

To: Kent Flood Risk Management Committee

From: Michael Harrison, Chairman of Kent Flood Risk Management Committee

Subject: Drainage consultee role

Classification: Unrestricted

1. Background

- 1.1. The Pitt Review into the 2007 Floods identified that SuDS implementation was a necessary step to reduce the flooding impact of new development, but that it was not more widely implemented because of the lack of recognised long-term maintenance body. Recommendation 20 states:

The Government should resolve the issue of which organisations should be responsible for the ownership and maintenance of sustainable drainage systems.

- 1.2. The Flood and Water Management Act 2010 delivered many of the recommendations of the Pitt Review and included Schedule 3 that set out proposals to make upper tier authorities, including Kent County Council (KCC), a drainage approving body (which became known as the SAB).
- 1.3. The role of the SAB would have been to approval the technical design of drainage in new developments according to government guidance (which prioritised SuDS), to inspect the construction of the approved drainage and where the new drainage served two properties or more to adopt the drainage and maintain it.
- 1.4. This role was never implemented. Defra was unable to resolve some of the issues that were required for full implementation to the satisfaction of all parties, in particular how the long-term maintenance would be funded. There were also concerns about how this detailed assessment would have worked alongside the planning system, where most major planning applications are submitted as outline and the detail is provided at a later stage.
- 1.5. In September 2014 Defra consulted on a different approach to the issue of SuDS. It proposed changes to the planning system to incorporate SuDS, which include the use of planning conditions to implement long-term maintenance of SUDS, with planning authorities responsible for enforcing this. The consultation document can be found in Appendix 1.
- 1.6. KCC supports the enhanced use of the planning system to help to deliver SuDS. However, we do not agree that it will resolve the issue of long-term maintenance, which is the key aspect for long-term sustainable SuDS implementation. We do not agree that planning enforcement is an appropriate mechanism to enforce maintenance of SuDS. Further, this proposal will not lead to an increased delivery of SuDS as it does not remove the automatic right to connect to the public sewer.
- 1.7. KCC's response to this consultation can be found in Appendix 2. Defra's response to the consultation responses can be found in Appendix 3. It can be seen from Defra's response that they believe the proposed changes can deliver long-term maintenance of SuDS.

2.0 Current Position

- 2.1. With the outcome of this consultation supporting the use of the planning system, the responsibility for delivering this new proposal transferred from Defra to CLG.
- 2.2. CLG released a further consultation on the role of the Lead Local Flood Authority (LLFA) in planning. KCC is the LLFA for Kent, at present we are not statutory consultees in planning for flooding or drainage. The proposal would make LLFAs statutory consultees for surface water drainage for major planning applications, with the intention to support the planning authorities to deliver this new planning role. The consultation document for this proposal can be found in Appendix 4.
- 2.3. KCC supports the proposal to make LLFAs statutory consultees for surface water drainage for major planning applications. However, we are concerned about the lack of specific guidance on the role we will be given and what flooding matters we will have a consultation role over. The specific nature of our role and what we are to cover will affect the burden placed on us.
- 2.4. KCC's response to this consultation can be found in Appendix 5. At the time of submitting this paper CLG was still considering the consultation responses it has received and has not yet given a response to this consultation or announced that it will implement it. An update will be provided at the committee meeting, if CLG has given a response or made an announcement.
- 2.5. CLG has also prepared a New Burdens Assessment for this new role in preparation for implementation. The assessment sets out what it believes this will cost to implement and what it will give in revenue support for it. The burdens assessment can be found in Appendix 6.
- 2.6. KCC has grave concerns over this New Burdens Assessment. It is based on the assessment for the original SAB role, which was a stand-alone function separate to the planning system. This assessment does not take account of the needs of the planning system. In particular the following areas are of concern:
 - no consideration of the additional time required to assist with the discharge of conditions
 - no additional funding for planning authorities for the additional burden on them
 - no consideration of the costs of undertaking the enforcement proposed
 - an assumption of cost savings in future that are not realistic.
- 2.7. CLG is expected to make an announcement for this to be implemented in April 2015. An update on the position will be provided at the committee meeting.

3.0 Preparation

- 3.1. In anticipation of this new role Defra is providing half-day capacity building workshops for LLFAs and planning authorities to attend. KCC has also provided three one-day workshops for planning authorities to help prepare for this new role. We will be providing more training in the coming year.

4. Recommendations

That Members:

- Consider any matters arising from the paper and subsequent announcements.

Michael Harrison, Chairman of the Kent Flood Risk Management Committee

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