



5 July 2007

Scottish Executive Environment & Rural Affairs Department
Water Division
Area 1-H
Victoria Quay
Leith
Edinburgh
EH6 6QQ

By e-mail

Dear Sirs

Implementing the Water Environment and Water Services (Scotland) Act 2003: Water, Sewerage and Drainage Infrastructure; Construction Standards and Vesting Conditions – Consultation

Please find attached a copy of the Homes for Scotland (HfS) consultation response and completed respondent form together with, for your information, a copy of the response to the parallel consultation on Sewers for Scotland (SfS2) by Scottish Water (SW).

Genuine concerns have been expressed by HfS at continuing discord among stakeholders in the process of integrating SUDS into sewerage practice resulting in delay in development progress and uncertainty over responsibility for future maintenance as a result of the very restricted proposals for public SUDS in SfS2. There is no end in sight to this lack of harmony with blame laid squarely at the door of SW. HfS requests a response from the Executive to the questions raised in this submission.

The timing of the Executive consultation is poignant given the announcement in the Scottish Parliament on 21 June by the Communities Minister, Stewart Maxwell, that there are insufficient new homes being built in Scotland and that he will be establishing a Housing Supply Task Force involving all the main stakeholders following the publication that day of a major new study on the housing market in Scotland.

In the past few years development constraint in the water and sewerage networks has been a critical issue with SW and a barrier to economic development in Scotland which is only now being addressed after much lobbying by organisations such as HfS. If the issue of proper and efficient integration of SUDS into the public sewerage network is not resolved quickly



and accepted by all stakeholders, this too will develop into a critical issue and act as a further barrier to the government's desire for a significant increase in new homes in Scotland both for sale and rent.

A copy of this letter has been sent to the Minister and we look forward to hearing from you on the questions raised in our response.

Yours faithfully

A handwritten signature in black ink that reads "David Little".

David Little
Head of Technical Services

cc Stewart Stevenson, Minister for Transport, Infrastructure and Climate Change

improving living in scotland



Response to Scottish Executive Consultation Paper

Implementing the Water Environment and Water Services (Scotland) Act 2003:

Water, Sewerage and Drainage infrastructure:

Construction Standards and Vesting Conditions

HOMES FOR SCOTLAND – SE CONSULTATION RESPONSE

Homes for Scotland (HfS) is the representative body for the private home building industry in Scotland. In 2005 some 24,000 dwellings were constructed in Scotland, 18,000 of which were built by the private sector without recourse to public subsidy. Homes for Scotland represents the interests of about one hundred companies who provide 95 of every 100 homes built for sale in Scotland and we have a rapidly expanding membership of professional and other service businesses engaged in our industry.

Background to this Public Consultation

New primary legislation, the Water Environment and Water Services (Scotland) Act 2003 known as WEWS came into effect during that year. Part 2 of the Act, Water and Sewerage Services, gave the Scottish Ministers powers to specify, through regulations if necessary, construction standards and vesting conditions for water and sewerage under secondary legislation to follow on.

Within this enabling legislation, transferring the EU Water Framework Directive into Scots law, a major change was effected by redefining the meaning of the term 'sewer' to include sustainable urban drainage systems or SUDS. Through the Act Scottish Water (SW) was made responsible for the future maintenance and capital replacement of shared public SUD systems. **This question of Scottish Water responsibility for SUDS has proved to be one of the principal issues within Part 2 of the Act.**

The Scottish Executive (SE) programme at the coming into force of the Act was to complete the introduction of regulations and SW guidance on construction standards and vesting conditions by 2005. It has taken the SE twice as long as intended to reach public consultation stage. Within this past 4 year period SW has communicated and consulted with stakeholders, mostly separately, on standards for both water and sewerage which in the case of SUDS has, by a lack of transparency and clarity in the process, left many in both the public and private sectors unaware of future liabilities and responsibilities. This delay in implementation coupled with premature introduction by SW of constantly changing draft standards as a working document with no legal standing has led to complete confusion not only within both local government and the development industry but also within SW itself. SW has come through this process accused on all sides of lack of flexibility with early adoption of a narrow, prescriptive, some may say cynical, approach to adoptable SUDS standards with insufficient staff resources to contribute, as a key stakeholder, to the holistic process necessary to achieve efficient, environmentally acceptable and cost effective design solutions avoiding unnecessary repeat working and delay.

