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**REPORT TO: ECONOMIC DEVELOPMENT AND INFRASTRUCTURE  
SERVICES COMMITTEE ON 14 AUGUST 2018**

**SUBJECT: MAINTENANCE OF SUDS UNDER SECTION 7 OF THE  
SEWERAGE (SCOTLAND) ACT 1968**

**BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT,  
PLANNING & INFRASTRUCTURE)**

**1. REASON FOR REPORT**

- 1.1 To ask the Committee to consider changes to SuDs arrangements.
- 1.2 This report is submitted to Committee in terms of Section III (F) (21) of the Council's Scheme of Administration relating to the Flood Risk Management (Scotland) Act 2009.

**2. RECOMMENDATION**

- 2.1 It is recommended that Committee agree to:
- (i) sign up to the principles set out in the Memorandum of Understanding for shared maintenance of SuDS for new development under Section 7 of the Sewerage (Scotland) Act 1968, as set out in the Appendix;
  - (ii) the policy which states that above ground components of SuDS for new development will be maintained by the landowner/s; and
  - (iii) to note that a further report will be submitted to a future meeting of this committee outlining the governance arrangements for the Section 7 agreements.

**3. BACKGROUND**

- 3.1 SCOTS Road Group, SCOTS Flood Group and Scottish Water, with support from the Scottish Government have worked in partnership to develop a collaborative framework that enables shared Sustainable urban Drainage Systems (SuDS) to treat and convey road drainage and surface water from the roofs and curtilages of buildings.
- 3.2 The framework is in the form of a Memorandum of Understanding (MOU), which outlines the principles of working together to minimise the costs to roads authorities and Scottish Water. Under these principles surface water

drained from roads and curtilage of houses within new developments will be accommodated in a shared SuDS, with shared maintenance responsibilities.

- 3.3 The MOU is not legally binding, however, all Local Authorities are being asked to adopt the framework and enter into a maintenance agreement with Scottish Water under Section 7 of the Sewerage (Scotland) Act 1968 for all new development requiring SuDS. A separate agreement will be required for each new development. Should Local Authorities decide not to adopt the framework then the current three pipe system would remain. The current system is: Local Authorities are responsible for roads drainage; Scottish Water is responsible for curtilage of houses; and the attenuation pond is the responsibility of the party identified by the developer.
- 3.4 The main principles in the MOU are that Scottish Water will maintain the below ground components and Local Authorities will maintain the above ground components of the shared SuDS. The proposals for the drainage of surface water and a copy of the MOU are provided in the **Appendix 1**.
- 3.5 To ensure the SuDS is constructed to the required standard the Local Authority will include an amount sufficient to construct the SuDS in the security normally taken as part of the Roads Construction Consent process. If the road and / or SuDS is not constructed to the required standard the Local Authority will use the security to complete the construction. The standard required for the above ground components of the SuDS in Moray will be specified by Moray Council.
- 3.6 The SuDS will be vested in Scottish Water and it will be responsible for renewing the SuDS at the end of its life.
- 3.7 Maintenance of the above ground component of the SuDS have ongoing financial implications for Local Authorities. In Moray it is proposed that maintenance be undertaken through a factoring arrangement, whereby maintenance of the above ground components would be included in the annual maintenance contract paid for by residents of the new development. Details of this agreement would be required to obtain planning consent for each development.
- 3.8 To facilitate this approach a policy regarding the maintenance of above ground SuDS has been drafted for agreement by this Committee. The policy is stated below.

“On completing SuDS construction within new housing developments the developer must submit an Operation and Maintenance Manual for approval by the Planning Authority acting reasonably. Maintenance of the SuDS shall be the responsibility of the owner/s of the development. Day to day maintenance will be subject to a factoring arrangement along with other communal maintenance works and this arrangement must form part of the title conditions for each dwelling within the housing development.. The details of the factoring arrangement must be supplied to the Planning Authority.”

- 3.9 The benefit to Moray Council in signing up to these principles is there would be clear roles and responsibilities regarding maintenance of SuDS for all new development that requires SuDS, which should reduce the risk of future flood risk that could occur if SuDS are not maintained properly. It would also enable Moray Council to influence the standard of SuDS to improve the ecological and amenity benefits that can be achieved, which would support the Council's policies seeking to achieve better placemaking, promoting biodiversity and multi benefit greenspaces.
- 3.10 Agreeing to the principles set out in the Memorandum of Agreement is the first step in the process of shared maintenance of SuDS. Details of the proposed governance arrangements (including monitoring and enforcement) and practicalities of how an agreement for each new development will be implemented will be the final stage of this process. It is anticipated that as well as the title conditions included in the policy statement at para 3.8 of this report, it would be prudent to employ planning conditions or section 75 agreements to ensure that the SuDs is properly maintained by landowners. Once the details of the final stage have been established a report will be submitted to a future meeting of this committee for agreement.

#### **4. SUMMARY OF IMPLICATIONS**

**(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

Flood Risk Management is a key priority in the 10 year plan "Building a better future for our children and young people in Moray."

**(b) Policy and Legal**

The principles in the MOU are not legally binding. Maintenance agreement between the Moray Council and Scottish Water in terms of Section 7 of the Sewerage (Scotland) Act 1968 will be legally binding. In the case of new developments, the Moray Council will delegate their maintenance responsibility under Section 7 agreements to landowners to facilitate enforcement and recompense should the SuDS scheme fail through insufficient maintenance.

**(c) Financial implications**

If delegation by Moray Council to landowner/s fails through lack of enforceability against or non payment by the landowner/s, then the council will incur costs in terms of its obligation under the Section 7 agreement with Scottish Water.

**(d) Risk Implications**

Delegation by Moray Council of its maintenance responsibility under the Section 7 agreements may fail either by non-compliance by or lack of enforceability against landowners. Title conditions may not be directly enforceable by the council and also they may require adjudication by the courts. This risk can be mitigated by a thorough investigation of the use of planning conditions or section 75 agreements as anticipated in

paragraph 3.10 of this report, and the results of this investigation will be included in the further report referred to in recommendation iii) of this report.

**(e) Staffing Implications**

There are no staffing implications associated with the recommendations in this report. Any staffing implications that arise from the governance or implementation of the agreements will be the subject of a future report to this Committee.

**(f) Property**

There are no property implications associated with the recommendations in this report.

**(g) Equalities/Socio Economic Impact**

An Equalities Impact Assessment is not needed because the recommendations in this report do not impact on people.

**(h) Consultations**

The Legal Services Manager (Property and Contracts), P Connor, Principal Accountant, Head of Development Services, The Manager (Development Management), Gary Templeton Principal Planning Officer, Lissa. Rowan, Committee Services Officer and the Equal Opportunities Officer have been consulted and comments have been taken into account.

**5. CONCLUSIONS**

- 5.1 Local Authorities in Scotland are being encouraged to enter into a collaborative framework with Scottish Water for the maintenance of SuDS for new development. The main principles of the framework are contained in a MOU that Moray Council would sign up to. These principles are Scottish Water will maintain all below ground components and Moray Council will maintain all above ground components of SuDS for new development.**
- 5.2 By entering into this framework Moray Council would have more control over future SuDS, which would help reduce future flood risk. Financial implications associated with ongoing maintenance of SuDS could be neutralised through a factoring agreement, which would be required to obtain planning consent.**

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Background Papers: None

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