

KENT UTILITIES ENGAGEMENT SUB-COMMITTEE

Friday, 27th January, 2017

10.00 am

**Medway Room, Sessions House, County Hall,
Maidstone**





AGENDA

KENT UTILITIES ENGAGEMENT SUB-COMMITTEE

Friday, 27th January, 2017, at 10.00 am

Ask for: **Joel Cook/Anna Taylor**

Medway Room, Sessions House, County Hall, Maidstone

Telephone: **03000 416892/416478**

Membership

Conservative (5): Mr R J Parry (Chairman), Mr R L H Long, TD (Vice-Chairman), Mr J A Davies, Mr G Lymer and Mr C Simkins

UKIP (1) Mr F McKenna

Labour (1) Mr T A Maddison

Liberal Democrat (1): Mr I S Chittenden

Independent (1): Mr M Whybrow

Tea/coffee will be available 15 minutes before the start of the meeting

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.

Webcasting Notice

Please note: this meeting may be filmed for the live or subsequent broadcast via the Council's internet site or by any member of the public or press present. The Chairman will confirm if all or part of the meeting is to be filmed by the Council

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UNRESTRICTED ITEMS

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

- 1 Welcome / Introductions
- 2 Apologies & substitutes
- 3 Declarations of Interests by Members in items on the Agenda for this meeting
- 4 Minutes of the meeting held on 27 July 2016 (Pages 5 - 12)
- 5 Presentation from Ofwat - water sector regulator (Pages 13 - 18)
- 6 Presentation from Southern Water (Pages 19 - 28)

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)

John Lynch
Head of Democratic Services
03000 410466

Thursday, 19 January 2017

KENT COUNTY COUNCIL

KENT UTILITIES ENGAGEMENT SUB-COMMITTEE

MINUTES of a meeting of the Kent Utilities Engagement Sub-Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Wednesday, 27 July 2016.

PRESENT: Mr R J Parry, Mr I S Chittenden, Mr J A Davies, Mr R L H Long, TD, Mr T A Maddison, Mr C Simkins, Mr M E Whybrow, Mr J E Scholes and Mr M Heale

ALSO PRESENT: Mr M A C Balfour

IN ATTENDANCE: Mrs K Stewart (Director of Environment Planning and Enforcement), Mr A Turner (Principal Regeneration & Projects Officer), Mr P Sass (Head of Democratic Services) and Mr J Cook (Scrutiny Research Officer)

UNRESTRICTED ITEMS

1. Election of Chairman

(Item 2)

1. Mr Simkins nominated Mr Parry, seconded by Mr Long.

RESOLVED that Mr Parry be elected unopposed.

2. Election of Vice-Chairman

(Item 3)

1. Mr Parry nominated Mr Long, seconded by Mr Simkins. Mr Maddison nominated Mr Whybrow, seconded by Mr Chittenden.
2. Put to the vote; 5 to 4 in favour of Mr Long.

RESOLVED that Mr Long be elected Vice-Chairman.

3. Terms of Reference of the Kent Utilities Engagement Sub-Committee

(Item 6)

1. The Chairman advised the Committee that the Terms of Reference had been amended in line with recommendations made at the Scrutiny Committee meeting on 9 June 2016; specifically to clarify that membership of the sub-committee would be drawn from the full council. The Chairman commented that he was pleased to see that this approach had led to a positive representation of useful knowledge, experience and expertise among the membership.
2. The Chairman provided a summary of the background to the development of the sub-committee, explaining that it had been in response to issues relating to growth across the county and how it may be improved or better facilitated through improved communication between the utility sector, the development industry and the public sector. It was envisaged that the role of the sub-committee would be to

facilitate the necessary discussions and to support co-ordination of any subsequent partnership work.

