

INSURANCE

Supply chain protection
HE renewal round-up

RISK MANAGEMENT

Social mobility and
public services
Procurement Act 2023

HOUSING

Pursuing possession fairly
SuDs and the *Flood and
Water Management Act 2010*

RISK MANAGERS

Capability and expertise
Managing risk and insurance
Public vs private risk transfer

stronger

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A BIRD IN HAND

Preparing
for the next
pandemic



Top tips on SuDS AND SCHEDULE 3 *to the Flood and Water Management Act 2010*

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As climate change continues to increase the frequency and intensity of extreme weather events, the role of Sustainable Drainage Systems (SuDS) in urban water management will become increasingly important, making it imperative for local authorities and other organisations involved in building and developing properties to embrace and promote these innovative systems.

What are SuDS?

SuDS are a collection of water management practices designed to mimic natural processes to manage surface water runoff and aid groundwater retention. Unlike traditional drainage systems that often rely on quickly channelling water away through pipes, SuDS are designed to slow down and manage runoff at the source. They can slow down water flow, promote infiltration, and enhance water quality to reduce the volume and rate of runoff entering watercourses and sewers. SuDS can be used in all types of development, offering a sustainable and multifaceted approach to managing surface water in built up environments.

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New housing estate with SuDS, Dorset

The importance of SuDS lies in their ability to:

- Reduce flood risk: By easing runoff and promoting infiltration, SuDS decrease the likelihood of overwhelming drainage systems and causing floods.
- Improve water quality: Natural filtration processes within SuDS remove pollutants from surface water before they reach natural water bodies.
- Enhance biodiversity: SuDS can create habitats for wildlife, contributing to urban biodiversity.

- Promote groundwater recharge: Infiltration techniques help replenish groundwater supplies.

■ Provide amenity spaces: SuDS features, such as green roofs and rain gardens, can improve the aesthetic and recreational value of urban areas.

For local authorities, the adoption of SuDS presents an opportunity to manage surface water runoff in a more sustainable and resilient



manner. Local authorities can effectively implement SuDS, and a development commitment to SuDS, to reduce flood risk, enhance water quality, and improve urban environments. SuDS schemes offer a range of environmental, social, and economic benefits, but implementation requires careful planning and consideration, including site-specific design, legislative compliance, environmental benefits, maintenance requirements, and economic viability.

The Flood and Water Management Act 2010

The *Flood and Water Management Act 2010 (the Act)*¹ was developed in response to widespread and severe flooding in the summer of 2007. This period saw unprecedented rainfall in the UK, resulting in substantial damage to property, infrastructure, and disruption to communities. The *Pitt Review*², an independent review conducted by Sir Michael Pitt, was commissioned by the UK government to investigate the flooding and provide recommendations to improve flood management and resilience. ➤

Key milestones in the development and implementation of *the Act*

2007: The devastating floods and subsequent *Pitt Review* highlighted significant gaps in the UK's flood management practices. The review made 92 recommendations, emphasising the need for a comprehensive and coordinated approach to flood risk management.

2008: The UK government responded to the *Pitt Review* by drafting the *Flood and Water Management Bill*, incorporating many of the review's recommendations.

2010: The *Flood and Water Management Act* received Royal Assent on 8 April 2010. The *Act* introduced measures to improve flood risk management, ensure better water resource management, and enhance the resilience of communities to flooding.

2015: Non-statutory technical guidance was produced by the Department for Environment, Food & Rural Affairs (Defra) for England and Wales. The Construction Industry Research and Information Association (CIRIA) produced the *SuDS Manual*, a comprehensive guide for the construction industry regarding SuDS.

2016: Non-statutory SuDS technical guidance was produced by the LASOO advisory group.

2019: SuDS were made mandatory in Wales for new property developments under certain circumstances including developments with more than one dwelling and with a construction area of over 100 square metres.

2022: AXA UK with the help of Kennedys Partner Paul Lowe, produced a report recommending SuDS as a solution to reduce the risk of surface water and sewerage flooding which was accepted by the government.

2023: Defra produced a policy statement and a final report on its review of SuDS.

2024: The government recommended SuDS become mandatory for new developments in England from 2024.





