Department for Environment, Food and Rural Affairs

December 2011

Links with other Regulatory regimes

Planning

- Where planning permission is required the developer may submit their SuDS application alongside their planning application, through the local planning authority. Where construction with drainage implications may occur, and a SuDS application has been submitted alongside a planning application to the local planning authority (LPA), the LPA must consult the SAB before giving a decision on the planning application. However the decisions of the LPA and SAB will be made independently of one another.
- The <u>National Planning Policy Framework</u> consultation is reviewing and consolidating planning policy into a single concise National Planning Policy Framework. Drainage applications will still be considered in the same way as set out above and Section IV.

Building Control

- Part H of the Building Regulations and its statutory guidance, Approved Document H (2002), set out technical requirements for surface water drainage, setting out a hierarchical preference for the discharge of rainwater, with discharge into a sewer as the last and least preferred option. These will continue to apply within the curtilage of the property. It is our intention for the National Standards and its guidance to demonstrate how to apply SuDS requirements outside the scope of the building regulations, for example, beyond the curtilage of a development.
- [Note: From 31 December 2011, the Welsh Government will take over responsibility for the building regulations in Wales].

Code for Sustainable Homes

• The <u>Code for Sustainable Homes</u> (the Code) was introduced to improve the overall sustainability of new homes by setting a single national standard within which the home building industry can design and construct homes to higher environmental standards than required by building regulations and offers a tool for developers to differentiate themselves within the market. Buyers of Code homes are given information about the environmental impact of their home and its potential running costs. The Code will be amended to take account of the National Standards for SuDS as they are implemented; during the transition, the National Standards will take precedence over any conflicting requirements in the Code.

Flood Risk Management

- Lead Local Flood Authorities (LLFAs) are required under the Flood and Water Management Act to develop a Local Flood Risk Management Strategy¹ for their area.² As part of the strategy and where the LLFA considers it necessary they can strategically plan drainage provision as part of a Surface Water Management Plan (SWMP) which will provide a clearer understanding of the issues and implications for SuDS design. In Flood Risk Areas identified under the Flood Risk Regulations (2009) the LLFA must develop flood risk management plans (requirements are expected to be similar to SWMPs) by Dec 2015 The Local Flood Risk Management Strategy will take account of environmental characteristics, development pressure, geology, soils and the interaction with river and coastal flooding.
- It is important for developers to contact their unitary or county local authority in their role as LLFAs to obtain relevant information to assist them in developing their design criteria.

Water Framework Directive

 The <u>Water Framework Directive</u> requires that all discharges of surface run off must be managed to mitigate the receiving environment, SuDS designs must ensure that they continue to meet these requirements.

Groundwater Directive

 As with traditional drainage systems, SuDS must also meet the requirements of the <u>Groundwater Directive</u>, which aims to protect, enhance and restore surface water and groundwater bodies and must be designed to take into account relevant river basin management plans.

Water Industry Act 1991

- Developers had a right to connect drainage from their site to the public sewerage system
 under section 106 of the Water Industry Act (WIA). The only limitation was that foul
 sewerage could not be discharged to a surface water only drainage system and that the
 water undertaker's permission is required before surface water could be discharged to a
 foul sewer.
- The Act introduces a significant change to this so called "automatic right to connect". For foul drainage, section 42 of the Act requires that the developer and the Water and Sewerage Company (WaSC) should enter into a binding agreement under section 104 of the WIA. Developers must build new sewers to a standard published by the Minister or

¹ Flood risk Strategy for Wales: http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/flooding/?lang=en

² Part 1 of the Flood and Water Management Act (FWMA) provides a policy framework for flood risk management alongside the Flood Risk Regulations 2009 (SI 2009/3042), which implement the EU Floods Directive (2007/60/EC). Nationally, the National Flood and Coastal Erosion Risk Management Strategy (NFCERMS) is the top level policy document.

such other standard as may be agreed between the undertaker and developer; and for the WaSC to automatically adopt such systems on completion.

- For the discharge of surface runoff, the right of connection is made conditional under Schedule 3 of the Act. Before a connection may be made to the surface or combined sewer, the developer must obtain approval from the relevant SuDS Approval Body for the design, including any proposed connection to the public sewerage system. Such approval will be contingent on the developer demonstrating compliance with the National Standards for SuDS.
- The WaSC 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.
- Developers will still need to enter into section 104 agreements with the WaSC for the adoption of any pipework and ancillary equipment which connect the SuDS into the public sewerage system. This may include structures containing flow control devices designed to restrict the rate of discharge into the sewer.

Highways Act 1980

- Currently, new residential and industrial estate roads and footways built to local
 authorities' specifications are largely intended to be adopted as highways, maintained at
 the expense of the public purse and/or public open space maintained by the local district
 or unitary authority (although some are designed to remain private). Under the Act, all
 new highway authority roads will also require SAB approval subject to the implication of
 phased implementation. SAB approval will also be required for any major construction
 work on existing local authority roads, i.e. affects the impermeable area. Routine road
 maintenance (e.g. filling potholes etc) to the impermeable area would not require SAB
 approval.
- The SAB will be exempt from adopting any part of a publicly maintained road or SuDS for which the highway authority is already responsible. The highways authority must act in accordance with the approved drainage proposals and the National Standards for SuDS. Where a road remains private but serves more than one property, the SAB will adopt and maintain the SuDS in or alongside the road.
- The Act intends that no SuDS in or alongside roads are un-adopted and unmaintained.
- At present the Highways Agency, who own major trunk roads and motorways, has
 produce the Design Manual for Roads and Bridges (DMRB) to ensure their roads and
 drainage systems meet the required standard. The Highways Agency aims to ensure
 DMRB reflects the National Standards for SuDS.

New Roads and Street Works Act 1991

- Under the definition of 'street' under the New Roads and Street Works Act 1991³, any area of land which the public may use as a "way" can be considered part of the road even though it may not be formed so as to be used by cars for example footpaths and grass verges. Therefore, in order to protect SuDS in or beside roads from statutory undertakers, such as utility companies, who have a statutory right to work in the street to maintain their apparatus, Schedule 3 of the Flood and Water Management Act requires the maintaining authority to designate SuDS on a road as having "special engineering difficulties" as under section 63 of the New Roads and Street Works Act.
- This approach prevents the SuDS from being broken up or interfered with until a plan of the works had been agreed between the undertaker (e.g. utility company) and the maintaining authority. Even without the proposed amendment, the SAB would have the legal ability to designate a road under section 63 of the New Roads and Streets Works Act 1991. Paragraph 23(i) of Schedule 3 places a duty on the SAB to use this power to designate.

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³ Section 48 New Roads and Street Works Act 1991

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