3. Members suggested various areas of the utility and development sectors that they felt should be considered as priorities. These included:
 - Long term or historic water system decline with limited maintenance or remedial work. It was suggested that existing issues should be tackled rather than built around as was reported to be the case.
 - Broadband and telecommunication provision across the county to ensure suitable digital access to all communities.
 - Ebbsfleet Development Project – suggested due to its significant scale and requirement for additional infrastructure with consequent utility connection needs.
 - Waste water – highlighted due to significant sewage overflows and flood risk concerns observed in previous years during times of increased rain.
4. Mr Balfour welcomed the enthusiasm of the sub-committee and noted the suggestions for consideration. He advised that it was critical to understand the underlying issues and to support improved communication between the other relevant stakeholders operating in the utility and development sectors. A critical role the sub-committee could play was engaging with the national regulators to consider how their processes impact on growth and utility provision, both positively and negatively. Additionally, Mr Balfour encouraged the sub-committee to consider how developers may need to adapt their processes and work flows to better contribute to growth within the existing regulatory framework. He suggested that this work would be enhanced through site visits that would improve Members' understanding of the practical issues involved in development and utility connections.
5. Regarding specific suggestions, Mr Balfour declared an interest for future reference, that he was a member of the Ebbsfleet Development Corporation Planning Committee.
6. Members commented that it was crucial to approach the issues with an open mind and without an initial negative bias against the utility sector or developers. The contribution of both industries was valuable to the County and necessary to support continuing growth. Members suggested that it was therefore important to consider the development priorities and how they fit within the regulations.
7. Members noted that it was important that the sub-committee maintain a reasonable focus and not over-extend itself. However further recommendations were made for areas of consideration including new models energy provision and waste management for new developments.
8. Mr Balfour agreed that it was important for the sub-committee to maintain a reasonable focus and prioritise its work effectively given the large scope of utility and development work in Kent. The Chairman advised Members that training packages were in development to assist the sub-committee in understanding the key issues and identifying relevant priorities.
9. In response to a question from Members regarding the level of engagement expected from the relevant stakeholders, Ms Stewart advised the sub-committee

that significant positive work had already been undertaken in relation to building links with the utility sector as well as the Kent Developers Group. Ms Stewart explained that it was hoped that the sub-committee could build on the existing good relationships already established, such as those in place with the water sector, while also helping to develop new liaison and engagement processes with the wider utility sector.

RESOLVED that the Terms of Reference set out be noted.

4. Objectives of Kent Utilities Engagement Sub-Committee *(Item 7)*

1. Members commented on the report outlining the objectives of the sub-committee, requesting minor amendments - , para 1.4, line 2 being to be amended to state '...where companies have constructive relationships,'
2. Mr Balfour commented that the issues surrounding utility provision, development work and regulatory involvement were wide ranging and featured a broad spectrum of differing opinions and experiences. Most conflicts or difficulties appeared to arise due to breakdowns in communication.
3. Members were given assurances from Mr Balfour and the Chairman that the sub-committee would not solely focus on utility provision impact on development as it was felt that there were wide issues requiring consideration.

RESOLVED that, subject to the requested amendments, the Objectives of the Kent Utilities Engagement Sub-Committee be noted.

5. Background Information *(Item 8)*

1. Ms Stewart explained that work in relation to improving links between developers and utility providers had been going on for some time. Identification of some the challenges to growth relating to connection issues for new development projects had been part of the instigation of the Growth Infrastructure Framework which currently sought to encourage closer engagement between the relevant stakeholders.
2. Mr Turner provided an overview of the positive work already undertaken with the water sector over recent years. He advised the committee that the three relevant companies were Southern Water, South East Water and Affinity Water. Some years ago, KCC worked with three of the main regulatory bodies to consider alternative and improved methods of monitoring water company performance. This led to the introduction of voluntary performance monitoring on a wider scale, which showed that Southern Water and Affinity Water were in the lowest performing group.
3. The identification of these issues led to an improvement in performance and assisted in securing support for ongoing liaison meetings with KCC. Additionally, other stakeholder group have since been involved in engagement work with the water companies with support of the regulators.

