

# **SCRUTINY COMMITTEE**

**Tuesday, 11th October, 2022**

**10.00 am**

**Council Chamber, Sessions House, County  
Hall, Maidstone**







## **AGENDA**

### **SCRUTINY COMMITTEE**

**Tuesday, 11th October, 2022, at 10.00 am**  
**Council Chamber, Sessions House, County Hall,**  
**Maidstone**

Ask for: **Anna Taylor**  
Telephone: **03000 416478**

#### **Membership**

Conservative (10): Mr A Booth (Chairman), Mr P V Barrington-King (Vice-Chairman), Mrs R Binks, Mr N J Collor, Mr G Cooke, Mrs S Hudson, Mr D Jeffrey, Mr R C Love, OBE, Mr H Rayner and Mr O Richardson

Labour (1): Dr L Sullivan

Liberal Democrat (1): Mr A J Hook

Green and  
Independent (1): Mr P Stepto

Church  
Representatives (3): Mr J Constanti, Mr M Reidy and Mr Q Roper

Parent Governor (2): Mrs K Moses, Vacancy

*County Councillors who are not Members of the Committee but who wish to ask questions at the meeting are asked to notify the Chairman of their questions in advance.*

### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

#### **A - Committee Business**

- A1 Introduction/Webcast Announcement
- A2 Apologies and Substitutes
- A3 Declarations of Interests by Members in items on the Agenda for this Meeting
- A4 Minutes of the meeting held on 20 July and 18 August 2022 (Pages 1 - 12)
- A5 SEND Transport Lessons Learnt Review Report (Pages 13 - 40)
- A6 Short Focused Inquiry - Section 106 Contributions (Pages 41 - 70)
- A7 Kent Flood Risk Management Committee - Annual Report (Pages 71 - 80)
- A8 Work Programme (Pages 81 - 84)

#### **B - Any items called-in**

None for this meeting.

#### **C - Any items placed on the agenda by any Member of the Council for discussion**

### **EXEMPT ITEMS**

*(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)*

Benjamin Watts  
General Counsel  
03000 416814

**Monday, 3 October 2022**

## KENT COUNTY COUNCIL

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### SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Wednesday, 20 July 2022.

PRESENT: Mr A Booth (Chairman), Mr P V Barrington-King (Vice-Chairman), Mrs R Binks, Mr N J Collor, Mr G Cooke, Mrs S Hudson, Mr D Jeffrey, Mr R C Love, OBE, Mr H Rayner, Mr O Richardson, Dr L Sullivan, Mr A J Hook and Mr P Stepto

ALSO PRESENT: Mr R W Gough (Leader of the Council), Mrs C Bell (Cabinet Member for Adult Social Care and Public Health), Mr J P McInroy (Deputy Cabinet Member for Corporate Services), Mr A Brady, Ms M Dawkins and Mr M A J Hood

IN ATTENDANCE: Mrs R Spore (Director of Infrastructure), Mr B Watts (General Counsel), Mr D Shipton (Head of Finance Policy, Planning and Strategy), Mr J Sanderson (Head of Property Operations), Ms J Taylor (Head of Project Management), Mr M Cheverton (Senior Asset Manager), Mrs A Taylor (Scrutiny Research Officer) and Mr M Dentten (Democratic Services Officer)

IN VIRTUAL ATTENDANCE: Mr P Bartlett and Mrs T Dean

### UNRESTRICTED ITEMS

#### **48. Introduction**

*(Item A1)*

The Chairman informed the Committee of an urgent item, to consider the call-in of decision 22/53 on KCC's Freehold Property Assets Disposal Policy, which had been brought to the meeting, following publication of the agenda, as it could not reasonably be delayed to the Committee's next meeting in September.

#### **49. Declarations of Interests by Members in items on the Agenda for this Meeting**

*(Item A3)*

No declarations were made.

#### **50. Minutes of the meetings held on 17 May and 8 June 2022**

*(Item A4)*

RESOLVED that the minutes of the meetings held on 17 May and 8 June 2022 were an accurate record and that they be signed by the Chairman.

## **51. Short Focused Inquiry Work Programme**

*(Item A5)*

*Mrs C Bell, Cabinet Member for Adult Social Care and Public Health and Mr P Bartlett, Chairman of the Health Overview and Scrutiny Committee were in attendance for this item.*

1. Mrs Taylor explained that the Committee were asked to agree the work programme and set out a priority order for the future Short Focused Inquiries (SFIs), as detailed in the report. She highlighted the three suggestions made by Members: Gypsy, Roma and Traveller health inequalities; improved delivery of dementia care; and the condition of the KCC property portfolio.
2. A Member asked that future contract reviews be included within the scope of the Highways Improvement Plans SFI.
3. Mrs Bell addressed the Committee. She provided added context on dementia care in Kent and referenced the development of a Kent dementia strategy which was being formulated in partnership with the NHS. In relation to the care model used by the Harmonia Dementia Village, she gave an overview of the financing arrangements, which included Section 106 and Interreg grant funding. Concerning Gypsy, Roma and Traveller health inequalities, she observed that an inquiry would be good opportunity to clarify the role KCC played in reducing health inequalities, as well as for measuring the efforts of the Integrated Care System (ICS) as a whole. She suggested liaising with representatives of the communities, ahead of an SFI, to ensure that they were aware and comfortable with the scope.
4. Mr Bartlett addressed the Committee. He explained the ongoing work of the Health Overview and Scrutiny Committee in relation to the NHS's work tackling Gypsy, Roma and Traveller health inequalities. He welcomed an SFI into the issue and encouraged the inclusion of education within its scope.
5. Members discussed the merits of different priority orders for the future SFI work programme.
6. Mr Cooke proposed and Mr Rayner seconded a future work programme for SFIs, with the following priority order:
  1. The condition of the KCC property portfolio
  2. Improved delivery of dementia care
  3. Gypsy, Roma and Traveller health inequalities
7. Members voted on the motion. The motion passed by majority vote.

RESOLVED to:

- a) note the progress made on the S106 SFI;
- b) confirm that a Highways Improvement Plans SFI will commence in late August - early September;
- c) agree the future work programme for SFIs, with the following priority order:
  1. The condition of the KCC property portfolio

2. Improved delivery of dementia care
  3. Gypsy, Roma and Traveller health inequalities; and
- d) agree to delegate to Officers the arrangement of the next Inquiry as outlined in the report.

**52. URGENT ITEM - Call-in of Decision 22/00053 - Kent County Council  
Freehold Property Assets Disposal Policy  
(Item B1)**

*Mr J McInroy, Deputy Cabinet Member for Corporate Services; Ms R Spore, Director of Infrastructure; and Mr M Cheverton, Senior Asset Manager were in attendance for this item.*

1. The Chairman introduced the item and shared his disappointment that the decision maker, Mr Oakford, Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, was not present. He invited the proposer of the call-in, Mrs Dean, to provide an overview of the reasons for her call-in. Mr Brady and Mr Hood as seconders were also invited to speak.
2. Mrs Dean presented the reasons for her call-in. She began by clarifying that she had no concern regarding the disposal of Council assets where there was no KCC service need or community interest. She explained her concern that the Freehold Property Assets Disposal Policy's community value principle could obligate voluntary and community sector groups, financially or otherwise, in a way which would make community bids unlikely. It was noted that the principle was not mentioned in the Council's Strategic Statement or Civil Society Strategy. She stated that the Policy required accompanying guidance for community groups and local councils, explaining the bidding criteria and purchase process. She added that many organisations within the voluntary and community sector faced challenges funding the necessary legal assistance required to finalise contractual arrangements with KCC. An assertion was made that community groups with limited financial resources would be put at a disadvantage when competing with commercial bids. The ambition to increase community resilience was welcomed, though it was stated that the aspiration would be in direct conflict with the ambition to achieve the highest price for property. She asked that the Policy be reconsidered to reconcile the two objectives.
3. Mr Brady shared his concerns that the Policy would limit the Council's ability to retain open spaces, in opposition to the Strategic Statement's commitments to protect those spaces, improve access and support nature recovery. He stressed the need for the Policy to assess open spaces against multiple values, not limited to finance, including their environmental benefit. In response to Mr Brady's statement, Ms Spore explained that the Policy came into effect when the Council had exhausted its own requirements to use the property for its own services, such as use as country park. She confirmed that Infrastructure worked in cooperation with colleagues in Growth, Environment and Transport (GET) to maximise biodiversity on the Council's estate.

4. Mr Hood stated that the Policy needed to be reconsidered to allow for district councils to be given the first chance to buy Council property, for the purpose of developing social housing. He added that the option to dispose of property below market price should be included within the Policy, so long as it had a significant positive community benefit. Following the statement, Ms Spore confirmed that KCC would consider community bids from district councils.
5. Mr McInroy, on behalf of Mr Oakford, made a statement. He confirmed that the Policy was clear in its commitment to provide community organisations with the opportunity to purchase Council property, with the proceeds financially benefitting statutory services. He explained that the Council needed to prioritise measures which eased its financial pressures, with the protection of statutory services being the main priority. It was emphasised that the Policy should be taken into account in conjunction with the Council's Civil Society Strategy and Strategic Statement.
6. Ms Spore clarified that the Policy would take account of an asset's community value when it contributed to supporting the Council's statutory services. She reminded Members that the Policy was subject to community asset legislation and gave reassurance that the Council provided advice and extensions, where possible, to aid community groups in their bids and business cases. Concerning the typical property for disposal, she noted that the majority were small and often within local planning allocation areas. The means of comparing bids, be that community or commercial, were explained, with it stressed that the process was clear and even-handed. It was noted that the Policy was only applicable when a property was declared surplus. She concluded by explaining that KCC were required to follow local plan designations, set by district councils.
7. Mr Watts explained the role of Democratic Services in assessing the validity of a call-in against the criteria set out in the Council's Constitution. He emphasised the impartiality of the process and explained that in determining the validity no judgement was passed on the reasons put forward by the Members.
8. Concerns were raised by a Member in relation to the centralisation of decision making set out in the Policy and 'special purchaser' exception, which they stated could impact bid competition.
9. In response to a question from a Member, Ms Spore confirmed that, on average, 5 community asset requests were received annually. She explained the typical timeline for a building disposal, which included interaction with communities, with community groups having 6 months to act after KCC announces its intention to dispose.
10. Mr McInroy confirmed, following a question from a Member, that it was a political decision not to have a community asset policy.



11. Members emphasised the importance of developing clear guidance for community groups, which accommodated local needs and requests.
12. A Member asked whether local Members would be notified of proposals to dispose assets in their division. Ms Spore confirmed that, in line with the Property Management Protocol contained within the Council's Constitution, local Members were consulted on property transactions or decisions which had an impact on property matters in their division.
13. Ms Spore confirmed, following a question from a Member, that the Council had disposed of property under their asset value. An example was given, with it noted that the disposal formed part of a wider regeneration project.
14. A Member asked that examples of successful bids be shared with community groups, to improve their understanding of the process and general requirements.
15. Following the comments made by the Committee, the Chairman offered the proposer and seconders the opportunity to reply. Mr Brady stated that the Policy needed to be reconsidered to realign the policy with the Strategic Statement. He stressed the need to develop a mechanism to explain how the Policy would be implemented and could be referenced by community groups. He reiterated his concern that the Policy did not determine how a community could quantify the public value of a property.
16. Mr Love proposed and Mr Cooke seconded recommendation (b) "that the Scrutiny Committee express comments but do not require reconsideration of the decision."
17. Members voted on the motion. The motion passed by majority vote.

RESOLVED that the Scrutiny Committee expressed comments but did not require reconsideration of the decision.

### **53. Revenue and Capital Budget Outturn Report 2021-22** *(Item C1)*

*Mr R Gough, Leader of the Council and Mr D Shipton, Head of Finance Policy, Planning and Strategy were in attendance and Mr J Betts, Interim Corporate Director of Finance; Ms C Head, Head of Finance Operations; and Ms E Feakins, Chief Accountant were in virtual attendance for this item.*

1. The Chairman introduced the item and invited Mr Gough to provide an overview of the Provisional Revenue and Capital Budget Outturn Report for the 2021-22 financial year.
2. Mr Gough began by noting that the Council had finished the 2021-22 financial year in budget, for the 22<sup>nd</sup> consecutive year. He addressed the financial pressures across the Children's, Young People and Education (CYPE) and Adult Social Care and Health (ASCH) directorates, as well as the lasting financial impact of the Covid-19 pandemic, which had increased case

complexity. He highlighted the underspend in community adult social care which had transpired as a result of shortages in social care staff. He reminded Members of the difficulty faced when forecasting future government funding.

3. Mr Shipton added that the 2020-21 and 2021-22 financial years had been anomalies in the grand scheme, due to the heightened level of funding and spending directly related to the pandemic. He noted that this made it particularly difficult to compare these to other years.
4. A Member asked whether in year budget realignment had impacted policy commitments. Mr Gough reassured the Committee that realignment did not reflect a shift in policy and was required to meet changing demand in-year.
5. In relation to the Adult Social Care budget, a Member asked how the underspend had impacted service delivery and whether any financial commitments had been made to address long term staff vacancies. Mr Gough recognised that the staff shortages were not a welcomed development and reflected an industry-wide issue, reassurance was given that the Personnel Committee would continue to monitor the issue. Mr Shipton confirmed that additional funding had been made available to providers to ensure increases in staff pay. He recognised that the sharp increase in wages across the social care industry, since the onset of the pandemic had been a significant factor, with providers still having issues recruiting despite the additional financial support.
6. Mr Gough confirmed that, with the steer of Cabinet, Finance were developing a clearer and earlier budget development process. Mr Shipton added that work was underway to improve the clarity of outturn reports, in order to increase accessibility.
7. Ms Head confirmed the accuracy of the £170m capital rephasing programme, and that it took account of existing and anticipated levels of debt costs.
8. The Chairman asked how long-term support for the provision of community mental health services had been built into future budget planning. Mr Gough informed Members that Cabinet would be considering the extension of the Reconnect Programme at its 21 July meeting, which would provide support and wellbeing opportunities for children.
9. Following a question from a Member on whether Decarbonisation Fund monies had been used ahead of the centrally set deadlines, Mr Gough agreed to clarify the position following the meeting.
10. Mr Gough was asked for an indication of KCC's current position in relation to the Dover Inland Border Facility. He reminded Members that the decision to establish the facility had been made by government and recognised that the site had the potential to be used for other future border operations, in order to reduce local pressures.

RESOLVED that the report be noted.

