Place Services and Economic Growth Scrutiny Committee

09:30	**Thursday, 26 November 2015**	**Committee Room 1, County Hall, Chelmsford, Essex**

Quorum: 5

Councillor S Walsh Chairman
Councillor K Bobbin
Councillor G Butland
Councillor T Cutmore
Councillor A Erskine
Councillor C Guglielmi
Councillor T Hedley
Councillor I Henderson
Councillor D Kendall
Councillor V Metcalfe
Councillor C Pond
Councillor S Robinson
Councillor K Twitchen
Councillor A Wood

For information about the meeting please ask for:
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www.essex.gov.uk/scrutiny

Essex County Council

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Part 1

(During consideration of these items the meeting is likely to be open to the press and public)

		Pages
1	**Apologies for Absence**	
2	**Minutes** To approve as a correct record the Minutes of the meeting held on 22 October 2015.	5 - 10
3	**Declarations of Interest** To note any declarations of interest to be made by Members in accordance with the Members' Code of Conduct	
4	**Questions from the Public** A period of up to 15 minutes will be allowed for members of the public to ask questions or make representations on any item on the agenda for this meeting. On arrival, and before the start of the meeting, please register with the Committee Officer.	
5	**Jobs, Welfare and Skills Scrutiny Review** To consider report PSEG/23/15 and a presentation from the Task and Finish Group, providing an update on this review and an opportunity for clarification on any particular issues arising from the scrutiny investigation.	11 - 16
6	**Devolution in Greater Essex** To consider report PSEG/24/15 and a briefing from the Leader on proposals for devolution for Greater Essex.	17 - 22
7	**Local Bus Consultation** To consider report PSEG/25/15 setting out the Cabinet Member’s response to the Committee’s recommendations arising from its briefing on the Local Bus consultation.	23 - 24

8	**Third Party Responsibilities And Flood Management Scrutiny Review** To consider report PSEG/26/15 seeking the Committee's formal endorsement of the Task and Finish Group's final scrutiny report 'Third Party Responsibilities and Flood Enforcement in Essex'.	**25 - 102**
9	**Work Programme 2015/2017** To receive report PSEG/27/15 and accompanying appendix setting out an update on the Committee's work programme for the period up to March 2016.	**103 - 106**
10	**Date of Next Meeting** To note that the next committee activity day is scheduled for Thursday 21 January 2016 at 10.30am.	
11	**Urgent Business** To consider any matter which in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.	

Exempt Items

(During consideration of these items the meeting is not likely to be open to the press and public)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

12	**Urgent Exempt Business** To consider in private any other matter which in the opinion of the Chairman should be considered by reason of special circumstances (to be specified) as a matter of urgency.	

MINUTES OF A MEETING OF THE PLACE SERVICES & ECONOMIC GROWTH SCRUTINY COMMITTEE HELD AT COUNTY HALL, CHELMSFORD ON 22 OCTOBER 2015

Present:

Councillor S Walsh (Chairman)	Councillor D Kendall
Councillor K Bobbin	Councillor M Maddocks
Councillor G Butland	Councillor V Metcalfe
Councillor T Cutmore	Councillor C Pond
Councillor C Guglielmi	Councillor S Robinson
Councillor I Henderson	Councillor A Wood

1. Apologies and substitution notices

Apologies were received from Councillors Erskine, Hedley, and Twitchen with Councillor Maddocks attending as a substitute for Councillor Twitchen.

2. Minutes

The Minutes of the Committee meeting held on 23 July 2015 were approved as a correct record and signed by the Chairman.

With particular reference to Minute 3/ July 2015 on declarations of interest, Councillors Bobbin, Kendall and Metcalfe confirmed that they wished to record that they too were members of Youth Strategy Boards in their relevant districts.

3. Declarations of Interest

With reference to Minute 6/ October 2015 on Third Party Responsibilities and Flood Management Councillor Cutmore declared a personal interest in that he is the Chairman of a Local Flood Forum.

