

## **DELEGATED DECISION**

### **REGENERATION AND ECONOMIC DEVELOPMENT**



**FEBRUARY 2017**

### **Transfer of Land of a Sustainable Drainage System (SuDS) at Mount Oswald, Durham**

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#### **Report of Gerard Darby, Assets Services Manager**

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##### **Purpose of the Report**

- 1 To authorise Durham County council to accept the transfer of the land, shown red on the attached plan, and enter into a suite of legal documents to enable the adoption of a Sustainable Urban Drainage System (SuDS) at Mount Oswald, Durham, and for Durham County Council to maintain it for the life of the development.

##### **Background**

- 2 SuDS is an alternative drainage system which has been introduced to reduce flood risk, improve water quality and present options for biodiversity and public amenity. The Government has decided to replace the regime for the approval and adoption of the SuDS pursuant to the Flood and Water Management Act 2010 with a procedure that makes SuDS part of the planning consent regime.

##### **Development**

- 3 As part of the planning consent the developer or owner of the land for the residential development has to provide a suitable drainage solution to limit the surface water runoff from the development. SuDS is an acceptable solution.
- 4 There will be an obligation on the developer to construct the SuDS at its own costs and provide a scheme for its maintenance (the maintenance plan). The developer will maintain the SuDS until it is transferred to the Council.
- 5 The developer or owner of the land (as applicable) will agree the form of legal documentation with the Council. Provision is made in the SuDS Agreement to enter into an estate rent charge over the Phase 1 and 2 of the development to provide a mechanism for collecting the service charge for the service provided by the developer and ultimately the Council. The service charge is for the management, administration and maintenance of the SuDS. Resident owners will enter into a separate deed so that they each pay a proportion of the estate rent charge secured on the property they have purchased.
- 6 It is envisaged that once the phase 1 is built out and the residential units sold the Council will take ownership of the SuDS via a Land transfer. The Council will become responsible for its ongoing maintenance for the duration of the development's existence except for those works that would be adopted by the sewerage undertaker.
- 7 The Council will carry out the required maintenance in accordance with a SuDS Agreement and maintenance plan (the Plan). The Plan can be used to demonstrate the Council's maintenance obligations and expenditure incurred for the service to the

residents. Management and admin breakdown costs should be available in the event of payment queries.

- 8 The Council will be able to recover its costs by way of a service charge through the estate rent charge imposed on the development site. In addition a covenant will be given by each residential owner to pay such service charge to the Council.
- 9 In calculating the amount of service charge the Council shall take into account past efficiency and future expenditure which it may incur so that the Council may meet such expenditure out of the funds. It shall also take account of and give due allowance for any surplus arising out of payment previously collected but not wholly expended. The Council is obligated to keep proper audited accounts.
- 10 As part of the management of the SuDS the Council will be responsible for the collection of the service charge and recovery of any arrears. As will any debt recovery resource will ultimately lie with the court. Whether all costs are recoverable (including the debt itself) will depend on the outcome of any court action. If the property is mortgaged (which of course is highly likely) the mortgagee will also have a charge on the property and if there is a default by the owner the recovery arrears will need to be recovered by a formal legal process. There is no guarantee that the debt will be recovered.

#### **Powers**

- 11 The Council shall use its powers under S123 of the Local Government Act 1972 to acquire the SuDS serving phase 1 and phase 2 of the Mount Oswald Development which has been given outline planning permission for the development ref: CMA/4/83 and a detailed planning permission dated 21 November 2013 for phase 1 with reference CE/13/01396/RM. The Council has agreed with the land owner to manage and maintain the SuDS as set out in this report. The Council shall rely on its powers pursuant to the Localism Act 2011 and Section 20 of the Land Drainage Act 1991 for the ongoing maintenance liability of the SuDS and its power to charge for providing the service.
- 12 The Council did consider the following options prior to deciding to enter into the SUDs scheme.

#### **Commuted Sum**

- 13 A commuted sum to pay for the maintenance/up keep of the SuDS will be agreed.

#### **Establish a Management Company**

- 14 Establish a management company comprising the residents of each of the residential units in the development. The SuDS area will be leased to the management company for a peppercorn and set out the maintenance obligations on the management company. Upon completion of the sale of each property the buyer of a dwelling will become a member or shareholder of the management company. The management company is controlled by the developer until the last unit is sold. At this point the company will then be controlled by the various residents.
- 15 Resident may prefer this option as they will have a form of involvement in the management company.
- 16 The management company is funded by an annual payment by way of service charge/rent charge in a sum to be agreed which may be reviewed each year. This will be collected by or on behalf of the management company from each dwelling holder.



- 17 The management company appoints a third party company to be responsible for the maintenance of the SuDS and the landscaping of the land in accordance with a management contract.
- 18 The service charge will be secured by a rent charge together with an obligation within a sale contract/transfer for the new owner to pay the relevant charge. The estate rent charge benefits the SuDS land so that in the event of default by the management company the Council will be able upon assignment to receive the payments in order to fund future maintenance. The lease will contain provision for termination or forfeiture in the event of breach by the management company where it cannot be rectified.
- 19 It is possible for the management company to become insolvent for example if charges are not paid or the costs of the maintenance and running of the company outweigh the monies collected. It is unlikely that the Council would be able to recover any sums paid to the company prior to insolvency.
- 20 If the property is mortgaged (which of course is highly likely) the mortgagee will also have a charge on the property and if there is a default by the owner the recovery of arrears will need to be recovered by a formal legal process. There is no guarantee that the debt will be recovered.

