

**TITLE OF REPORT:** Adoption and maintenance of sustainable drainage systems, open space and play areas on new developments

**REPORT OF:** Paul Dowling, Strategic Director, Communities & Environment

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### **Purpose of the Report**

1. To seek Cabinet approval to the Council acquiring, subject to conditions, Sustainable Drainages Systems (SuDS), open and/or play areas from residential developers.

### **Background**

2. The Council's current policy approach to open space and play areas approved by Cabinet on 19th June 2012 (Minute C30) is to proactively encourage developers to transfer open and/or play space provided within residential developments to the Council, subject to the developer paying a commuted sum equivalent to a maximum of twenty years future maintenance of the land and fixed play equipment. The Council will thereafter maintain these areas in perpetuity. The policy was adopted after instances where developers failed to undertake ongoing maintenance and the Council intervened in response to complaints from residents despite it not owning the land and not receiving a fee in respect of the work.
3. The Council's current approach to maintenance of open space and play areas is unsustainable for the lifetime maintenance of the areas concerned given the reduction in resources to maintain and manage our open spaces and play areas. In addition, following the adoption of the Core Strategy and Urban Core Plan and strengthening of national planning policy on SuDS, SuDS are now required in new developments of 10 or more houses (major development). Therefore an updated maintenance model for the upkeep of open space and play areas and a new model for the maintenance of SuDS is now required.
4. SuDS provide an alternative solution to conventional piped drainage methods whereby the SuDS manage surface water by mimicking natural processes and can deal with heavy rainfall events. SuDS comprise series of components such as permeable paving, swales, rainwater gardens, ponds, wetland habitats and basins which integrate with highways and multifunctional open spaces including wildlife habitats and recreation/play areas. SuDS also need connections to the public sewerage system. Whilst the government has not prescribed which body is ultimately responsible for ongoing maintenance of SUDS, it is anticipated that, as with existing open space and play areas which are not properly maintained, the Council will ultimately be the authority of last resort to which residents will revert to if SuDS are not properly maintained. On that basis, it is proposed that in relation to new residential developments, the Council adopts the policy attached at appendix 2. The policy will also minimise the risk of the Council, in its role as Local Lead Flood Authority (LLFA), of having to intervene using their powers to undertake works to manage flood risk from surface water runoff or groundwater.

5. The effect of the new policy is that in new residential developments, the cost of future maintenance of SuDS, open space and play areas will no longer be met by the developer and the Council thereafter. Instead, the maintenance costs will be met equally by the property owners of the development, via the payment of an estate rent charge. For developments of 10 houses or more, that payment will be made to a Management Company who will be responsible for maintaining the land. For developments of less than 10 houses (minor development), the estate rent charge will be payable to the Council who will be responsible for maintaining the land.

### **Proposal**

6. That Cabinet recommend to Council that it adopts the policy attached at Appendix 2 in relation to new residential developments.

### **Recommendations**

7. It is recommended that Cabinet recommends that Council adopts the Adoption and maintenance of sustainable drainage systems, open space and play areas on new developments Policy attached at Appendix 2 in respect of new residential developments.

For the following reasons:

- i) To provide a clear maintenance approach to SUDS, open space and play areas for the Local Planning Authority and developers for new development.
- ii) To ensure revenue funding for the ongoing maintenance costs of the open space, play areas and SuDS, over the lifetime of new development.
- iii) To provide a means of safeguarding the public, as the Council will be the freehold landowner of the open space, play areas and SuDS.
- iv) To manage the Council's resources required to maintain open spaces, play areas and SuDS.

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### Policy Context

1. The provision of SuDS is now a material consideration for all major development. To support the implementation of national planning policy on SuDS, the Government revised the National Planning Practice Guidance (April 2015) and DEFRA's Non-statutory Technical Standards for sustainable drainage systems (March 2015).
2. The provision of SuDS in new development is also supported by local planning policy; Policy CS17 of the Core Strategy and Urban Core Plan requires new development to prioritise the use of SuDS given the multifunctional benefits in terms of flood management, water quality, green space and biodiversity enhancement and to follow the drainage hierarchy. It also includes site specific policies which require SuDS to manage local flood risk.
3. The provision of SuDS within multifunctional open spaces also supports:
  - Vision 2030 – 'Sustainable Gateshead' by contributing to local flood risk management and attractive environments; and 'Active and Healthy Gateshead' by providing local residents with attractive spaces to lead active lifestyles.
  - The Council Plan – the shared outcome of healthy, inclusive and nurturing places for all under Live Well Gateshead, by providing attractive areas for social and recreational activities.
4. As a result the Local Planning Authority is required in considering a development that includes a SuDS, to be satisfied that the proposed minimum standards of operation are appropriate and that there are clear arrangements in place for ongoing maintenance over the lifetime of the development, through the use of planning conditions and obligations.

