

## **Proposals for implementation of SuDS – approval, adoption and maintenance**

### **1 Background**

This document sets out proposals for an alternative mechanism to enable well-designed, adoptable and maintainable sustainable drainage systems (SuDS) in new developments.

To maximise certainty but minimise burden of new approaches, they utilise pre-existing approval and adoption mechanisms and maintenance funding mechanisms which can engage effectively with the planning process. Proposals contained herein seek to strike a balance between the need for better standards for SuDS delivery and for streamlined housing delivery.

These proposals are intended to be considered in lieu of implementation of Schedule 3 of the Flood and Water Management (2010) (FWMA) should government not be minded to do so, but seek to achieve the same outcomes through a streamlined mechanism. The core proposal is that the Lead Local Flood Authority (LLFA) has the responsibility for approving and adopting SuDS and undertaking maintenance. Within this proposal three models for implementing this are outlined. The proposals have been developed with knowledge and experience of the legislative framework around drainage.

A key consideration is avoidance of the need to create new legislation by working within the existing legislative framework to the maximum extent possible.

Reducing infrastructure capacity constraints and flood risks for both new development (growth) and for existing development (sewer capacity and spills) has to be a key outcome of potential mechanisms. Within this, oversight of all SuDS delivered in an area and a sustainable funding regime are important considerations.

Climate change, adaptation and sound consideration of exceedance mean that SuDS infrastructure will primarily comprise surface features (swales, basins, ponds) aligned with exceedance routes and for the most part within public realm.

This informs an alternative to Schedule 3 that aligns well with established land drainage legislation, powers, LLFA roles and responsibilities as well as funding. This provides clarity in terms of classifying what SuDS features are (if they are not public sewers) and enables adoption and maintenance to be dealt with an established model with a possible funding mechanism.

Developers and consultants need to work within a clear, consistent and robust adoption regime. Since highways and the drainage of surface water from them are important factors in shaping developments, alignment with the established process for highway adoption would be beneficial and could enable housing growth.

This document primarily addresses the mandatory delivery of SuDS in England. The establishment of LLFAs by the FWMA has meant that there is a suitable body already in place.

LLFAs are charged with maintaining good records and guidance and templates are in place on the quality and consistency of records. The effective management and maintenance of SuDS should be driven by good records.

Recognising the challenges of placing SuDS within the planning framework it is recommended that an approach that mirrors the technical approval and adoption of highways should be used for delivering mandatory SuDS. This ensures there is an appropriate balance between robust standards, delivery of an approach which minimises burdens and is familiar to the key stakeholders.

**Specific reasons why the planning process creates challenges to secure good quality SuDS include:**

- **Inconsistent local policies and expertise** – There is significant variation in how Local Planning Authorities (LPAs) interpret and enforce SuDS requirements, with some placing little emphasis on surface water management, and others having specific local plan policies, and their own supplementary planning documents on SuDS. Some LPAs also lack the necessary expertise to review SuDS applications. Many developers have expressed concern about the lack of clarity and consistency.
- **Limited enforcement and compliance checks** – Even when SuDS are included in planning approvals, there is often no inspection or verification to ensure they are built as designed. This leads to poorly implemented systems that may not function effectively, increasing flood risk.
- **Developers modifying or removing SuDS post-approval** – Developers can submit applications to discharge or alter conditions related to SuDS after approval, often reducing the extent or quality of SuDS in order to reduce costs. This reduces the potential to effectively manage flood risks for people and properties.
- **Expensive and lengthy appeals process** – When SuDS related planning applications are challenged, defending them in appeals is costly and time-consuming for LPAs, LLFAs and developers and can delay housing construction. Limited budgets mean councils can avoid contesting drainage issues, leading to flood risk challenges later in the life of the development.

**Specific reasons why an approach that mirrors the highways adoption process could be favourable include:**

- **Established and familiar process** – Developers and local authorities are already familiar with the highway adoption process, which includes technical approval, legal agreements, inspections, and maintenance obligations. Mirroring this approach for SuDS would simplify implementation and improve compliance.
- **Clear accountability and long-term oversight** – Just as highways are maintained by a designated authority, assigning a single body (such as the Lead Local Flood Authority) to approve, adopt, and maintain SuDS ensures consistency, long-term responsibility, and proper upkeep of this infrastructure.
- **Guaranteed maintenance funding** – Similar to highways, a commuted sum or surface water drainage charge could provide dedicated funding for enforcement, inspections and

ongoing SuDS maintenance, ensuring they remain functional and effective in managing flood risk.