**54. Inflationary Pressures on Capital Construction Programmes (Decision 22/00050)**  
*(Item C2)*

*Mr J McInroy, Deputy Cabinet Member for Corporate Services; Ms R Spore, Director of Infrastructure; Mr J Sanderson, Head of Property Operations; and Ms J Taylor, Head of Project Management were in attendance for this item.*

1. The Chairman introduced the item and noted that it had been requested by Mrs Dean. The Committee were reminded that any Member of Council could request an item for Scrutiny.
2. Mr McInroy provided an overview of the Inflationary Pressures on Capital Construction Programmes executive decision. He confirmed that the decision ensured that the Council had sufficient capital allocated and contractual management arrangements in place to deliver the programmes and projects, with anticipated additional costs as set out in the Medium-Term Financial Plan.

RESOLVED that the report be noted.

**55. Work Programme**  
*(Item D1)*

RESOLVED that the work programme be noted.

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## SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 18 August 2022.

PRESENT: Mr A Booth (Chairman), Mr P V Barrington-King (Vice-Chairman), Mrs R Binks, Mr N J Collor, Mrs T Dean, MBE, Mrs S Hudson, Mr D Jeffrey, Mr R C Love, OBE, Mr H Rayner, Mr O Richardson, Dr L Sullivan and Mr P Stepto

ALSO PRESENT: Mr D L Brazier, Mr I S Chittenden, Ms K Constantine, Ms M Dawkins, Rich Lehmann and Mr B H Lewis

IN ATTENDANCE: Mr S Jones (Corporate Director of Growth, Environment and Transport), Mr P Lightowler (Interim Director of Transportation), Mr S Pay (Public Transport Planning and Operations Manager), Mr J Cook (Democratic Services Manager) and Ms E Kennedy (Democratic Services Officer)

### UNRESTRICTED ITEMS

#### **56. Declarations of Interests by Members in items on the Agenda for this Meeting** (Item A3)

No declarations were made.

#### **57. Decision 22/00052 - KCC Supported Bus Funding Review** (Item B1)

*Mr D Brazier, Cabinet Member for Highways and Transport; Mr S Jones, Corporate Director of Growth, Environment and Transport; Mr P Lightowler, Interim Director of Highways and; Mr S Pay, Public Transport Planning and Operations Manager were in attendance for this item.*

1. The Chairman introduced the item and invited the proposer of the call-in, Mr Lehmann, to provide an overview of the reasons for his call-in. Mr Sole as the seconder was also invited to speak.
2. Mr Lehmann outlined the reasons for his call-in, building on the details contained in the meeting papers. He stated that the decision was not taken in accordance with the Council's decision-making principles, when considering whether the decision was proportionate to the desired outcome, in that the consultation process had revealed the impact on the elderly, disabled and low-income residents across the county. He raised concerns that the decision may not make the intended £2.2m saving and that there was insufficient information regarding the future funding of Kent Karrier, as while the decision report outlined external sources, it did not specify amounts, funding source sustainability or whether these sources could be used for other services being terminated. He questioned whether estimates were sought for the number of pupils who would gain access to free school transport via KCC's appeals system and for the increase in demand

for the Kent Karrier services and associated costs. He added that the decision contradicted one of KCC's net zero commitments, made in the Strategic Statement (Framing Kent's Future), to 'turn the curve on transport emissions.' Stating that the decision report had failed to give an estimate of full carbon impact, with the report outlining the carbon impact relating to one of the school-day only services but not for all relevant routes. In relation to KCC's commitments to 'work with partners through the Kent Enhanced Bus Partnership and with Government to explore sustainable and commercially viable options for providing bus transport to meet people's needs,' he argued that that the cutting of the routes would not be making the best use of Bus Service Improvement Plan funding, as residents could not be incentivised to use services they did not have access to. It was queried whether operators had made further withdrawals of service, in the knowledge that subsidies were to be cut. Mr Lehmann concluded by asserting that the decision had not been taken with a presumption in favour of openness and referred to comments by the Cabinet Member made at the Environment and Transport Cabinet Committee on 6 July 2022 that "the £2.2m saving was immutable."

3. Mr Sole expressed support for KCC carrying out regular reviews of bus subsidy funding to ensure residents were receiving value for money and so that a good service was retained across the county. He raised concerns that at the time the proposed cuts to the subsidised routes were announced, operators had released a long list of other non-subsidised routes which they were to stop. Concerns were shared about the environmental impact of bus routes ceasing and it was felt this was a backward step with regard to cutting emissions in the county. He stated that there was a negative impact relating to social isolation and poverty, which would be felt in other areas of KCC. He noted that solutions had been found to save other bus services in the county and he hoped a similar approach could be taken to the other bus services to look at how they could be retained.
4. Mr Brazier thanked Mr Lehmann and Mr Sole for expressing the reasons for the call-in clearly. Clarification was given that the consultation for the decision had been contemporaneous with bus operators withdrawing a number of services for economic reasons and it was acknowledged that this had caused residents a great deal of distress. The two issues had become conflated and it was emphasised that commercial withdrawals of service were not what was being considered at this meeting. Many of the services affected by the decision under consideration were lightly used and few people had contacted Mr Brazier about these. However, he had received many representations from members of the public regarding more than 80 services which were not subsidised by KCC.
5. Mr Lightowler updated Members regarding the Supported Bus budget and advised that as the decision had not been implemented, the services identified to be reduced were still running and therefore, this was an overspend and mitigations would need to be found in other areas to compensate for the overspend. He confirmed that the funding of Kent Karrier was not able to be confirmed until the decision had been implemented. Regarding the Local Transport Fund, which came from the Department for Transport with the purpose of supporting authorities during the transition period to a 'sustainable network', he explained that the funding had been to support operators while they made network changes with unforeseen costs, with the fund coming to an end in October 2022. Concerning the Bus Recovery Grant, which was direct funding

from the government to the commercial bus industry to facilitate recovery following the Covid-19 pandemic, he also noted that it would conclude in October 2022. He further explained that the expectation was that bus operators were to work towards sustainability within their networks, working with local authorities.

6. The Chair opened to the matter to debate. A Member stated that they believed the Department for Transport in a 16 August letter, had outlined a softening of the government's position on use of the Bus Service Improvement Plan funding. The Member added that the Department had also recognised that local baselines for bus services may have changed. It was asserted that officers needed to be given the opportunity to explore what additional options were available now that the impact of the decision was known, as expressed by the operators, in addition to their own commercial service withdrawals. The impact of the decision on families and residents in rural areas was emphasised, with it argued that the decision deserved a fresh look, since more was known of the consequences of the decision compared to when it was first taken.
7. In view of the points outlined, Mr Rayner moved and the Chairman seconded a motion that **“the Scrutiny Committee require implementation of the decision to be postponed pending review or scrutiny of the matter by the full Council.”**
8. It was clarified by the Clerk that, having been proposed and seconded, the motion which would confirm the outcome of the call-in consideration following due consideration and discussion by the Committee, should be debated prior to any vote. The Chair invited Members to debate the motion as proposed and welcomed contributions from visiting Members who had requested to attend and speak on the matter.
9. A Member raised concerns about those who without a bus service would not be able to access education as well as concerns regarding the impact on health outcomes and the affordability of other transport options for residents to access local hospitals. Further information was sought regarding the affected bus routes where they were the only public transport available to a rural community or served a hospital.
10. Members raised points regarding the rapidly changing situation since KCC's Budget was agreed in February. Since then, there had been war in Ukraine, inflation, the energy crisis and the cost of living crisis. The view was put forward that the decision would need to be reconsidered in light of these pressures.
11. Members expressed concerns that there had been extensive debate on the decision and if the decision was not implemented, as set out in the Budget agreed in February 2022, that the funding of the subsidies was unaccounted.
12. Concerns were raised regarding the social impact of the decision and further information was sought on the impact on villages with no other public transport options. Members raised concerns regarding social isolation and loneliness for young people, people with disabilities and the elderly, with specific reference to the Social Isolation Select Committee.

13. A Member asked whether an appropriate audit had been undertaken in relation to the Transport Act 1985 as it said there needed to be a satisfactory replacement for services removed. It was also asked if the Education Act 2014 had been considered in the decision-making process.
14. Ms Dawkins asked for it to be noted in the minutes that she had wanted to join the call-in request but timing issues had prevented this.
15. Prior to a vote being taken on the motion under debate, the Chairman asked Mr Cook (Democratic Services Manager) to explain the call-in referral process. Mr Cook advised the Committee that in the event of the Scrutiny Committee resolving to require implementation of a decision being postponed pending review of scrutiny of the matter by Full Council, the process would be as follows:
- Cabinet would meet formally to reconsider the decision on the basis of a report setting out the views expressed by the Scrutiny Committee.
  - Cabinet would be able to confirm, amend or rescind the decision.
  - Cabinet's reconsidered decision (either confirmed without change or amended) would be published and it would be reviewed by Full Council at its next meeting on 15 September 2022.
  - Full Council would be able to either; agree implementation without comment, make comments but not require reconsideration or refer the decision back to Cabinet for further reconsideration in light of any comments made by Full Council.
16. The Chairman asked the Committee to take note of the procedural advice and called for a vote on the motion:  
"that the Scrutiny Committee require implementation of the decision to be postponed pending review or scrutiny of the matter by the full Council."
17. Members voted on the motion. The motion passed.

RESOLVED that the Scrutiny Committee require implementation of the decision to be postponed pending review or scrutiny of the matter by the full Council.

*Dr Sullivan, Mrs Dean and Mr Stepto indicated that they wished their vote in favour of the motion was recorded in the minutes.*



By: Anna Taylor, Scrutiny Research Officer  
 To: Scrutiny Committee, 11 October 2022  
 Subject: SEND Transport Lessons Learnt Review Report

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Summary: The Scrutiny Committee is invited to comment on and note the SEND Transport Lessons Learnt Review Report and submit any areas for further consideration to the Chair and Spokespeople outside of the meeting for future review by the Committee.

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## 1. Introduction

- a) In February 2022 concerns were raised by a number of members of the Scrutiny Committee about the changes to the school transport system for children and young people with special educational needs and disabilities (SEND).
- b) The Scrutiny Committee met to receive updates on the developments in relation to the provision of SEND Transport on 8 March, 23 March and 20 April 2022.
- c) In April the Scrutiny Committee was presented with Internal Audit's Terms of Reference for the SEND Transport Lessons Learnt Review. The Internal Audit review had been commissioned by the Chief Executive, General Counsel and the s.151 Officer and the report is published on the Council's website.
- d) The SEND Transport Lessons Learnt Review was presented to the Governance and Audit Committee upon publication on 29 September 2022 and is appended to this report.

## 2. Recommendation

The Scrutiny Committee is invited to comment on and note the SEND Transport Lessons Learnt Review Report and submit any areas for further consideration to the Chair and Spokespeople outside of the meeting for future review by the Committee.

## Background Documents

None

## Contact Details

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# SEND Transport Lessons Learnt Review Report

29<sup>th</sup> September 2022

Report Distribution	
Chief Executive Officer, KCC	David Cockburn
General Counsel	Benjamin Watts
Corporate Director - Finance	Zena Cooke / John Betts

AUTHORS	
Report Authors	Internal Audit Team
Head of Internal Audit	Jonathan Idle

**The engagement was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing**

## EXECUTIVE SUMMARY

This Internal Audit review was commissioned by the Chief Executive (Head of Paid Service when commissioned), General Counsel and the s.151 Officer following significant and well publicised service failures in the redesign of Special Educational Needs and Disabilities (SEND) transport services and the adverse reputational impact upon and loss of confidence in Kent County Council.

The Council has a statutory duty to provide free transport arrangements to facilitate attendance at school for eligible children.

The impact of how the redesign of transport services has been managed has had significant and distressing impacts to pupils, parents and carers across the County, which has been a major contributory factor to the commissioning of this Review.

### Objectives

To independently review and assess the governance, consultation with parents, control, monitoring, oversight and decision making arrangements in respect of the redesign of SEND Transport arrangements.

To ascertain the factors and underlying causes of “what went wrong” and to identify how Council services can better meet the transport needs of children with SEND, their parents and carers.

The review will form part of the Council's intention to identify the relevant factors that created the significant levels of distress and anxiety to SEND pupils and parents so lessons can be learnt to ensure that a similar situation does not re-occur.

### Scope

The Lessons learnt review focussed on 11 scope areas which were as follows:

Impact upon Families and Children	Consultation Process with Parents, Carers and Kent PACT
Decision Making	Re-tendering and Contract Award Processes
Project Planning and Change Management Arrangements	Review of Risk Management and Assurances prior to Implementation
Communication Process with Parents, Carers and Kent PACT December 2021- March 2022	Review Effectiveness of Short-Term Remedial Actions from February 2022
Growth, Environment and Transport (GET) Directorate Governance Arrangements	Children, Young Persons and Education (CYPE) Directorate Governance Arrangements
Cross- Directorate Governance and Communication between GET Directorate and CYPE Directorate	

Additionally, the review also focused upon processes relating to Budget Savings for SEND Transport.

## Conclusion

In the second week of February 2022, it became rapidly apparent to Members and Senior Officers in Kent County Council that there were highly significant delivery issues in the provision of Home to School Transport for children with special educational needs and disabilities.

This was a cause of immense concern to children, parents and carers and was documented and discussed in local and social media. The impact of the service failure has been the central consideration in the undertaking of this review.

This review was commissioned by the Corporate Statutory officers of the Council and is designed to highlight where the Council needs to focus its learning and adapt its operations to ensure similar situations do not arise.

This report in no way seeks to undermine the many hard working and committed officers who deliver services in challenging circumstances. This review has, however, highlighted serious flaws within the Council and if existing and longstanding governance arrangements contained both within the Council's Constitution and its agreed processes had been followed or complied with, then the service failure may not have occurred.

Specifically, if governance and processes relating to Key Decisions and associated Equality Impact Assessment, Project Management and the management of risk had been followed and raised with all appropriate parties and sections within the Council, then the impact upon children, parents and carers may not have occurred.

It is clear that the Council will continue to make significant financial decisions including the requirement for budget savings, however the precedence of good governance and the impact upon those who receive services must be at the forefront of all proposed decisions. Consequently, there now needs to be an increased emphasis upon a culture which ensures the consistent delivery of good governance at Kent County Council.

Observations and lessons learnt for each of the 11 scope areas identified are covered within section xx of the SEND Lessons Learnt Review.

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## What were the key themes?

From the lessons learnt review, several core themes for the failure to provide transport provision were identified:

Governance

Project Management

Compliance Culture

Risk Management

Communication

## 1. Impact upon Families and Children

### Key Observations

- SEND children and families were impacted countywide. The impact on families and children has been detrimental. Trust and confidence in the SEND Transport system was lost, with reputational damage to the Council.
- Social media forums captured the feelings of parents / carers and the impact the new arrangements had on them.
- This review has not considered the full impact of the SEND Transport re-tendering exercise in relation to journey times principally due to insufficient data held on previous journey making, a comparison between new and previous journey times not possible.
- Statistics and data were inconsistent. A definitive number of pupils without transport on the 14<sup>th</sup> of February 2022 could not be ascertained. Internal Audit determined a best estimate, which was significantly different to the various figures quoted in February 2022. The root cause of this was that there were no robust mechanisms in place to monitor and track the population of pupils requiring SEND transport and their allocation to routes and contracts.
- In response to the data issues, a daily Situation Report (SITREP) to analyse the SEND Transport data and provide structure and accuracy was introduced.
- The County Council received a range of comments relating to the impact. Some of these are referenced on the following page.