### Background

5. The Council's current policy approach to open space and play area maintenance is that the Council will take ownership of and maintain these areas, subject to receiving a commuted sum from the developer equivalent to the costs of 20 years maintenance. It is clear that this approach is unsustainable given the reduction in resources to maintain and manage our open spaces and play areas after the 20 year period. In addition, this approach is not suitable for the lifetime maintenance of SuDS as 100 year commuted sums would make development unviable.
6. Therefore an updated maintenance model for the upkeep of open space and play areas and a new model for the maintenance of SuDS is now required.
7. An extensive range of maintenance approaches have been considered by officers and the proposed model is that set out within the policy attached at appendix 2.

8. Discussions with the development industry, other local authorities in the region and Northumbrian Water, and a site visit to exemplar SuDS schemes in Darlington and Middlesbrough have been undertaken in formulating the proposed model. Officers are satisfied that this model satisfies the needs of the Local Planning Authority, ensures the future maintenance of the land, whilst protecting Council resources. Alternative models were assessed as providing less protection of Council resources and / or more risk to the Council as landowner and/or LLFA.

### **Consultation**

9. The Cabinet Members for Environment and Transport and the Leader of the Council have also been consulted and are in support of the proposal.

### **Alternative Options**

10. A range of maintenance options have been considered:
  - i) The option of the Council taking direct responsibility for maintaining the SuDS, open space and play areas on all new developments without a Management Company was discounted as given the reduction in resources to maintain and manage our open spaces, SuDS and play areas, the Council is not sufficiently resourced to maintain SuDS on large scale developments.
  - ii) The private ownership option which requires the developer to appoint a service management company to maintain the open space, SuDS and play areas on privately owned land in perpetuity. This option would not involve the Council taking ownership of the land and as such any default in future maintenance could only be enforced through planning powers. This option has been discounted, in principle, given that the Council would in practice, become the authority of last resort if issues arise. Should the management company go out of business and not meet its maintenance obligations, the LLFA and Highway Authority would need to intervene to prevent flooding to property and highways from the SuDS.
  - iii) The existing maintenance option where the Council owns and maintains the open space, play areas and SuDS funded by commuted sums from the developer. This approach has been discounted given the commuted sum only funds maintenance of open space and play areas for 20 years. The option of requesting 100 year commuted sums was also discounted as the quantum of that would render development unviable.

### **Implications of Recommended Option**

#### **11. Resources**

- a. **Financial Implications** – The Strategic Director, Corporate Resources confirms that there will be some financial implications arising from the recommendation.

For minor development, the proposal provides revenue funding from the property owners via the estate rent charge to meet the ongoing maintenance costs over the lifetime of the development.

For major development, the financial implications only arise in the event that the management company default under the terms of the lease (i.e. if the company was insolvent or did not maintain the open space/SuDS as per the agreed management plans), the maintenance responsibility and estate rent charge would default back to the Council.

**b. Human Resources Implications –**

There will be some human resource implications arising from the recommendation.

For major development, additional resources will be required for the Legal Team (to draw up agreements) and Property Team (to manage the Council's larger land portfolio including leases). Ground Maintenance and Corporate Resources Teams would only require additional resources should the management company default. Planning Enforcement may need some resources to enforce the planning agreements prior to the land transfer to the Council.

For minor development, additional resources would also be required for: Ground Maintenance Teams (to directly undertake the maintenance or oversee contractors), Legal Team (to draw up agreements), Property (to manage the Council's larger land portfolio) and Corporate Resources (to collect the estate rent charges and manage the ring fenced maintenance funds).

**c. Property Implications –**

There will be property implications arising from the recommendation.

