

The Implementation of the Sustainable Drainage (SUDS) provisions of the Flood and Water Management Act 2010

General

This response to the above Consultation is written on behalf of the Middle Level Commissioners (MLC), a statutory corporation undertaking the functions of an internal drainage board and of the navigation authority for the Middle Level river system and our administered internal drainage boards, (IDBs) which are listed in the Appendix to this response. In the context of Lead Local Flood Authorities, (LLFA) the MLC and IDBs are situated within the areas of Peterborough City Council (UA), Cambridgeshire County Council or Norfolk County Council or a combination of these areas.

The Consultation relates to the implementation of the sustainable drainage (SUDS) provisions within the Flood and Water Management Act 2010.

While the MLC and IDBs broadly support the implementation of the SUDS provisions and, if implemented properly, these provisions should lead to a considerable improvement in surface water management, we do however, have concerns about whether the LLFA will be ready in time, particularly for a commencement in 2012 and particularly about the resources and skills which will be available to it, especially in the short term. It is also not clear how the LLFA's new duties will be funded. While Government has confirmed that short term maintenance funding will be provided, it is not clear whether all costs are to be covered and the timetable for such funding does not suggest an adequate time to really assess what the true maintenance costs of SUDS will be.

Whilst we can also appreciate why it is recommended that SUDS is managed "at source," this is not however always the most appropriate solution or location and does not take account of the whole water cycle process or other amenity issues.

For example, the Gaul Road development at March will, hopefully, feature a balancing pond to the west of the Bypass which will be some distance away, within the proposed Country Park. A similar situation is proposed for the Sainsbury/Industrial Estate at Eastrea, near Whittlesey.

Water so collected would therefore, in the correct circumstances, be able to be used for water resources purposes. Therefore, an appreciation of the LPAs Water Cycle Strategies, particularly in this 'drought' area needs to be included.

It is also not entirely clear at what stage of the planning process, SUDS will be considered. While in many cases, suitable satisfactory surface water drainage arrangements for a development can be made, in some cases such arrangements may be very complex or even impossible. How will the new process ensure a proper linkage between the Planning and SUDS process in such cases, particularly if the arrangements or the detailed design is a reserved matter?

We also have grave concerns about suggestions that SUDS must be affordable. In this high flood risk area, SUDS must be proper and adequate and, where a discharge to our systems is proposed, if inadequate measures are proposed on grounds of cost, our consent will be refused.

The period of 8 weeks proposed for the SAB to assess whether a SUDS is functioning properly does not, we consider, leave adequate time for this to be properly considered.

The proposals within A5 and A6 should we consider, be resisted at all costs as they have many adverse effects including increased discharges at Waste Water Treatment Works and are not sustainable. Most LPAs are trying to remove surface water discharge from foul water systems.

B4 & B5 We have previously and will continue to use the worst case event up to and including the 1 in 100 year event together with an allowance for climate change.

B6 - For attenuated discharge we would adopt B6(b) first bullet point but if the developer wishes to use the 1 in 1 year event for evaluating the discharge rate that would also be considered. However limiting the flows to 21/s/ha is difficult and normally creates maintenance issues due to the size of the outfall structure. Restricting discharges to such low flows also requires larger areas of land and it could be argued to be unviable or unsustainable.

B7 – Generally, comments apply as B6 but allowing for the brown field development. We consider greenfield rates down to 1 in 1 year event in the correct circumstances.

We note the emphasis given to permeable paving but must question whether this is a ‘sustainable’ means of surface water disposal.

1.11 If the use of SUDS is to be used alongside other forms of legislation, policy and standards, then these need to be reviewed accordingly. For example, BRE 365 only allows for the design of a facility 10% AEP (1 in 10 years) with no allowance for climate. This is obviously a concern.