### Lessons Learnt

- Parent / Carer feedback should be used to inform management actions.
- KCC should work together with Kent PACT, families, and schools to restore trust and confidence in the Council.
- For future similar projects, an impact (quantitative and qualitative) assessment that informs the decision-making process should be undertaken and reported to Members and Senior Management.
- A range of mechanisms, including the SITREP, to monitor and track pupils transport arrangements be established, deployed and maintained.

### Conclusion

There has been a detrimental impact on SEND children and families across Kent that has resulted in a lack of trust in SEND transport.

A formal analysis of the impact upon journey times should be undertaken to determine the impact of the new transport arrangements. This should be reported to management and members.

Statistics and data were inconsistent, specifically the number of children affected and without transport. In response to the data issues, a daily Situation Report (SITREP) was developed and introduced by an independent team post 14<sup>th</sup> February 2022.

## What was the impact on families?

### Feedback from Kent PACT and Parents/Carers on the frustrations of the SEND Transport failures

"Monday still no email or call re transport. My emails are being ignored. Even my MP not got anywhere. So frustrated and upset"

**Parent**

"My little one is anxious too. Squashed in the back of a taxi with sensory processing issues and they hate being touched. I don't know what to do to be honest. Had to calm them this morning"

**Parent**

"I'm still struggling to understand why they would end contracts without new ones sorted and in place ready"

**Parent**

"So damaging to our children's mental wellbeing and ours to be honest"

**Parent**

"In terms of what we are doing about those who still have no transport arrangements, I wish to clarify. We are communicating with Cabinet Members, Corporate Directors and Management continuously. We request updates frequently on actions being taken to ensure our children and young people will have suitable transport asap. Our priority and focus is that this happens. Only then will we move forward, unpicking every area of transport from eligibility to allocation including comms and work with (including challenge) KCC to ensure this never happens again"

**Kent PACT**



## 2. Consultation Process with Parents, Carers and Kent PACT

### Key Observations

- The formal KCC consultation process was not employed for the SEND Transport retender.
- There was engagement with messaging from the Council to Kent PACT that included emails to parents / carers and the You Tube Q&A video.
- Social media forums captured key consultation themes from parents / carers.
- An Equality Impact Assessment (EqIA) was not undertaken as should have been expected by the Council.
- Schools were involved in the 'shareability' (children sharing vehicle with other children) exercise, and some meetings were held to disclose details of the re-tendering exercise.
- Member briefings in advance of the re-tendering exercise covered a range of challenges facing SEND Transport. The briefings did not include either how these challenges would be met or specifically the re-tendering exercise.
- There was an absence of co-production across the CYPE Directorate and there was limited co-production undertaken by Client Transport who were engaging with Kent PACT and Schools.

### Lessons Learnt

- In future, a full consultation exercise be considered by Members and Senior Management for such projects.
- Parent / Carer feedback to be used to inform management actions and decisions.
- An Equality Impact Assessment (EqIA) must be undertaken for such projects.
- Members should be provided with briefings which include the rationale for proposed changes and their potential impacts on those using council services.
- There needs to be more understanding and appreciation of what co-production is, mapping out all parties who should be involved, who is responsible for ensuring effective co-production occurs and how it is factored into the key stages and decisions.

### Conclusion

There was an absence of consultation and no Equality Impact Assessment (EqIA). However, there was some engagement (emails and the Q&A video – see also Section 7 of the report) with Kent PACT and parents / carers.

This did not extend to engaging parents / carers in a manner where their concerns could be raised and reviewed.

Member briefings did not specifically cover how the challenges facing SEND transport would be addressed and the forthcoming SEND re-tendering exercise.

There was an absence of co-production across the CYPE Directorate with limited co-production undertaken by Client Transport.

## 3A. Decision Making

### Key Observations

- There was a distinct lack of accountability between both CYPE and GET.
- It would have been beneficial if there had been more structured handover arrangements of information for new Cabinet members. (Please Cross Reference to Section 8)
- There are currently 3 Cabinet Member with potential links to the decisions surrounding home to school transport which complicates accountability for the service.
- Public Transport are the delivery agent for providing home to school transport however, there is no formal Service Level Agreement (SLA) in place between CYPE and GET setting out roles and responsibilities and reporting requirements. (Please Cross Reference to Section 10)
- There were no clear governance arrangements set out for the project and no reporting lines into a specific Cabinet Committee. These should have been set out at the outset of the project. (Please Cross Reference to Section 5)
- Under the Council's Constitution, a key decision should have occurred however, no key decision was undertaken.
- From interviews conducted in this review, there was a continuing theme regarding the awareness of what a key decision constitutes.
- Informal governance forums did not sufficiently consider the key decision requirements and project governance for the changes to transport arrangements.
- Agreement of the budget may have been misrepresented as a decision to pursue the Home to School Transport re-tender. The agreement of the budget sets out the plan in which the

### Lessons Learnt

- Clear governance arrangements should be set out at the start of major projects.
- Home to school transport may benefit by falling under the clear and documented remit of 1 Cabinet member as the political responsibilities for SEND Transport appear to lack clarity.
- Awareness/ training of what and when a key decision must be undertaken should be reviewed.
- A formal SLA should be documented to outline the roles and responsibilities for the service between CYPE and GET. (Please Cross-Reference to Section 10).
- Where there is a potential impact on protected characteristics, an Equalities Impact Assessment (EQIA) should be undertaken.
- Informal Governance forums should be reviewed for their purpose and should have clear Terms of Reference.

The Council requires a more effective second line of defence to ensure that governance principles are complied with and there should be consideration of where this enhancement and the resources should sit.

Council wants to take and where necessary, such as the re-tender of Home to School Transport, would require a key decision.

- No Equality Impact Assessment (EqIA) was undertaken for the re-tendering exercise.

### Conclusion

A key decision for the re-tendering of the entire SEND Home to School transport network should have been undertaken. As a key decision was not undertaken, this had led to a number of processes not being undertaken such as an EQIA.

There was a lack of clarity between Officers in CYPE and GET as to who had responsibility for the key decision. This should have been developed jointly between the Directorates.

## 3B. Budget Savings

### Key Observations

- The inclusion of the CYPE £2m budget saving for 2021-22 to “Restructure and Retender the SEN transport network to achieve efficiencies” did not fully consider all potential risks / impact.
- The budget saving proposal did not allow sufficient time for the implementation of Travel Service Optimisation (TSO) and the subsequent re-tendering exercise.
- Officers and Members interviewed during the review did not have a consensus view on whether or not the SEND Transport re-tendering budget saving proposal for £2m warranted a Key Decision.
- There is insufficient clarity in terms of the accountability and responsibility for SEND Home to School Transport (HTST) budget (£36m).
- Monitoring arrangements for the delivery of the saving in 2021-22 were insufficient.

### Lessons Learnt

- There has been a significant increase in the numbers of EHCP's since 2015, leading to an increase demand in HTST applications.
- The SEND HTST budget should be managed and monitored jointly between CYPE and GET with improved and formal communication and accountability, roles and responsibilities being clearly defined.
- It should be ensured that sufficient information is presented to support future budget saving proposals to ensure sufficient information is presented to decision makers, particularly in relation to how the saving was calculated with potential risks / impact and opportunities
- All future budget savings proposals should be led and managed by the respective budget holder, who should “sign off” the business case with close oversight of the respective Finance Business Partner, to ensure the correct information is being presented and processes followed.
- Meeting notes, decisions and actions from discussions about future budget saving proposals at informal governance forums should be recorded in sufficient detail and filed for future reference.
- Where budget savings proposed impact across multiple Directorates, it should be ensured that there is consistent collaborative work by staff in Finance.
- Decision makers should provide more robust scrutiny / challenge over proposed budget savings to ensure the proposals are reasonable / deliverable.
- All future budget saving proposals to be reported to the respective Directorate Management Teams and Corporate Management Team prior to seeking Member approval.
- Greater transparency and formal monitoring are needed to evidence the delivery of agreed budget savings.

**Conclusion**

The need to make budget savings was one of the main drivers behind the SEND Transport re-tendering exercise. The review identified a lack of understanding across officers and Members that the £2m budget saving proposal should have been subject to a key decision.

There were significant weaknesses and clarity in:

- the accountability and responsibility of the HTST budget;
- the adequacy of the HTST budget saving business case - including how the budget saving proposal of £2m was derived and who was involved in this calculation process;
- the decision-making process to approve the budget saving proposal and;
- the subsequent monitoring and tracking of budget saving delivery.

The review also identified that the proposal budget savings were highly unlikely to be deliverable within the intended timetable.

These weaknesses led to the HTST budget saving proposal being agreed without full consideration of all of the risks and impact.

## 4. Re-tendering and Contract Award Process

### Key Observations

#### Re-tendering of the SEN Transport Contracts:

- The KCC standard procurement plan was not utilised, resulting in key information being missed such as governance requirements, risk management arrangements and the resources needed.
- The Dynamic Purchasing System was identified to retender the whole home to school transport service. However, the improvements identified as part of the Strategic Commissioning – Improve Phase Report had not been implemented which would have provided some efficiencies in the process.
- There was a lack of engagement with the GET Project Management Office and Strategic Commissioning to provide relevant challenge and support.
- The retender was driven by the need to meet a £2m savings target that had been agreed in the budget in 2021.
- The time frame to retender the whole SEN transport network was over ambitious (seven weeks in Jan-Feb 2022). Previous tenders have occurred over the summer holidays which allows the service more time to resolve any contractual issues.
- Staff involved in the re-tendering exercise worked extraordinary long hours and at weekends to try and complete the re-tendering exercise, often impacting on their wellbeing.

#### Contract award of the Travel Service Optimisation (TSO) software:

- The benefits (including the savings it can offer) of using a TSO solution was initially based on use over a four-year period, however the decision to retender the whole SEN transport contracts to meet a £2m saving led to TSO being awarded a one-year contract.

### Lessons Learnt

- The CYPE Commissioning Plan requires enhancing to include the commission of SEND Transport to ensure there is relevant oversight at a strategic level.
- Both CYPE and GET might benefit from a Project Board structure to ensure the strategic aims of commissioning SEND transport are being met through the operational delivery being managed by GET.
- Applying the commissioning principles in the re-tendering of SEN transport would have identified the need for project management and commissioning expertise.
- Where service decisions are linked to savings targets it is essential to identify the additional costs of the action proposed as part of the decision-making process.

### Conclusion

The re-tendering timeframe of the entire SEN transport network was over ambitious and treated as business-as-usual activity rather than the complex commissioning exercise that it was. Consequently, there was no support from GET's Project Management Office or Strategic Commissioning.

The procurement of a TSO solution followed KCCs commissioning principles up to the award stage to support the retendering of the SEN transport network and has supported the service in meeting a £2m saving, however costs in excess of £1m for TSO were not factored into the initial savings calculation.

- Although there was relevant review of the procurement of TSO by Strategic Commissioning and Senior Officers, the 'Authority to Award' form was completed but was not signed off by the Corporate Director who has budget responsibility for the spend. There may be additional review to be undertaken in this area.
- The £2m savings identified by the service through the re-tendering of the SEN transport network did not take into account the £910k spend to procure TSO nor the initial £150k cost. (Please Cross-Reference to Section 12).

## 5. Project Planning and Change Management Arrangements

### Key Observations

- KCC principles and tools for project management were not utilised for the project. Methodologies of the provider were utilised; however, these lack the granular detail of KCC methodologies.
- GET did not utilise their Project Management Office (PMO), who have the necessary expertise in Project Management. High reliance was placed on the supplier to bring project management expertise.
- The re-tendering should have been recognised as a project rather than being regarded business -as-usual activity.
- Dedicated resource was not assigned to the re-tendering exercise and was completed alongside business-as-usual leading to Officers working excessive hours.
- There was no project board set up for the major project leading to insufficient governance and oversight of the project.
- Re-tendering of an entire network is not common practice and additionally no contingency was built into the project to account for any delays.
- Officers commented that anomalies identified during the pilot of the system were still present during the final output which may have been a contributing factor to the delays.
- There were insufficient monitoring arrangements in place to track the progress of the tendering exercise.
- There was no Data Protection Impact Assessment (DPIA) undertaken though the procured system utilises personal data.
- A project risk register was not developed or established.

### Lessons Learnt

- The PMO must be utilised for significant projects to ensure that adequate project planning, governance and oversight are undertaken.
- There should be consideration of a centralised PMO function for the whole of the Council as a means of ensuring consistency in the application of project management approaches and principles.
- There are a wide range of guidance and tools readily available to support officers in managing a project and these must be utilised where experience from the PMO is not utilised.
- A DPIA must be undertaken for the procured system to understand whether there are any risks that the Data Protection Officer needs to be aware of.
- Risks for the project must be continually assessed from the outset of the project to full implementation which can be easily undertaken as part of development of a project risk register.

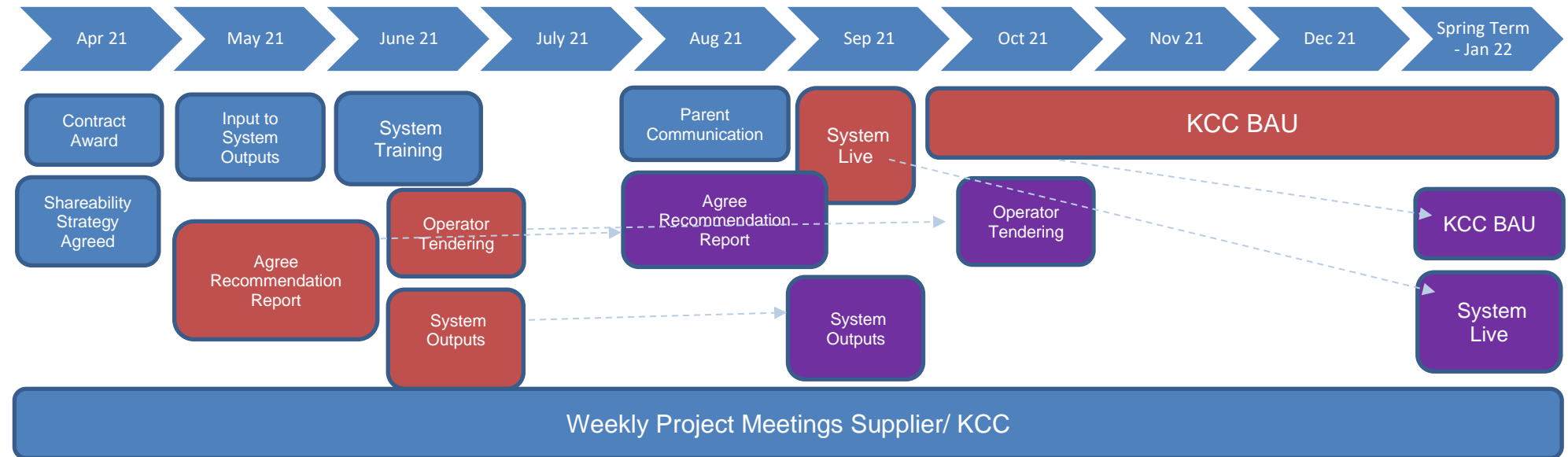
### Conclusion

Overall, the re-tendering of the entire Home to School Transport was not treated as a project but as business-as-usual activity.

