

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

Comments have been provided by colleagues in 'Flood Risk Strategy', Water Policy and Directive Implementation', 'Natural Resource Management', 'Planning' and 'Geoscience' teams and I will address these as they arise in the consultation document.

Part 1 – Consultation Proposals

Para 1.3

Suggest providing further clarity on the scope of development to be included i.e. is it applicable regardless of the size of the development and will it apply to applications for extensions (perhaps over a certain size for commercial/industrial), conversions, demolish and rebuilds etc?

Para 1.10

The paragraph should also recognise that uncontrolled drainage, or poorly designed and/or maintained systems to control surface water discharge from new development may also exacerbate fluvial flood risk in main rivers and ordinary watercourses in addition to causing a risk of surface water flooding.

Para 1.13

Clarification needed over whether the requirement to adopt and maintain the approved SuDS applies where a DCWW surface water sewer is the receiving 'watercourse'.

To ensure optimal SuDS schemes can be implemented to deliver a wide range of benefits, the scheme needs to be agreed as being effective and viable as early in the development process and iterative. Development sites need to be designed around SuDS rather than the drainage scheme design being made to fit around the preferred site layout, or one which has been previously permitted/agreed.

Para 1.20

In order to promote above ground 'landscaped' SuDS in preference to 'hard' underground features, strong policy backing is required. Landscaped SuDS are likely to take up more valuable developable space and could reduce the number of units that can be constructed. This may have negative financial implications for a developer and could result in costs which are greater than the savings made over higher construction costs of traditional/conventional systems. Development sites need to be designed around above ground SuDS features, which will need to be anticipated at the earliest stage of the development process. For example, if drainage design decisions are managed later, for example, by way of a pre-construction condition in a planning permit, it is more likely to result in the retrofit of a scheme and perhaps less desirable below ground solution and missed opportunities to deliver a scheme resulting in multiple benefits.

Capital costs savings are quoted as over £9000 per residential home but it would be good to understand potential savings in terms of business/industry developments, for example. supermarkets/warehouses etc. It would also be useful to understand the benefits of SuDS in terms of enhanced house prices and desirability, which links to the Well-being of Future Generations Act 2015 goal of a more prosperous Wales

In terms of key barriers to uptake of good quality landscaped SuDS, a number of key barriers need to be recognised:

- Perception that SuDS are not popular with customers such as homebuyers. Greater effort into 'selling' the benefits may be required, especially when sites are being marketed.
- Reluctance from developers to deviate from the norm and to default to tried and tested drainage designs.
- Current reluctance from water companies/LAs to adopt above ground features and/or anything with more than a 1:30yr design.

Consideration should be given on how timescales for planning and SAB decisions could be impacted upon when requesting information from a developer and in attaining an integral drainage solution.

The consultation document proposes further about how the planning regime can be reformed to require a drainage scheme which is appropriately designed, approved and adopted. Has it been considered how this may be achieved? Does this include new policy and technical advice, or changes to existing policy through Planning Policy Wales, technical Advice Notes and/or Local Development Plans to ensure the effective delivery of SUDs and associated landscape measures in land use planning ?

Para 1.22

What is the context of the £20 million benefits per year? Can other benefits such as societal/environmental also be quantified?

Question 1 [Do you agree with our proposals? Please include an explanation with your reply.](#)

We refer you to our comments under paragraph 2.30 below.

Question 2

No evidence to provide as such, but would support appropriate changes to planning policy to promote the greater use of above ground SuDS and the need for SuDS to be integral to the site layout/design rather than something that is thought about later in the process.

As indicated in our response to Question 1 above, paragraph 2.30 includes a new role for NRW (Development Planning Service). However, the current Regulatory Impact Assessment does not seem to reflect on the resource implications for NRW from this proposed new duty.

Furthermore, paragraph 2.21 of the consultation document encourages pre-application discussions with statutory consultees. However, the current Regulatory Impact Assessment does not seem to reflect on the resource implications for NRW from this proposed new activity.

It is not clear what role would NRW be expected to perform as part of any appeals process described in paragraph 2.3 of the consultation document. Any new role for NRW will need to be reflected in the Regulatory Impact Assessment.

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 of this kind. It would be useful to learn from Welsh Government on the expected number of consultations for NRW as a statutory consultee to consultations from SAB.