- **Improved construction standards and compliance** – A structured approval and inspection process, similar to Section 38 of the Highways Act could be underpinned by a consistent set of mandatory SuDS standards that would ensure that SuDS are built to the correct standard, reducing the risk of post-construction modifications that undermine their effectiveness.
- **Resilience to developer/Management Company insolvency or negligence** – The use of financial bonds, as in highway adoption, would safeguard against developers failing to complete or properly construct SuDS, protecting local authorities from inheriting poorly designed or unfinished systems.

### 1.1 Key factors influencing the proposals

SuDS should be designed, approved and managed in a holistic way so that maintenance costs are minimised, safety and environmental outcomes maximised, multiple benefits are delivered contributing to place-making. It is impractical and inefficient for different organisations to maintain different areas within the public realm, or open space.

As other public infrastructure (such as highways, footways and cycleways and amenity areas) and private properties depend on effective rainwater management, the mandatory arrangements for robust, long-term maintenance need to be in place and there should be clear accountability on the body undertaking that role.

Primarily maintenance activities such as grass cutting and keeping outlets clear of blockages etc) constitute the main elements of SuDS stewardship and management.

In new developments, SuDS will normally be provided by a developer in a similar manner to the provision of highways in their sites. SuDS comprise essential public infrastructure and there should be a **legal duty** on a specified body to approve, adopt and maintain systems and, importantly to hold oversight over all systems within a defined area. This oversight role is important as individual systems may develop over time as further development occurs or as surface water is removed from adjacent older developed areas.

If the approval, adoption and long-term maintenance of SuDS is not made mandatory for a specific body, there will be a lack of clarity, consistency in delivery and the performance and associated quality will be weakened. This lack of clarity, certainty and consistency will also drastically impact the delivery of housing (1.5m new homes) and other development, requiring unnecessary levels of negotiation and potential costly litigation. Research with developers has already indicated that they prefer certainty and a level playing field across the country.

SuDS provide a service for all individual properties and highway surfaces which drain to them and as with other services, the equitable way of funding long-term management and maintenance is through charges placed on the users and beneficiaries. Ideally payment should be based on the degree of benefit derived from SuDS, and properties/developments with larger impermeable areas should pay more.

Funding of long-term stewardship and maintenance is a significant challenge and should be proactively explored by Defra and the Cunliffe Review. Without there being a secure source of funding, there can be no effective duty placed on any body to approve, adopt and maintain SuDS. Funding is considered in more detail in section 3.

## **2 Options for the approval, adoption and management of SuDS**

Several viable options are available for the approval, adoption and maintenance of SuDS. These include Water and Sewerage Companies (WaSCs), private management companies and local authorities.

### **2.1 Water and sewerage companies**

Whilst WaSCs may be considered to be suitable adopting bodies for SuDS, the definitions within the Water Industry Act 1991 limit their abilities to adopt certain SuDS features, primarily those that can be designed/defined as a sewer. As outlined in [Water UK's guidance](#) this excludes features like permeable paving, highway drainage and other source control features on private land. As private companies they can also be reluctant to take on responsibility for SuDS, particularly those in land to which the public have access. A few WaSCs like Anglian Water have adopted SuDS through Water UK's Sewerage Sector Guidance.

### **2.2 Private management companies**

Private management companies have been set up to manage SuDS for some sites. However, the reasons for this have largely been the absence of duty and powers placed on any other body.

Whilst a management company might maintain SuDS and be funded by the residents, there are no requirements on an individual company to remain in place and there is often no accountability or contingency should the management company not carry out its work properly or fail completely.

It can be difficult for management companies to secure payments from occupiers of properties. There is also no body which can step in to adopt the SuDS should the maintenance company fail to fulfil its obligations or cease to exist, meaning liability would fall on property owners leading to technical and administrative burden and financial pressure being placed on people without the necessary resources.

As outlined the [Housebuilding market study](#) by the Competition & Markets Authority (CMA) in 2024, private management companies pose a number of challenges, which are not limited to, or specific to SuDS. Also, in high growth areas, there is a real risk of a plethora of management companies being put in place (one for each development) with no requirement on these to cooperate and for there to be oversight over the whole area.

There is no obligation on management companies to coordinate their roles or to exercise wider stewardship and consider broader SuDS needs which may arise on an adjacent piece of land, and there is no control over the charges they make to residents. Additionally, there is no

duty on a management company to facilitate later development on adjacent land which may need to drain into the established SuDS.