The project would have benefitted from utilising already available expertise from the PMO which may have led to stronger project planning. Contingency was not built into the project to account for any delays and therefore more robust project planning should have been undertaken. The timeline for the project can be found overleaf.



## Project Timeline



### Legend



Above details the original project timeline for the re-tender of the entire Home to School Transport Network. Themes related to re-tendering on this scale is not normal practice which were identified as part of interviews with Officers. The timescales set out for the project were ambitious and did not account for potential project slippages. The **icons in red** detail some of the key milestones which were not met to expected timescales and the **purple icons** show where these had slipped to in the project timeline.

## 6. Review of Risk Management and Assurance prior to Implementation

### Key Observations

- Prior to the SEND Transport failure in February 2022, there were no risks recorded in the JCAD risk register relating to the SEND Transport re-tendering and service allocation process, within CYPE, GET or Corporately.
- The risks that have been subsequently added to the JCAD risk register are not sufficient.
- Risks relating to the SEND Transport re-tendering have not been discussed at Management team meetings in detail. Where risk was discussed, the focus was on finance and achievement of budget savings.
- There is no evidence of a significant risk assessment being completed with regards to the impact of the SEND transport changes prior to the re-tendering exercise.
- No communications have been identified to support the escalation of risks regarding the impact of the project.
- The assurance statements from the GET and CYPE Directorates for the 2021-22 Annual Governance Statement (AGS) do not include any reference to SEND transport risks.
- Briefings to members and committees regarding the project did not include reference to risk management.

### Lessons Learnt

- Risk Registers within both CYPE & GET should be updated to include more specific risks with regards to the provision of SEND transport with a more dynamic assessment of risk for projects such as this. Consideration should be given to the full range of risks, such as: the restricted SEND transport market and increased demand, service failure and the impact on children and families, workload of officers and their wellbeing when undertaking significant additional work with tight timescales and budget/ cost pressures.
- Where appropriate, the SEND Transport risks should be escalated to the CYPE and GET Directorate risk registers and potentially to the Corporate Risk Register.
- As a cross-directorate process, the risks raised and actions taken to address them should be co-ordinated, with a link between the risk registers for CYPE and GET.
- The AGS for 2021-22 should reflect SEND Transport re-tendering.

### Conclusion

There has been a failure of Risk Management and a general lack of awareness of risk has been noted from the Officer and Member interviews undertaken during this review. In addition, the AGS submissions for 2021-22 did not reflect SEND Transport re-tendering.

## 7. Communication Process with Parents, Carers and Kent PACT December 2021-March 2022

### Key Observations

- Contact details of parents/carers were not up to date, and this resulted in limited or delayed communication with them.
- Social media platforms captured key communication themes.
- Client Transport sent a range of emails to parents/carers providing generic information about changes to SEND transport.
- A YouTube Q&A video (8<sup>th</sup> February 2022) was produced, with PACT asking questions on behalf of parents /carers.
- There was no mention of a considerable number of pupils without transport on the emails sent by Client Transport or the video.
- Kent PACT knew that the SEND transport service was not ready before CYPE did.
- Support from the Marketing and Resident Experience team, who later advised on engagement and how to address concerns, was not sought at an early stage of the project.
- High volumes of SEND Transport emails were received with the vast majority going into the Client Transport Inbox, which was managed by minimal staff and no contingency arrangements, resulting in emails not being dealt with in a timely manner. In addition, parents/carers phoning KCC could not get through and receive adequate responses in a timely manner. This position was compounded by the same Client Transport staff also having to deal with transport tenders to be concluded.
- Devolved complaints management meant that Client Transport should have dealt with all complaints, however they came through a number of channels leading to disorder and confusion.
- The Marketing & Resident Experience Team offer to assist with enquiries and complaint management, (as did the CYPE Directorate), however such offers were initially rejected. Once they were involved, the enquiries and complaints were triaged to

### Lessons Learnt

- Data cleansing of contact details of parents/carers should be performed.
- Parent / Carer feedback should be used to inform management actions.
- The Marketing & Resident Experience Team must be deployed from the early stages of such projects to assist with communications and enquiries and complaints management.
- Customer phone and email management processes be reviewed and revised to ensure that customer contact is responded to in a timely manner.
- There should be consideration of centralised complaints handling and management and ensure that any complaints received from other channels are re-directed to the central complaints team.

### Conclusion

Generic emails and the Q&A video with Kent PACT were used to communicate the changes to SEND transport to parents/carers, however this effectively delivered false assurance to parents and carers in relation to forthcoming travel changes.

The Client Transport and Eligibility teams did not hold up-to-date contact details, and this had an adverse impact on communications.

Parents/carers did not receive timely responses from telephone enquiries.

SEND transport emails (enquiries and complaints) went into the Client Transport Inbox with insufficient staff to respond to them. In addition, complaints came through several channels, and this further compounded the position.

prioritise according to importance and urgency, and responses were written empathetically.

Once it was clear that the existing team could not address all issues, the Marketing & Resident Experience Team assisted with enquiries and complaints. This had a positive impact.

## 8. Growth, Environment and Transport (GET) Directorate Governance Arrangements

### Key Observations

- Roles and responsibilities within GET in relation to the SEND Transport re-tendering exercise were not clearly defined.
- There was limited information reported to the newly appointed GET Cabinet Member following the May 2021 elections.
- There was no formal decision made or EQIA completed by GET in relation to the procurement of TSO, or the SEND Transport re-tendering exercise. Assumptions were made that this had been covered by CYPE and verification checks not completed.
- The Transport Information Forms submitted to GET are not always complete / accurate, which can lead to delays.
- The Client Transport Team was not sufficiently resourced or managed to deliver the SEND Transport re-tendering exercise, within the specified timeline, alongside business-as-usual activities, and concerns raised about resources capacity and well-being during the exercise were not heeded.
- The success of delivering the re-tendering exercise was reliant on a small number of officers and the Client Transport Team working excessive hours for a prolonged period of time.
- There was no formal project management in place over the SEND Transport re-tendering exercise, which led to gaps in the tracking, monitoring and reporting of re-tendering exercise.
- There is no evidence that updates on the Transport re-tendering exercise were being formally reported to Senior Management and Cabinet Member.
- There were no project risk management arrangements in place over the SEND Transport re-tendering exercise, which meant key risks and emerging risks were not identified, assessed and mitigated. (Please Cross-Reference to Section 5).

### Lessons Learnt

- Improved clarity on roles and responsibilities within GET on future SEND Transport re-tendering exercises.
- GET Directorate to work more collaboratively / closer with CYPE Directorate on future SEND Transport re-tendering exercises.
- Future re-tendering exercises to follow formal project management and risk management methodology and to be completed in accordance with the Council's Constitution.
- Future SEND Transport re-tendering exercises to be subject of more robust monitoring, tracking, reporting and escalation.
- Future SEND Transport re-tendering exercises to be resourced appropriately, taking into account well-being, resource gaps, working hours and business-as-usual workload.
- The findings of the original February 2021 Continuous Improvement review should be revisited and actioned as needed.
- IT systems inefficiencies to be identified and resolved.

### Conclusion

The governance, project management, risk management and resource management arrangements in place within GET in relation to the SEND Transport re-tendering exercise proved ineffective, which contributed to home to school transport not being provided by the agreed date.

## 9. Children, Young Persons and Education (CYPE) Directorate Governance Arrangements

### Key Observations

- There was no reliable and regular performance monitoring information by CYPE as commissioner to review the position of the SEND Transport re-tendering.
- Lack of co-production between the SEND Team and the Eligibility Team. (Please refer to Section 2).
- CYPE staff interviewed were not aware that there were issues with the re-tendering process until February 2022. Members and staff felt misled by officers in GET.
- CYPE budget holders felt that they had no control over the budgets for which they were responsible.
- Lack of engagement at all levels with CYPE on the redesign of SEND transport services e.g., Cabinet Committee, CMT and DMT despite this directly impacting on ability to deliver statutory responsibilities.
- No collaborative decision making; CYPE were informed of the decisions made by GET and Finance despite the statutory responsibility for the provision of education lying with CYPE.
- The needs of individual children are at the heart of the process and demonstrated by personalised EHCPs.
- Provision of informal Member updates resulting in an inability to demonstrate that Members have been sufficiently briefed on ongoing projects.
- Despite being responsible for planning, managing, review of strategic development and operation of school transport and having responsibility for mainstream & SEND transport budgets, the role of the Head of Fair Access has no dotted reporting line with GET.
- Internal Audit were informed that senior management within CYPE requested a delay to the re-tendering process due to concerns that this would not be delivered, this request was not actioned due to budget pressures.

### Lessons Learnt

- The CYPE Directorate have not sufficiently exercised contract management with the GET Directorate in relation to the provision of SEND Transport.
- There was a lack of ownership of the SEND Transport re-tendering from the Directorate with statutory responsibilities.
- A more effective collaborative approach of working between Directorates in the Council needs to be embraced and the removal of silo working.
- The co-production principles which the Directorate have signed up to were not followed.

### Conclusion

The CYPE Directorate did not exercise sufficient management and oversight of the SEND Transport re-tendering as would be expected with their statutory responsibilities.

- CYPE were not actively involved in the communication with parents and carers. (Please refer to Section 7)
- Risk identification and mitigation processes fell short of expectations (Please refer to Section 6)

## 10. Cross-Directorate Governance and Communication between GET Directorate and CYPE Directorate

### Key Observations

- There was no effective shared governance between the two Directorates with accountabilities and responsibilities not being sufficiently clear and requiring clarity.
- Communications between the two Directorates on SEND Transport are based upon informal arrangements, which are not fit for purpose.
- There is no Service Level Agreement (SLA) between the CYPE and GET Directorates in relation to the provision of SEND Transport.
- The communication of transport requirements between the two Directorates requires improvement in order to improve planning efficiency.

### Lessons Learnt

- Recognition of cross-directorate projects via the performance of an impact assessment at the early planning stages.
- A formal SLA between CYPE and GET, must be introduced including meaningful performance measures, which are subject to contract monitoring arrangements and robust escalation procedures where needed.
- Officer and Member accountability, roles and responsibilities on SEND Transport and future re-tendering exercises to be clearly defined.
- To improve and formalise the communication between CYPE, GET and key stakeholders.
- Future SEND Transport re-tendering exercises to be managed as a cross-directorate initiative and in accordance with the Council's Constitution and project management methodology.
- To review communication of transport requirements between CYPE and GET, including the transport information forms and the transition from year 6 to year 7.
- For CYPE and GET to operate collaboratively in order to deliver the Council's statutory duty for SEND Transport.

### Conclusion

The cross-directorate governance arrangements in place in relation to the HTST service and HTST retendering exercise have been inadequate. This resulted in service delivery failings. Significant improvement is needed to ensure there is greater unity between the Directorates, to enable more effective service delivery in the future.



## 11. Review Effectiveness of Short Term Remedial Action from February 2022

### Key Observations

- There was a lack of progress monitoring throughout the re-tendering of transport routes. It was, therefore, not clear how many children without transport was outstanding and Management Information at a student level was not available after the proposed go live dates of the contracts to manage the situation.
- Since February 2022, the Growth Environment and Transport (GET) Project Management Office has been utilised and there is also regularly Sitreps in place.
- The numbers of children with transport outstanding in February 2022 was not as high as some parties indicated.
- The majority of the delays for students awaiting allocation of transport were remedied within three weeks.
- Where individuals had specific requirements such as single occupancy, this was found to align with the new allocated transport arrangements.
- A scheme to reimburse parents was put in place promptly and advertised on the website.
- The scheme allowed timely payment of claims to parents and was processed outside the Client Transport team to allow them to focus on the allocation of transport to students.
- There were 167 reimbursements made to 139 claimants. The total value of claims was £36,604.
- Payments were authorised by Client Transport in a timely manner and regular payment runs were made to claimants.

### Lessons Learnt

- There was no student level monitoring of progress towards achieving the re-procuring of home to school transport, leading to poor oversight and scrutiny.
- After the delays in the re-procurement of Home to School Transport were realised, there was still a lack of insightful management information to either quantify the magnitude of the issue or to assist in managing its resolution.

### Conclusion

There was no regular monitoring of progress for the procurement of SEND Home to School Transport, either during or immediately after the proposed implementation date, 14<sup>th</sup> February 2022. This meant there was no escalation of delays and then no accurate information on the number of those students left without transport immediately after the implementation date.

The Client Transport Team worked long hours to resolve outstanding issues and the majority of delays were rectified within 3 weeks, and there are now regular SitReps in place to monitor students requiring transport.

Ultimately, officers from several sections of the Council were required to respond to the remedial actions required by the Council.

The reimbursement scheme set up to recompense parents for travel costs was set up promptly and adequately managed.

## Appendix B – Glossary of Terms and Abbreviations

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**Annual Governance Statement (AGS)** – The purpose of the AGS is for an authority to report publicly on its arrangements for ensuring its business is conducted in accordance with the law, regulations and proper practices and that public money is safeguarded and properly accounted for. The AGS provides an overview of how the Council's governance operated.

**Business Case** – Provides justification for undertaking a project, programme or portfolio. It evaluates the benefit, cost and risk of alternative options and provides a rationale for the preferred solution.

**Client Transport & Eligibility Team** - assess the eligibility for children with an Education, Health and Care Plan (EHCP) for transport assistance based on the defined criteria.

**CMT** - Corporate Management Team.

**Commissioning Principles** - Commissioning to get the best possible services that deliver value for money. If the principles are embedded, these could yield efficiency gains and community benefits, through smarter, more effective and innovative commissioning, and optimal involvement of third sector organisations in public service design, improvement, delivery and holding the local government to account. This should result in better public outcomes for individuals and communities.

**Constitution** – Sets out how the Council conducts its business, including who is responsible for making decisions and how decisions are made, procedural matters (set out in the 'standing orders'), the role of officers and standards & ethical governance.

**Co-Production** – Co-production is defined by KCC as follows – *“Everyone, including young people, coming together from the start; to work collaboratively as equal partners, communicating and listening in a respectful manner; to achieve the best possible outcome for everybody”*.