Before commenting on the detail of the documents, we would also make the point that all drainage systems, be they main river or soakaway or other local system, will only work within defined limitations and to a defined return period. Floods in excess of that capacity will lead to flooding in the normal course. Whether that flooding causes widespread property damage or endangers lives will, of course, depend on circumstances but it should not be forgotten that, while a properly constructed and maintained SUDS will improve the position, it will not remove the risk of flooding of the scale referred to in paragraph 1.3 of the Consultation Document. There will also be occasions when it is necessary to evacuate excess water as speedily as possible and, in areas such as Swavesey, in Cambridgeshire, where the main river system can become “tidelocked,” a failure to do so could well lead to property flooding. The consideration of an appropriate SUDS must take this fully into account.

Question 1 SUDS must take into account the needs of the local area, including the need in certain circumstances for water to be evacuated early and the benefits of direct discharge to stream. It also should not be overlooked that all sewers must outfall somewhere and SUDS too will require an available outfall at some point. It is also unclear how developments other than for housing will be treated, particularly in the transitional phase. While primarily a matter for the LLFA, we are concerned that insufficient assessment has been made of their resource needs. Our Planning Engineer, with many years’ experience of dealing with flood risk issues in relation to development, does feel that it is the smaller sites where neither the developer or his agent are knowledgeable on the subject that tend to take more time. Larger developments are undertaken primarily by developers who generally know what they are doing or who employ suitable consultants.

Question 2 We would strongly disagree with the proposal that developments granted planning permission, developments subject to the approval of reserved matters or where a valid planning application is submitted before the ‘cut-off’ date should be exempt under the transitional arrangements. Where a full and final planning permission

has been granted, then it is accepted that it would be right for an exemption to apply. However, we must question the need for this to apply to an outline permission or to an application granted subject to the approval of reserved matters, where those reserved matters include surface water drainage issues. We cannot see any justification whatsoever for the mere submission of a planning application giving rise to an exemption. There will be many developments at an advanced stage of planning which have not reached the stage of an application and it is unclear how this proposal will apply to phased developments. We therefore consider that exemption should be linked only to the final grant of planning approval for surface water drainage matters. We consider that to do otherwise would result in a large number of outline applications where the possibility of acceptable drainage solutions being present has not been properly considered. The attempt to control drainage simply through the imposition of planning conditions has been shown to be clearly unsatisfactory.

Question 3, 4 This is more a matter for the LLFA and their level of readiness. We are however aware of concerns expressed by SABs and a degree of phasing may well lead to an easier implementation, particularly in terms of their resource/skill requirements. We consider that the LLFAs may not be ready for implementation in October 2012.

Question 5 For Neighbourhood Plan development to be exempt, it will have to be ensured that not only is the mode of drainage from the development appropriate but that the impact elsewhere is properly assessed. It is, however, by no means clear that this will necessarily occur. The SAB will then be asked to adopt SUDs in which they may not have been fully involved. If they then refuse and, because the SUDs are exempt from approval, adoption will be voluntary, who will then maintain the drainage arrangements? We also consider that the matters raised in 2.15 could equally apply to other areas of development. We therefore do not support this type of development being exempted from SAB approval.

Question 6 It is clear that a number of definitions, which may provide subsequent clarity, are awaited. At present therefore, we are concerned at the suggestion in paragraph 3.5 et seq and Annex A that appropriate drainage requirements may be “dumbed down” if not “affordable”. Any development should be required to make appropriate arrangements and if such arrangements would make the proposals “unaffordable”, the whole development proposal may have to be reconsidered. “Unaffordability” should not be used as an excuse for inappropriate drainage arrangements; the cost of rectifying which may then falls to others, including the taxpayer. Within managed flood risk areas, such as the Fens, “affordable” SUDS may raise flood risk and take place without a proper consideration of the management of the (relevant part of the) catchment. The key question here, is what is ‘sustainable drainage’ and what are we trying to protect; discharges into the Main River or local watercourses?

As stated above, we do not consider permeable paving to be sustainable. Such systems often require the extracting of mineral resources from the ground, drying them, and in the case of paviers, baking them. They are then transported across the country using limited resources and increasing the carbon footprint. They use labour intensive techniques which require careful supervision if they are to work correctly.

