

**From:** Barbara Cooper, Corporate Director of Growth, Environment and Transport

**To:** Susan Carey, Cabinet Member for Environment

**Subject:** Flood Risk Management Policies

**Decision Number:** 19/00087; 19/00088; 1900089

**Summary:** Kent County Council (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 proposing to adopt 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:**

The Cabinet Member for Environment, is asked to adopt the following policies (as shown in Appendices A, E and I):

- Drainage and Planning Policy (Appendix B)
- Land Drainage Policy (Appendix F) and
- Section 19 Reporting Policy (Section 4.3);

and to delegate to the Director of Environment, Planning and Enforcement the authority to make any further modifications which may be necessary such as formatting changes and typographical errors in order to publish these policies.

## 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 LLFA, KCC has a strategic overview of local flooding (flooding from 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 publish reports of investigations into flood events.

1.3 KCC is revising or bringing forward new policies that set out how we undertake some of our powers and duties as a LLFA. These policies are:

- Drainage and Planning Policy,
- Land Drainage Policy, and
- Section 19 Reporting Policy

1.4 These policies were presented to the Kent Flood Risk Management Committee on 22 July 2019 and they were individually publicly consulted on between 19 August to 30 September 2019. Each policy had a separate Equality Impact Assessment (EqIA) that was presented as part of the consultation. The responses to these consultations are set out in each consultation report found in Appendices C, G and J.

## 2. Drainage and Planning Policy Statement

### 2.1 Introduction

- 2.1.1 As a LLFA, we have been 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<sup>1</sup>. A response is required to be returned to the local planning authority within 21 days of being consulted on a major planning application.
- 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 the Department for Environment, Food and Rural Affairs (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, and our experience of undertaking this role for over four years, we have updated our Drainage and Planning Policy Statement.
- 2.1.6 The revised Drainage and Planning Policy is attached in Appendix B.

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<sup>1</sup> Major development is defined within the Development Management Procedure Order as development that involves any one or more of the following:

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwelling houses where:
  - (i) the number of dwelling houses to be provided is 10 or more; or
  - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more.

## **2.2 Revised Drainage and Planning Policy**

- 2.2.1 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 Statement (2017) 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.
- 2.2.2 Additionally, we cannot be certain that the drainage system 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.
- 2.2.3 One of the primary intentions of the revised Drainage and Planning Policy 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 '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 better enable developers to submit the correct level of information at each stage to support approval of planning applications.
- 2.2.4 The revision also includes requirements for a verification report, as a post construction condition that is recommended for all major planning applications on which KCC is consulted. 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 LLFA, it is important that we understand how implemented drainage systems work and ensure that any variations or changes to the drainage system deliver the same standard of service. We are also required to maintain a record of structures and features in the county, and this verification report will support us in keeping this record up to date.
- 2.2.5 The details and format of the verification report have been developed in consultation with the development community in Kent and their consultants.
- 2.2.6 Otherwise, there have only been minor changes to the policy requirements set out in the Drainage and Planning Policy. 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 a range of social, environmental and economic benefits than might otherwise be delivered 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.

## **2.3 Drainage and Planning Policy Consultation**

- 2.3.1 The consultation asked seven questions about the revision of the Drainage and Planning Policy, including questions about the EqIA.
- 2.3.2 We received 34 responses. The consultation report can be found in Appendix C. A summary of the responses is provided below:
- Respondents generally agreed that the Drainage and Planning Policy is consistent with the NPPF and other national guidance, with 69% agreeing or strongly agreeing with the statement.
  - 66% of respondents agreed or strongly agreed that KCC's requirements for drainage submissions were clearly stated in the policy statement, 17% neither agreed or disagreed and 7% of respondents disagreed.
  - 70% agreed or strongly agreed that the Verification Report improves the quality of sustainable drainage measures, 13% disagreed and 17% did not know or neither agreed nor disagreed.
- 2.3.3 The consultation has highlighted some areas for clarification on some technical matters. In response to comments about technical design details, links with the Kent Design Making It Happen guide have been highlighted. We have also made some other technical amendments to clarify the Drainage and Planning Policy and provided links to industry standards to support the delivery of the policy.

### **3. Land drainage Policy**

#### **3.1 Introduction**

- 3.1.1 KCC as the LLFA 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.
- 3.1.2 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, and we are also obliged to ensure that there is no loss of habitat or pollution to the watercourse.
- 3.1.3 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 obtain planning permission first, as the location and extent of the structure may alter through the planning process, whereas land drainage consent is concerned with design and engineering details, so these factors need to be specified in the consent application.
- 3.1.4 KCC also has enforcement powers to ensure that ordinary watercourses are maintained to pass ordinary flows and to remove unconsented structures. KCC's preferred approach to 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.

- 3.1.5 The Land Drainage policy, attached in Appendix F, sets out how KCC proposes to exercise these powers and gives guidance to applicants for land drainage consent.

### **3.2 Draft Land Drainage Policy**

- 3.2.1 The Land Drainage policy statement is new. Previously, KCC has undertaken this Land Drainage function according to the Land Drainage Act and best practice based on guidance from the Environment Agency, who performed this role prior to it being passed to KCC, and other relevant legislation, including the Habitats Regulations.
- 3.2.2 This formal statement of our policy consolidates our requirements into one statement, informed by our experience of performing this role over the past six years. It is designed to clarify our requirements for landowners, and to ultimately enable greater compliance. It particularly focusses on Land Drainage consent for culverts. Culverts represent a significant portion of the applications for consents we receive.
- 3.2.3 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, and they reduce the connectivity of the watercourse to its natural floodplain, which often gets developed. To this end, 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. In doing so, we work with the applicant to reduce the risk to flood risk and biodiversity.
- 3.2.4 The Land Drainage Policy sets out the requirements for applicants to demonstrate that proposed works, including culverts, are appropriate for the proposed watercourse and do not increase flood risk.