It is difficult to require management companies to operate to consistent standards and to maintain records of the infrastructure they manage for effective functioning and risk management. It can also be in the interests of a management company to restrict access to the features it is maintaining either to residents within a site, or to everyone.

### 2.3 Local authorities

The maintenance of public realm (highways, recreational and amenity spaces etc) is a core function of local authorities. The insurance industry is comfortable with this long-established practice and premiums on local authorities undertaking this role across a large portfolio of open spaces are low.

The options proposed in this document therefore all involve the LLFA being the body that would approve, adopt and maintain SuDS. In doing so, the proposals recognise that this would only work satisfactorily if a robust funding regime were linked to the duties.

- (a) The ability for LLFAs to take on the role is largely in place and has been anticipated for a number of years. The mechanism by which LLFAs would undertake the role is the main consideration of this proposal and reflects discussion and considerable uncertainty around the implementation of Schedule 3, or using a widely regarded compromised approach embedded in planning. The models considered comprise: All LLFAs are designated as New Appointment and Variation (NAV inset appointees) solely in relation to the management of surface water through SuDS within their own area.
- (b) LLFAs work, and responsibilities are aligned with, the Highway Authority (HA) so that the HA powers and obligations to adopt new infrastructure apply to the LLFA in respect of SuDS. This would mean that SuDS are considered as highway drainage and adopted as such.
- (c) All LLFAs are designated as Internal Drainage Boards (IDBs) solely in relation to the management of surface water through SuDS within their own area. This model acknowledges that SuDS are infrastructure with its own characteristics which are aligned with natural watercourses and having a wider role than a pure utility, including a stronger element of flood risk management.

Option (a) would see SuDS being classed as sewers and LAs as a special category of NAV.

Option (c) would see SuDS being classed as land drainage and LAs operating as a special category of IDB or through adaptation of existing LA land drainage powers.

Option (b) would perhaps see SuDS being classed as highway drains. However, the wider synergies between highways and SuDS are seen as being essential within all of these options.

Option (b) would require the HA and LLFA to work closely together. The main challenge relates to making this a duty and ensuring long-term funding is available for the maintenance of adopted drainage infrastructure serving private properties. This could be overcome by establishing a SuDS adoption process which is based on (and perhaps works alongside) the

highways adoption processes and closer working between HAs, LLFAs and LPAs. These synergies are fundamental to the good practice already observed in England and Wales and could be easily incorporated within either of the other models.

Guidance could be issued to maximise the synergies between LLFA and HA within individual LAs in terms of their respective technical approval and adoption processes. Guidance might also include the ways in which these two functions support the Local Planning Authority (LPA) role (in a unitary setting and in the two-tier system). Benefits are already being realised where local authorities are delivering drainage and highways responsibilities within the same department.

Options (a) and (c) both provide the duty and appropriate funding for the LLFA's post-adoption management and maintenance activities.

Option (a) does this through the existing surface water drainage charge and also facilitates the practical management and funding of SuDS which connect to sewers managed by WaSCs. This ought to be fairly simple to implement via a 'licencing process' administered by Ofwat.

Option (c) would involve a process managed by Defra which would differentiate the roles of existing IDBs from those of newly established ones. This could be the option which is simplest to implement. Essentially greater synergy would be created between the LLFA role and the powers and responsibilities within the Land Drainage Act 1991 to enable the LLFA to establish SuDS and then adopt and maintain them. It also provides a charging mechanism for funding SuDS maintenance. Other aspects would fall into place naturally such as coordination and oversight of all SuDS in an area and maintaining records. Transparency in use of the charge and evidence that the funding via charges is not a new tax would come through:

- The use of a separate precept rather than the charge being part of the general Council Tax bill.
- Capping the charge on properties to the same level as that charge by the WaSC for surface water drainage to sewer in that area.

## **2.4 Mirroring highway adoption**

The capital cost of infrastructure in new developments is normally borne by developers. If there is a difficult site, the costs are sometimes supported by grants. For highways this means that the HA does not usually pay anything to the cost of the new infrastructure but has the role of approving, adopting the new infrastructure and then maintaining it (often funded by a Commuted Sum). The developer is also responsible for the costs associated with adoption, including (for highways) the HA's costs of drawing up the adoption agreement and inspections during construction.