Sustainable Urban Drainage Working Party (SUDSWP)

SUDSWP was set up in the Spring of 1998 to encourage development that does not result in pollution of the aquatic environment. This was to be done by promoting policies and design solutions for sustainable surface water drainage at new developments in Scotland.

1998 Membership of SUDSWP included the 3 Water Authorities; East of Scotland Water, West of Scotland Water, North of Scotland Water (all now as SW); Construction Industry Research and Information Association (CIRIA); the Scottish Office (now SE); Scottish Environment Protection Agency (SEPA); Scottish House Builders Association (now HfS); Convention of Scottish Local Authorities (COSLA); Society of Chief Officers of Transportation in Scotland (SCOTS); and the Scottish Society of Directors of Planning (SSDP).

SUDSWP at its launch was chaired by Colin Bayes (today's chairman) who was quoted at the time as saying;

" SUDSWP believes that the aim of sustainable urban drainage will only be achieved through the co-operation of all the organisations involved in urban development. By the year 2010 there will be another quarter of a million homes in Scotland, with all their supporting roads and parking, so it is vital that a more sustainable approach is taken to ensure that further urban development doesn't result in pollution. To this end the Working Party will promote a partnership approach to sharing the responsibility for developing surface water drainage systems, and protecting the aquatic environment. A top priority for SUDSWP is the production of a design manual for Scotland which will, give designers and engineers practical advice on sustainable urban drainage systems".

In March 2000 CIRIA published manual C521, the Sustainable urban drainage systems design manual for Scotland and Northern Ireland, produced in conjunction with SUDSWP. The 3 Water Authorities at that time and COSLA devised a Framework Agreement for the maintenance of shared public SUDS:-

- Local Authorities will maintain above ground assets; and
- Water Authorities will maintain below ground assets.

Details of the Framework Agreement were included in CIRIA C521.

CIRIA manual C521 has now been replaced by a comprehensive UK design manual, CIRIA RP697, published in February 2007 reflecting current best practice.

Royal Commission on Environmental Pollution (RCEP) – Twenty Sixth Report, the Urban Environment – published 6 March 2007

This wide ranging UK report had a section on SUDS headed under 'Creating Green Infrastructure'.

Clause 4.80 of the report made reference to practice in Scotland:-

'Scotland has had primary legislation to promote SUDS since 2003, and further secondary legislation is expected in 2007. As a result, Scottish Water is able to adopt SUDS, and we were told by SEPA that planning authorities generally accept the technique. SEPA believes that the use of SUDS is already widespread in Scotland. However, other organisations are concerned that the new management arrangements are not yet working well enough to bring about the widespread use of good quality SUDS.'

SW Consultation with HfS on Draft Standards Sfs2 and Wfs2

SW first ran workshops and produced draft guidance on public SUDS during the period 2004/05 at a time when industry ability to communicate freely with SW was most problematic. Confusion was compounded by the narrow SW approach and its proposals for public SUDS completely going against the earlier 2000 Water Authorities/COSLA Framework Agreement.

SUDS in Sfs2 underwent considerable redrafting in the early part of 2006 before being placed on the SW website as a 'working document'.

SW invited HfS to participate in an informal consultation which took place between August 2006 and May 2007 on Sfs2 and Wfs2. **The HfS response of 8 September 2006 and the subsequent SW/HfS communications to 10 May 2007 remain valid as a detailed response to the current SW draft Sfs2 under current public consultation. This record will be the basis of the imminent HfS response to SW and a copy is attached as requested by SE.**

Several significant changes to proposals have been made by SW to Sfs2 following HfS representation including, for SUDS, removal of the simply unworkable stand off of 35 m for ponds and basins from housing boundaries, a rewording of the SW insistence for SW/local authority Section 7 Agreements and the reduction of the defects liability period from 36 to 12 months. However there are concerns with the framework developing as a consequence of the perceived impact of legislation and proposed Sfs2 and these are listed as follows.