**Corporate Statutory Officers** - Chief Executive (Head of Paid Service), General Counsel and the s151 Officer (Corporate Director of Finance).

**CYPE** – Children, Young People & Education Directorate.

**Data Protection Impact Assessment (DPIA)** - A Data Protection Impact Assessment (DPIA) is a process to help identify and minimise the data protection risks of a project.

**Data Protection Officer (DPO)** - The primary role of the data protection officer (DPO) is to ensure that the organisation processes the personal data of its staff, customers, providers or any other individuals (also referred to as data subjects) in compliance with the applicable data protection rules.

**DMT** - Directorate Management Team.

**Dynamic Purchasing System** – A dynamic purchasing system (DPS), is an electronic method of procurement, used for the supply of goods and/or services. It is different to traditional procurement routes as it operates an 'open market' for suppliers to join either constantly or very frequently.

**Dynamic Risk Assessment (DRA)** - The process of continually observing and analysing risks and hazards in real-time in a changing or high-risk environment. This is done while completing a task, so you can continue to carry out duties safely. This allows to quickly identify new risks before they can do any harm and remove them.

**EHCP** – Enhanced Care Plan.

**Equality Impact Assessment (EqiA)** - An Equality Impact Assessment (EqiA) is a tool that helps us to place equality, diversity, cohesion and integration at the heart of everything we do and make sure our strategies, policies, services and functions do what they are intended to do and for everybody. Carrying out an EqiA involves assessing the likely (or actual) effects of policies on people in respect of protected equality characteristics including age, disability, race and sexual orientation.

**Finance Business Partner** – Finance Business Partners are accountants who work very closely with the business to help it make key financial decisions. They discuss historical results as well as future projections. Key strategies are also discussed, as these all impact on the financial results. Finance business partners will often be embedded within specific business units to create active partnerships that provide real-time support and analysis. This makes them trusted advisers focused on adding value to businesses.

**GET** – Growth, Environment & Transportation Directorate.

**GET Project Management Office (PMO)** - department that defines, maintains and ensures project management standards within the GET Directorate.

**HTST** – Home to School Transport.

**Improve Phase Report** - Focuses on developing ideas on how to remove sources of variation in the process. This phase deals with testing and standardising potential solutions. The idea at this point is to understand what is really occurring in the process and not what is perceived to be the root cause(s) of any variation. Once you have identified specific inputs that affect the outputs, you can start to develop a strategy on how to control the process.

**Internal Audit** – provision of independent assurance that an organisation's risk management, governance and internal control processes are operating effectively.

**JCAD** – Electronic risk register used by KCC to monitor risks.

**KCC Standard Procurement Plan** - also known as a procurement management plan, is a document that is used to direct the process of selecting and finding a supplier. It justifies the necessity for an external supplier and describes how the process of finding a supplier will be undertaken.

**Kent PACT** – Kent Parents & Carers Together Kent PACT is a parent carer forum set up for parents of children and young adults with disabilities and additional needs.

**Key Decisions** – A key decision is defined as: A decision which is likely to result in significant expenditure or savings, or a decision which is likely to be significant in terms of its effects on communities living or working in two or more wards.

**Marketing & Resident Experience Team** - The core purpose is to ensure that; KCC's reputation is protected, enhanced and promoted and that the customer experience is championed, enhanced and protected across all contact channels. Working with services to help design and improve the customer and user experience, the team anticipates and responds to the needs of services, residents and other stakeholders.

**Members** – Elected councillors.

**Officers** – Member of staff employed by the Council.

**Project Board** - The main role of the project board is to direct the project in line with the corporate project mandate. The project board is therefore ultimately responsible for a project's success (or failure). The board's responsibilities evolve through the lifetime of the project, but chief among them is to ensure communication channels between the project management team and external stakeholders (e.g., corporate management) are working as they should.

**Risk Identification** - The purpose of risk identification is to reveal what, where, when, why, and how something could affect a company's ability to operate.

**Risk Mitigation** – A strategy to prepare for and lessen the effects of threats faced by a business. Comparable to risk reduction, risk mitigation takes steps to reduce the negative effects of threats and disasters on business continuity (BC). Threats that might put a business at risk include cyberattacks, weather events and other causes of physical or virtual damage. Risk mitigation is one element of risk management.

**Root Cause Analysis (RCA)** - A popular and often-used technique that helps people answer the question of why the problem occurred in the first place. It seeks to identify the origin of a problem using a specific set of steps.

**S151** – Section 151 Officer - Section 151 Officer. An officer appointed under section 151 of the Local Government Act 1972 which requires every local authority to appoint a suitably qualified officer responsible for the proper administration of its affairs.

**Second Line of Defence** - The second line of defence (functions that oversee or who specialise in compliance or the management of risk) provides the policies, frameworks, tools, techniques and support to enable risk and compliance to be managed in the first line, conducts monitoring to judge how effectively they are doing it and helps ensure consistency.

**SEND** – Special Educational Needs & Disabilities.

**Service Level Agreement (SLA)** – A service level agreement (SLA) is a contract between a service provider and a customer, defining the types and standards of services to be offered.

**Shareability** – Children sharing a vehicle with other children.

**SITREP** – Daily situation report.

**Stakeholders** - Stakeholders in local government are normally considered to be the residents of the local government area but can also include residents' associations, sports clubs and community associations, such as Scouts and Community Gardens groups, who use the grounds and facilities in the local government area.

**Statutory Duty** Local authorities are bound by statute. Their functions are set out in numerous Acts of Parliament and many of these functions have associated legal duties.

**Strategic Commissioning** – the Division responsible for strengthening commissioning capability, and leading and shaping commissioning activity for the Council. The Division works closely with Directorates to provide specialist professional services for all phases of the commissioning cycle and provide strong capability across the key functions of commercial leadership and judgement, and evidence-based decision making.

**TSO** – Travel Service Optimisation.

From: Mr Tony Hills, Chairman of the Section 106 Short Focused Inquiry (SFI)  
Gaetano Romagnuolo, Research Officer - Overview & Scrutiny

To: **Scrutiny Committee – 11 October 2022**

Subject: Short Focused Inquiry – Section 106 Contributions

Classification: **Unrestricted**

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## 1. Introduction

- a) At its meeting of 7 July 2021, the Scrutiny Committee agreed that the work programme for Short Focused Inquiries (SFIs) should include an inquiry into Section 106 contributions in Kent.
- b) Oral evidence was gathered from a variety of sources, including:
  - KCC's Cabinet Member for Economic Development and relevant KCC officers
  - The Chairman of the Kent Chief Planning Officers Group
  - The Chairman of the Kent Developers Group
- c) In addition, the Committee received written evidence from several people/organisations, including the following:
  - House building companies
  - West Sussex County Council
  - Planning consultants
  - KCC's Members and officers
- d) The recommendations and findings of the inquiry are set out in the report contained in Appendix 1.

## 2. Next Steps

- a) Once agreed, the report and recommendations will be submitted to the Leader and relevant Cabinet Members along with a request for a formal response to the recommendations within two months.
- b) The next inquiry, as agreed on 15 December 2021 and confirmed on 20 July 2022, is into Highway Improvement Plans. The inquiry is already underway.

## 3. Recommendation:

**That the Scrutiny Committee approve the Short Focused Inquiry Report into Section 106 contributions, and that it be submitted to the Leader and relevant Cabinet Members along with a request for a formal response to the recommendations within two months.**

#### **4. Background Documents**

None.

#### **5. Contact details**

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# **Kent County Council**

## **Section 106 Short Focused Inquiry (SFI) Report**

**September 2022**



## Headline Findings

- Since 2014, KCC has secured a total of about £300m in contributions from developers. However, 24% of the total infrastructure required in the county is neither secured nor expected, leaving a funding gap of about £4billion.
- Effective early engagement allows communities to have their say at a stage where their views can genuinely influence design decisions. The involvement of KCC Members in the early stages of the planning process is critical to maximising the impact of developer contributions and to promoting thriving and sustainable communities.
- Although KCC is a major infrastructure provider, it is not able, under current legislation, to adopt or implement its own CIL charging schedule. Kent District Councils determine the CIL monies that KCC receives to fund the delivery of infrastructure that it is responsible for.
- The 2020 Planning for the Future White Paper, and the Levelling-Up and Regeneration Bill (2022), propose substantial reforms to the national planning and regeneration system. A key proposal is the introduction of a new 'Infrastructure Levy' which will replace the existing Section106/CIL system. It will be set locally and non-negotiable, and it will be based on the sale value of the development.
- Kent has rich and varied biodiversity, with over 3,400 rare and threatened species. The impact of development and urbanisation on the natural environment should be factored into decision-making. Biodiversity Net Gain is an important measure to help protect the environment.
- Every local authority will be required to prepare design codes that should be met before planning permission for development is granted. The Kent Design Guide is available to all of Kent's Local Planning Authorities. It provides guidance for assessing planning applications and for achieving high standards of design and construction.
- Ensuring that unspent developer contributions remain with the communities they were intended for would increase levels of public understanding and trust towards the developer contributions system, and would improve the quality of life of Kent's residents.



# 1.Introduction and Scope

## 1.1. Introduction

1.1.1. Financial contributions from developers are normally used by KCC to increase infrastructure capacity to support services for which the local authority is responsible.

1.1.2. KCC seeks to secure contributions primarily for services including:

- Highways
- Primary and Secondary Education
- Adult Social Care
- Libraries
- Community Learning
- Youth Services
- Waste
- Broadband.<sup>1</sup>

1.1.3. Since 2014, KCC has secured a total of about £300m in contributions from developers. However, this has not been achieved without significant challenges. While KCC seeks to maximise contributions for essential community infrastructure, and to meet increasing demand, the current system presents several obstacles - including viability issues and planning policy restrictions.<sup>2</sup> Imminent national reforms to the planning system could present many more potential challenges.

1.1.4. The aim of this inquiry was to review the experience of Section 106 and other developer contributions in Kent, and to address the system's key challenges, in order to maximise support to KCC services and improve the lives of Kent residents.

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<sup>1</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, Written Evidence

<sup>2</sup> Ibid

## **1.2. Committee Membership**

1.2.1. The membership of the inquiry consisted of ten elected Members of Kent County Council:

Mr Tony Hills (Chairman Designate)

Mr Neil Baker (Conservative)

Mr Alister Brady (Labour)

Mr Nigel Collor (Conservative)

Mrs Trudy Dean (Liberal Democrat)

Ms Sarah Hamilton (Conservative)

Mr Mark Hood (Green Party)

Mr Andrew Kennedy (Conservative)

Mr Harry Rayner (Conservative)

Mr Robert Thomas (Conservative)

## **1.3. Scope**

1.3.1. The scope of the inquiry was:

1. To define, and briefly put into context, Section 106 contributions in Kent.
2. To explore the key challenges experienced by KCC in securing Section 106 contributions.
3. To identify actions that KCC could take to maximise Section 106 contributions.

## 2. Background

### 2.1. Definitions

2.1.1. The term '**Section 106 Agreement**' (**S106**) refers to Section 106 of the Town and Country Planning Act 1990. This is the primary legislation under which Local Planning Authorities (LPAs) are able to secure planning obligations through signed agreements between the developer and the authority.<sup>3</sup>

2.1.2. Section 106 Agreements are negotiated between a developer and the LPA to meet, or contribute to, the cost of providing new infrastructure to mitigate the impact of a new development.<sup>4</sup>

2.1.3. A '**Local Planning Authority**' (**LPA**) is the public authority whose duty it is to carry out specific planning functions in a particular area.<sup>5</sup> While Kent County Council is responsible for providing and maintaining a wide range of strategic infrastructure - such as roads, schools, and social care - it is often not the Local Planning Authority entering into legal agreements with developers. KCC therefore works closely with local District and Borough LPAs to arrange a timely transfer of developer contributions between the relevant authorities, and to ensure that its statutory responsibilities can be met.<sup>6</sup>

2.1.4. The **Community Infrastructure Levy (CIL)** is a levy that allows local authorities to raise funds from the owners or developers of land who are undertaking new building projects. The CIL helps local authorities to deliver infrastructure to support the development of their areas. In Kent, the funding raised from CIL is collected by Kent's Districts. While KCC is not directly responsible for collecting CIL, it receives funds from local Districts in order to meet its statutory duties.<sup>7 8</sup>

2.1.5. Both S106 planning obligations and the CIL are therefore designed to help pay for local infrastructure but there are differences in the way the two should be used. The CIL is intended to provide infrastructure to support the development of an area, while planning obligations are used

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<sup>3</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>4</sup> House of Commons Library (2019) Planning Obligations (Section 106 Agreements) in England, London

<sup>5</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>6</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>7</sup> Ibid

<sup>8</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

to make an individual planning application acceptable in planning terms. Most site-specific impact mitigation which is required for a development to be granted planning permission should therefore be carried out using a planning obligation. The CIL does not need to be used for providing infrastructure on the site from which it is collected.<sup>9</sup>

2.1.6. A **Section 278 Agreement (S278)** refers to Section 278 of the Highways Act 1980. Under this legislation, highway authorities are able to secure planning obligations, through legally binding agreements with developers, in order to fund alterations or improvements to highways.<sup>10 11</sup>

2.1.7. KCC, as the local highway authority, is responsible for the maintenance and development of the county's road network. If planning permission has been granted for a development that requires changes or improvements to local highways, a Section 278 Agreement details the alterations that the developer needs to pay for and carry out.<sup>12</sup>

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<sup>9</sup> House of Commons Library (2019) Planning Obligations (Section 106 Agreements) in England, London

<sup>10</sup> Ibid

<sup>11</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>12</sup> Ibid

## **2.2. National Context**

### **National context**

- 2.2.1. A recent study conducted on behalf of the Ministry of Housing, Communities and Local Government showed that the value of developer contributions agreed in England in 2018/19 was £7bn. This represented an increase of 16% in the aggregate value of developer contributions since 2016/17.<sup>13</sup>
- 2.2.2. There were strong geographical variations in how developer contributions were generated and invested, with the majority (53%) being agreed in London and the South East. However, this proportion was lower than in 2016/17 (58%).<sup>14</sup>
- 2.2.3. Other regions of England increased their share of agreed developer contributions. Between 2016-17 and 2018-19, the proportion of the total value agreed more than doubled in the East Midlands (from 4% to 9%), and in the North West it increased from 3% to 6%.<sup>15</sup>
- 2.2.4. The source of developer contributions has not changed significantly. In 2018/19, CIL accounted for 12% of all developer contributions, down from 13% in 2016/17. Mayoral CIL remained constant at 3% of the total, and affordable housing contributions were unchanged at 67% of the total.<sup>16</sup>
- 2.2.5. The majority of developer contributions (85%) continue to come from negotiated S106 agreements. Between 2016/17 and 2018/19 this proportion was unchanged.<sup>17</sup>