Developers and LAs have been using an adoption process for highways for a very long time. This is linked to the planning process but, importantly, the technical and legal aspects are dealt with separately. Within the planning processes (master planning and formal planning applications) the HA and LLFA are both important consultees. Both will often provide detailed input to this process, primarily in relation to impacts on the wider area and where there may

be need for improvements to accommodate a development but may also comment on infrastructure issues in the development itself.

However, significantly, in parallel to its planning consultee role, the HA has a separate, technical approval process which deals with individual sites' highway infrastructure being provided by the developer; leading to this being adopted and then managed and maintained by the HA.

There are essentially two technical/legal mechanisms for highways built as part of new development becoming adopted: one with a legal agreement ahead of the work starting (through Section 38 of the Highways Act 1980) and one following completion.

The former is the most common, most robust and the means by which parties generally favour for securing adoption. It is suggested that similar mechanisms to these be put in place for SuDS and the LLFA, with the use of a legal adoption agreement.

There is a similar process which WaSCs and developers use for the adoption of sewerage infrastructure (Section 104 of the Water Industry Act). Essentially, it is the use of established process (similar to Section 38 as above) in relation to SuDS that is beneficial and discussed in detail within this briefing note.

The process for the adoption of highway or sewerage infrastructure has many elements that should also be followed for SuDS adoption. These include:

- (a) The technical vetting and approval of proposals.
- (b) Entering into an adoption agreement i.e. 'a contract' that the HA or WaSC will adopt the infrastructure created by the developer, provided it is built to the correct standard.
- (c) The HA or WaSC inspecting the works as they progress.
- (d) Safeguarding the HA or WaSC and purchasers (and mortgagees) of the risk of the developer becoming insolvent or being otherwise unable to complete the infrastructure to an adoptable standard. This is done by having a financial bond. This is an important aspect in the sale of new properties in that purchasers verify the robustness through the CON 29 legal search. The bond is normally reduced in size as 'risk reduces' as development work is undertaken and as completion approaches. The bond represents a cost to the developer but is an important safeguard for property purchasers and the adopting body. Release and reduction of the bond is largely in the hands of the developer. The incentive of reducing and releasing the bond encourages the speedy implementation of infrastructure in new development; something which benefits all stakeholders.
- (e) A final inspection, adoption and release of any remaining bond. This normally follows a period where infrastructure is acknowledged by the adopting body to be complete but where the developer continues to maintain it in order to demonstrate it is functioning adequately. This process mirrors the normal contractual relationship and risk management between client and contractor in all civil engineering contracts.
- (f) The infrastructure coming into the HA's or WaSC's management regime. This is not solely about the various aspects of maintenance but also includes protecting the infrastructure from third party activity/damage. This could be from utilities or from residents misusing

the infrastructure, parking issues, moving boundaries or obstructing visibility splays. The HA and WaSC also continues to provide answers to purchasers of properties on the adoption status of the infrastructure. Management also includes the maintenance of records of the infrastructure and general oversight to examine the impacts of new development or other proposed changes.

- (g) Maintenance by the adopting body normally has several elements: periodic inspection, routine maintenance, minor reactive maintenance and major activity/renewal.

A similar process can be seen in relation to SuDS retrofits, where the WaSC in seeking to remove surface water from its sewers is in a role similar to the developer. However, because outcomes of the retrofit process should be aligned, a 'lighter touch' agreement would be appropriate. In view of the focus on retrofits (something which is likely to increase and be in place for a long time), it is important that a viable process be put in place for delivery.

## **2.5 The influence of local government structure**

In England Unitary Local Authorities are LLFAs, HAs, LPAs and have an environmental health (EH) role. In two tier system, County Councils have the LLFA and HA roles whilst District Councils are LPA and have the EH role.

There is an accelerating process in England toward unitary councils, to larger councils and to regional agglomerations (city regions, and/or combined authorities) to enable more effective working in relation to strategic functions such as transport, development and planning. Some unitary councils created a little over 25 years ago are now amalgamating with neighbouring unitary councils and district councils to create larger unitary councils.

It is a reasonably safe assumption that England will be 100% unitary within a few years. This change is a positive one in relation to SuDS as all the key, related functions (flood risk management and land drainage, highways and planning) are brought within a single authority and the unitary councils will have capacity which smaller councils do not have. There is also the potential to consider having regional teams with appropriate skills and knowledge, rather than these being within smaller local authorities. This could align with evolving thinking around regional operators and/or collaboration.