### **3.3 Land drainage Policy Consultation**

- 3.3.1 The public consultation on the Land Drainage policy asked six questions about the draft policy, including questions about the EqIA.
- 3.3.2 The consultation exercise received 31 responses. There was strong support for the policies which are proposed. The consultation response report can be found in Appendix G.
- 3.3.3 Responders to the consultation did highlight that the links with Drainage and Planning Policy need to be clearer, and in response, we have added text to the Land Drainage policy to clarify these links. Other comments related to water quality issues, which are not covered by Land Drainage regulation. In order to improve clarity, we have provided links to the relevant Environment Agency webpages.

## 4. Section 19 reporting

### 4.1 Introduction

4.1.1 KCC has a duty 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. We have discretion as to how we conduct these investigations i.e. the thresholds for these investigations are not prescribed.

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.1.5 The current flood investigation approach 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.

4.1.6 The Kent Local Flood Risk Management Strategy was refreshed in 2017 (it was considered at ETCC in the meeting on 30 November 2017). 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.

4.1.7 Therefore, the policy for investigating flooding needs revising.

## **4.2 Background**

- 4.2.1 The current policy for investigating flood events sets the threshold for an investigation relatively low. These minimum requirements result in a formal report of the flood event which is often not necessary or useful.
- 4.2.2 Further, 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 typically take nine to twelve months from the flood to publishing the report, sometimes longer.
- 4.2.3 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 with 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.
- 4.2.4 However, there are circumstances where reports of flood investigations remain valuable such as occasions where several properties have been flooded and there is no recent memory of flooding, and/or where the flooding is complex, and a public report is useful for explaining the causes.

## **4.3 Proposed policy**

- 4.3.1 In order to create a more proportionate and effective investigation policy, KCC proposes to investigate events that have flooded residential properties internally or that have disrupted local services; however, it proposes that not all of these flood events should be followed by a public report.
- 4.3.2 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.
- 4.3.3 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.

4.3.4 Once approved by the Cabinet Member, the Section 19 reporting policy will be published on the KCC Section 19 Report webpage, along with details of how to report a flood event.

#### **4.4 Consultation**

4.4.1 The consultation exercise on the Section 19 Reporting policy received 25 responses. The consultation response report can be found in Appendix J.

4.4.2 There was broad support for the policies which are proposed, although some responders did raise objections to the proposed policy.

4.4.3 These objections all focussed on the change of the threshold from one property to five properties internally flooded. Respondents expressed the view that small floods should all be investigated as they may be indicative of wider problems that may worsen. KCC does agree with this, and this policy is not inconsistent with this view. The change of threshold in the proposed policy affects the *publication of a report* into an investigation. KCC will undertake investigations into flood events that do not meet this threshold, but we will not necessarily publish a report of the investigation. KCC will include text on the Section 19 report webpage to clarify this point.

#### **5. Legal**

5.1 As the LLFA and the Land Drainage Authority, KCC has the power to develop policy for the powers and duties it exercises. The policies presented in this report set out how KCC will apply these roles. They are consistent with relevant legislation including the Flood and Water Management Act 2010 and the Land Drainage Act 1991 and associated guidance. Any legal issues that might arise will be on individual cases where these policies are applicable, rather than on the content of the policies.



## 6. Financial

6.1 KCC currently undertakes the roles set out in these policies. The policies clarify and update how KCC undertakes these roles. There are no new financial burdens from these policies.

## 7. Equalities

7.1 An equalities impact assessment (EqIA) has been prepared for each of the three policies. These EqIAs were included in the consultations that were undertaken.

7.2 The EqIA did not identify any significant equalities impacts. The consultation did not highlight any gaps in the EqIAs.

## 8. Data Protection

8.1 Some personal data will be collected as part of delivering these policies, however it will not be processed in a way that meets requirements for a Data Protection Impact Assessment (DPIA). Data is held on a KCC server, in accordance with KCC data security policy.

## 9. Recommendations

The Cabinet Member for Environment, is asked to adopt the following policies (as shown in Appendices A, E and I):

- Drainage and Planning Policy (Appendix B)
- Land Drainage Policy (Appendix F) and
- Section 19 Reporting Policy (Section 4.3);

and to delegate to the Director of Environment, Planning and Enforcement the authority to make any further modifications which may be necessary such as formatting changes and typographical errors in order to publish these policies.

## 10. Appendices:

- Appendix A: Proposed Record of Decision – Drainage and Planning Policy
- Appendix B: Drainage and Planning Policy Statement
- Appendix C: Drainage and Planning Policy Consultation Report
- Appendix D: Drainage and Planning Policy EqIA
- Appendix E: Proposed Record of Decision – Land Drainage Policy
- Appendix F: Land Drainage Policy Statement
- Appendix G: Land Drainage Policy Consultation Report
- Appendix H: Land Drainage Policy EqIA
- Appendix I: Proposed Record of Decision – Section 19 Reporting Policy
- Appendix J: Section 19 Reporting Policy Consultation Report
- Appendix K: Section 19 Reporting Policy EqIA

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