

Proposal for the drainage of surface water

Introduction

The Scottish Government charged Scottish Water and roads authorities to make the most cost effective arrangements for draining new development sites, in particular to avoid a 3-pipe drainage solution. As the environmental considerations over the disposal of surface water have developed, and additional flood risk management issues have come to the fore, consideration has been given to providing a shared drainage system to take both curtilage and roads drainage, treat it effectively and outfall it into our existing natural drainage with minimal environmental impact.

To achieve this aim, representatives from Scottish Water, the SCOTS Roads Group and the SCOTS Flood Group have drawn up an arrangement under which the authorities with responsibility for drainage, roads and flood risk management at new housing developments work together to require the developers to provide a shared, environmentally-friendly surface water drainage system which will vest in an in-perpetuity public body with the maintenance costs shared between Scottish Water and roads authorities, to their mutual benefit.

No changes are required to the statutory powers and responsibilities of the separate authorities. The framework proposed brings together the exercise of their respective powers from initial approval of the design of the shared drainage system through to the shared responsibility of maintaining the system.

The framework is in the form of a memorandum of understanding of working together, the principles of which are not legally binding on any authority. Each authority will be asked to sign up to these principles for individual housing developments. A maintenance agreement under section 7 of the Sewerage (Scotland) Act 1968 will be put in place. If any authority does not wish to do so, then Scottish Water and the roads authority will have to ensure the provision of, and meet the full costs of maintaining, their own separate drainage systems.

At legacy sites, where authorities accept the proposals, then when the reasons preventing vesting are resolved, the principles of shared maintenance may, where practicable, be applied.

At this time, the proposal relates to housing developments to which the Security for Private Road Works (Scotland) Regulations 1985 applies. Those regulations do not apply to all housing developments (eg some publicly-financed housing developments) or to non-housing developments. It is intended addenda will be produced catering for the variations required to the framework at those types of developments.

The memorandum of understanding is attached as Appendix 2. It will be housed on Scottish Water's website, and other authorities are encouraged to provide links from their own websites to the memorandum.

SCOTS and Scottish Water have signed up to this proposal, and encourage local authorities to do the same and adopt the principles and working practices set out in the memorandum.

Recommended maintenance split

A sub-group was set up to consider what constitutes a fair and equitable division of maintenance responsibilities for the shared drainage system. Appendix 4 lists the scenario and assumptions used to inform this process.

The recommendation is that maintenance responsibility be split between Scottish Water and roads authorities on the basis of Scottish Water maintaining that part of the shared drainage system which lies below ground and roads authorities maintaining that part of the shared drainage system which lies

above ground. Scottish Water will, in addition, renew the shared drainage system at the end of its life at its own expense.

By way of example, Scottish Water will take care of desilting, outlet/inlet and forebay cleaning and repairs/maintenance to engineered structures. Scottish Water will also be responsible for capital maintenance of access surfaces, with the roads authority responsible for the day-to-day clearance and management of these surfaces.

Roads authorities will be responsible for grounds and vegetation maintenance including grass cutting, litter picking, plant and weed management and fencing/signage if applicable.

Each authority will retain the responsibility it has under statute for those parts of the drainage infrastructure lying outwith the shared drainage system. For example, roads authorities will retain responsibility for gullies and drains that exclusively drain the road.

The Whole Life Cost spreadsheet at Appendix 4 reflects a typical example scenario consisting of a swale, pond and basin over a 25-year lifespan. Maintenance task costs have been extracted using CIRIA standard rates and (where appropriate) maintenance frequencies. During discussions within the sub-group, some of these frequencies were adjusted to reflect real world experience.

The costs reflect an example scenario. Roads authorities will incur high frequency, smaller value costs over the life of the asset. Scottish Water will incur lower frequency, higher cost activities, including asset renewal. Scottish Water will also be ultimately liable, as the system owner, for any liabilities in relation to licensed activities under SEPA.

It should be noted that no allowance has been made for events such as reactive chokes, vandalism and damage. Damage costs will be incurred on the basis of which party maintains that part of the asset. For example, damage to planting will fall to be made good by roads authorities, and damage to inlets/outlets by Scottish Water.

Maintenance agreement

A style agreement under section 7 of the Sewerage (Scotland) Act 1968, should authorities wish to use it, is attached as Appendix 3.

