have been incorporated but we have spotted two items for correction:

- Table G3.2 (page 32) still references Environment Agency website for provision of information on Source Protection Zones. Should be updated to reference needs to contact NRW for information.
- Table G3.4 has been removed from this revised version as Table G3.3 (page 35) is intended to cover discharges to both surface water and groundwater (cross references table 4.3 in CIRIA SuDS manual). Therefore the title of Table G3.3 in Annex F needs revising to read “treatment requirements and design strategies for discharges of surface water run off to surface water **and groundwater...**”