In all cases, the Council would become the freehold landowner of the SuDS, open space and play areas which will increase its property portfolio.

However, for major development, the land would be leased to a management company (prior to the Council taking ownership) who would be responsible for the maintenance regime.

For minor development, the Council would be directly responsible for undertaking the maintenance regimes for the SuDS/open space or overseeing contractors to undertake the maintenance regimes.

**12. Risk Management Implications –**

There are some risk management implications arising from the recommendation.

- i) The developers cannot be compelled to agree to comply with the policy through the planning process; there is a risk that developers could opt out of this approach in favour of the "private ownership option". To manage this risk, early engagement with developers about the merits of the proposal is essential. The developers would be required to sign up to the model through a SuDS agreement and management plans through a planning agreement reducing the risk of the developer opting out of the model post planning permission.

- ii) For major development, the Council would become the freehold landowner providing a fall back mechanism for the Council to intervene should the management company fail, thereby providing a means of safeguarding the public. The Council does not have direct control over the maintenance regime unless the lease is terminated. However, should the management company default under the terms of the lease (i.e. if the company was insolvent or did not maintain the open space/SuDS as per the agreed management plans), the maintenance responsibility would default back to the Council. The Council would then be able to directly undertake the maintenance regime or re-establish another management company funded by the rent charge. Therefore, there is low risk in the long term that the SuDS and open space would not be properly maintained.
- iii) There may be some long term financial risks associated with setting the annual estate rent charge to cover the lifetime maintenance costs. To manage this risk the open space/SuDS management plans need to be robust and inform the lifetime maintenance charges. For major development, there is some financial risk associated with the policy: should the management company be liquidated it is unlikely that all the funds accumulated for long term maintenance tasks would be available to the Council. However, the Council would receive revenue funding from the property owners via the estate rent charge to meet the ongoing maintenance costs.
- iv) The policy should ensure that the Highway Authority and LLFA are not at risk of having to carry out remedial maintenance work on the SuDS.
- v) For major development, the liability for health and safety and duty of care would be transferred to the management company. Should the management company's lease be terminated, then the liability would revert back to the Council. To manage this liability, sufficient resources needs to be committed to the LLFA, LPA and Property Services to undertake design and construction appraisals to ensure compliance with the standards set out in the SuDS Supplementary Planning Document (when adopted), and to abide by the agreed maintenance regimes as set out in the open space /SuDS management plans. The minimum maintenance standards set out in the management plans must be implemented over the lifetime of the development to manage the liability.

13. **Equality & Diversity Implications** – There are no equality and diversity implications arising from this report.

14. **Crime & Disorder Implications** – There are no crime and disorder implications arising from this report.

15. **Health Implications** – There are potential health benefits for residents arising from the recommendation through the provision of high quality and well maintained green infrastructure and SuDS that provide attractive areas for social and recreational activities.
16. **Sustainability Implications** – The recommendation will support sustainable new development that incorporates well maintained SuDS and open space that assists flood management, adaptation to climate change, improves water quality, and incorporates wildlife habitats and high quality green infrastructure.
17. **Human Rights Implications** – There are no human rights implications arising from this report.
18. **Area & Ward Implications** – The policy will be applied across the Borough and there are no area and ward specific implications.

## APPENDIX 2

### **Adoption and maintenance of sustainable drainage systems, open space and play areas on new developments**

#### **1. Purpose of the Policy**

1.1 This policy sets out Gateshead Council's approach to the maintenance of Sustainable Drainage Systems (SuDS), open space and play areas on new residential development.

#### **2. Background**

2.1 The Council's current approach to maintenance of open space and play areas is unsustainable for the lifetime maintenance of open space and play areas given the ongoing reduction in resources. In addition, following the adoption of the Core Strategy and Urban Core Plan and strengthening of national planning policy on SuDS, they are now required in new developments of 10 or more houses (major development). Therefore, an updated maintenance model for the upkeep of open space and play areas and a new model for the maintenance of SuDS is required.

2.2 SuDS provide an alternative solution to conventional piped drainage methods whereby the SuDS manage surface water by mimicking natural processes and can deal with heavy rainfall events. SuDS comprise of series of components such as permeable paving, swales, rainwater gardens, ponds, wetland habitats and basins which integrate with highways and multifunctional open spaces including wildlife habitats and recreation/play areas. SuDS also need connections to the public sewerage system.