4. Members questioned how the sub-committee should consider any monitoring information, given that the regulators should already have relevant sanction authority to address any significant failures. Ms Stewart explained that the regulators were able to manage general performance through appropriate sanctions but stated that the sub-committee could play a role in examining some of the issues underlying any performance concerns or how they may impact on growth. In some cases, it had been suggested that there was a lack of flexibility in the regulatory framework which prevented utility providers from responding swiftly to changing demands or new developments. In response to a linked Member question, Ms Stewart explained that while lack of flexibility may be an issue, the legislation and guidance for the utility sector was kept up to date through reviews of statutory guidance.
5. Mr Turner also suggested that the sub-committee could support the engagement work through Member knowledge of the customer experience, acting as consumer champions. Although he commented that regulatory focus on protecting existing customers from excessive bills had a consequent limiting impact on the sector's capability to respond to change, specifically that regulators will not allow investment in developments until they have been legally finalised and confirmed, causing a delay in any necessary utility connections. This has created a situation where the utility company is able to support stable or established growth after the fact but not be involved in planned growth.

RESOLVED that the background information be noted.

6. Proposals for the Kent Utilities Engagement Sub-Committee *(Item 9)*

1. The Chairman advised the sub-committee that a work programme would be developed over the summer, taking into account current utility and development activity and the views expressed by the Members regarding priorities and consideration of wider issues.
2. Members commented on the wording of the proposed scope of the sub-committee, requesting the following amendments:
 - Expanding consideration of barriers to growth beyond the utility sector by referencing 'other bodies'.
 - Broaden scope to include current and future growth.
 - Include consideration of maintenance of existing infrastructure.
 - Include consideration of how to address historic utility network issues.

RESOLVED that subject to the amendments being made, the proposed scope be noted.

The Chairman advised the sub-committee that Mr Sass would soon be leaving KCC to take up other employment in London. The Chairman and the sub-committee formally thanked Mr Sass for his hard work and excellent contribution to Democratic Services.

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KENT UTILITIES ENGAGEMENT SUB-COMMITTEE

TERMS OF REFERENCE

9 Members

Conservative – 5; UKIP – 1; Labour – 1; Liberal Democrat – 1; Independent – 1.

Responsibility and outcomes:

1. This sub-committee is responsible for engaging with utility providers and regulators operating in the Kent area.
2. The goal of the sub-committee is to achieve better alignment of utilities planning and connections to developments across Kent and to improve the quality of life of Kent citizens.
3. The sub-committee will highlight examples of good and bad practice and work with utility providers to devise and promote effective utility and development strategies, making suggestions for improvement and engaging with national regulators where appropriate.
4. The sub-committee will use regular engagement with key partners in the utility and development sectors to improve communication, avoid unnecessary duplication and increase transparency.

Governance:

5. The sub-committee is a sub-committee of the Scrutiny Committee with membership drawn from all members of the council.
6. The sub-committee provides a report to the Scrutiny Committee on an annual basis, or more regularly if required.
7. The sub-committee will meet three times a year, with additional meetings arranged as required.
8. As a partnership meeting, attendance of all external parties is encouraged in the spirit of joint-working but will be on a voluntary basis.

Agenda setting:

9. A work programme will be maintained by the Growth, Environment & Transport directorate, developed in consultation with Members, partner agencies, utility providers and regulators.

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By: John Lynch (Head of Democratic Services)
To: Kent Utilities Engagement Sub-Committee 27 January 2017
Subject: Ofwat – Water Regulation
Classification: Open

Summary: Responsibility for monitoring and reviewing performance of utility companies lies with the relevant regulator. Ofwat (Water sector regulator) are providing a presentation to the Committee outlining their responsibilities and powers in relation to regulating the water sector.