Roadside sustainable drainage system, Salford

Schedule 3 of the Act

Despite the *Act* being passed in 2010, the implementation of *Schedule 3*, which provides a framework for the adoption of SuDS, has been delayed and is expected to be implemented soon. The delay is due to concerns over the cost, complexity, and administrative burden of implementing the new SuDS approval and adoption processes, as well as a change in government.

Until *Schedule 3* comes into force, developers should incorporate SuDS voluntarily, and local planning authorities should impose conditions relating to SuDS through existing planning regulations.

Schedule 3 mandates these key points:

- 1** Establishment of SuDS Approving Bodies (SABs): Local authorities are designated as SuDS Approving Bodies. These bodies are responsible for evaluating and approving drainage systems in new developments and redevelopments.
- 2** Requirement for SuDS: New developments must incorporate SuDS that comply with national standards. These must be approved by the SABs before commencement of any construction work. This ensures that surface water is managed sustainably, reducing flood risk and environmental impact. Permitted developments such as single buildings under 100 square metres will not require approval.

Schedule 3 places greater responsibility on developers to create SuDS.

Other proposed exclusions include nationally significant infrastructure products. There will be transitional arrangements for developments at an advanced stage of planning at the point *Schedule 3* is commenced to avoid incurring additional costs.

- 3** Adoption and maintenance: Once approved, local authorities are required to adopt and maintain SuDS, ensuring they function effectively over the long term.
- 4** National standards: *Schedule 3* mandates the creation of national standards for SuDS, which provide guidelines on the design, construction, operation, and maintenance of these systems.
- 5** Funding: Defra will conduct a full analysis of the costs and benefits, with the net additional costs to local authorities being assessed and funded.
- 6** The government has indicated *Schedule 3* can also amend *Section 106* of the *Water Industry Act 1991*³ to make the right to connect surface water to the public sewer conditional on the SAB approving the SuDS.

What factors should local authorities consider in relation to SuDS?

- Are the minimum standards of operation for the proposed SuDS appropriate in the context of the development and site?
- Are there clear arrangements for the ongoing maintenance of the SuDS, including who will pay the costs and who will carry out any works?



When purchasing a development site, due diligence on whether it is suitable for the construction of SuDs should be paramount.

■ The possible long-term maintenance solutions local authorities could consider include:

- Could responsibility be taken by the relevant local authorities? For example, drainage and highway authorities with funding through a developer's insurance policy or a capital sum to fund maintenance?
- Can local authorities request developers form a resident-company with contractual obligations on maintenance as part of the approval process?
- Can maintenance costs be added to the leases as a charge on the leases to the landlord?
- Could properties sold as freeholds have covenants with a maintenance of SuDs obligation?

What is the application process for obtaining SuDs approval?

The process for obtaining approval for SuDs from SABs involves several key steps, including the submission of documentation and adherence to specified criteria. (A typical application process is outlined in Fig 1.)

1. Pre-application stage

Discussions should take place when considering acquiring land as part of due diligence before an application is made to the local planning authorities.

Developers should engage with the SAB early in the project planning stage to discuss the proposed SuDs design and address any initial concerns or requirements including biodiversity, ecology, water quality, open space, maintenance and landscape, which may impact sustainable drainage delivery.

Various other bodies like the Environment Agency⁴ and Internal Drainage Board⁵ should be consulted on whether the development can be accepted in principle.

Applicants should also consider information that needs to be collected that may affect proposed SuDs.

2. Submission of application

There are a range of documents required at each stage. After the pre-application, applicants can opt to submit a full or outline application where certain matters can be reserved to be dealt with later⁶.

Considerations for developers, contractors and consultants

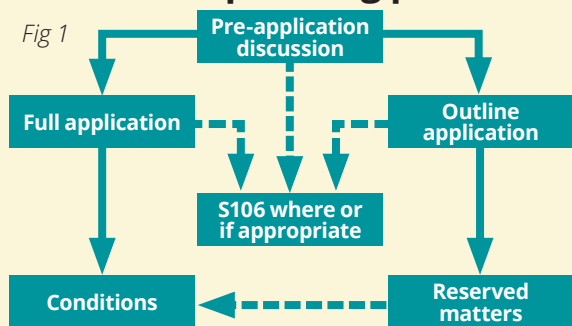
Due diligence: when purchasing a development site, due diligence on whether it is suitable for the construction of SuDs should be paramount.

