

# DELEGATED DECISION

## Regeneration and Local Services

6 March 2018



## Adoption of a Sustainable Drainage System (SuDS) at Yoden Way, Peterlee

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### Report of John Reed , Head of Technical Services

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#### Purpose of the Report

1. To authorise the Council to enter into a suite of legal documents to enable the adoption of a sustainable drainage system (SuDS) at Yoden Way in Peterlee and for the Council to maintain it for the life of the development.

#### Background

2. SuDS is an alternative drainage system that 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.
3. The Council has developed a SuDS policy which can be found at the following link:

<http://www.durham.gov.uk/media/9133/Sustainable-Drainage-System-Adoption-Guidance-2016/pdf/SustainableDrainageSystemAdoptionGuidance2016.pdf>

#### Development

4. 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.
5. 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.
6. 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 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.

7. 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.
8. It is envisaged that once the development is built out and the residential units sold the Council will take ownership of the SuDS. 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.
9. 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 administration breakdown costs should be available in the event of payment queries.
10. The Council will be able to recover its costs by way of 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.
11. 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 payments previously collected but not wholly expended. The Council is obligated to keep proper audited accounts.
12. 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 with any debt recovery recourse 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 of arrears will need to be recovered by a formal legal process. There is no guarantee that the debt will be recovered.

### **Powers**

13. The Council shall use its powers under S123 of the Local Government Act 1972 to acquire the SuDS serving the development at Yoden Way in Peterlee which has been given planning permission dated 12 October 2017 ref: DM/17/01950/FPA. The Council have agreed with the landowners 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.

### **Details of any alternative options considered and rejected when making the decision**

None

## **Recommendations and Reasons**

14. To authorise the Council to take on the ongoing maintenance responsibility of the SuDS once transferred to the Council as detailed in paragraphs 4 to 11 above and to enter into and execute any legal documents required for this purpose.

## **Decision**

15. 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 in paragraphs 4 to 11 above and to enter into and execute any legal documents required for this purpose.

## **Background Papers**

None

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## **Appendix 1: Implications**

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### **Finance**

Maintenance cost for the SuDS over the life of the development has been estimated at £3379.73 per year.

The total maintenance cost will be apportioned between the properties on the development according to individual plot sizes and varies from £20.01 to £65.41 per property per year.

Individual rent agreements, deed of apportionment and deed of covenant will allow the Council to collect the annual maintenance fee from the property owners.

### **Staffing**

None.

### **Risk**

As detailed in the report.

### **Equality and Diversity / Public Sector Equality Duty**

None.

### **Accommodation**

None.

### **Crime and Disorder**

None.

### **Human Rights**

None.

### **Consultation**

None.

### **Procurement**

None.

### **Disability Issues**

None.

### **Legal Implications**

As detailed in the report.