Memorandum of Understanding regarding the provision of surface water drainage from housing developments

1. When proposals are received from a developer of a new housing development to which the Security for Private Road Works (Scotland) Regulations 1985 apply to incorporate into the development as part of its overall drainage design a section which carries surface water from both the curtilage of houses and other buildings within the development and the roads serving the development (this section being the "shared drainage system"), the authorities responsible for drainage (SW), roads (RA) and flood risk management (FRM) at the development will work together to agree the technical aspects of the shared drainage system to ensure it meets the requirements of each of the authorities involved, liaising with other authorities with statutory responsibility in relation to the development as required.
2. The approvals given to the developer to allow the developer to proceed will include conditions to ensure the shared drainage system (1) is constructed to the agreed technical standards, and (2) can vest in SW on its completion independently from the remainder of the drainage system of which it forms a part.
3. Subject to any change in law over the period in question, the technical standards will not be revised over the period of time given to the developer to complete the development. If the developer seeks an extension to the timescale for completion, RA will liaise with SW and FRM on the proposal, and the three authorities will agree any revised technical standards to be imposed.
4. Where the development comprises a phase of a larger development, the developer must include a stand-alone drainage system in the first phase to be completed, and either an individual stand-alone drainage system or integration by agreement into a completed drainage system for each subsequent phase.
5. RA will take a security to construct the road in accordance with the terms of the relevant construction consent. This will include an amount sufficient to construct the shared drainage system to the agreed standard.
6. The shared drainage system will vest in SW on completion in accordance with agreed standards.
7. In the event of RA being required to construct the road in accordance with the provisions of the 1985 regulations, SW will allow RA access onto land it has acquired to house the shared drainage system to allow RA to complete the infrastructure. As required by the 1985 regulations, RA will adopt the road on completion.
8. SW's vesting process will result in SW being legally responsible for maintaining the shared drainage system. Once vested, SW will maintain that shared drainage system. Where the road is not constructed by RA, RA will adopt the road as and when it is required to do so in accordance with the provisions of section 16(2) of the Roads (Scotland) Act 1984. When the road is adopted by RA, SW and RA will share the cost of maintenance of the shared drainage system on a basis to be agreed. The agreed sharing of costs will be set out in a maintenance agreement under section 7 of the Sewerage (Scotland) Act 1968. RA will become liable for its share of maintenance under the maintenance agreement relating to that road from the date of its adoption of the road.
9. The maintenance agreement will be specific to each development, and be based on a standard framework, as follows –
 - 9.1 SW will maintain the 'below ground' components of the shared drainage system,
 - 9.2 RA will maintain the 'above ground' components of the shared drainage system,
 - 9.3 the 'below ground' and 'above ground' components will be identified on the drawing forming part of the maintenance agreement, and

- 9.4 SW will meet the cost of renewing the shared drainage system or any part thereof at the end of its life.
10. If a developer proposes to add discharge to an existing shared drainage system, SW, RA and FRM will liaise over the proposal and agree a response.
 11. Should damage or an incident be caused by a third party which affects any part of the shared drainage system, SW and RA will co-operate fully and openly in investigating the incident, together with, where necessary, any relevant regulator, and join in seeking to recover the costs of repair from that third party, if both consider that action is reasonable and proportionate.
 12. Where a road is stopped up or de-listed, RA will no longer be responsible for its share of the maintenance of any shared drainage system serving that road. If all connections from the curtilage of houses and other buildings into a shared drainage system are removed, SW will no longer be responsible for its share of the maintenance of that shared drainage system.
 13. In their dealings with each other and other stakeholders in relation to the application of these principles, SW, RA and FRM will endeavour always to act in a reasonable manner and a spirit of co-operation. In addition, SW and RA will keep under review the terms of any maintenance agreement they enter into, and will endeavour to ensure it always reflects a fair and equitable division of the overall maintenance costs.
 14. If a difference of opinion on any issue covered by these principles or a maintenance agreement cannot be resolved through internal escalation procedures agreed between SW and RA, the matter will be referred to the Scottish Ministers for determination, and that determination is final.
 15. It is acknowledged these principles will evolve over time to reflect changes in legislation and practice. SW, RA and FRM agree to review these principles from time to time at the instigation of any of the authorities.

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