

To: Kent Flood Risk Management Committee

From: Mike Whiting - Cabinet Member for Planning, Highways, Transport and Waste

Subject: Flood Risk Management Policies

Classification: Unrestricted

Summary: KCC undertakes a number of functions as the Lead Local Flood Authority for the County. These include acting as a statutory consultee for surface water in planning, regulating ordinary watercourses and undertaking investigations into flooding. KCC is planning to consult on new and revised policies for these functions that clarify our role and ensure our policies are up to date with current guidance and best practice.

Recommendation:

That Members:

- Note the paper and the three draft policies, the Drainage and Planning policy, the Land Drainage Policy and the Section 19 Investigation policy;
- Provide any comments or feedback prior to these policies going to public consultation.

1. Background

1.1 Kent County Council (KCC) is the Lead Local Flood Authority (LLFA) for Kent under the Flood and Water Management Act 2010 (the Act). As Lead Local Flood Authority, Kent County Council has a strategic overview of local flooding. Local flooding is defined by the Act as flooding which is caused by:

- Surface water,
- Groundwater, and
- Ordinary Watercourses

1.2 As LLFA, KCC has a number of powers and duties for the management of local flood risk in the county. These powers and duties include:

- The duty to act as a statutory consultee for surface water in planning
- The power to regulate works in ordinary watercourses, and
- The duty to undertake investigations into flooding

1.3 KCC is revising or bringing forward new policies that set out how we undertake these powers and duties. This paper introduces these policies.

2. Drainage and Planning Policy Statement

2.1 Introduction

2.1.1 As a LLFA, we have been acting as a statutory consultee for surface water within the planning process since April 2015. As a statutory consultee we are required to provide the Local Planning Authority technical advice and guidance on surface water management proposed

in major planning applications. A consultation response is required to be returned to the local planning authority within 21 days.

- 2.1.2 Our consultation responses are based on guidance from existing planning policies, National Planning Practice Guidance, and the published national Non-Statutory Technical Standards for Sustainable Drainage which was published by DEFRA in 2015.
- 2.1.3 KCC adopted a Drainage and Planning Policy Statement in 2015 that sets out our requirements for surface water management in major developments. The Drainage and Planning Policy Statement is consistent with the Non-Statutory Technical Standards and National Planning Policy Framework (NPPF).
- 2.1.4 The Drainage and Planning Policy Statement is used by the following groups:
 - developers when considering their approach to development on new sites or redevelopment of brownfield sites in preparing submissions;
 - professionals involved in developing drainage schemes including engineering and urban and landscape professionals;
 - local authorities when developing local planning and land-use policy.
- 2.1.5 Following recent changes to the NPPF and the publication of DEFRA's 25-Year Environment Plan, we have revised our Drainage and Planning Policy Statement to be consistent with them.
- 2.1.6 The revised Drainage and Planning Policy is attached in Appendix 1.

3. Revised Drainage Policy

- 3.1.1 From our experience of performing our role as statutory consultee we have found that the information submitted with planning applications regarding surface water management does not always comply with our Drainage and Planning Policy and that applications do not always contain sufficient information to support a decision. Consequently, we often have to request more information from the applicant, which causes planning delays.
- 3.1.2 Additionally, we cannot be certain that the drainage system what was approved in the planning application has been delivered by the developer's contractors. We have found in some cases that important features of the drainage system have not been constructed as approved.
- 3.1.3 One of the primary intentions of the revised Drainage and Planning Policy Statement is to create a more concise document which provides greater clarity on our requirements for surface water management. In Section 4.3 of the Drainage and Planning Policy Statement 'Consultation submission requirements' we have included a clear table (Table 1) detailing the information required at each stage of planning. The previous version only displayed our minimum requirements for full planning stage. This addition

should enable developers to submit the correct level of information at each stage to support approval of planning applications.