2.3 Following construction it is imperative that SuDS are properly maintained to avoid their purpose and effectiveness being compromised.

#### **3. National Policy Context**

3.1 The National Planning Policy Framework (NPPF) requires that new development in areas at risk of flooding give priority to the use of SuDS. In December 2014, a ministerial statement clarified that SuDS would be delivered through the planning system rather than through the separate SuDS Approving Body (SAB) process. The statement strengthened the national planning policy position on SuDS and from April 2015, the use of SuDS became a material consideration when assessing an application for major development (10 dwellings or more; or equivalent non-residential or mixed development). To support the implementation of national planning policy on SuDS, the Government revised the National Planning Practice Guidance on SuDS and published DEFRA's Non-statutory Technical Standards for sustainable drainage systems.

#### **4. Local Policy context and links to other strategies**

4.1 The provision of SuDS in new development is also supported by local planning policy; Policy CS17 of the Core Strategy and Urban Core Plan requires new development to prioritise the use of SuDS given the multifunctional benefits in terms of flood management, water quality, green space and biodiversity

enhancement and to follow the drainage hierarchy. In addition, a number of site specific policies including the Neighbourhood and Village Growth Sites require the use of SuDS to manage local flood risk issues.

4.2 The policy has been developed in the context of the existing policy framework:

- Vision 2030 – asset transfer has a role in all the Big Ideas, by helping to strengthen and sustain VCS organisations; SuDS contribute to ‘Sustainable Gateshead’ by supporting local flood risk management and attractive environments; and the provision of well maintained open space and play areas support ‘Active and Healthy Gateshead’ by providing local residents with spaces to lead active lifestyles.
- The Council Plan –in relation to the shared outcome of a healthy, inclusive and nurturing place for all under Live Well Gateshead.
- The Corporate Asset Strategy and Management Plan - outlines how the Council aims to use its assets to achieve its corporate objectives
- The policy has also been developed in the context of the Consultation Draft of Gateshead’s Local Flood Risk Management Strategy which is being prepared by the Lead Local Flood Authority.

## **5. Principles Underpinning the SuDS, Open Space and Play Areas Policy**

5.1 Whilst the government has not prescribed which body is ultimately responsible for on going maintenance of SUDS, it is anticipated that, as with existing open space and play areas, which are not properly maintained, the Council will ultimately be the authority of last resort to which residents will revert to if SuDS are not properly maintained. On that basis, this policy sets out the Council’s preferred approach to the future maintenance of open space, play areas and SuDS on new residential developments.

5.2 Adopting the approach set out in this policy should ensure that the risk of the Council, in its role as Local Lead Flood Authority (LLFA), to carry out remedial maintenance work on the SuDS, is minimised. The policy should also ensure that Council financial resources are not prejudiced in the future as the full costs of all future maintenance will be met by property owners.

5.3 The Council’s policy is therefore underpinned by the following principles:

- The SuDS will need to comply with Gateshead’s local SuDS standards for design, construction, adoption and maintenance which will be set out in a Supplementary Planning Document (SPD). It is envisaged the SuDS SPD will exclude the adoption of property level SuDS, permeable paving in the adopted highways, oversized pipes and geocellular systems.
- The SuDS design will need to have regard to the performance requirements set out in the DEFRA ‘Non-Statutory technical standards for SuDS’ to ensure new development is not at high risk of flooding and the SuDS will not increase flood risk elsewhere. These standards include:
  - maintaining greenfield runoff rates on greenfield sites and for brownfield sites ensuring the runoff rates do not exceed redevelopment rates;

-demonstrating that the discharges from SuDS into watercourses will not increase flood risk elsewhere and will not adversely affect the functioning of the public sewerage system;

-demonstrating that surface water is managed within the site to ensure no flooding within any building in a 1 in 100 storm event plus climate change.

- SuDS components will need to be designed in accordance with best practice design guidance set out in the CIRIA SuDS Manual, C753 (November 2015).
- SuDS design will need to be informed by a drainage assessment which includes: a detailed drainage model, detailed drawings, health and safety assessment, and a management and maintenance plan; to ensure that the SuDS operate safely and effectively over the lifetime of the development.
- SuDS should have no adverse impact on water quality, and where possible improve the water quality prior to entering a watercourse.
- SuDS should follow the SuDS management train integrating SuDS components within the layout of the development to achieve the necessary benefits to flood management, water quality, amenity and biodiversity.