Introduction

1. Sally Irgin is attending to provide a presentation from Ofwat, outlining the regulator's responsibilities and how it works with Developers in relation to the water sector
2. Sally Irgin is an Associate Director at Ofwat, the economic regulator for the water sector. She is Director of Ofwat Casework Programme which is the organisation's front line service for customer complaints about water companies and the part of the organisation responsible for determining disputes and taking formal enforcement action where Ofwat has powers to do so. Over the last three years Sally has led Ofwat's work on developer-related disputes and a specific project working with water companies to improve their delivery of services to their developer customers.
3. Ofwat are engaging with the Committee to support ongoing work to improve communication and effective joint planning between the utility and development sectors.

Ofwat

4. Under section 2 of WIA91 as amended, Ofwat must carry out most of its work as an economic regulator in the way it considers will best:
 - further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition
 - secure that water companies (meaning water and sewerage undertakers) properly carry out their statutory functions
 - secure that water companies can (in particular through securing reasonable returns on their capital) finance the proper carrying out of their statutory functions
 - secure that licensed persons properly carry out their licensed activities and statutory functions
 - further the resilience objective to secure the long-term resilience of water companies' water supply and wastewater systems; and to secure that they

take steps to enable them, in the long term, to meet the need for water supplies and wastewater services

5. Subject to its main duties above, Ofwat must also regulate in the way it consider will best:

- promote economy and efficiency by water companies in their work
- secure that no undue preference or discrimination is shown by water companies in fixing charges
- secure that no undue preference or discrimination is shown by water companies in relation to the provision of services by themselves or other licensed persons
- secure that consumers' interests are protected where water companies sell land
- ensure that consumers' interests are protected in relation to any unregulated activities of water companies
- contribute to the achievement of sustainable development

(Ofwat must also have regard to the principles of best regulatory practice.)

6. Additional guidance from Ofwat in relation to development work may be found in appendix 1 (Development guidance – Ofwat)

Recommendations:

Members are asked to note the presentation and information provided by Southern Water.

The Committee may require further information be provided by relevant KCC departments and it may request further information from Southern Water.

Joel Cook
Scrutiny Research Officer
Democratic Services
Tel No: 03000 416892
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Appendices:

Development Guidance – Ofwat

Background Information:

Better Connected: a practical guide to utilities for home builders
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389772/Better_Connected_Dec14_2.PDF

Development Guidance – Ofwat

(Full content available - <http://www.ofwat.gov.uk/regulated-companies/company-obligations/new-connections/>)

Summary information provided for reference in relation to growth and connection charges. Further information in relation to water company duties and Ofwat operations may be accessed via their website - <http://www.ofwat.gov.uk/>

Planning for and enabling growth

Monopoly companies have general duties under section 37 and 94 of the WIA91 to develop their networks in order to meet increasing demand through new connections.

- Section 37 requires a water company to develop and maintain the system of water supply such that it can make such supplies available to persons demanding them.
- Section 94 requires a sewerage company to provide, improve and extend a system of public sewers to ensure an area is effectually drained.

[Monopoly companies' price controls](#) include allowances – where they provide sufficient evidence – for them to:

- invest in their water and sewerage networks to support growth; and
- recover the costs of this investment from customers.

In order to plan for and enable new developments schemes we expect monopoly companies to speak with and listen to:

- new connections customers
- local planning authorities
- other relevant statutory bodies
- other infrastructure providers

Strong and on-going conversations between monopoly companies and their new connections customers should deliver a range of benefits to all parties, including both new connections customers and monopoly companies' existing customers. These benefits include the monopoly companies:

- providing levels of service for new connections customers based on greater trust and confidence and a stronger understanding of their needs
- having a better and earlier understanding of the impact of changes in demand on their networks
- efficiently planning the development of their networks, with investment and business planning based on robust assumptions of growth
- effectively managing the investment risks of providing new capacity, only doing so where they are confident that it is required and that they will be able to recover the costs of providing it

Appendix 1

- being able to deliver strategic, joined-up solutions where there are multiple development sites coming forward, rather than a succession of smaller schemes
- recovering fair and proportionate contributions from new connections customers and existing customers to the infrastructure required to respond to growth

On-going and timely conversations between monopoly companies and their new connections customers and planning authorities is essential for all parties to understand the timing, location and impact of future developments. Alongside the statutory planning system, these conversations are one of the ways in which monopoly companies should identify and enable the delivery of development schemes. Where appropriate, monopoly companies should use these conversations to work with multiple developers to identify and deliver joined-up solutions where several sites are coming forward together.