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<sup>13</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

## Planning Reforms

2.2.6. The Planning for the Future White Paper (August 2020), and the Levelling-Up and Regeneration Bill (May 2022), propose substantial changes to the country's planning and regeneration system. Reforms include: the intention to replace the existing Section106/CIL system with a new 'Infrastructure Levy'; the requirement for local authorities to prepare design codes to help develop good quality, sustainable places, and; improving environmental outcomes.<sup>18 19</sup>

2.2.7. A key proposal is the introduction of a new, **national Infrastructure Levy** which will replace the existing Section106/CIL system. The Bill proposes a simple and non-negotiable Infrastructure Levy that is locally set and based on the value of the property when it is sold. This will combine the affordable housing, S106 and CIL requirements. The proposal was justified, in part, as being necessary to: "*enable us to sweep away months of negotiation of Section 106 agreements and the need to consider site viability.*"<sup>20 21 22</sup>

2.2.8. The intended benefits of this new Infrastructure Levy include:

- Reducing the bureaucracy of the current Section 106 negotiation and administrative processes.
- Reducing delays and their associated costs.
- Removing the need to conduct viability tests on individual sites.<sup>23</sup>

2.2.9. Every local authority will need to have a **Design Code** that covers their entire area. These are design requirements that should be met before

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<sup>18</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>19</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>20</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>21</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

<sup>22</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>23</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

planning permission for development is granted. The aim is to ensure that good design is considered at all spatial scales, from development sites to individual plots.<sup>24 25</sup>

2.2.10. One of the key reforms in the Levelling Up and Regeneration Bill is the replacement of the Environmental Impact Assessment and Strategic Environmental Assessment regime with a new system of environmental assessment: Environmental Outcomes Reports (EORs). This section of the Bill allows the Secretary of State to make regulations to set “*specified environmental outcomes*” against which consents and plans will be assessed, and to repeal or amend existing environmental assessment legislation.<sup>26</sup>

2.2.11. The Bill acknowledges that the impact of development on the natural environment needs to be considered in decision-making at both a strategic and project level, and commits to introducing the reforms in the Environment Act (2021) into planning policy. This Act contains provisions for the protection and improvement of the environment, including introducing a **Biodiversity Net Gain** (“BNG”) objective. This requires the biodiversity value attributable to a development to exceed the pre-development biodiversity value by at least 10%.<sup>27 28</sup>

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<sup>24</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>25</sup> Gov.UK (2022) Government response to the Levelling Up, Housing and Communities Select Committee report on The Future of the Planning System in England, online, <https://www.gov.uk/government/publications/future-of-the-planning-system-in-england-government-response-to-the-select-committee-report/government-response-to-the-levelling-up-housing-and-communities-select-committee-report-on-the-future-of-the-planning-system-in-england>

<sup>26</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>27</sup> Ibid

<sup>28</sup> Environment Act (2021) House of Commons, Sessions 2019-21, 2021-22, London: The Stationery Office

## 2.3. Local Context

2.3.1. Local authorities are required to provide a summary of all the financial and non-financial developer contributions that they received in the previous financial year. This is presented in an Infrastructure Funding Statement (IFS) which includes details of contributions through S106, CIL and S278.<sup>29</sup>

2.3.2. According to KCC's most recent IFS, for 2020-21, the financial contributions secured by KCC through signed S106 Agreements amounted to almost £98.3million. Most of this funding was allocated to KCC by Kent's Districts and Borough Councils.<sup>30</sup>

2.3.3. Not all the funding that has been secured through S106 is actually received. Factors such as a stalled development, or changing planning circumstances through appeals and renegotiations, can affect the funding that KCC receives. The total amount of money actually received by KCC from S106 contributions in 2020-21 was almost £24.5million (Figure 1).<sup>31</sup> In 2019-20 it was about £17.9million.<sup>32</sup>

2.3.4. The service area that received the majority of the funding in 2020-21 was Education (with just over £21million), followed by Highways (£1.35million).<sup>33</sup> In the previous year, the same service areas were the main recipients, with £11million allocated to Education and £6million Highways.<sup>34</sup>

**F**  
**:**

Service Area	Amount
Adult Social Care	£141,034
Community Facilities	£731,199
Education	£21,161,564
Highways	£1,349,358
Kent Thameside	£1,101,120
Strategic Waste Services	£0
<b>Total</b>	<b>£24,484,276</b>

### **Total s106 contributions received by KCC, 2020-21**

<sup>29</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Kent County Council (2020) Infrastructure Funding Statement

<sup>33</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>34</sup> Kent County Council (2020) Infrastructure Funding Statement



**Source:** Kent County Council (2021) Infrastructure Funding Statement

- 2.3.5. Non-monetary (in-kind) contributions agreed in 2020-21 through S106 included the provision to local primary and secondary schools of 41 ultra-fast broadband and 6 land transfers.<sup>35</sup> This compared with 5 broadband and 1 land transfer agreed contributions in 2019-20.<sup>36</sup>
- 2.3.6. KCC is not responsible for collecting CIL. The ways in which can access a Kent District's CIL receipts vary between Districts. In some cases, a set percentage of CIL receipts are transferred from a District to KCC annually. In others, KCC has to make bids against a District's CIL receipts.<sup>37</sup>
- 2.3.7. In 2020-21, KCC received no funding from CIL receipts. It retained £750K from 2019-20 and used it in July 2021 as a contribution to the Swanley Train Station project.<sup>38 39</sup>
- 2.3.8. The value of S278 agreements takes the form of a performance bond paid to KCC by the developer based on the cost of the highway works (including utility works). The bond protects KCC against the risk of unforeseen expenditure if the activities are not completed by the developer.<sup>40</sup>
- 2.3.9. The total value of S278 signed bonds was almost £10million in 2020-21, and £9.9million in the previous year.<sup>41</sup> The total value of the fees received by KCC as part of S278 agreements was about £1.1million in 2020-21, and about £1.4million in 2019-20.<sup>42</sup>

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<sup>35</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>36</sup> Kent County Council (2020) Infrastructure Funding Statement

<sup>37</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>38</sup> Ibid

<sup>39</sup> Kent County Council (2020) Infrastructure Funding Statement

<sup>40</sup> Ibid

<sup>41</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>42</sup> Kent County Council (2020) Infrastructure Funding Statement



## 3.Key Issues and Recommendations

### 3.1. Early Member Involvement in the Planning Process

3.1.1. At a high level, planning is about making places, developing communities, and shaping the future. It plays a central role in identifying the type and location of developments, the areas that need to be protected or enhanced, and in assessing whether a proposed development is suitable. Planning is about upholding the wider public interest for the benefit of the whole community and not just individual constituents or particular interests. A central aim of planning is to deliver sustainable development, which means balancing the economic, environmental and social impacts of new developments.<sup>43</sup>

3.1.2. Councillors can play a key role in planning and in finding this balance. They can:

- act as a link between communities and the council
- help to set the direction of planning policy
- help to set vision and culture for the planning service, and work with officers.<sup>44</sup>

3.1.3. There was a strong consensus in the Committee, and from contributors to the inquiry, that early Member involvement in the planning process is critical to maximising the impact of developer contributions and to promoting thriving and sustainable communities.<sup>45 46 47</sup>

3.1.4. Early community engagement allows residents, councillors and other local stakeholders to be involved at the earliest possible stage in the planning of housing and other developments. It provides communities with a meaningful role in shaping their places, and allows developers to benefit from the insights that communities can provide through their unique local knowledge.<sup>48</sup>

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<sup>43</sup> Local Government Association (2017) A Councillor's Workbook on Planning, London

<sup>44</sup> Ibid

<sup>45</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>46</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>47</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 10 June 2022, Maidstone

<sup>48</sup> City of Westminster (2022) Early Community Engagement in Westminster, London

- 3.1.5. Effective early engagement gives communities an opportunity to have their say at a stage when their views can genuinely influence design decisions. This gives officers a fuller understanding of residents' views when discussing a proposed development with developers at pre-application stage. This can promote developments that are more responsive to local need, and more resilient to future changes in local behaviour and demand.<sup>49</sup>
- 3.1.6. By sharing their vision with local communities in an open, transparent and collaborative way, developers can use early engagement to reduce the number and severity of objections that are raised at formal application stage. This can help councils to make more timely decisions and, in turn, can reduce unnecessary delays and expenses to applicants.<sup>50</sup>
- 3.1.7. The pre-application stage provides an invaluable opportunity for KCC Members to be actively involved in the process. Members value being well informed about emerging development proposals so they can advise their constituents and take a leadership role that encourages high-quality developments that meet the needs of the communities they represent.
- 3.1.8. Through early engagement, they can help to maximise the impact of developer contributions by encouraging a more efficient and appropriate allocation of funding to the communities they were intended for.
- 3.1.9. Committee members themselves provided several examples where more effective early information and engagement could have led to the use of developer contributions to provide infrastructure that better served the needs of local communities.<sup>51 52 53</sup>
- 3.1.10. The arrangements to provide more information and early involvement of councillors vary between authorities, but they generally include a range of options that allow councillors to exchange ideas and help develop schemes that meet the needs of an area.<sup>54</sup>
- 3.1.11. At its meeting on 22<sup>nd</sup> March 2022, the Growth, Economic Development and Communities Cabinet Committee asked for an 'All Member Briefing' to be arranged to provide all KCC Members with some information about developer contributions, financial data and key challenges they pose for KCC. The briefing also seeks to raise

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<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>52</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>53</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>54</sup> Local Government Association (2014) 10 Commitments for Effective Pre-Application Engagement, London

awareness amongst Members of how they can be better informed and how they can express their views on the Section106/CIL requirements within their own divisions.<sup>55</sup>

3.1.12. In addition to endorsing the establishment of the All Member Briefing, the Committee recommends that the relevant KCC services should inform KCC Members of proposals for new housing development in their own divisions. A structured mechanism should be designed to ensure that Members are notified of such proposals at the earliest possible time.

3.1.13. Effective development planning and appropriate infrastructure help to develop thriving and sustainable communities. Through effective information and early involvement, KCC Members can help to maximise the impact of developer contributions and promote planning that can meet the needs of the communities they represent.

3.1.14. Having considered all of the above issues, the Committee

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#### **Recommendation 1**

**The Committee applauds the initiative to organise, as soon as possible, an All Member Briefing that provides KCC Members with information and advice about developer contributions. The Committee recommends that this All Member Briefing should:**

- 1) Provide comprehensive information and financial data on developer contributions that cover the different forms of infrastructure that KCC is responsible for, and outline the key challenges it faces.**
- 2) Clearly explain how KCC Members can be briefed and can be actively involved in the early stages of the planning process.**
- 3) Be updated and provided at regular intervals.**

<sup>55</sup> Kent County Council (2022) Growth, Economic Development and Communities Cabinet Committee, 10 May 2022, Infrastructure Funding. All Member Briefing Scoping Paper, Maidstone

### **Recommendation 2**

**The Committee believes that KCC Members should be advised early enough on planning applications to be able to have an input into Section 106 agreements. The relevant KCC services should inform KCC Members at the earliest possible time of proposals for new housing development in their own divisions.**

## 3.2. Planning Reforms

3.2.1. The Planning White Paper (August 2020), and the Levelling-Up and Regeneration Bill (May 2022), propose substantial reforms to the country's planning and regeneration system. Reforms include: the intention to replace the existing S106/CIL system with a new 'Infrastructure Levy'; the requirement for local authorities to prepare 'Design Codes' to help develop good quality, sustainable places, and; improving environmental outcomes.<sup>56 57 58</sup>

3.2.2. If a proposed development is expected to create pressures on existing infrastructure, the planning system allows for obligations to be placed on the developer to provide, or contribute to, the additional infrastructure. Historically, the majority of developer contributions have been secured through S106 agreements.<sup>59</sup>

3.2.3. KCC spends S106 contributions on a range of local infrastructure including primary and secondary education, highways and transportation, adult social care, libraries, adult education and youth and community facilities. District councils use contributions towards infrastructure such as affordable housing, health care, local play areas and further education.<sup>60</sup>

3.2.4. The legal tests used to consider a S106 agreement are set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations (2010). They require that the contributions must be:

- necessary to make the development acceptable in planning terms
- directly related to the development, and
- fairly and reasonably related in scale and kind to the development.<sup>61</sup>

3.2.5. S106 agreements are secured on a site-by-site basis, with payments typically being made in instalments as the development progresses. In 2020-21, KCC received £24.5million from S106 contributions.<sup>62</sup>

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<sup>56</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

<sup>57</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>58</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>59</sup> Kent County Council (2018) Kent and Medway Growth and Infrastructure Framework

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Kent County Council (2021) Infrastructure Funding Statement

- 3.2.6. 85% of the national value of developer contributions is determined through S106 agreements<sup>63</sup>, but the process for securing this funding can be challenging.
- 3.2.7. Unlike the CIL, the content of S106 agreements is negotiated between infrastructure providers and developers. This can sometimes create uncertainty for both. Infrastructure providers may not be able to forecast receipts accurately over a substantial period of time. This limits their ability to forward fund investment and can lead to projects being underfunded.<sup>64</sup>
- 3.2.8. For the developer, there is uncertainty over the level of financial and infrastructure commitments that will be needed to achieve their desired planning consent. This uncertainty is often only resolved at a fairly late stage in the planning process - after substantial funds have been expended in bringing forward an application. This can cause financing issues, and can potentially damage the viability of a scheme, delaying or even preventing its implementation.<sup>65</sup>
- 3.2.9. The Community Infrastructure Levy came into force in April 2010. It was designed to largely replace the S106 regime by allowing LPAs to raise funds from developers through a tariff-style approach.<sup>66</sup> Where the CIL has been adopted, it is the LPA that sets the levy, collects the receipts and allocates them to infrastructure projects.<sup>67</sup> The Kent Districts that have adopted CIL are: Canterbury, Dartford, Folkestone and Hythe, Maidstone and Sevenoaks.<sup>68</sup>
- 3.2.10. Kent is a 2-tier authority area. KCC is a major infrastructure provider but the current legislation does not allow it to adopt or implement its own CIL charging schedule. Kent District Councils determine the CIL monies that KCC receives to fund the delivery of the infrastructure it is responsible for. They are under no compulsion to transfer *any* receipts to KCC.<sup>69</sup> In 2020-21, KCC received no funding from CIL receipts. In 2019-20, it received £750K.<sup>70</sup>

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<sup>63</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>64</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>65</sup> Ibid

<sup>66</sup> Kent County Council (2018) Kent and Medway Growth and Infrastructure Framework

<sup>67</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>68</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>69</sup> Ibid

<sup>70</sup> Kent County Council (2020) Infrastructure Funding Statement



- 3.2.11. According to the most recent Kent and Medway Growth Infrastructure Framework report, 24% of the total infrastructure required in the county is neither secured nor expected, leaving a funding gap of about £4billion.<sup>71</sup>
- 3.2.12. The Government has not yet been explicit about how the new Infrastructure Levy will be set, or about how it will be collected and allocated to infrastructure providers.<sup>72</sup>
- 3.2.13. The main concerns for KCC with the current CIL system involve its ability to raise, control and direct CIL contributions to meet the cost of delivering the infrastructure that is required. The Committee agrees with evidence from those advocating that KCC should be able to adopt its own CIL charging schedule, since it has statutory responsibilities for providing much of the infrastructure.<sup>73 74 75 76</sup>
- 3.2.14. The main concern identified by the Committee is that, if S106 contributions are removed and consolidated into a new Infrastructure Levy system whereby Kent District Councils alone can exact, control and distribute such funding, the problems experienced by KCC around CIL could be perpetuated or even exacerbated.<sup>77 78</sup>
- 3.2.15. KCC is a major provider of infrastructure in Kent, and endeavours to ensure that vital services such as schools, highways, Adult Social Care and libraries meet the needs of Kent residents. However, the current system for securing the funding necessary to provide and maintain this vital infrastructure seems to be flawed. As there is uncertainty over whether<sup>79</sup> and when the new Infrastructure Levy will be introduced – with changes to planning procedures not planned to take place until 2024<sup>80</sup> – the Committee believes that, in the meantime, the current system should be improved.