5.4 A proactive strategy to implement the policy and transparent and consistent process:

- The Council will seek to implement the policy proactively, (through early communication with developers) to encourage developers to consider the drainage design at the earliest opportunity when planning the development and to apply a multidisciplinary approach. The Council will expect to work closely with the developer from early in the pre-application process through to construction of the SuDS, to ensure that the SuDS integrate with the development layout and provide high quality green infrastructure.
- The Council views this policy positively as part of a long-term vision to manage surface water flood risk within the borough and to ensure new development is resilient to future climate change over its lifetime. This should help to minimise the future demands on the Lead Local Flood Authority to undertake works to manage flood risk from surface water runoff. The policy also provides an opportunity to achieve other sustainability benefits through well designed SuDS that: prevent pollution and improve water quality, create high quality places for people to live and accommodate local wildlife.

## 6. The Policy

### **For major development (10 or more units)**

- (i) The developer is required as part of a planning consent to construct SuDS, open space and play areas within the development. This is secured via a planning obligation and SuDS Agreement and include SuDS and open space management plans to ensure a quality standard of maintenance is undertaken throughout the lifetime of the development.

- (ii) The developer is required to maintain the SuDS, open space and play areas for 5 years following completion of construction.
- (iii) When selling development plots the developer shall reserve the benefit of an Estate Rent Charge for the maintenance of the developments SuDS, open space and play areas by requiring the new property owner to enter into a Deed of Covenant and Rent Charge. This means the purchaser is required to pay an annual fee to contribute (on an equal proportion to other plot purchasers) to maintenance costs.
- (iv) The developer is required to set up an incorporated management company, made up of all the property owners, to whom it will lease the SuDS, open space and play area land. The Management Company is responsible for maintaining the SUDS, Open Space and play areas. The maintenance is funded by the property owners via a Property Service Charge, which is an equal proportion of the Estate Rent Charge, i.e. the Estate Rent Charge should be apportioned equally between the total number of properties on the development.
- (v) Following this 5 year interim maintenance period, the Council would take the freehold ownership of the land (including the benefit of the Estate Rent Charge) for nil consideration subject to the lease to the Management Company. NWL would take responsibility for the surface water pipes in and out the system.

#### Impact on Council

Although the Council's property portfolio will increase, it will have no direct day to day involvement in the maintenance of the land it will acquire as that will continue to be carried out by the Management Company. Only if a Management Company fails, either financially or in complying with the terms of the lease will the maintenance responsibilities revert to the Council. If this exceptional situation arises, the Council will utilise the benefit of the Estate Rent Charge to fund the maintenance of the land.

#### **For minor developments (9 units or less)**

- (i) The developer is required as part of a planning consent to open space and play areas within the development. It may also be required to construct SuDS. This is secured via a planning obligation and SuDS Agreement (if applicable) which will include an open space management plan (and SuDS management plan if applicable) to ensure a quality standard of maintenance is undertaken throughout the lifetime of the development.
- (ii) The developer is required to maintain the SuDS, open space and play areas for 5 years following completion of construction.
- (iii) When selling development plots the developer shall reserve the benefit of an Estate Rent Charge for the maintenance of the

developments SuDS, open space and play areas by requiring the new property owner to enter into a Deed of Covenant and Rent Charge. This means the purchaser is required to pay an annual fee to contribute (on an equal proportion to other plot purchasers) to maintenance costs.

- (iv) Following this 5 year interim maintenance period, the Council would take the freehold ownership of the land (including the benefit of the Estate Rent Charge) for nil consideration. NWL would take responsibility for the surface water pipes in and out the system.

#### Impact on Council

The Council's property portfolio will increase. The Council will become directly responsible for maintaining the SuDS, open space and play areas. The cost of this maintenance will be funded by the property owners via the payment of a Property Service Charge directly to the Council. The Council will therefore be responsible for calculating, billing and collecting the Property Service Charge.

It replaces the current policy approach to open space and play areas maintenance in new development with a new policy approach. The new maintenance policy would be applied to all land used for open space, play areas and SuDS in new development.