Charging for new connections

We use the term new connections to describe where a customer requires either or both:

- access to the existing public water supply or sewerage system by means of a service pipe or lateral drain
- a new water main or sewer.

The Water Industry Act 1991 (WIA91) gives Ofwat a duty to make determinations on certain new connections disputes. These determinations largely relate to the level of charges and the terms and conditions of agreements made between a monopoly company and their customer.

Sections 42-43A, 99-100A and 51C of the WIA91 sets out the methods for calculating both:

- the requisition charge a monopoly company can recover from a customer when it provides a new water main or public sewer, and
- the asset payment a monopoly company will pay to a developer or self-lay organisation (SLO) when a water main is self-laid and later adopted by the monopoly company. Asset payments are only paid for self-laid water mains – no asset payment is paid to the constructor of self-laid sewers, service connections or lateral drains.

Both of these calculation methods are based on what are considered to be the 'costs reasonably incurred' in providing the infrastructure.

Also, under sections 45, 47, 51C and 99 of the WIA91 the charges monopoly companies can recover the costs or expenses reasonably incurred by the monopoly company when they provide:

- service connections
- lateral drains

Appendix 1

- works to enable the adoption of self-laid water mains

Disputes arise about both the level of costs and the range of the cost items considered to be 'costs reasonably incurred'. The most common areas of dispute referred to us include where:

- [administration and overhead costs](#) are included alongside the physical construction costs of materials and labour
- [off-site works](#), to provide new infrastructure or reinforce existing infrastructure beyond those directly requisitioned or self-laid by a developer, are required to enable the requisitioned or self-laid infrastructure
- the infrastructure provided includes [additional capacity](#) beyond that required by the person requesting the new connection
- the [income offset](#) provided for in the calculation of a requisition charge or asset payment has not been offset against the costs incurred in providing off-site works or capacity, or is offset twice or separately for on-site and off-site works
- a water or sewerage company has recovered contributions towards off-site works through its requisition or self-lay charges as well as recovering [infrastructure charges](#) for each property newly connected to its network. Infrastructure charges are permitted by section 146 of the WIA91 and condition C of monopoly companies' licences. We investigate disputes on a case-by-case basis. We consider

When an SLO provides new connections it must enter into a self-lay agreement with the relevant water company under section 51A of the WIA91. Ofwat has powers under section 51B of the WIA91 to consider appeals about the terms on which a water company offers to enter into a self-lay agreement under section 51A. Common areas of dispute referred to us include the terms a water company has offered in order to satisfy itself about the quality of the self-laid assets it will be taking ownership of (['assurance terms'](#)).

- the legal framework of the WIA91
- the evidence provided to us by the parties to the dispute

Given that we do investigate disputes on a case-by-case basis, there may be justifiable grounds for moving away from our general expectations in light of the facts of an individual case.

However, we have general expectations on each of the issues set out above that represent our starting point when considering disputes. We set these out below.

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By: John Lynch (Head of Democratic Services)
To: Kent Utilities Engagement Sub-Committee 27 January 2017
Subject: Southern Water
Classification: Open

Summary: Southern Water is a major water company operating in Kent and will be attending the Committee to provide information and respond to questions.

Introduction

1. Paul Kent is attending to provide information on the company's operations in Kent and to answer questions from the committee
2. Paul Kent, as the Environment and Wastewater Strategy Manager for Southern Water, is accountable for the following:
 - Identifying expenditure requirements of above and below ground wastewater assets.
 - Maintaining and improving performance.
 - Agreeing environmental improvements required to meet legislative drivers.
 - Developing an integrated catchment approach to delivering environmental improvements.
 - Identifying future investment requirements arising from development and growth in the southeast.