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<sup>71</sup> Kent County Council (2018) Kent and Medway Growth and Infrastructure Framework

<sup>72</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>73</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>74</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>75</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>76</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>77</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>78</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>79</sup> Inside Housing (2022) New Levy to Replace Section 106 Still Being Considered, Government Confirms, online, <https://www.insidehousing.co.uk/news/news/new-levy-to-replace-section-106-still-being-considered-government-confirms-74888>

<sup>80</sup> Gov.UK (2022) Levelling Up and Regeneration: Further Information, online, <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information#next-steps>

- 3.2.16. If the new Infrastructure Levy is introduced, it will be crucial that the developer contributions received by KCC are sufficient to meet the costs of providing the necessary infrastructure in the county. As part of the legislative process of the Levelling-Up and Regeneration Bill, the Government will consult on a number of important provisions. This will give KCC an opportunity to lobby the Government in order to protect the County Council's position and secure the significant level of infrastructure funding that it requires.

### **Recommendation 3**

**KCC's Cabinet Member for Economic Development should write to the Secretary of State for Levelling Up, Housing and Communities and urge him to:**

- 1) Introduce a legal requirement for LPAs in 2-tier areas to pass a proportion of CIL funds to the County Councils for their areas.**
- 2) Enable County Councils in 2-tier areas to adopt their own CIL charging schedule in order to self-determine the funds required to provide the infrastructure that needs to accompany new development, and to collect and allocate the funding for that infrastructure.**

### **Recommendation 4**

**When responding to the Government's consultation on the Levelling-Up and Regeneration Bill, KCC's Cabinet Member for Economic Development, and the relevant KCC services, should make it clear that the levels of developer contributions received by KCC through the new Infrastructure Levy must be appropriate and sufficient to meet the costs of providing the infrastructure that needs to accompany new development.**

### 3.3. Environmental Outcomes

3.3.1. One of the key reforms in the Levelling Up and Regeneration Bill is the replacement of the Environmental Impact Assessment and Strategic Environmental Assessment regime with a new system of environmental assessment: Environmental Outcomes Reports (EORs). This section of the Bill allows the Secretary of State to make regulations to set “*specified environmental outcomes*” against which consents and plans will be assessed, and to repeal or amend existing environmental assessment legislation.<sup>81 82 83</sup>

3.3.2. In setting outcomes, the Secretary of State (SoS) must have regard to the 25-Year Environment Plan (and subsequent Environmental Improvement Plans), including the legally binding long-term environment targets and the interim targets that support them. The Government will also prepare guidance on how plans and consents demonstrate that they are supporting the delivery of environmental outcomes.<sup>84</sup>

3.3.3. The Bill acknowledges that the impact of development on the natural environment needs to be factored into decision-making at both a strategic and project level, and commits to bringing the reforms in the Environment Act (2021) into planning policy. The Environment Act 2021 contains provisions for the protection and improvement of the environment, including the introduction of a ‘biodiversity net gain’ (BNG).<sup>85</sup>

3.3.4. BNG is an approach to development or land management that aims to leave the natural environment in a measurably better state than it was beforehand.<sup>86</sup>

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<sup>81</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>82</sup> Gov.UK (2022) Levelling Up and Regeneration: Further Information, online, <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information#next-steps>

<sup>83</sup> Chartered Institute of Ecology and Environmental Management (2022) What is the Levelling Up and Regeneration Bill?, online, <https://cieem.net/what-is-the-levelling-up-and-regeneration-bill/>

<sup>84</sup> Ibid

<sup>85</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>86</sup> Local Government Association (2022) Biodiversity Net Gain, online, <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain>

3.3.5. BNG applies in England only by amending the Town & Country Planning Act (TCPA) (1990), and is likely to become law in 2023. The Environment Act sets out a number of key components to mandatory BNG, including the following:

- A minimum gain of 10% is required, calculated by using a 'Biodiversity Metric'.
- The habitat must be secured for at least 30 years. This is to be achieved through obligations or conservation covenants.
- The habitat can be delivered on-site, off-site or via statutory biodiversity credits.
- BNG requirements do not change existing statutory environmental and wildlife protections.<sup>87 88</sup>

3.3.6. Although this is an important step in protecting the natural environment, the Office for Environmental Protection (OEP) has questioned whether the minimum level of net gain specified in the Act will be enough to meet the Government's biodiversity ambitions.<sup>89</sup> This view is shared by the Kent Nature Partnership (KNP), which advocates a target biodiversity gain of 20%.<sup>90 91 92</sup>

3.3.7. KNP says that Kent has a rich and varied biodiversity resource, with over 3,400 rare and threatened species. Because of the services and functions that biodiversity provides, this resource can also be described as Kent's 'natural capital'. Natural capital provides food and raw material, regulates air, water, soil and climate, and supports us culturally with non-material benefits.<sup>93</sup>

3.3.8. With unprecedented population growth and urbanisation, additional food and materials will be required, with intensive food production and farming placing further pressures on the land. This growth is also producing a highly fragmented landscape with small pockets of habitat supporting rare and vulnerable species. Fragmentation impairs species movement and migration, making these isolated populations less able to survive or adapt to changing climate conditions.<sup>94</sup>

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<sup>87</sup> Environment Act (2021) House of Commons, Sessions 2019-21, 2021-22, London: The Stationery Office

<sup>88</sup> Local Government Association (2022) Biodiversity Net Gain, online, <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain>

<sup>89</sup> Office for Environmental Protection (2022) OEP Advice in Response to Biodiversity Net Gain Consultation, online, <https://www.theoep.org.uk/report/oep-advice-response-biodiversity-net-gain-consultation>

<sup>90</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>91</sup> Kent Nature Partnership (2020) Justification for a Biodiversity Net Gain Target of 20% in Kent

<sup>92</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>93</sup> Kent Nature Partnership (2020) Justification for a Biodiversity Net Gain Target of 20% in Kent

<sup>94</sup> Ibid

3.3.9. KCC recently commissioned an independent assessment of the potential effect of a 15% or 20% BNG target on the viability of residential-led development in Kent. The purpose of this assessment was to evaluate the feasibility of a higher target, and to determine whether it materially affect the viability of development in the county.<sup>95</sup>

3.3.10. Amongst other things, the assessment concluded that:

- Increasing BNG from 10% to 15% or 20% would not materially affect viability in the majority of cases, when delivered onsite or offsite.
- In most cases, the major cost is in meeting the mandatory, minimum 10% BNG. The cost to increasing to 15% or 20% BNG is generally negligible.
- Because BNG costs are low in comparison with other policy costs, they are unlikely cause a development to be unviable.<sup>96</sup>

3.3.11. The Committee believes it is critical that the impact of development and urbanisation on the natural environment should be factored into decision-making. BNGs are an important measure to help protect the environment, and their impact should be maximised, while having consideration for the viability and cost of developments.

3.3.12. The Committee therefore recommends the following:

#### **Recommendation 5**

**KCC should work with all of Kent's Local Planning Authorities to secure, unless there are exceptional circumstances, a minimum of 20% Biodiversity Net Gain from new developments.**

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<sup>95</sup> Kent County Council (2022) Viability Assessment of Biodiversity Net Gain in Kent; Final Report

<sup>96</sup> Ibid

### 3.4. Kent Design Guide

- 3.4.1. Another key reform in the 2022 Levelling-Up and Regeneration Bill is the requirement for local authorities to prepare local 'Design Codes'.<sup>97 98 99</sup>
- 3.4.2. A design code is a set of simple, concise, illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. Design codes are important because they provide a framework for creating greener, sustainable and distinctive places, with a consistent and high-quality standard of design.<sup>100</sup>
- 3.4.3. Every local authority will need to prepare design code requirements that should be met before planning permission for development is granted. Developers will have to comply with the styles drawn up and favoured locally - from the layout or materials used, to how green spaces are provided.<sup>101 102</sup>
- 3.4.4. The obligation to prepare Design Codes will be a new process for many authorities, and there are concerns that planning departments are increasingly under resourced,<sup>103 104</sup> urban design skills and capacity are low and declining,<sup>105</sup> and that many may struggle to find the resources and skills needed to prepare effective local codes.<sup>106</sup>

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<sup>97</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

<sup>98</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>99</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>100</sup> MHCLG (2021) National Model Design Code, London

<sup>101</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>102</sup> Gov.UK (2022) New Bill to Level Up the Nation, online, <https://www.gov.uk/government/news/new-bill-to-level-up-the-nation>

<sup>103</sup> Local Government Association (2022) Local Planning Authorities: Developing a Recovery and Resilience Planning Package Post-Pandemic, online, <https://www.local.gov.uk/housing-planning-and-homelessness/local-planning-authorities-developing-recovery-and-resilience>

<sup>104</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>105</sup> Urban Design Group (2017) Design Skills in English Local Authorities

<sup>106</sup> Planning (2022) The Challenges that the Government's Proposed Requirement for Authority-Wide Design Codes Will Present to Councils, online, <https://www.planningresource.co.uk/article/1790068/challenges-governments-proposed-requirement-authority-wide-design-codes-will-present-councils>

- 3.4.5. KCC has been involved in the Kent Design Initiative. This is a partnership of Kent's local authorities, developers, builders, communities and interest groups that have joined forces to campaign for good design in Kent.<sup>107</sup>
- 3.4.6. To help achieve this aim, the partnership published the Kent Design Guide. Its aim is to ensure that all new developments result in vibrant, safe, attractive and liveable places. It offers criteria for assessing planning applications, and helps planners, building designers, engineers and developers to achieve high standards of design and construction. It will also provide planning committee members and officers with the tools to refuse consent for poor design.<sup>108</sup>
- 3.4.7. The Guide is available to all of Kent's local authorities for formal adoption. It is expected to be used as a supplementary planning document, attached to either the Local Development Framework or the Local Plan.<sup>109</sup>
- 3.4.8. **The Committee believes that local Design Codes can play an important role in promoting greener, more sustainable and distinctive places in Kent.**
- 3.4.9. **The Committee applauds and endorses the Kent Design Guide, and encourages all Kent LPAs to adopt it formally.**

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<sup>107</sup> Kent County Council (2022) Kent Design Guide, online, <https://www.kent.gov.uk/about-the-council/strategies-and-policies/regeneration-policies/kent-design-guide>

<sup>108</sup> Ibid

<sup>109</sup> Ibid

### **3.5. Unspent Developer Contributions**

3.5.1. Developers are not simply house builders; they are also community builders. It is crucial that there is a strong framework to ensure that developer contributions are used effectively and transparently, for the benefit of local communities. It is also important that there is a mutual understanding between developers and local authorities about how these contributions should be used, underpinned by a clear set of shared principles.

3.5.2. Developers' financial contributions should be spent in accordance with their negotiated purpose and within their agreed time limit. Most S106 agreements have a return clause whereby, if a contribution remains unspent after a certain period, KCC is legally obliged to hand it back to the developer.<sup>110</sup>

3.5.3. KCC has a monitoring mechanism which flags up repayment deadlines and minimises the amount of contributions that are not spent within the agreed timeframe. In 2020-21, no S106 contributions were lost to KCC because of a return clause.<sup>111</sup>

3.5.4. However, the evidence, and the experience of Committee members themselves, identified instances of unspent developer contributions that were very much needed to support the communities they were intended for.<sup>112 113</sup>

3.5.5. The Committee strongly believes that, if financial contributions cannot be used for their originally stated purpose within the agreed timeframe, then they should be given directly to the local community, rather than returned to the developer.

3.5.6. The core principle underlying this is that these financial contributions should always benefit the communities they were intended for - even if the originally agreed use for the money is not met.

3.5.7. This view is shared by the Home Builders Federation (HBF) itself. The HBF commissioned a national poll to explore public awareness of developer contributions to local communities, and to seek views on how these contributions should be used and communicated.<sup>114</sup>

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<sup>110</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>111</sup> Ibid

<sup>112</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>113</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>114</sup> Home Builders Federation (2020) Building Communities; Making Place a Home, London



3.5.8. The conclusions from the poll were that:

3.5.9. People in England and Wales are almost twice as likely (73%) to think that housing developments can increase pressure on local facilities and services (such as schools and health services) rather than to accept that developer contributions are critical in building or improving local communities (for instance, health facilities, local parks, playgrounds or roads) (37%).<sup>115</sup>

3.5.10. The public would welcome efforts to increase levels of transparency in the system. Over half (52%) are interested in knowing more about developer contributions in their area. Almost three quarters (73%) think that unspent developer contributions should be spent in their local area, compared to 7% who think they should be put to use for wider national infrastructure improvements, or retained by the council.<sup>116</sup>

3.5.11. In response to this research, HBF devised a set of practical policy recommendations that it believed would increase levels of public understanding and trust towards the developer contributions system.<sup>117</sup>

3.5.12. A key recommendation echoes the Committee's belief that any unspent contributions should remain with the local communities that they were intended for.<sup>118</sup>

3.5.13. Having considered the above issues, the Committee

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#### **Recommendation 6**

**KCC's Cabinet Member for Economic Development should lobby the Secretary of State for Levelling Up, Housing and Communities and ask him that, when a financial contribution is made by a developer but is not used by the relevant local authority in the agreed timeframe, it must be given directly to the local community that it was intended for, rather than returned to the developer.**

e following:

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<sup>115</sup> Ibid

<sup>116</sup> Ibid

<sup>117</sup> Ibid

<sup>118</sup> Ibid



By: Anna Taylor – Scrutiny Research Officer  
 To: Scrutiny Committee – 11 October 2022  
 Subject: Kent Flood Risk Management Committee Annual Report  
 Classification: Unrestricted

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**Summary:**

To confirm the purpose and scope of Scrutiny Committee consideration of the Kent Flood Risk Management Committee (KFRMC) Annual Report.