- 3.1.4 The revision also includes requirements for a verification report, as a post construction condition that is recommended for all major planning applications KCC is consulted on. The intention of the verification report is to confirm if the drainage system has been constructed in accordance with the approved designs and to identify any changes that have been made to the design and whether there would be any impact on the performance of the system as a result of these changes. As the Lead Local Flood Authority, it is important that we understand how drainage systems work and especially if proposed systems have been changed. We are also required to maintain a record of structures and features in the county, this verification report will support us in keeping this record up to date.
- 3.1.5 The details and format of the verification report has been developed in consultation with the development community in Kent and their consultants. The intention is that a responsible person in the developer's organisation will sign-off the report and submit it to KCC, which can be done on-line.
- 3.1.6 The policy requirements set out in the Drainage and Planning Policy have not significantly changed. They have been reorganised to be easier to follow and the formatting has been revised to make them easier to read. More attention has been given to promoting amenity and open space to encourage more multifunctionality in sustainable drainage systems. It is our intention to promote sustainable drainage measures in open space to provide the opportunity for improved water quality, biodiversity and amenity as well as drainage.

4. Land drainage Policy

4.1 Introduction

- 4.1.1 Kent County Council as the Lead Local Flood Authority has powers as a Land Drainage Authority, under the Land Drainage Act 1991, to regulate ordinary watercourses in Kent. An ordinary watercourse is a watercourse that is not a main river, it may be a small river, stream, ditch or drain and does not always need to flow.
- 4.1.2 As a land drainage authority KCC has powers to provide consent for any works within an ordinary watercourse. In exercising this role, we must ensure that the works do not increase the risk of flooding, we are also obliged to ensure that there is no loss of habitat or pollution to the watercourse.
- 4.1.3 Land drainage consent is separate to planning permission, some works may be subject to both a planning application and land drainage consent. Granting of one does not automatically mean the other will follow or that the other is not required. We generally advise applicants to get planning permission first, as it may alter the location etc, of the structure being

consented, whereas land drainage consent is more concerned with design details.

- 4.1.4 KCC also has enforcement powers to ensure that ordinary watercourses are maintained to pass ordinary flows and to remove unconsented structures. KCC's preference with enforcement is to work with the relevant landowner to avoid the need to undertake formal enforcement. Our powers of enforcement only allow us to undertake the necessary works and to charge the landowner the costs. We do not have the power to compel landowners to undertake works.
- 4.1.5 The Land Drainage policy, attached in Appendix 2, sets out how KCC proposes to exercise these powers and gives guidance to applicants for land drainage consent.

4.2 Land Drainage policy

- 4.2.1 The Land Drainage policy statement is new, previously KCC has undertaken this Land Drainage function according to the Land Drainage Act, best practise, based on Environment Agency guidance, who performed this role prior to it being passed to KCC, and other relevant legislation, including the Habitats Regulations.
- 4.2.2 The new policy consolidates our requirements into one statement, revised over the years of undertaking this role. It particularly focusses on Land Drainage consent for culverts. Culverts represent a significant portion of the applications for consents we receive.
- 4.2.3 As a general rule KCC's preference is not to use culverts, but we accept them where they are unavoidable, principally for access to new developments. Culverting watercourses for the purpose of facilitating new development is not a sustainable policy. Culverting watercourses removes habitat and prevents fish migration and increases flood risk. Many flood risk issues in Kent are associated with culverted watercourses, as they are expensive and difficult to inspect and maintain, they prevent direct entry for water, they reduce the connectivity of the watercourse to its natural floodplain, which often gets developed on, and if they are constructed over they present a long-term maintenance liability.
- 4.2.4 The Land Drainage Policy sets out the requirements for applicants to demonstrate that the proposed works, including culverts, are appropriate for the proposed watercourse and do not increase flood risk.

5. Section 19 investigations

5.1 Introduction

- 5.1.1 KCC has is to undertake investigations into flood events in Kent under Section 19 of the Flood and Water Management Act 2010 and to publish a report of the investigation. The purpose of an investigation is to determine which risk management authorities have relevant flood risk management

functions and whether those risk management authorities have exercised those functions in response to the flood.