With reference to Minute 7/ October 2015 on the Local Bus Consultation, Councillor Kendall declared a personal interest in in that he is Secretary of the Brentwood Bus and Rail Users Association, and a Trustee of Brentwood Community Transport in his capacity as a Brentwood Borough Councillor.

With reference to Minute 10/ October 2015 on the Future of the South East Local Enterprise Partnership Councillor Butland declared a personal interest in that he is a member of the South East Local Enterprise Board.

4. Questions from the Public

There were no questions raised by members of the public

5. Cabinet Member Portfolio Changes

The Chairman confirmed that at the Full Council earlier in the month changes had been to Cabinet Member portfolio responsibilities, which would affect some issues under consideration by the Committee. For instance Passenger Transport, including the Local Bus Consultation referred to in Minute 7/ October 2015, would now fall within the Transport, Planning and Environment portfolio rather than the former Highways and Transportation portfolio.

6. Third Party Responsibilities And Flood Management Scrutiny Review
(Minute 8/July 2015)

The Committee considered report PSEG/16/15, together with presentations that provided an update on issues that will be included in the final scrutiny report to be submitted for its endorsement by a Task and Finish Group in due course.

As there has been a lot of activity taking place around the Council's flood management activities in recent months, it was considered prudent to provide the full Committee with a detailed update and ensure Members understood the conclusions reached by the Group. Given the progress being made around the topic, the briefings also provided the Group with a final opportunity to ensure that the report itself would be fully up to date when published formally.

By way of introduction the Committee viewed a short video on the 'Flooding Strategy' that is published on the County Council's website, followed by briefings from:

1. Lead Local Flood Authority Flood Team
    - Update on content of the draft report and progress made,
    - importance of engaging the public,
    - ECC Flood Management Website.

2. Highways Enforcement Team
    - Update on the Maldon Highways Enforcement Pilot Project, and the implications for enhanced enforcement activity.

The following officers delivered the briefings and provided clarification on issues arising from the scrutiny investigation:

- Graham Thomas - Head of Planning and Environment, Flood Water Management Team (FWMT)
- Lucy Shepherd - Lead Local Flood Authority Manager (FWMT)
- Kathryn Goodyear- SuDS Approval Body Manager (FWMT)

- Emma Brown- Senior Legal Advisor, Highways Authority Enforcement Team (HAET)

While the issues covered in the briefings would be covered within the final scrutiny report, during the discussion that ensued Members sought and received clarification on various matters including:

- Improving public understanding of flood responsibilities and the need to educate in this respect, eg training and advice to small building businesses; liaison with landowners who may be unaware of their responsibilities; and success of negotiation to mitigate the need for formal enforcement action.
- Maintenance responsibilities.
- Whether searches to reveal ownership responsibilities should become mandatory in the conveyancing process.
- Flooding caused by third parties/utility companies.
- Highway Authority's limited powers of enforcement compared to enforcement tools of the Lead Local Flood Authority in Essex County Council.
- Introduction to Highway Authority Enforcement Pilot Project in Maldon, which has been extended until April 2016.
- Enforcement procedures against multiple adjacent owners
- A positive working relationship is evolving between the FWMT and HAET.
- Plans to develop the Council's Flooding website, with more videos being planned.
- FWMT is seeking meetings with Local Planning Authorities to discuss proposals for Service Level Agreements, whereby ECC will provide some of its expertise in development control matters.
- Achievements so far including examples of "before" and "after" ditch clearances.

The Chairman thanked Officers for their valuable contribution to the scrutiny review, and with specific reference to the Maldon Highways Enforcement Pilot Project confirmed that the Committee would wish to be kept informed of its progress beyond April 2016 and any proposals for it to be extended to other areas of the county.

7. Local Bus Consultation

The Committee noted report PSEG/17/15 summarising its briefing held on 24 September on a Local Bus Consultation.