Southern Water

3. Southern Water is owned by Greensands Investments Limited, a consortium made up of pension and infrastructure funds.
4. Southern Water take nearly 70% of its water from underground sources, called aquifers, 23% from rivers and 7% from storage reservoirs. Each day, it treats and recycles 718 million litres of wastewater at 365 treatment works after it is pumped through a network of 2,375 pumping stations and 39,600km of sewers.
5. Further information relating development and planning for growth may be found in the attached documents.

Recommendations:

Members are asked to note the presentation and information provided by Southern Water.

The Committee may require further information be provided by relevant KCC departments and it may request further information from Southern Water.

Joel Cook
Scrutiny Research Officer
Democratic Services
Tel No: 03000 416892
e-mail: joel.cook@kent.gov.uk

Appendices:

Southern Water – Map of Operations

Southern Water – Planning for Future Growth

Background Information:

Southern Water – Strategic Statement 2015-40
<https://www.southernwater.co.uk/strategic-direction-statement>

Southern Water – Area of Operations



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Planning for Future Growth

Southern Water's role in the development process



- Water companies play a fundamental role in providing infrastructure for new growth – installing essential water and wastewater services for new developments and the people who use them
- We are fully committed to providing the right infrastructure in the right place, at the right time, in collaboration with planning authorities and developers
- We have statutory obligations to provide water and wastewater services: we cannot refuse new connections and we are unable to object to new developments
- We have a duty to ensure the service we provide our existing customers does not deteriorate as a result of new homes being built
- We are not a statutory consultee on individual planning applications

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Planning for Growth

How do we become aware of the need for infrastructure?

1. Collation of future population forecasts from sources such as ONS and DCLG.
2. Maintain a database of housing developments of 10 or more units based on data produced by Local Authorities:
 - * Allocations in adopted Local and Neighbourhood Plans
 - * Five year supply of housing

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Planning certainty is key to support our investment proposals to Ofwat, the water industry's economic regulator.



Local and Neighbourhood Plans

To effectively plan for growth we need to know how much the population is expected to grow by, as well as where and when development will happen

- Local Plans and Neighbourhood Plans are key to informing our plans for infrastructure improvements:
 - We use various sources to estimate expected population and housing growth, including census data and population projections
 - Precise location and expected timescales allow us to assess where connections can be made or where infrastructure improvements may be required
 - This allows us to make the case in our five-year investment proposals for new infrastructure to support projected growth
- Working alongside local authorities and developers is the best way of ensuring our investments are made at the right time and in the right place

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**Planning certainty is key –
we invest against planned development**



Responding to Planning Applications

Water companies are not statutory consultees on individual planning applications

- Around 50 Local Authorities across our region
 - We encourage local authorities to consult us on applications for major developments (typically > 20 homes) or where proposals would have a significant impact on, or be impacted by, our assets
 - We respond to planning applications when consulted and may request planning conditions
 - Planning conditions, if implemented by the planning authority, facilitate the delivery of necessary infrastructure in parallel with the development
- In some cases, new infrastructure such as new sewers and pumping stations needs to be built in order to make a connection – most of this cost should be covered by the developer
- We expect new development to apply the drainage hierarchy – surface water **should not** be allowed to drain to a foul or combined sewerage system, except as a last resort
 - If planning approval is given without drainage conditions, we cannot subsequently refuse a connection on the grounds of inadequate capacity



Pre-development Enquiries

Southern Water Developer Services are actively seeking to engage with developers at an early stage, prior to the submission of planning applications

- Developers should consult with us to ensure:
 - Water supply and sewerage infrastructure are available to meet needs of the proposed development
 - An adequate supply of mains water can be provided
 - Public sewers with adequate capacity are available or can be provided or alternative arrangements can be made
 - Development in close proximity to wastewater treatment works is avoided – odour and fly concerns
- We provide a comprehensive service to builders, developers and individuals looking to connect to our network. For further information, visit:

<http://www.southernwater.co.uk/property-and-developers>