It is recognised that an important aspect of sustainable development is that it takes place on land allocated within Local Plans where matters such as transport and flood risk will have been considered. Because these areas have been identified, a master planning approach is appropriate; certainly for larger sites. This is the approach being employed in the strategic growth points within the Oxford – Cambridge corridor.

Through this approach efficiencies in place making, highway and public transport planning and other, quality benefits could be delivered. By incorporating surface water management planning into master planning, an integrated 'SuDS strategy' for the whole development area could be delivered. This approach would in effect be 'Stage 1' in the process outlined below. Smaller developments on allocated sites and 'windfall' sites can be dealt with by direct entry into 'Stage 1' dialogue with the LLFA.

In a similar approach to master planning in new developments, surface water management planning can also be used to provide robust delivery and adoption of SuDS retrofits.

### 3 Funding

As with the process for creating new highways, the capital cost of the infrastructure and costs of the adoption process are borne by the developer. These costs include vetting, inspection and the provision of a bond to secure satisfactory completion of the works. The bond is released on adoption. This practice is accepted by all stakeholders and is not problematic to implement.

However, it is critical that the funding of the management, enforcement and maintenance is satisfactorily addressed. The funding of maintenance and the charges on those who derive benefit from surface water drainage whether that be via SuDS or sewers are considerations that should be linked because of equity, accountability and financial sustainability.

Considerations in relation to equity include:

- Occupiers of properties which drain to SuDS and those draining to sewer paying substantially the same for the drainage service.
- No occupier having a 'free' surface water drainage service (paid for from government funding) whilst occupiers of other properties pay a service charge to a provider for a similar service.
- That there remains in place a direct link between funding for surface water drainage and flood protection and charging.
- That beneficiaries of surface water drainage are the occupiers of property at a particular point in time and that attempts to capitalise what is a revenue activity into an up-front capital charge (e.g. commuted sum) has the effect of increasing the first-time cost of housing and raises the threshold for people to enter the housing market.

These are considered further within Table 1.

It is noted that all properties pay a charge for surface water drainage within their water bill. This varies slightly between WaSCs but is about £60/annum for a typical residential property and includes an element for highway drainage. It should be noted that in areas where there is an IDB, properties pay an additional charge for the IDB's work. In areas where foul drainage and surface water drainage (or water supply and drainage) are dealt with by different WaSCs then one collects the whole bill from customers and forwards the relevant proportion to the other company. Table 1 presents the main funding options some key benefits and disbenefits.

It should be noted that options (a) and (c) in Section 2.3 would both lead to a funding regime that is established, accepted and which is sustainable. There would be statutory ability for the LLFA to charge occupiers of properties for the benefit they receive from the drainage of surface water to adopted SuDS.

Table 1 Overview of potential funding options

Option	Benefits	Disbenefits
1. General taxation	<ul style="list-style-type: none"> <li>• Simple to collect.</li> </ul>	<ul style="list-style-type: none"> <li>• Increases taxation.</li> <li>• Introduces unfairness. (Some people receive a service without paying whilst some pay for the service even though they may not receive any benefits.)</li> <li>• Penalises residents of older properties which drain surface water to sewer. These pay twice: once directly to the WaSC and then a contribution through tax to properties which drain to SuDS.</li> </ul>
2. General Council Tax	<ul style="list-style-type: none"> <li>• Simple to collect.</li> </ul>	<ul style="list-style-type: none"> <li>• As above</li> </ul>
3. A specific precept collected alongside the property's Council Tax bill.	<ul style="list-style-type: none"> <li>• Relatively simple to collect.</li> <li>• Creates a direct linkage between the service and the users of the service.</li> </ul>	<ul style="list-style-type: none"> <li>• Perception that this is a new tax. Even though these properties paying this way would be paying a reduced charge to the WaSC, the linkage between the two would not be made.</li> <li>• There would be a need to create and additional database.</li> </ul>
4. Commuted Sum	<ul style="list-style-type: none"> <li>• Simple to implement.</li> <li>• Consistency could be supported by the development of a commuted sum calculator.</li> </ul>	<ul style="list-style-type: none"> <li>• Paid by Developer as a 'tax on development' which is actually paid by property purchasers. This may be a significant amount and can impact development viability.</li> <li>• Inflexible: Sums paid by the developer in respect of a specific site should be ring-fenced to that development. Lawyers have indicated that 'pooling of commuted sums into a single pot' is not legal and would be open to challenge were funds from one site to be spent on another.</li> <li>• Challenge of fair estimating: Inflation and interest rates can affect the length of time a fund is viable for. There is significant risk of lack of robustness in the funding which may run out due to inflation and/or interest rates.</li> </ul>