Councillor Kendall reiterated his concerns about the provision of hard copies of the consultation document and means for response, the future of Community Transport and it's funding, and Gross to Net Contracts. He confirmed that he had submitted his representations to the consultation.

The Committee **agreed** the following recommendations:

1. It is recommended to the Cabinet Member for Transport, Planning and Environment that:
    - Feedback be sought on bus consultations through targeted focus groups including the Young Essex Assembly,
    - Representation be sought for the new Bus Strategy Forum from the Parish Forum, and Employers/ Training sector i.e. to reflect the needs of people relying on passenger transport to access work and training opportunities across Essex, and
    - that Councillor Simon Walsh, as Committee Chairman, and Councillor David Kendall be appointed as the Scrutiny Committee's representatives on the Bus Commissioning Strategy Board.

2. That the Committee's representatives on the Bus Commissioning Strategy Board be tasked with reporting back to the Committee as and when necessary on the development of the Bus and Passenger Transport Strategy.

8. Performance Reporting To Scrutiny Committees

The Committee considered report PSEG/18/15 concerning performance reporting to scrutiny committees.

The Scrutiny Board has been considering how to make best use of performance information that will be made available to each Scrutiny Committee this autumn. It had agreed some principles on how the Scrutiny Committee Chairmen would wish to see and use performance data namely an annual overview report on the progress made towards delivering ECC's corporate outcomes as measured by the corporate outcome indicators to the Corporate Scrutiny Committee; and a twice-yearly more detailed report on performance against the corporate outcomes indicators and key performance measures will be provided for each Scrutiny Committee.

The Committee **agreed** to:

- Seek an overview of the performance information that is to be provided to the Committee in due course, and

- consider the question and answer approach set out in report PSEG/18/15 now proposed for the scrutiny of the forthcoming performance reports being made available to this Committee.

9. Essex and Southend Replacement Waste Local Plan

The Committee noted report PSEG/19/15 on its briefing about the Essex and Southend Replacement Waste Local Plan held on 24 September 2015.

The Chairman advised that since the briefing, an update from the Cabinet Member had been circulated to all County Councillors providing an update on the consultation undertaken on the Plan**.**

10. Future of the South East Local Enterprise Partnership

The Committee noted report PSEG/20/15 about action taken on its behalf with regard to proposals on the future of the South East Local Enterprise Partnership (SELEP).

Following discussion in July 2015, the Chairman had sent letters on behalf of the Committee to the Secretary of State for Communities and Local Government, and the Secretary of State for Business, Innovation and Skills. The letters set out a compelling case for the creation of a Greater Essex Local Enterprise Partnership (GELEP). Both letters had been acknowledged but no formal reply received.

Councillor Butland based on his knowledge as a representative on the SELEP Board advised the Committee that he was aware via a letter sent to Board Members advising that the Secretary of State for Communities and Local Government was not prepared at this stage to change the boundaries of the SELEP. Furthermore a new Chairman for the SELEP Board was being sought from the business community.

There was general disappointment that the Chairman had not received a formal reply from the Government to confirm that proposals for a GELEP had been dismissed. Nevertheless as the argument for a GELEP is an important component of the Essex Devolution proposals, Members considered that the matter should still be pursued by the County Council. As arrangements were being made for the Cabinet Member for Economic Growth, Waste and Recycling to attend the Committee's next meeting, the Chairman proposed that Members would have that opportunity to seek further information from him, and raise their concerns with him.

11. Work Programme 2015/2017

The Committee noted report PSEG/21/15 setting out an update on its activities.

At the meeting Councillors Henderson and Kendall raised concerns about the length of time taken to deliver the final scrutiny report on Jobs, Welfare and Skills, and consequently the impact upon the timeliness of the outcomes reached. The situation was partly due to a reduction in the level of policy officer support before the review had been completed even though the Policy Team had initiated the scrutiny review in the first instance.