Key factors include:

- Subsoil and its infiltration potential⁷.
- The gradient of the site – steeper gradients may increase runoffs⁸.
- The position of any suitable water feature as the ultimate discharge point for surface water – may need consent from third-parties to discharge the water.
- The land drainage rights – may need an easement to drain surface water over intervening land.
- Requests for specialised desktop utilities searches. ➤

Illustrative planning process

Fig 1



Note: Dashed links indicate the optional parts of the process
Source: local.gov.uk

2019

In 2019 SuDs were made mandatory in Wales for new property developments under certain circumstances.

Lead time: the application process requires numerous documents to be submitted and involves many different bodies in the decision-making process, therefore there may be delays.

Suitable land: local authorities may require developers to earmark certain aspects of a site for SuDs, for example ditches and ponds.

Skills and workforce: given SuDs are relatively new, there may be a shortage of skilled designers and contractors familiar with the system. Training is needed to try to avoid professional indemnity (PI) claims for stakeholders with little or no experience with SuDs. Consider the demand and availability of such specialists.

Additional costs:

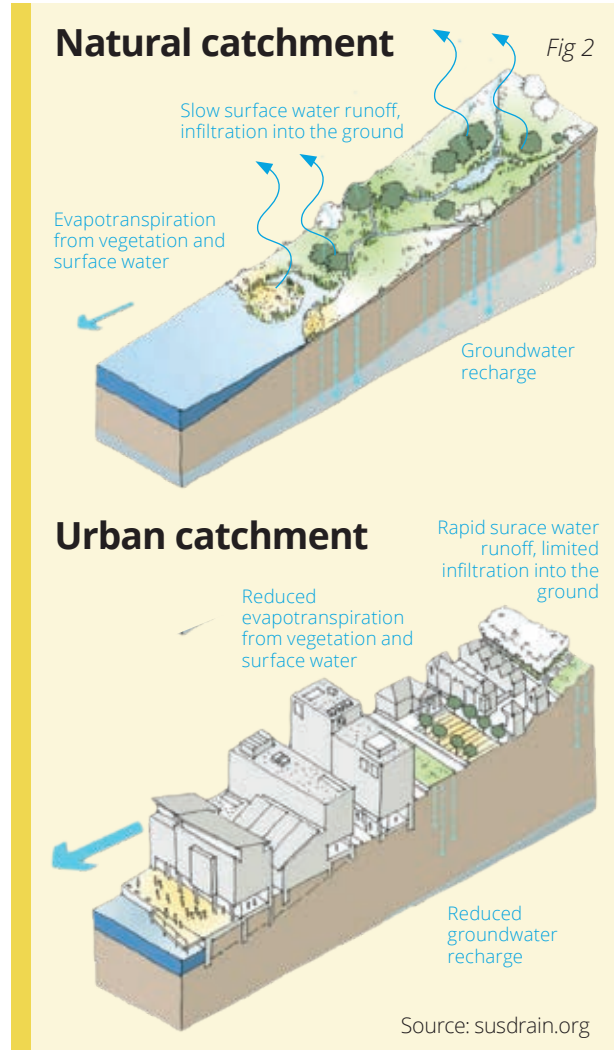
- **Application:** the process involves a lot of paperwork, including preparing evidence, and inspection throughout the construction.
- **Design:** SuDs can be more expensive to design compared with other types of surface water drainage.
- **Construction:** the complex design may incur additional construction costs, as well as inspection costs throughout the construction period.
- **Responsibility:** *Schedule 3* places greater responsibility on developers to create SuDs. SuDs have been previously only encouraged or recommended. The further onus will affect both small and large developers. ●

References

- ¹The Flood and Water Management Act 2010, Legislation.gov.uk
- ²The Pitt Review, jesip.org.uk
- ³Water Industry Act 1991, Legislation.gov.uk
- ⁴Environment Agency
- ⁵Internal Drainage Board
- ⁶Non-statutory technical standards for sustainable drainage - LASOO
- ⁷Infiltration overview, susdrain
- ⁸SuDS on site: Responses to Site Condition, Geosmart

Resources

The LASOO practical guidance is a vital tool to understand and follow when considering SuDs: Non-statutory technical standards for sustainable drainage, susdrain.org and Roles and responsibilities relating to SuDs, local.gov.uk
 The Construction Industry Research and Information Association (CIRIA) SuDs manual provides detailed support on the standards required, Ciria.org
 Information on sustainable drainage, Susdrain.org



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