Option	Benefits	Disbenefits
		<ul style="list-style-type: none"> <li>• There is a general lack of transparency which reduces confidence in fairness and accountability (this can be overcome with guidance).</li> <li>• This method of funding introduces a risk of uncertainty to property values at sale points following the initial sale (this can be overcome with guidance).</li> </ul>
5. Existing surface water drainage charge	<ul style="list-style-type: none"> <li>• Uses existing, accepted and proven system.</li> <li>• Has direct linkage between cost and the service provided.</li> <li>• Fair for residents of properties connected to sewer and for those connected to SuDS.</li> </ul>	<ul style="list-style-type: none"> <li>• Will require administrative changes between WaSCs.</li> </ul>

The funding models are adaptable to all options for which a body is responsible for the stewardship of SuDS. A key challenge to using commuted sums (option 4) is the risk of poor estimating, inconsistency and the potential for abuse. However, this can be overcome with the implementation of clear guidance, and greater transparency of costs and calculation methodologies. Use of this actually makes the option of an alternative, fairer 'User : Provider' relationship being implemented later unlikely. Users will feel the payment has been made for the lifetime of the property.

In relation to option (c), the use of a separate precept (option 3 in table 1) rather than the charge being part of the general Council Tax bill and it being capped to the equivalent WaSC surface water drainage charge would give transparency that the charge is not a new tax. If necessary, provision could be made for the WaSC to raise this charge on behalf of the LLFA as option 5 above. Whilst the funding of the adoption process is relatively straightforward and is proposed to be one similar to that for highways (that is, paid for by the applicant developer), the issues around the funding of the long-term stewardship, management and maintenance role need to be considered.

An important principle of funding the SuDS approval and maintenance process is that the existing surface water drainage charge remains in place for all property owners whether they drain to sewer or to SuDS. The reasons for this are:

- (a) The LLFA is funded for its approval, enforcement, management and maintenance work.
- (b) Equity: Customers pay the same whether they are in older properties draining to sewer or newer properties draining to SuDS, or a combined system. It would mean that residents of older or newer properties would not be treated differently depending on the age of their property and means of rainwater drainage. Other funding methods also introduce unfairness in that some customers will pay nothing, and some pay twice.

- (c) This money is already 'in the system' and people are happy to pay it. The collection costs are low. No new mechanism needs to be established.
- (d) There is linkage between the charge and the service received.
- (e) It readily takes account of the established practice where a property which wholly manages rainwater within its plot makes no payment for the maintenance of communal systems of rainwater drainage.
- (f) It allows for the costs of drainage of highways to be covered by residents who are by and large also benefiting from the provision of these highways.
- (g) It avoids any perverse incentives to drain new properties to sewer or SuDS.
- (h) It is proposed that the surface water management charge continues to be collected by the WaSC on the current basis. The proposal through which the LLFA accesses this funding for properties connected to SuDS is:
  - The LLFA will be responsible for keeping accurate records of all properties draining to adopted SuDS.
  - The LLFA would be responsible for billing the WaSC for the appropriate amount, less an agreed administration charge for the collection service.

## **4 Proposed adoption process**

This approach is based on S. 38 Agreements (Highways Act 1980) which has been used by most HAs for a long time and has been shown to be workable and robust. The adoption process for SuDS would ideally be aligned with that for highways, including alignment of drainage specifications in the Design Manual for Road and Bridgeworks (DMRB). It is considered that in the interim, the process could begin without full alignment of specifications and that this work could be undertaken at a later stage by a local government working group.

### **4.1 Empowerment and obligation**

LAs (Unitary and upper tier authorities) are designated either as 'NAVs' or as 'IDBs' in respect of surface water drainage via SuDS within their own geographic areas. Unitary and upper tier LAs already have most of the powers that they require to manage surface water drainage infrastructure as HAs and LLFAs (under Highways, Land Drainage and Flood & Water Management Acts). However, the designation would have the effect of ensuring that all aspects of drainage powers are available on a like basis to those used by WaSCs for sewerage.

A decision that, going forward, all surface water is to be discharged to SuDS (land drainage) first and no longer permitted to be discharged to sewers i.e. amendment of the automatic right to connect surface water to sewer (S.106 of the Water Industry Act 1991) is strongly encouraged.