The Chairman advised Members that he had spoken to the officers in question prior to today's meeting and had been given an assurance that the Jobs, Welfare and Skills review would be considered by the full Committee in November.

With specific reference to scrutiny engagement around the forthcoming executive review of Parking Partnerships, some Members expressed their discontent with the delay of the review until January 2016. The Chairman advised the Committee that he would seek an update from the Cabinet Member concerned.

12 Future Committee Dates

The Committee noted report PSEG/22/15 setting out the following future meeting dates:

- Thursday 23 June 2016
- Thursday 21 July 2016
- Thursday 22 September 2016
- Thursday 20 October 2016
- Thursday 24 November 2016
- Thursday 15 December 2016
- Thursday 19 January 2017
- Thursday 23 February 2017
- Thursday 23 March 2017
- Thursday 20 April 2017

13. Date of Next Meeting

The Committee noted the next committee activity day was scheduled for Thursday, 26 November 2015

There being no urgent business the meeting closed at Noon

Chairman

NB. Throughout the meeting problems were experienced with the microphone system and the Chairman, on the behalf of the Committee, apologised to all those present noting that the meeting had been audio broadcast.

	AGENDA ITEM 5
	PSEG/23/15
Committee:	**Place Services and Economic Growth Scrutiny Committee**
Date:	**26 November 2015**
JOBS, WELFARE AND SKILLS SCRUTINY REVIEW (Minute 9/ July 2015)	
Enquiries to:	**Christine Sharland, Scrutiny Officer** Telephone no 03330134569 **Christine.sharland@essex.gov.uk**

The Jobs, Welfare and Skills Task and Finish Group will be submitting a scrutiny report to the Committee in January 2016 for its formal endorsement. The scrutiny report will set out the conclusions and recommendations the Group has reached from the evidence it has obtained through its investigations. Councillors Henderson, Kendall, and Walsh comprise the Group.

At today's Committee meeting the Group has organised a presentation to provide Members with a fuller understanding of the issues investigated as part of the scrutiny review on jobs, welfare and skills before the final report is completed. It will also ensure Members have an opportunity to ask questions on the scrutiny review where they may feel that further clarification would be helpful.

The terms of reference for the review read as follows:

> 'To consider the extent, if any, of local involvement in shaping the design and assisting in the delivery of national programmes which are linked to improving employment, welfare and skills in Essex.
>
> To consider how the Council and its key partners can be more effectively engaged with the development and delivery of national programmes, with the aim of improving outcomes for the residents of Essex.
>
> To consider how increased local involvement in the design and delivery of the national programmes would improve outcomes in Essex.'

A briefing paper is attached at the Appendix to this report.

Action required by the Committee at this meeting:

To consider the content of the presentation, and to clarify any particular issues arising from the scrutiny investigation prior to the Task and Finish Group's consideration of the final scrutiny report.

Appendix

Briefing paper prepared on behalf of the Jobs, Welfare and Skills Task and Finish Group for the Place Services and Economic Growth Scrutiny Committee meeting held on 26 November 2015

Better placed:
Locality-based employment and skills for Essex

Purpose and terms of reference

The Task and Finish Group has set out to understand the challenges and opportunities for improving welfare to work and skills to improve local residents' access to employment. The Group has taken time to explore the current landscape of provision, its strengths and weaknesses, and is considering how Essex County Council and other local authorities in Essex could most effectively contribute to improving outcomes. In examining employment, skills and welfare locally, the Group has considered the extent, if any, of local involvement in shaping the design and assisting in the delivery of national programmes and how the Council and its key partners can be more effectively engaged to improve outcomes for Essex residents. The lessons learnt are applicable across Greater Essex and potentially beyond.

In practice, our investigation, while underlining the benefits of a locality-based approach, has highlighted the complexity of many of these issues, at a time when the welfare-to-work landscape is evolving rapidly, and new approaches are being tested as part of wider devolution deals (notably in Manchester). We highlight what we believe are the key issues for further investigation and development and set out a broad direction of travel towards having greater local determination over provision at the Greater Essex level.