Remaining Concerns

1. Public SUDS and SW

There is widespread concern at the limitation on public SUDS as defined in Sfs2. As alluded to in the consultation questions there is no practicable application of these proposed public SUDS features to small or medium sized housing developments which form the majority. **This is a glaring omission and one which has still to be resolved but how and how long will this take?**

2. SUDS Treatment Train – Stakeholder Responsibility – Local Authorities

As with HfS, local authorities and other stakeholders have been consulted by SW on their proposals. Local authorities presumably will be aware of and will be concerned regarding the shaping of the new framework and the responsibilities and financial burden imposed on them for future maintenance of SUDS systems as a result of roads run off. There appears to be no provision for local government funding of this sort nor the means of raising it in future. **Where is the finance coming from?**

Many authorities rejected the year 2000 framework agreement, some will no doubt reject the proposed new framework and yet more may want to revert back to the year 2000 agreement.

Guidance on SUDS for roads in residential development is badly needed and SCOTS, through SUDSWP, has now set up a working group to address this but how long will guidance take to be agreed and published?

There needs to be clarity on responsibility including financial responsibility. This is not a new issue. In the bringing in of SUDS into the WEWS Bill in January 2003 the then Minister, Ross Finnie stated:-

“In addition to the support offered by SEPA and Scottish Water, the Convention of Scottish Local Authorities flooding task group recently highlighted the problem of the lack of agreement among developers, local authorities and Scottish Water on who is responsible for the future maintenance of SUDS. The group called for the Scottish Executive to address the issue of responsibility for SUDS maintenance.”

Will SE now give clarity on responsibility in order that no one stakeholder is left in doubt?

3. SUDS Treatment Train – Stakeholder Responsibility – SW

SW was charged with defining public SUDS and under WEWS ministers were allowed to specify in regulations the design standards that SUDS must meet if they are to be vested in SW.

In SW doing so and in a manner at the outset which was seen to be limited, inflexible and prescriptive, alienation of SW from practically all other stakeholder groups was inevitable.

In addition, due to lack of SW staff resources and suitably experienced staff in key positions, frustration, repeat working and delay in discussing and taking forward development proposals at the outset, as was the recommended holistic approach, has become common.

As a consequence, the original SUDSWP concept of a partnership approach among stakeholders, has failed to materialise despite signs of some recent SW improvement in customer focus.

4. Backlog of Adoption

SUDS – it has to be realised that in the majority of completed facilities in private housing developments presently under private maintenance, the number of which is now considerable, there may be limited opportunity for public adoption in future.

Pumping Stations – failure by SW over the past few years to have a proper and fair system of adoption in the majority of cases, has led to in excess of 230 pumping stations not being left unadopted and with no regular maintenance. SW after lobbying has now accepted that this must not be allowed to continue and a working group has been formed to address this and devise a fair and proper procedure for future stations.

5. SW interpretation of WEWS and Surface Water Sewers connecting to Private SUDS

SW has caused consternation among all stakeholders by their interpretation of WEWS stating that surface water sewers connecting to and from private SUDS will not be adopted and remain private. This has potential far reaching consequences and is against the spirit of the new legislation. **What is the SE position on this stance by SW?**

HfS Conclusion

In completing this response we have tried to place the very real problems that exist in context. There is little industry optimism, nor we suspect public sector optimism, in the successful working of this new framework in relation to SUDS unless the SE exerts greater power and influence.

There is no sign on the horizon of the necessary all party buy-in to make this new system work effectively in consideration of the water environment while providing cost effective solutions and keeping to a minimum the inevitable delay in the development process.

Attached: Responses to set questions

Edinburgh, 5 July 2007

Consultation Questions

QUESTION 1. Are you content that the current approach of agreement involving approval letters should be maintained or developed? Or do you consider there is a need for Regulations on water and/or sewerage connections, and if so why?

Response:

There is an overriding need for flexibility. We agree that the present system of approval letters should be maintained and developed.

The form of approval letter should be based on a standard format with provision for site specific reference.

QUESTION 2. Do you agree with this statement of policy? If not, what alternative would you propose? Are there any modifications or additions you would like to see?