#### **Details of any Alternative Options Considered and Rejected when Making the Decision**

- 21 Paragraphs 12-20 detail the options considered to implement SuDS management post construction. Once the decision was made to take forward the method outlined, the decision being requested for approval in this report relates to the transfer of the SuDS to the Council and to enter into any legal agreement that will be necessary to deliver the scheme. Given the above, there are no suitable alternatives to the SuDS scheme.

#### **Recommendations and Reasons**

- 22 To authorise the transfer of the freehold title to the Council to take on the ongoing maintenance responsibility of the SuDS when transferred to the Council as detailed above and to execute and enter into any legal documents required for the SuDS scheme.

#### **Decision**

- 23 To authorise the Council to take ownership of the SuDS by way of freehold transfer and take on the ongoing maintenance responsibility of the SuDS as detailed above and to execute and enter into legal documents required for this purpose.

#### **Background Papers**

Plan

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#### **Appendix 1: Implications**

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**Finance – As detailed within the report**

**Staffing - N/A**

**Risk – As detailed within the report**

**Equality and Diversity / Public Sector Equality Duty - N/A**

**Accommodation - N/A**

**Crime and Disorder - N/A**

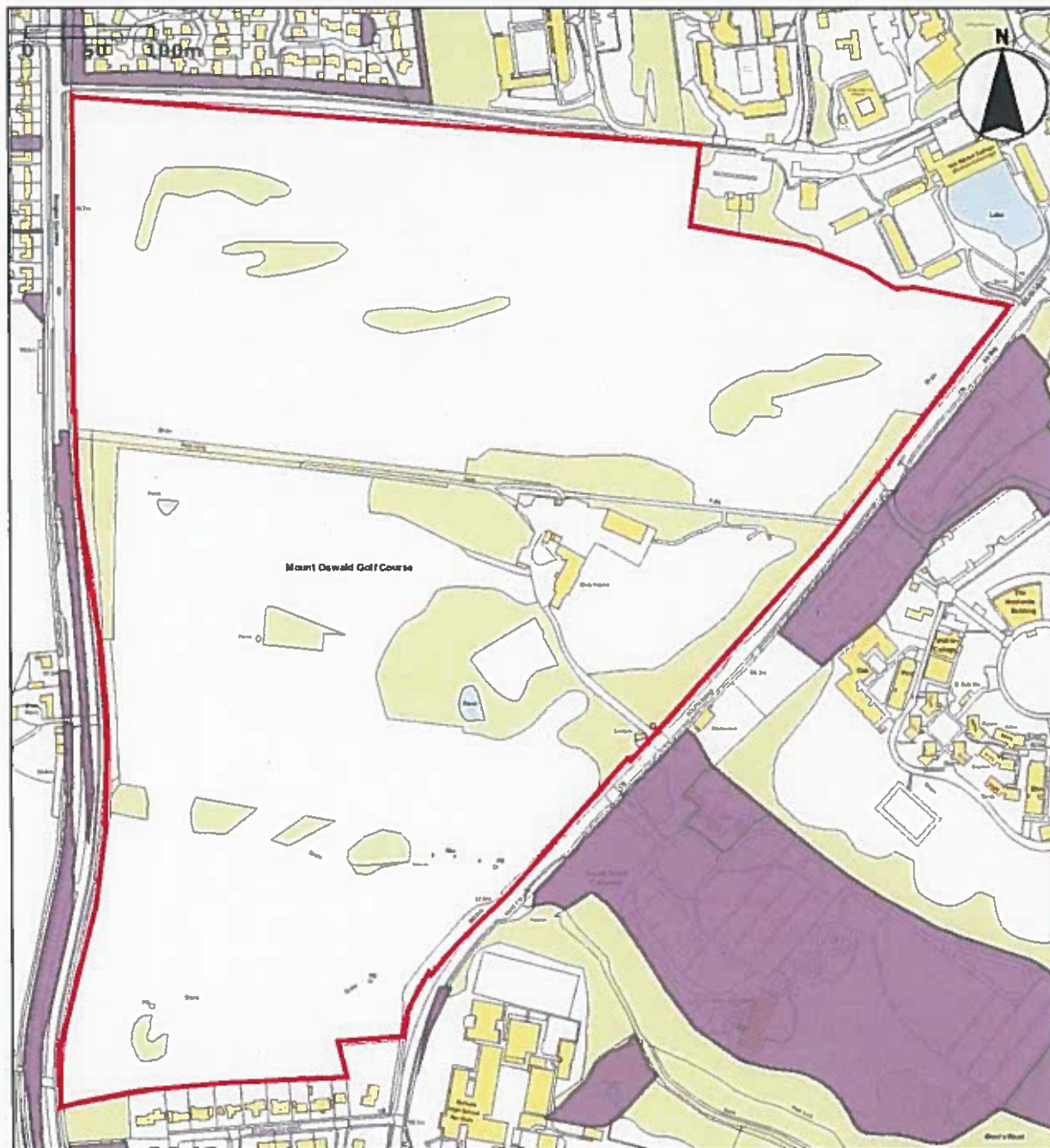
**Human Rights - N/A**

**Consultation -** Councillor Eddie Tomlinson as Portfolio Holder together with Local Councillors Grenville Holland and Nigel Martin were informed and no objections or conflicts of interest were received.

**Procurement – N/A**

**Disability Issues - N/A**

**Legal Implications – As detailed within the report**



Title: Mount Oswald - SUDS

Scale: 1:5000

Date: 5/2/2015

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