The KFRMC operates within Kent County Council's (KCC) scrutiny function, alongside the Scrutiny Committee. The Annual Report is an information item intended to highlight positive work undertaken by the KFRMC.

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**Introduction**

1. The KFRMC is tasked with reviewing and scrutinising the exercise of flood risk management and coastal erosion functions by risk management authorities in Kent. These authorities include, but are not limited to, KCC, the Environment Agency and Southern Water.
2. The Annual Report is presented to the Scrutiny Committee for noting, providing an opportunity for the KFRMC to raise awareness of the scrutiny activity it has undertaken, scrutiny it intends to undertake in the future and to flag up any particular points of concern where required.
3. As the KFRMC performs a scrutiny function on behalf of KCC, the Scrutiny Committee is not being asked to scrutinise their activities or scrutinise flood risk management more generally as part of this item.

**Recommendation:**

To note the Kent Flood Risk Management Committee Annual Report.

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**From:** Tony Hills, Chairman, Kent Flood Risk Management Committee  
**To:** Scrutiny Committee – 11 October 2022  
**Subject:** Kent Flood Risk Management Committee Annual Report  
**Classification:** Unrestricted

**Summary:** This report provides the Scrutiny Committee with an overview of the work of the Kent Flood Risk Management for the period May 2021 – July 2022.

**Recommendation:** The Committee is asked to note the Kent Flood Risk Management Committee Annual Report.

## 1. Introduction

- 1.1 This is the Kent Flood Risk Management Committee's (KFRMC) first Annual Report to the Scrutiny Committee since the May 2021 election. The KFRMC has met on four occasions since then, with meetings in July 2021, November 2021, March 2022 and July 2022.
- 1.2 The topics covered during this period were:
- Environment Agency and Met Office Alerts and Warnings
  - KCC severe weather response activity
  - Short Term Adaptation for Long Term Resilience to Climate Change
  - Kent Flood Action Group Forum
  - Southern Water Drainage and Wastewater Management Plans
  - Southern Water Pathfinder Scheme
  - KCC Flood and Water Management
  - Catchment Management Farming
  - Storms Eunice and Franklin
  - Little Venice Country Park and Marina
- 1.3 The Committee's terms of reference are set out at Appendix 1. The membership comprises 7 KCC Members. There is also a standing invitation to each of the District Councils, Internal Drainage Boards, Kent Fire and Rescue Service and the Kent Association of Local Councils (KALC), who send representatives to the meetings. The Committee's approach is to encourage attendance by as many organisations as wish to be represented.
- 1.4 In 2018/19, the Committee adopted a two-pronged approach to its work. It continued to gather as much information as possible on the effects of and preparedness for climate change, whilst also assessing the Kent's ability to respond to events in the short term.
- 1.5 Environment Agency and Met Office Alerts and Warnings as well as KCC severe weather response activity are reported to every meeting.
- 1.6 Most items discussed were accompanied by presentation materials. These can be accessed on the KCC website at [democracy.kent.gov.uk](https://democracy.kent.gov.uk).

## 2. Committee meeting on 8 July 2021

- 2.1 Little Venice Country Park and Marina

The Chairman outlined the steps taken to investigate the issue of flood risk at the site, after it was raised by Members in March 2020. He confirmed that he had met virtually with the landowner to discuss Members' concerns and understand the measures undertaken to protect vulnerable residents on the site. KCC's Resilience and Emergency Planning Manager, explained that there was a historic planning permission for a mobile home site at Little Venice Country Park and that there had been significant flooding events in recent years which had led to several precautionary evacuations, including some carried out during the previous winter. He confirmed that the site was a permitted development and that KCC officers and partner agencies had sought to overcome the risks, using such measures as the on-site Emergency Plan.

## **2.2 Short Term Adaptation for Long Term Resilience to Climate Change**

KCC's Environmental Projects Manager gave a presentation which detailed KCC's involvement in the Short Term Adaptation for Long Term Resilience to Climate Change (STAR2Cs) project, alongside European partners. It was explained that the project sought to promote climate adaptation by overcoming an implementation gap between national strategies, in order to adapt to climate change and undertake local adaptations in Kent. Members were shown predicted climate trends, which included that temperatures were projected to rise by between 2 and 3 degrees by 2040 and 5 to 6 degrees by 2080, with average summer rainfall reducing by 20-30% by 2040 and 30-50% by 2080. STAR2Cs' seven principles were: Co-Design, Customised, Flexibility, Multi-Functionality, Incrementalism, Integration and Cost Effectiveness. It was noted that KCC, supported by JBA Consultants had carried out significant research and wide stakeholder engagement with 120 key stakeholders, publishing the results of the climate risk assessment in late 2020. The assessment highlighted the environmental changes that Kent could experience over the next 20-80 years, the potential risks and opportunities these changes posed to Kent's society, economy and environment, and made recommendations for adaptation action.

## **3. Committee meeting on 24 November 2021**

### **3.1 Kent Flood Action Group Forum**

The Chairman of Collier Street Parish Council gave a presentation on the Kent Flood Action Group Forum (KFAGF). He outlined its functions to help communities to better prepare before, during and after flooding, whilst also promoting effective communication, and collaboration with other Flood Action Groups to ensure that collective knowledge and experiences were shared. He confirmed that the KFAGF had met for the first time virtually in November 2020. The need to challenge local planning authorities in respect of inappropriate development on identified flood risk areas was stressed. Members recommended that the Forum engage with a series of Partners across Kent, including the River Stour and Nailbourne Management Group. Members were urged to encourage their residents to register to receive flood alerts.

### **3.2. Southern Water Drainage and Wastewater Management Plans**

Southern Water addressed the Committee, explaining that Drainage and Wastewater Management Plans (DWMP) would ensure that drainage and wastewater management was fit for the future, with the necessary resources allocated, taking account of factors such as growth and climate change. Reassurance was given that DWMPs would identify future risk in terms of flooding and pollution, which would be shared with customers. Concerning storm overflows, they confirmed that the region had been broken down into

three categories: Not Significant, Moderately Significant and Very Significant, it was noted that there were very significant concerns over North Kent. Members were informed that there were 1038 storm overflows (release valves to discharge water when the capacity of the sewage system was exceeded) across Kent. Not all of these were active, but those which were, were identified as 'high spillage.' Members raised grave concerns at the number of illegal discharges made in Kent over recent years.

### **3.3 KCC Flood and Water Management Team**

KCC's Flood and Water Manager gave a presentation on his team's operations. He outlined KCC's responsibilities as a Lead Local Flood Authority, which extended to: setting local flood risk strategy, currently the Kent Local Flood Risk Management Strategy 2017-2023; being a statutory consultee for surface water in major planning applications; promoting sustainable drainage; and investigating floods. He explained that the Team were investigating four flooding events, each triggered by internal flooding to five properties or more, which had occurred during Summer 2021.

## **4. Committee meeting on 9 March 2022**

### **4.1 Southern Water Pathfinder Scheme**

Southern Water gave a presentation which included reassurance that it supported requirements under the Environment Act 2021 to make demonstrable improvements in the sewerage systems together with progressive reductions in the harm caused by untreated sewage discharges. They confirmed that the company had set a target to reduce storm overflows by 80% by 2030, founding a Storm Overflow Task Force.

### **4.2 Storms Eunice and Franklin**

KCC's Resilience and Emergency Planning Manager brought a report which addressed the impact of Storms Eunice and Franklin on Kent's communities, infrastructure and natural environment between 18 and 21 February 2022. The preparations of the Kent Resilience Forum (KRF) were explained, and included five media releases, which warned the public and the additional rostering of emergency services, local authority, Environment Agency, utility and NHS personnel. The Committee were informed that 71,000 properties and much critical infrastructure was affected by power outages, including several water treatment and pumping stations. In response to KCC Highways receiving 1,233 emergency alerts, it was confirmed that 50 crews had been deployed to clear hazards. It was explained that a Vulnerable People and Communities Cell was set up to support residential care, children's and respite care centres, accommodation for unaccompanied asylum-seeking children and Afghan refugees affected by the storms amongst other individuals and communities. Members commended all partners involved in the emergency response.

## **5. Committee Meeting on 5 July 2022**

### **5.1 Catchment Management Farming**

Natural England gave a presentation which covered: Catchment Management Farming; their Farm Advice Team; an overview of the Marden Project which encouraged holistic natural farm management potential through Farm Advice work; and the benefits of on-farm meetings for ensuring successful promotion. Following questions from the Committee it was confirmed that a priority farm list had been developed based on water

quality assessments, which informed decisions to target specific farms through the Catchment Management Farming scheme. Natural England also assured Members that they engage with farmers who express interest in the scheme.

## **5.2 Southern Water Drainage and Wastewater Management Plans**

Southern Water presented on the results of their investigations into pollution, internal sewer flooding and storm overflows; their Plans to create resilient wastewater systems; and partnership working with local authorities, farmers and National Highways. In response to Member inquiries, Southern Water confirmed that they had developed a sustainable drainage policy to manage rainwater run-off. The requirements for the company to improve how it captured and used rainwater and reduce the proportion of rainwater flow into combined sewers were acknowledged. Southern Water recognised the challenge of encouraging retrofitting in older housing stock to achieve this improved rainwater management. Members stressed the need for Southern Water to act urgently to tackle pollution, especially in regard to reducing the flow of rainwater into combined sewers, given the impact this had on Kent's coast and agreed to continue monitoring the company's performance in these areas.

## **6. Future activities**

- 6.1 The Committee will maintain its two-pronged approach, continuing to receive updates on how agencies are adapting to climate change, whilst also monitoring the responses to current issues. A continued emphasis will be placed on holding partners to account for poor performance and unmet targets.
- 6.2 The Committee's next meeting is scheduled for 9 November 2022, with planned business including:
- A review of Highways Maintenance during Winter 2021/22;
  - Presentations on:
    - the work of KCC Sustainable Drainage Team;
    - Southern Water's progress against their commitment to reduce storm overflows by 80% 2030; and
    - the Environment Agency's sea defence developments and low carbon flood solutions
  - Met Office Environment Agency Alerts and Warnings
  - KCC severe weather response activity

## **7. Conclusions**

- 7.1 Kent Flood Risk Management Committee is carrying out an important oversight and scrutiny function in receiving regular reports on the work carried out by KCC and its partner agencies. The Committee's influence has benefited from the continued positive engagement by those local authorities who regularly attend and by the positions of authority that their representatives hold within those organisations.
- 7.2 Climate change is having the effect of increasing the threat of flooding and other severe weather impacts. The Committee's role is to examine whether and how KCC and all its partner agencies are working together effectively to reduce the risk and to respond to events. The general picture of preparedness is encouraging. Sudden flash flooding is a growing risk and is responded to very thoroughly whenever and wherever it occurs, whilst



preparations for major coastal and fluvial floods and reservoir inundation are constantly being updated and tested. At the same time, research of a very high standard is being carried out by different agencies, and the information gathered is widely disseminated amongst them and shared with communities.

## **8. Recommendation**

**The Committee is asked to note the Kent Flood Risk Management Committee Annual Report.**

## **9. Background Documents**

Appendix 1 - KFRMC Terms of Reference

## **10. Contact Details**

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## **KENT FLOOD RISK MANAGEMENT COMMITTEE**

### **TERMS OF REFERENCE**

Membership: 7 Members

- 1 In accordance with the Localism Act 2011 (Schedule 2), this committee is responsible for reviewing and scrutinising the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority's area.
- 2 This committee is responsible for:
  - (a) the preparation monitoring and review (in conjunction with the Flood Risk Management Officer) of a strategic action plan for flood risk management in Kent, taking into account any Select Committee recommendations, the Pitt Review and relevant requirements of the Flood and Water Management Act 2010.
  - (b) reporting annually (and more often if necessary) to the Scrutiny Committee and to the Cabinet Member for Environment & Transport.
  - (c) reviewing and responding to any consultation on the implementation of the Pitt Review and the future development of the Flood and Water Management Act 2010.
  - (d) receiving reports from the Southern Regional Flood and Coastal Committee and responding as appropriate.
  - (e) the investigation of water resource management issues in Kent.
- 3 A risk management authority must comply with a request from this committee for information and a response to a report.
- 4 The committee may include (non-voting) persons who are not members of the authority, including representatives of District Councils, the Environment Agency and Internal Drainage Boards.

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By: Anna Taylor, Scrutiny Research Officer

To: Scrutiny Committee, 11 October 2022

Subject: Work Programme

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Summary: This report gives details of the proposed work programme for the Scrutiny Committee.

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## **1. Introduction**

- a) Any Member of the Council is entitled to give notice that they wish an item relevant to the functions of the Committee (which is not an excluded matter) to be included on the agenda for the next available meeting.
- b) The definition of an excluded matter referenced above is:
  - a. Any matter relating to a planning or licensing decision,
  - b. Any matter relating to a person in respect of which that person has a right of recourse to a review of right of appeal conferred by or under any enactment,
  - c. Any matter which is vexatious, discriminatory or not reasonable to be included in the agenda or discussion at a meeting of the Scrutiny Committee.
- c) The Scrutiny Committee has the ability to 'call-in' decisions made by the Cabinet or individual Cabinet Members. Any two Members from more than one Political Group may give notice within five clear working days from the publication of a decision taken of their wish to call-in the decision.

## **2. Recommendation**

The Scrutiny Committee is asked to consider and note the report.

## **Background Documents**

None

## **Contact Details**

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## Work Programme - Scrutiny Committee October 2022

### Items identified for upcoming meetings

SFI – Highways Improvement Plans – currently in progress.

24 November 2022	
Item	Item background

7 December 2022	
Item	Item background
Reconnect Programme - update	December 2021 Scrutiny Committee - The Chairman thanked Mrs Chandler and Mr Adams for their attendance and shared his intention for the Reconnect Programme to return to the Committee in late 2022, in order to give Members the opportunity to analyse final outcomes following the Programme's conclusion."
Budget Monitoring Report	Twice yearly budget monitoring
Making a Difference Everyday – update	6 month update following call-in of decision 21/00091

25 January 2023	
Item	Item background
Draft Budget 2023/24 and MTFP	

23 February 2023	
Item	Item background

20 April 2023	
Item	Item background
Homeless Connect – 6 month update on Transition Plans	Concerns raised in September 2022 over Homeless Connect Decisions 22/00075 and 22/00076

**June 2023 – Budget monitoring year end**

**June 2023 – Scrutiny Committee meeting as Crime and Disorder Committee**

**December 2023 - Budget monitoring report**

**January 2024 – Draft Budget 2024/2025 and MTFP**

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