

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE – 15 MARCH 2018

SCOTTISH WATER – MAINTENANCE AGREEMENTS FOR SHARED DRAINAGE SYSTEMS

1 Recommendation

The Committee is recommended to:

1.1 Approve the adoption by the Director of Infrastructure Services of the Memorandum of Understanding with Scottish Water and the making of subsequent individual agreements for the joint maintenance of surface water drainage systems in new housing developments as appropriate.

2 Background/Discussion

- 2.1 Under Section 7 of the *Sewerage (Scotland) Act 1968*, a roads authority and Scottish Water may enter into an agreement on the provision, management and maintenance of Sustainable Drainage Systems (SuDS), sewers and drains.
- 2.2 Generally speaking, the maintenance responsibility for surface water drainage from housing developments is split: Scottish Water are responsible for curtilage drainage while the responsibility for drainage of public roads rests with the roads authority. Agreements under Section 7 of the *Sewerage (Scotland) Act 1968* enable these systems to be combined and, through the sharing of costs, the maintenance burden is reduced for each party.
- 2.3 At present it is not uncommon for SuDS features such as basins or ponds to remain unadopted following completion of housing developments. While this means that the Council do not incur any costs maintaining the feature, there is no certainty that the feature will be kept in a serviceable condition and the possibility that a failure of the drainage system could cause localised flooding. Section 7 agreements ensure that such features will be maintained in perpetuity by a public body.
- 2.4 A group comprising of members from the SCOTS Roads Group, SCOTS Flood Group and Scottish Water have drafted a Memorandum of Understanding (MOU) outlining the high-level principles of working together to minimise the costs to all parties. Under these principles the surface water from roads and from the curtilage of houses in the development will be accommodated within a shared system with the maintenance responsibility shared between the roads authority and Scottish Water. A letter endorsing the proposals is included as **Appendix 1** while the MOU is included as **Appendix 2**.

- 2.5 Individual maintenance agreements would be signed for each housing development following the principles in the MOU. The proposed maintenance split would involve Scottish Water maintaining those parts of the shared drainage system which lie below ground while the roads authority would maintain those parts above ground. Scottish Water would, in addition, renew the shared drainage system at the end of its life at its own expense. This arrangement would ensure that each party undertook the work best suited to its expertise and would achieve a roughly equal division of costs over the long term.
- 2.6 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Committee is able to consider and take a decision on this item in terms of Section F.1.1. of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to policy and resource matters (within agreed budgets) relating to functions of Roads, Landscape Services and Waste Management and Transportation which have not been reserved to the Full Council or specifically delegated to any other Committee of the Council.
- 3.2 Delegation of authority to act on this matter is already granted under Section F.5.1. of the List of Officer Powers in Part 2B of the Scheme of Governance however, as this proposal involves a significant change in practice, it was felt appropriate to refer the matter to the Committee for approval.

4 Implications and Risk

- 4.1 An equality impact assessment is not required because the proposal does not have a differential impact on any of the protected characteristics.
- 4.2 There are financial implications arising from agreeing to the joint maintenance of additional drainage systems however the costs would be less than those involved in each party maintaining discrete systems. Under either scenario, the costs to the Council would be met from the roads maintenance budget.
- 4.3 The following Risks have been identified as relevant to this matter on a

Corporate Level:

- Budget pressure – entering into joint maintenance agreements for new shared drainage systems will involve additional routine maintenance costs however these costs would be smaller than those falling to the Council under the alternative scenario of assuming sole liability for the maintenance of systems draining road surface water only.

- Environmental challenges – Section 7 agreements will ensure that responsibility for the maintenance of appropriate SuDS will pass to an in-perpetuity public body. This should reduce the likelihood of localised flooding arising from poorly maintained or neglected drainage systems.

4.4 A Town Centre Impact Assessment was not carried out as no impacts on town centres are envisaged.

Stephen Archer
Director of Infrastructure Services

Report prepared by John Bruce, Roads Policy Officer and David Armitage, Roads Policy and Asset Manager
Date 16 February 2018

6 February 2017

«Title_1» «Name_1» «Name_2»
«Council»
«Address»
«Column2»
«Column3»
«Column4»

Castle House
6 Castle Drive
Carnegie Campus
Dunfermline
KY11 8GG

Dear «Title_1» «Name_2»,

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,

Douglas Millican
Chief Executive
Scottish Water

Neil Ritchie
Head of Natural Assets
and Flooding
Scottish Government

Scott Allan
Executive Chair
SCOTS

Enc. Documentation package



Appendix 2

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