PART 2 – The Proposed Approach

Para 2.2

Schedule 3 definition of a “Drainage System” states:

“Drainage system”

1 (1) *In this Schedule “drainage system” means a structure designed to receive rainwater except—*

(a) a public sewer, or

(b) a natural watercourse.

(4) *“Natural watercourse” means a river or stream.*

The definition of “Natural watercourse” is too ambiguous. If we are to take this literally then it excludes for example drainage ditches (ephemeral or otherwise), which provides a loophole for developers to direct water through these channels to surface waters. It would be better to consider other definitions such as that defined within Section 104 (4) Water Resources Act, 1991 which states *“relevant river or watercourse” means (subject to subsection (4) below) any river or watercourse (including an underground river or watercourse and an artificial river or watercourse) which is neither a public sewer nor a sewer or drain which drains into a public sewer. ”*

Para 2.3

Need to ensure Unitary Authorities as the responsible SuDS approving body have sufficient resource and expertise to manage approval of new drainage systems.

Taking the proposals further, we can see the benefits of applying SAB adoption retrospectively to built schemes. Adoption and long-term management/oversight via a SAB might help address some issues associated with poorly maintained systems and ensure consistency of approach.

Para 2.5. Question 3

Suggest the 1st bullet point of the definition is amended to include reference to 'reducing flood risk'.

Also suggest amending the bullet-point "Protecting health and safety," to read "Protecting health and safety, and promoting well-being"

Perhaps the other points could be amended/expanded to bring in links with S6 of the Environment Act and Well-being goals e.g.

- promote environmental (or ecosystem) resilience;
- promote and increase green spaces & improve opportunities for physical & emotional wellbeing.

The National Standards S4 Amenity and S5 Biodiversity, are very clear about what a SUDS should contain to promote multiple benefits. However, developers are notoriously resistant to change, and risk averse, so we believe Schedule 3 must take every opportunity to emphasise the multiple functions of SUDS. As it stands, the SUDS definition gives priority to protecting health and safety, which gives developers the opportunity to argue for SUDS which are fenced-off, or even capped, on the grounds that people are less likely to fall into them. Including the promotion of well-being into the definition is not only consistent with the Well-being of Future Generations Act, but also drives home the point that SUDS must be used to deliver the aspirations in Standards 4 and 5 to bring people into positive contact with water and its wildlife.

Para 2.7

A concern with the current non-statutory Standards, is the requirement to attenuate to the 1 in 1 year runoff event. In reality, a SuDS scheme should mimic the natural runoff rates for any given event.

Para 2.9

Agree and support the proposed addition, but it would be helpful to understand what mechanisms will be in place to do this. Clarification of the 'design life' is required and suggest it could be linked to the lifetime of the development in flood risk terms for residential/other development.

Question 4

Although the National Standards encourage the use of more 'natural' SuDS (in preference to underground SuDS), the language used means developers are still able to utilise underground storage relatively easily. Stronger policy support /wording could help to deliver more above ground designs, with a presumption against below ground systems unless it can be fully justified.

Question 5

Principles set out are good with links for both Flood Risk Management and Env Act/Well Being of Future Generations Act. However, greater emphasis would be welcome on the need to consider the suite of multiple benefits that could be achieved when planning/designing/approving drainage schemes. This will help promote greater use of above ground landscaped SuDS features, which may be constrained by the current focus on economic drivers/costs savings/developers' preference.

We are keen to see the National Standards made statutory as they summarise the state of the art in SuDS, as compiled by experts in the field and were informed by evidence of best practice from across the world.

Question 6

We agree that it's important to ensure the long-term effectiveness of the system and deliverability of associated benefits that may take time to establish. In our experience, adoption and provision for future maintenance are two key blockages to the adoption of SUDS. The SAB needs to be aware of maintenance commitments in advance of decision/ adoption to recognise resource requirements. Inadequate funding/maintenance could cause negative impacts such as increased flood risks, water quality issues and public nuisance from poorly maintained systems.

Question 7

We agree that partnership working within and between LAs is vital to ensure effective delivery, however some questions arise on how this can be achieved:

- How would they be convened and how often?
- How would their timescales fit with those in the planning process?
- How will sufficient resource be made available?
- Consultation with others (e.g. NRW/water companies) – each LA may have different contacts depending on area – what would be the process of resolving any conflicts and how would the governance structures be set up?