Response:

There is general agreement with the statement of policy but that the limited degree of SUDS features in Sfs2 to be publically adopted is in contradiction with those described in legislation and in the new CIRIA SUDS manual C697. Sfs2 cannot be applied to small/mediumscale housing developments. Amendment of Sfs2 to accept public SUDS complying with CIRIA C697 may be a solution to this problem.

QUESTION 3. Do you think the proposal for assessment of source control SUDS is likely to be an effective means of ensuring that the components of a drainage scheme which will not be vested (eg source control) are adequate?

Response:

No. Ability to control and influence the performance of source control SUDS is questionable. There is concern over the degree of influence of Scottish Water over source control SUDS for which they are not responsible.

QUESTION 4. Do you consider that this proposal should be regarded as the standard situation and that it gives effect to the purpose of the provision of SUDS in the WEWS Act? If not, what alternative would you propose to implement the intention in the Act's provision that arrangements should be made for the development and the ongoing maintenance of SUD systems?

Response:

No.

There are concerns that Scottish Water would have too much influence in the overall SUDS process and over systems for which it appears they will have no responsibility, probably at the expense of other stakeholders. The development of an efficient partnership process as stated by the SUDS Working Party at the outset, regardless of individual and sometimes time consuming input, is considered essential for success and in avoiding unnecessary delay.

QUESTION 5. Are you content with these criteria and that they should be adopted through Sfs2? If not, what alternatives would you propose? Do you consider that they, or any of them, should be statutory? Is there a need to have regulations to apply these criteria?

Response:

Yes.

There is no need for regulations. Emphasis should be made in Sfs2 for flexibility in the approval of additional systems for public SUDS.

QUESTION 6. Are you content that there should be agreements between Scottish Water and local authorities on road drainage? Are there any reasons why or circumstances in which the parties should not enter into agreements of the type prescribed in section 7 of the Sewerage (Scotland) Act 1968?

Response:

Yes.

In terms of Section 7 agreements there appears to be little precedent upon which to form a view.

QUESTION 7. Do you consider that there is a need to prepare guidance specifically for local authorities on the use of SUDS in relation to roads?

Response:

Yes.

A participative public/private sector approach should be followed in the preparation of new guidance.

QUESTION 8. Do you agree that these are the main categories of non-standard situation? And in that appropriate situations the parties concerned should reach a bespoke agreement on vesting (on the basis that SW will develop standard conditions for all other agreements)?

Response:

Yes.

As stated in our general response the majority of housing developments fall into the small/medium scale category.

QUESTION 9. For small developments in rural or urban locations, do you consider there is a scale of development (eg number of houses) for which the standards in Sfs2 should be relaxed? If so, at what level might that be and should national guidance establish it? What equivalent guarantee of good design and construction standards can be provided for such circumstances?

Response:

There is a view that the application of solutions already within CIRIA C697 to Sfs2 would resolve this issue.

QUESTION 10. Do you agree that responsibilities need to be clearly defined as proposed here?

Yes, but only once the issue of question 9, SUDS in small/medium developments has been satisfactorily resolved.

QUESTION 11. Do you agree that cost effectiveness should be a criterion for the vesting of SUDS in public spaces? And that the assessment of costs should be based on whole-life costing?

Yes. Assessment should be based on the complete SUDS system.

Whole life costing particularly in the case of SUDS is far from an exact science. It does have a use as a guide to future maintenance costs but these will very much depend on factors such as reliable data input and frequency of maintenance operation. It is therefore only one of a number of considerations in assessment. There are conflicting

reports of SUDS maintenance cost assessment to date with evidence that public sector estimates are at the higher end of the scale.

QUESTION 12. Do you agree with the Scottish Executive's view that account should be taken of safety and that proportionate measures should be applied? Do you agree that the principles of nature conservation should be applied in a proportionate way in the construction and maintenance of SUDS features?

Response:

Yes. Industry attention to health and safety matters on construction sites generally is fundamental to working practice and welfare and SUDS facilities are no exception. Management of health and safety should always be subject to a site specific risk assessment.

Housing developers embrace the principles of sustainable environments with a balanced approach to nature conservation in all open space activity including SUDS. Many are measured by their regard for the application of CSR principles in design, procurement and construction.