

Agenda Item	24
Report No	EDI/60/18

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 16 August 2018

Report Title: Scottish Water Section 7 – Memorandum of Understanding

Report By: Director of Community Services

1. Purpose/Executive Summary

- 1.1 This report provides background information with regard to the adoption of a Memorandum of Understanding between The Highland Council and Scottish Water.
- 1.2 It provides recommendations for adopting the Memorandum and noting that funding to be used for maintenance of sustainable drainage schemes as determined by Section 7 agreements will result in budget pressures.

2. Recommendations

- 2.1 Members are invited to:
 - i. approve the adoption of the Memorandum of Understanding between The Highland Council and Scottish Water, with regard to the ability to enter into individual Section 7 agreements;
 - ii. note that funding for maintenance of sites with a Section 7 agreement may result in budget pressures, which should be recognised, as continued maintenance of these sites is essential to reduce the risk of localised flooding; and
 - iii. note the current position in Highland in relation to the legacy surface water drainage systems.

3 Background

- 3.1 With two exceptions*, new developments are required to provide drainage in a sustainable form, more commonly known as SuDS (Sustainable Drainage System). This is regulated under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 to ensure that reasonable protection is provided to the water environment.

(*Exceptions are for a single dwelling and where discharge is directly to coastal waters.)

- 3.2 There are no legislative regulations which determine who or what authority is responsible for SuDS after they are constructed. Roads Authorities only have responsibility for road drainage and Scottish Water's responsibilities are for curtilage drainage.
- 3.3 Representatives from the Society of Chief Officers of Scotland (SCOTS) and Scottish Water drafted a document in the form of a Memorandum of Understanding to address the maintenance issue for sustainable drainage systems. This approach has also been supported by Scottish Government. The letter and draft memorandum are included in **Appendix 1**.

4 Memorandum of Understanding

- 4.1 The purpose of the Memorandum of Understanding (MOU) is to provide a framework to enable Scottish Water and local authorities to work together to specify maintenance responsibilities for shared drainage systems constructed as part of new developments. These are known as a Section 7 agreement under the Sewerage (Scotland) Act 1968.
- 4.2 The use of the Memorandum would only apply to developments which include roads that are to be adopted by the Roads Authority. Those developments which do not include roads to be adopted will require the developer to make alternative arrangements for maintenance. Where relevant, Factors may also be contracted by developers to maintain SuDS as well as communal grounds areas. The Council will consider this option when appropriate.
- 4.3 Entering into a Memorandum of Understanding is not legally binding. It is also not a legal requirement to do so. However, Scottish Water is under no obligation to accept road drainage into an adopted drainage system and if the MOU is not adopted by Highland, a separate road drainage system (including its own pipes and SuDS) may be required. Working together should minimise costs to all parties involved and satisfy current policy and regulations relating to the control of water for developments.
- 4.4 If the MOU is adopted, Highland Council officers from Planning, Transport Planning and Flood Risk Management will work with Scottish Water to develop bespoke Section 7 agreements for relevant developments going forward. These would be developed early in the planning process and should streamline the approval of SuDS and drainage features through the Road Construction Consent and Scottish Water Technical Approval processes.

5 Maintenance Costs

- 5.1 Actual costs for maintenance depend on the type and size of SuDS constructed. The premise of the Section 7 agreements would be for Scottish Water to maintain the underground elements of the shared drainage system while Highland Council would maintain the above ground elements. Where assets are constructed by a third party and later vested with public bodies, well-developed and funded maintenance arrangements prevent premature failure of the assets, and the resultant expenditure to the vesting bodies should be minimised. Over the long term, it is expected that costs are equitable between both parties as it covers the whole life of the drainage system.
- 5.2 The type of maintenance Highland Council is expecting to undertake would be, but is not limited to, grass cutting, aquatic plant management, weed management, litter picking and fencing works. Housing developments increase the amount of Council tax received by the Council and maintaining the associated assets that result from these developments should be recognised. It is important that certain types of maintenance are undertaken according to the individual site maintenance plans or specifications drafted by developers and agreed by the two vesting bodies. This is to ensure the continued effectiveness of the drainage system. Section 7 agreements will result in future budget pressures which Members are asked to note.
- 5.3 It would be premature to try to estimate the funding required for these activities as it is site specific and depends on the number of developments throughout Highland which are subsequently adopted. However, it is expected that there will be higher than average costs for activities such as grass cutting as this may involve strimming, cutting slopes and removing clippings. Depending on the type of system present, there may be costs for fencing as well as specialist activities such as aquatic plant maintenance and reed bed filtration.

6 Legacy Sites

- 6.1 Scottish Water is now proactively reviewing legacy sites which have not been vested, to see what is required to bring them up to an adoptable standard. The Memorandum does not deal with legacy sites and these are being considered separately by SCOTS and Scottish Water. It is expected that further guidance will be produced for dealing with these sites, though it is likely that they will be taken forward under the principals of the Section 7 agreement. Until agreements are made, legacy sites are the responsibility of either the developer, land owner or may remain under the control of a factor.

7 Implications

- 7.1 Resource - Resource will be required to undertake the maintenance of shared drainage systems. This is expected to be fulfilled utilising existing staff with any specialised resources brought in as necessary.
- 7.2 Legal - Legal implications may include the issue of legacy sites which will be brought to a future Committee if necessary.
- 7.3 Community (Equality, Poverty and Rural) – No implications.
- 7.4 Climate Change / Carbon Clever – adoption of the Memorandum of Understanding and entering into Section 7 agreements supports the commitment of the Council to adapt to climate change while promoting a sustainable environment within communities.

- 7.5 Risk – ensuring that sustainable drainage systems are maintained in perpetuity by public bodies reduces the risk of localised flooding at new developments.
- 7.6 Gaelic - No implications.

Designation: Director of Community Services

Date: 24 July 2018

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Appendix 1

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Dear XXX

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

Over the last year, representatives from the SCOTS Roads 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 drainage systems designed to treat and convey road drainage and surface water from the roofs and curtilages of buildings.

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, Scottish Water and developers. Under these principles the surface water drained from the roads and the curtilage of houses within the development will be accommodated within a shared system, with the maintenance responsibilities shared between the two authorities.

Although not legally binding, all Local Authorities are encouraged to adopt the framework and enter into a maintenance agreement with Scottish Water under Section 7 of the Sewerage (Scotland) Act 1968 for individual developments. Should Scottish Water or a Local Authority decide not to do so, they will have to ensure the provision of, and meet the full costs of maintaining, their own separate drainage systems for new developments.

We are content that a fair and reasonable arrangement has been achieved and are fully in support of this proposal. This type of co-operation and collaboration is fundamental to integrated surface water management and will also be a significant step towards meeting the obligations of Local Authorities and Scottish Water to help facilitate the implementation of sustainable flood risk management in Scotland.

With this in mind, the framework represents the preferred arrangement for all new housing developments. The signatories wish to encourage Local Authorities to adopt and apply this framework with immediate effect as set out in the accompanying documentation.

Yours sincerely,

XXX
Scottish Water

XXX
Scottish Government

XXX
SCOTS

Enc. Documentation package

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.

November 2016