Question 8

Should an alternative body be appointed it must be made up of experts who understand the benefits and limitations of a variety of SUDS and who also have local knowledge on flood risk from all sources and local water quality issues.

Para 2.16

It needs to be clear what is meant by 'all construction work. For example, does this extend to land clearing ahead of development/ extensions/ demolish and rebuild / brownfield developments?

Will there be guidelines to advise developers what may or may not need SAB approval, for example permeable areas?

Question 9

We agree with the exemptions

Para 2.21

It is recommended that regard for SuDS should form part of the considerations by a developer prior to land purchase so that the market value of the land can take account of SuDS constraints due to their land take.

Perhaps consultation with SABS could be statutory at the pre-applications stage to facilitate successful implementation of good quality SuDS, particularly for major developments.

Para 2.22

We would 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 DNS and major development should be considered. This should include how drainage schemes are approved and inform planning decisions.

We would also 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 achieved and delivered at a local and strategic level should be fully explained.

Para 2.23

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 10

We consider the time limits to be reasonable but reiterate the points made against para 2.22 and 2.23 regarding benefit of achieving a SAB decision prior to planning permission.

Para 2.30

The consultation document proposes that Natural Resources Wales should be a statutory consultee for SuDS approval if the drainage system directly or indirectly involves the discharge of water into a watercourse. This would represent a new role for NRW. However, it is not clear on the reason for consulting NRW on this matter. For example, it is not clear as to whether NRW should be consulted to provide advice on flood risk, water quality, and/or on the potential impact on our ability to manage assets maintained by NRW. We recommend that the reason for consulting 'statutory consultees' should be made clear in accompanying regulations/ or guidance so that consultors, consultees, and determining authorities have a shared and consistent understanding of roles, and to avoid potential duplication of effort by consultees.

It will also be useful to have clarity on whether statutory consultees will be expected to provide a view within a defined format. For example, whether we would need to provide certain categories of response, and whether we could provide a combined single response to a combined application (as described in paragraph 2.22 of the consultation document).

As a statutory consultee in the town and country planning system, our role includes providing technical advice to the determining authority and/ or applicants on the level and acceptability of flood risk from rivers and the sea. We may also provide comment on any mitigation measures proposed. We do not currently provide advice on surface water flood risk or any localised flood risk issues. This advice should be sought from the relevant Lead Local Flood Authority (LLFA).

With this in mind, with regard to the 2nd bullet point – does this refer to all watercourses? Under the Flood and Water Management Act, the LLFA is responsible for managing risk of flooding from ordinary watercourses. In terms of development planning, advice from Welsh Government is that NRW should not comment on surface water issues. Is there scope to clarify whether consultation with NRW should only be for discharges to Main rivers/IDDs? If not, clarity is needed on what is expected of us in terms of flood risk and water quality issues.

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’?

If proposals contained within this consultation document involves changes to consultee roles, further consultation will be required to understand our capacity to fulfil any new role. There will also be a need to ensure consistency and common understanding of roles within the planning system.

It is also not clear how statutory consultees will be consulted by SAB or the LPA (subject to routes proposed under paragraph 2.22 of the consultation document). The consultation document indicates that “the LPA must consider SuDS approval of a development proposal separately from the planning approval process.” This seems to suggest that NRW will receive a consultation for SuDS approval, and a separate consultation on any relevant planning application.

We would need to consider how to resource the statutory consultee requirement as we do not currently provide development planning comments on drainage. We need to consider how SAB consultation with NRW would be resourced and facilitated. The current Regulatory Impact Assessment does not seem to reflect the resource implications for NRW from this proposed new duty.

Furthermore, paragraph 2.21 of the consultation document encourages pre-application discussions with statutory consultees. However, the current Regulatory Impact Assessment does not reflect on the resource implications for NRW from this proposed new activity. Any pre-application discussions we might have about SuDS needs to be considered in the context of our discretionary advice charging scheme.

It is not clear what role would NRW be expected to perform as part of any appeals process described in paragraph 2.3 of the consultation document. Any new role for NRW will need to be reflected in the Regulatory Impact Assessment.

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 of this kind. It would be useful understand the expected number of consultations from SABs.