This would be facilitated by creating a viable means to connect to watercourses (i.e. there would be the ability to offer developers requisitioning to overcome access difficulties at a point where new infrastructure connects to existing or to watercourse in third party land).

Because these powers are already largely in place, this process is in effect one of clarification/consolidation and it should be relatively simple to designate LAs as NAVs or IDBs with specific remit. However, because LLFAs are under democratic control and ultimately accountable to Defra, if the NAV route was followed, they could be deemed to be excluded from Ofwat supervision or have only 'light touch' supervision. The means by designation, could be legislated for.

A statement is produced setting out:

- (a) How the approach aligns with the Government's growth and housing agendas and will be supported by guidance to LAs on how the interface with developers can be streamlined.
- (b) How it is anchored in the mandate given by the Pitt Review (2008) and that this fulfils one of its key recommendations.
- (c) How this builds on established legislation and development processes where these are working well.
- (d) Acknowledgment of the importance of good quality, multi-functional public realm.

**4.2 The adoption process**

A technical approval and adoption process which is as close as possible to that used for new highways adopted under Section 38 of the Highways Act (1980) should be established. This would be simpler than existing highway adoption agreements as they can involve a safety audit and there are some minor differences in highway adoption process between individual HAs. This would enable consistency across all LLFAs with unified requirements such as bonds. As the highways adoption process is familiar to all developers, alignment with it should make the infrastructure delivery process simpler for all parties and speedier.

LLFAs and HAs are provided with guidance to develop maximum synergy between the highway and SuDS approval and adoption process. This might, for example, be manifested in a single adoption agreement with the developer.

Table 2 presents typical stages in a SuDS adoption process (this is based on the flow chart on page 22 of the Advice Note on Highways Adoption produced by DfT in 2022).

*Table 2 Typical stages in SuDS adoption process*

Stage	Activity	Charge	Bond	Details
1	Initial enquiry	Possibly modest charge.	None	<ul style="list-style-type: none"> <li>• Usually prior to planning consent.</li> <li>• Proposals discussed to ensure Standards are met and there are no adverse downstream impacts.</li> <li>• Within a Unitary Council this should be a single enquiry (with single charge) covering: planning, highways and flood risk/SuDS.</li> </ul>

Stage	Activity	Charge	Bond	Details
2	SuDS technical submission	Modest charge related to size of development.	None	Includes validation of submission and calculation of amount to be covered by bond.
3	Vetting/approval of technical submission	Percentage of the amount to be covered by bond.	None	Interactive process normally leading to approval. Application may be rejected with reasons.
4	Adoption agreement signed	Costs covered in 3.	Full amount of bond.	Developer applies for adoption agreement. Normally this will not be done until planning consent is received.
5	Construction work. Properties are sold as they are built.	Covered in 3.	Bond reduced in line with progress and timescale.	<ul style="list-style-type: none"> <li>• Inspections and any relevant testing.</li> <li>• LLFA adds the SuDS details to the records but noting them as 'unadopted and subject to adoption agreement'.</li> <li>• Property owners are billed for drainage service. This funding is available to LLFA or developer as set out in agreement.</li> </ul>
6	Completion of construction	Covered in 3.	Bond reduced to perhaps 25% of full amount.	<ul style="list-style-type: none"> <li>• Detailed inspection.</li> <li>• 'As built' records handed over by developer to LLFA.</li> <li>• Infrastructure enters the Maintenance Period where it continues to be looked after by the developer.</li> </ul>
7	Final certificate issued.	Covered in 3.	Bond reduced to zero.	<ul style="list-style-type: none"> <li>• Infrastructure is adopted.</li> <li>• LLFA updates records as appropriate.</li> <li>• Developer's responsibilities end.</li> <li>• Surface water drainage charges for properties within the development are available to LLFA.</li> </ul>

## 5 Underpinning technical principles

SuDS delivery process should be guided by simple consolidated mandatory SuDS standards (together with deemed to comply guidance) and applicable to new, 'greenfield' developments, redevelopment sites and retrofits which remove surface water from existing drainage systems.