As regards local standards we do consider that there is a workable approach to this problem. It needs some prompt discussions together with an appreciation that there may be more than one local standard dependent upon the locality.

Question 7 It is unclear at present exactly what is meant by ‘conventional’ alternatives. It is however the case that the comparison is with present systems that have already at times and in circumstances shown to be unacceptable. Affordability should be a secondary consideration. We do not agree with the proposal in Annex A that the SAB should be required to assume that the SUDS are functioning correctly, unless there is evidence to the contrary. We consider that the developer should be required to adduce sufficient and robust evidence to show that the SUDS is functioning correctly, otherwise it should be assumed that it is not.

Question 8 The cumulative effect of smaller developments falling within 4.4 and which are exempt should not be overlooked. The proposed exemption mooted in paragraph 4.8 seems a little odd. The issue here is the disposal of surface water. Any exemption should therefore surely be related to the size of the property, rather than the number of employees.

The encouragement of pre application discussions and the exemption list in Figure 1 are supported.

It is regrettable that Defra have chosen neither to make provision for statutory consultees’ costs to be reimbursed or to enable them to charge fees for such consultation. The resulting strain on resources within some consultees who may not consider the SUDS application to be a priority is likely to result in responses being unable to be made to the SAB within the time limit of 12/7 weeks proposed. Any lessening of the time limit will simply increase this problem.

Question 9 This is a matter for the SAB. However, we believe that it would be helpful to avoid disputes.

Question 10 Since no provision is made for fees to be levied by statutory consultees, we consider the fee proposals to be unsatisfactory.

Question 11 Cost recovery would seem the appropriate basis of recovery.

Question 12 This is primarily a matter for the SAB, though the absence of a fee basis for statutory consultees is clearly an omission.

Question 13 The imposition of this timescale may well lead to standing objections being lodged so that the matter can be more properly dealt with. It may also lead to an increased workload on the SAB.

Question 14 This would seem appropriate.

Question 15 This would seem appropriate.

Question 17 This appears to equate to the Planning position and there is no objection to this.

Question 18 This is more a matter for other parties.

- Question 19 The proposed appeal procedure seems appropriate. No justification is given as to why such appeals should be at no cost to the developer and we consider that a fee should in such circumstances, be paid by the Developer.
- Question 20 This would seem appropriate.
- Question 21 The reason why the sustainable drainage system should be defined purely as “those parts of a drainage system that are not vested in a sewerage undertaker” is not given and is likely to lead to confusion. Because of the imprecise definitions within what became paragraph 1 of Schedule 3 to the Flood and Water Management Act 2010, the question of artificial watercourses remains to be clarified. We would suggest therefore that the definition of sustainable drainage system should also exclude “watercourses vested in or under the jurisdiction of a statutory body” as a minimum. It is clearly assumed from paragraph 6.2 of the Consultation Paper, that only the SAB or the sewerage undertaker will have roles, which is patently not the case. We believe that urgent reconsideration needs to be given to this aspect.
- Question 22 We consider that the definition at present of ‘single property drainage system’ is inappropriate. While some of the examples quoted will be owner/occupied where, in the case of residential flats or similar instances, ownership and occupation are or could be different, these properties should not be classed as single properties. Instead, we consider that a single property should be a property owned and occupied by a single person or body. However, even in these cases, we consider that in the case of some large properties there would be a benefit in having the SUDS adopted by the SAB.
- It is noted that a sewerage undertaker must accept surface water from a public road which is in accordance with a SAB approval. It is hoped that the sewerage undertaker, in exercising this duty and generally, will have full regard to their own obligation to the owners/operators of the receiving watercourse, into which their sewers are proposed to discharge.
- Question 23 This time frame to a large extent will depend upon the resources which the SAB and the statutory consultees are able to devote to such a request. No provision however, appears to have been made for there to be a maintenance period during which the developer must have maintained the SUDS before it can be adopted. We feel that a 12 month period is appropriate.
- Question 24 This is primarily a matter for the SAB, but will depend on available resources.
- Question 25 We have no comment on this question.
- Question 26 We consider that the SAB should be able to decide well within a 12 month period, whether the SUDs have been adversely affected and a shorter timescale, say 6 months would be appropriate unless there are particular circumstances.
- Question 27 The period of 6 months in which to lodge an appeal seems overlong. A shorter period, say 3 months, would surely suffice.
- Question 28 This would appear a sensible proposal in view of the close linkages between planning and SUDS approval.