5.1.2 Clearly, a flood investigation is only needed when no risk management authority has exercised or is proposing to exercise its functions in respect of the flood or if there is no clear relevant risk management authority, otherwise the investigation only repeats the work of other risk management authorities.

5.1.3 It should be noted that the Flood and Water Management Act does not require the report of the investigation to set out the causes or circumstances of the flood. Some explanation of the causes, however, is necessary in an investigation report in order to provide background to the flooding, to identify the appropriate risk management authorities and to determine what, if anything, could be done in response to the flooding.

5.1.4 A policy for investigating flooding incidents was set out in the first Kent Local Flood Risk Management Strategy that was adopted by the County Council in 2012.

5.1.5 The current flood investigation policy is:

Flood investigations will be undertaken where no other risk management authority is exercising or is proposing to exercise its functions in respect of the flood and where the flood is significant.

Where the definition of a significant flood event is one that causes:

- internal flooding to one or more properties;
- external flooding of five or more properties;
- flooding of roads, rail and other transport infrastructure to an extent that they become impassable by vehicles;
- flooding of or near locally important services or infrastructure, for example health centres and electricity substations, to an extent that they cannot function normally.

5.1.6 The Kent Local Flood Risk Management Strategy was refreshed in 2018. The new Strategy did not include policies regarding how KCC would exercise its duties as LLFA, as it focussed on the broad strategic issues of local flood risk management.

5.1.7 The policy for investigating flooding needs revising.

5.2 Background

5.2.1 The current policy for investigating flood events sets the threshold for an investigation quite low. Our experience of exercising this power is that for flood events that meet the minimum requirements for triggering an investigation a formal report of the flood event is often not necessary or useful.

- 5.2.2 Producing the report of the investigation is time consuming and resource intensive, which can delay the delivery of actions to mitigate future floods. The evidence for the report must be compiled from a number of sources and written into a report which needs to be consulted on with the parties referenced in it. This process can take several months, typically nine to twelve months from the flood to publishing the report, sometimes longer.
- 5.2.3 For smaller flood events, the formal report is not necessary, nor does it lead to any particular outcome. The report itself does not provide KCC any powers to require risk management authorities to undertake works, it is only a public statement of the circumstances. Formal, public reports of flood investigations are often not wanted by the victims of the flooding either, simple statements of the issues are usually all they require.
- 5.2.4 Reports of flood investigations remain valuable for flood events where a public statement of the flood event is useful. This includes occasions where several properties have been flooded and there is no recent memory of flooding and where the flooding is complex and a public report is useful for explaining the causes.

5.3 Proposed policy

- 5.3.1 KCC proposes to investigate events that flooded residential properties internally or that disrupted local services but proposes that not all of these flood events should be followed by a public report.
- 5.3.2 In carrying out these investigations, KCC officers will continue to liaise with the subjects of the flooding and report to them the findings of the investigation, though not necessarily publicly.
- 5.3.3 KCC proposes to increase the threshold for publishing reports of flood investigations so that they are used when they add value. The proposed policy for publishing reports of flooding is set out below:

Section 19 Flood Investigation Policy

KCC will undertake an investigation into a flood event and publish a report of the findings where no other risk management authority is exercising or proposing to exercise its risk management functions and where:

- the flooding causes internal flooding to five or more properties or critical infrastructure assets in a localised area; or
- The flood mechanism is complex, for instance there are two or more sources of floodwater involved or the source or mechanism of the flooding is unclear and there is a public interest to explain this mechanism; or
- KCC determines that a report of the flooding is merited.

6. Consultation

6.1 These policies will be consulted on publicly this summer. Once this has been completed they will be taken to the Environment and Transportation Cabinet Committee prior to adoption by the county.

4 Recommendations

That Members:

- Note the paper and the three draft policies, the Drainage and Planning policy, the Land Drainage Policy and the Section 19 Investigation policy;
- Provide any comments or feedback prior to these policies going to public consultation.

Mike Whiting, Cabinet Member for Planning, Highways, Transport and Waste

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