An important aspect of the approach is to ensure SuDS sit within established drainage legal principles. This ensures that the implementation of SuDS is simplified, especially in regards to approval, adoption and accountability for management and maintenance. Failure to do this risks several challenges and additional delay due to complexity and extra consultation needed. In terms of 'established drainage legal principles' the following are fundamental elements:

- (a) Watercourses retain their status as such as does the law relating to them.
- (b) Engineered surface water drainage infrastructure built to serve development generally drains to a watercourse. In doing so the following well-established practice and law will continue to apply:
  - i. Drainage serving one property is **private**. Private drainage is regulated by Approved Document 'H' of the Building Regulations (H3 for rainwater).
  - ii. Approved Document H of the Building Regulations should be updated to require source control SuDS (permeable paving, rainwater harvesting, rain gardens) and for Building inspectors to vet, approve and inspect the SuDS within the curtilage of properties. The movement toward a 'property handbook' will assist the property owner in understanding any maintenance matters. It should be noted that a recent change in drainage law has made the WaSC responsible for section of lateral drain which serves a private property but which is outside the curtilage. A similar practice should be used for lateral SuDS drains within the public realm which serve individual properties.
  - iii. Drainage serving more than one property (or at least one property and public highway) is **public** and should be adopted. Having identified what are private SuDS and the proposed process for regulation of them, it is the public SuDS infrastructure that becomes the primary focus of this document. Private SuDS serving more than one property are highly undesirable as they would risk re-introducing all the long-standing, former 'private sewers' issues which have only recently been resolved through the 2011 transfer legislation. (In itself, this is an issue which should demonstrate why adoption of SuDS by LLFA should happen; rather than SuDS becoming managed by management companies.)
  - iv. Drainage serving adopted highways only is part of the highway – a 'Highway Drain' and is the responsibility of the Highway Authority (Highways England for motorways and trunk roads and local authorities for other roads).

Except where subsoil is suitable for dealing with surface water by soakaway systems alone, public SuDS infrastructure should normally comprise of surface conveyance and attenuation features which align with the exceedance route and which would normally be within the public realm.

As surface features many SuDS components will interact with the ground in the same way as natural watercourses do. As well as conveying water, SuDS can infiltrate water to ground and also receive water from the ground. These are characteristics of land drainage, whereas sewers are designed to be watertight. Clearly, in some cases, SuDS will need to be made

'watertight' e.g. in the cases of ponds that will retain water or where it is undesirable for water to soak into the ground.

A core characteristic of well-planned SuDS is that they sit within multi-functional public realm. This accords with:

- (a) Sound management of flood risk.
- (b) Proposed SuDS Standards.
- (c) Public realm and green networks being critical elements in creating places where people want to live and in relation to the 'sponge city' approach to dealing with climate change.

The HA and the LLFA role are within the same tier of councils and it should be encouraged that their activities be integrated as far as possible and especially so in relation to new developments and retrofits. The reasons for this are to:

- (a) Provide quality, place making outcomes which are 'joined up' in respect of the role of the highway for all users, and flood risk and surface water management through SuDS.
- (b) Improve the speed and effectiveness of delivering new development, including streamlining the interface between developer and adopting body.
- (c) Strengthen accountability for maintenance of the resulting public realm and enable this to be done efficiently.
- (d) Acknowledge the following factors:
  - i. Surface water from highways is typically of the order of 50% of the total arising from the development of land. The highway is the source of the most polluted component of surface water runoff and the principal area where SuDS will benefit water quality.
  - ii. Highways comprise an important part of public realm and, certainly within residential developments, have a role as spaces for inclusion and social interaction (Ref: Manual for Streets).
  - iii. Highways are often drainage exceedance routes.
  - iv. Retrofits are largely focussed on removing highway runoff from existing sewers by introducing SuDS features into the highway and adjacent public realm.

The scope of the process leading to adoption and sound management of SuDS means that the LLFA needs to have the range of powers needed to operate and requires a sustainable source of funding.

## 6 Abbreviations

<b>Defra</b>	<b>Department of Environment, Food and Rural Affairs.</b>
<b>MHCLG</b>	Ministry of Housing, Communities and Local Government.
<b>DfT</b>	Department for Transport.
<b>LA</b>	Local Authority.
<b>HA</b>	Highway Authority.

<b>LLFA</b>	Lead Local Flood Authority.
<b>LPA</b>	Local Planning Authority.
<b>EH</b>	Environmental Health (Department or Team with a LA).
<b>WaSC</b>	Water and Sewerage Company.
<b>FWMA</b>	Flood and Water Management Act 2010.
<b>NAV</b>	New Appointment and Variation ('Inset'); A body (limited company) appointed by Ofwat to carry out all or some of the functions previously provided by the incumbent monopoly provider.
<b>IDB</b>	Internal Drainage Board; a public body which manages water levels within an area with special needs for drainage.