Question 29

A third option, whereby the LLFA or other body responsible for the watercourse has (and enforces) a byelaw that no increase in flow rates or volumes can be made to the watercourse without the consent of the relevant body, might also be considered.

It is also unclear why there is any differentiation between SUDS with and without a sewer connection, since all sewers will eventually outfall.

It appears throughout this consultation, that those responsible for it have perhaps failed to properly appreciate the linkage between groundwater, watercourses, surface water run off, sewers and SUDS. The issues arising need to be dealt with holistically, rather than artificially separated off. A proper appreciation of the drainage regime of the relevant area/catchment must, we feel, accompany every SUDS application.

We consider that all SUDS need to be installed and maintained properly.

The reference in Part B2 of Annex A to there being no discharge to a watercourse from the first 5mm of any rainfall event, does overlook the possibility that the catchment might already be wet or saturated. The reference in paragraph D3 of that Annex to minimising pumping also appears to overlook the fact that the receiving sewers or watercourses may themselves be pumped.

The criteria for drainage system design in paragraphs D5 and D6 seem also to fail to appreciate that the receiving sewers or watercourse systems may provide a lower standard of flood protection.

Other relevant issues which should be raised in this context do, we consider, include:

- a) Having considered this consultation, we are concerned that this document, like PPS 25, is too generic and does not appreciate the specific circumstances encountered in the Fens, for example, low gradients, low flows, pumped discharges, finite capacity systems, limited water resources etc.
- b) Whilst the document considers one aspect of development the consultation does not consider the increased discharges in both rate and volume of treated effluent and detrimental impacts from Waste Water Treatment Works.
- c) Whilst retrofitting SuDs into existing systems is a nice idea it is difficult to think that this will ever be economically viable unless an area is redeveloped.
- d) If British Waterways are to be a statutory consultee as a navigation authority (item 4.27), why are other navigation authorities excluded?
- e) We agree with the contents of item 6.17 and that all SuDs devices should be designated as flood risk features and placed on a register.

APPENDIX

Benwick Internal Drainage Board
Bluntisham Internal Drainage Board
Churchfield and Plawfield Internal Drainage Board
Conington and Holme Internal Drainage Board
Curf and Wimblington Combined Internal Drainage Board
Euximoor Internal Drainage Board
Hundred Foot Washes Internal Drainage Board
Hundred of Wisbech Internal Drainage Board
Imbanking Commissioners
Ladus District Drainage Commissioners
Manea and Welney District Drainage Commissioners
March and Whittlesey Internal Drainage Board
March East Internal Drainage Board
March Third District Drainage Commissioners
March Fifth District Drainage Commissioners
March Sixth District Drainage Commissioners
Needham Burial and Birdbeck District Drainage Commissioners
Nightlayers Internal Drainage Board
Nordelph Internal Drainage Board
Ramsey First (Hollow) Internal Drainage Board
Ramsey Fourth (Middlemoor) Internal Drainage Board
Ramsey Upwood and Great Raveley Internal Drainage Board
Ransonmoor District Drainage Commissioners
Sawtry Internal Drainage Board
Sutton and Mepal Internal Drainage Board
Swavesey Internal Drainage Board
Upwell Internal Drainage Board
Waldersey Internal Drainage Board
Warboys Somersham and Pidley Internal Drainage Board
White Fen District Drainage Commissioners