It would also be useful to explore the risk of a different determination (refusal/ grant of permission) being applied to planning application/SuDS approval application in the routes proposed under paragraph 2.22 of the consultation document.

Risks to groundwater appear does is not reflected in the consultation, despite being in the non-statutory standards. Will there be any need for SABs to consult NRW for SuDS in sensitive groundwater locations or will there be a reliance on Planning to pick this up? For example the non-statutory standards and our [groundwater protection policies](#) highlight 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?

We are conscious of avoiding scenarios where for SUDS discharges to sensitive groundwater a scheme may be approved by a SAB but NRW refuse to either grant an environmental permit or object at planning (because we may not have been

specifically consulted by the SAB as per the wording of the Regulations). Equally if SUDS are planned on contaminated sites do the SAB have the necessary expertise and skills to ensure the SUDS does not mobilise any contamination? If not, again how would NRW be engaged in the conversation - via planning? We are also not clear how Environmental Permitting interacts with the SAB process as some surface water discharges to ground will require a permit if it has the potential to be contaminated, for example run-off from lorry parks. Again, we run the risk of a SAB authorising something which we then refuse to permit. However, we are conscious of the extra burden on NRW potentially being consulted three times for the same scheme – via the SAB, via planning and via permitting.

If there is an overarching SAB covering several unitary authorities, would consultation at individual level be needed?

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 are clearly distinguished to prevent duplication of effort and control.

Para 2.31

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.

Question 11

Timings seem reasonable. We would 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 DNS and major development should be considered.

Any time limits for schemes which are accompanied by Environmental Impact Assessments should be aligned with the timescales set out in regulations for consultees to consider Environmental Statements.

Question 12

We agree with the proposal to set a national fee

Question 13

It would be useful to understand how the rates have been derived in order to comment further.

Question 14

This seems reasonable as long as any increases are transparent and clearly justified.

Para 2.43

Is there a potential to extend the charging scheme to include provision for NRW to inspect the SUDS in relation to pollution prevention to watercourses during the construction phase?

Question 15

We agree with the proposals, but clarity is needed regarding applications that must be resubmitted because of changes requested by the SAB - would a fee apply?

Para 2.44

Does the SAB have powers to require an easement / access arrangements? Or would this be done by negotiation?

Question 16

Would there be flexibility to extend the timeframe in certain circumstances, for example if it were a very complex case?

Question 17

We support the proposed definition. By defining all drainage as SUDS where it is not covered an agreement under section 104 of the Water Industry Act, the proposal avoids all ambiguity, and should have the result of ensuring that all drainage delivers multiple benefits wherever possible.

Question 18

We agree

Question 19

We consider that SABs would welcome guidance for calculating a suitable non-performance bond which will facilitate consistency and fairness of approach across Wales.

Para 3.6

During the 'construction' phase, many SUDS are temporarily used as a mitigation measure e.g. temporary lagoons to manage surface water run-off and silt pollutions to water. It is therefore recommended that this be clearly defined in any Schedule 3 amendment that SUDS, if used as a temporary pollution prevention measure to manage surface runoff during the construction phase, that they submit a separate maintenance scheme, along with a construction management plan and associated method statements as part of any planning application demonstrating the use, management, maintenance and subsequent restoration to original SUDS design for post construction implementation.

Question 20

We agree a maintenance plan should be submitted with a SAB application and should include details of lifetime costs to maintain and enhance if required. We suggest that Welsh Government should provide both guidance and a basic maintenance plan template for applicants to use, or build upon. This would enable SABs to better judge if the contents of any plan were realistic and comprehensive, and it would reduce the effort required by applicants to design maintenance plans from scratch.

Clarity is required on who's responsibility it will be to set up and agree an inspections regime. If maintenance is outsourced to a management company at some point in the lifetime of the SuDS, how will the SAB maintain an oversight role and what enforcement powers will be available?

Para 3.9

If a SuDS scheme is designed and approved in good faith but then is found not to operate as intended is there scope for amendment / improvement if required to ensure acceptable operation. If so who will be responsible for any amendment / improvement works?

Whatever option is utilised it is essential that maintenance can be monitored and enforced if necessary over the lifetime of the development.

It is also essential that the newly constructed system is inspected and signed-off to ensure it has been built in line with the approved design.

Provisions should also be made in the event that a management company becomes bankrupt to ensure continuity of maintenance.