Fieldwork

Our investigation began in June 2014, and has produced a series of briefing notes on key topics. We heard evidence from ECC Cabinet members, lead ECC officers and other key partners (including senior staff from Seetec and Ingeus, who are the two Work Programme 'prime providers' in Greater Essex). We undertook a series of site visits[1] where we had the opportunity to talk with young people in training, and engage in group work with the Essex Youth Assembly and welfare to work clients. We are grateful to all the contributors who participated in the review, and appreciated the energy, skill and commitment of those delivering services on the ground locally.

[1] Site visits were to: Braintree Job Centre (30.10.2014); Seetec offices at Chelmsford (04.12.2015); Ingeus Offices at Chelmsford (16.12.2014); Brentford Community Print (14.01.2015); Fitness in Mind at Brentwood (14.01.2015); Harwich Mayflower Project (05.02.2015); Energy Skills Centre at Harwich; Harwich Jobcentre Plus and Teen Talk Harwich (all 05.02.2015); ECC's NEET Team in Basildon (28.08.2015)

The problem

An appropriately skilled workforce is critical for sustainable economic growth and to drive the increase in UK productivity called for in the July budget. However, local businesses in Greater Essex continue to face skills shortages, which hold back their growth, while at the same time some of our young people face challenges in getting on the career ladder, and too many of our most vulnerable residents are excluded from work.

The challenge of developing a comprehensive strategy is complicated by these complementary areas being steered by at least three central government departments, yet implemented by a wide range of partners. The pathways to work and more importantly to sustained and gainful employment build on careers advice in our schools, skills provision, and welfare to work programmes. This provision is rarely adapted to the local labour market and often fails to respond to local business needs. Hence, outcomes may be suboptimal.

Essex County Council has made a substantial contribution to addressing this locally, notably in its £multi-million Skills Programme, Family Solutions and other wraparound services that help to enable people to live and work independently. Increasingly, the links between health and social care, skills provision and employment support are being exploited by areas such as Greater Manchester in its *Working Well project* to deliver a more locally responsive system that improves outcomes for disadvantaged and vulnerable people. There may be lessons here for the development of initiatives under Greater Essex's devolution deal.

The employment, skills and welfare to work systems, generated by central government departments, are siloed and hence do not complement each other. Local partners are left to negotiate the maze of provision, which too often they have no involvement in designing, commissioning, delivering or scrutinising. To make the systems work, local partners have to tie loose threads together at the fringes of these provisions. Business and local people are all too often left with Hobson's choice, even if their current and future needs are not fully served.

Key findings to date

Welfare to work – The Work Programme, conceived centrally and delivered independently of local partners, took years to reach target outcome levels. In the meantime, over three quarters of participants did not find work. Even though Greater Essex providers are among the best in the country, and despite significant incentives under payment by results, providers have not been able to provide the support needed to help more vulnerable people to make the transition from welfare to work.

Careers advice in schools – Young people are left unable to make informed choices in their learning and careers. They remain unaware of the opportunities available in the local labour market. Young people told us that careers advice in schools is patchy and ranges from a permanent careers teacher to a one off interview. The information shared focuses on academic progressions and offers little recognition to non-academic routes, which may be more appropriate to many young people (2/5 of 16 year olds do not gain 5 GCSEs A*-C).

Skills provision – Simplifying the system, the majority of young people aged 16-18 in Essex, for example, go into sixth form (c. 20,000) which offers predominantly academic study; c. 12,000 go into further education which offers predominantly vocational provision; and only c. 5,000 start apprenticeships, which offer the clearest link to meeting local employer skills needs. Outside of apprenticeships there are limited incentives to meet the needs of local employers. Indeed the system is often described as learner led, although it is constrained by what providers choose to deliver. This leads to a mismatch between provision and local needs.

These gaps offer potential opportunities for local partners to make the case to government for greater local determination.

The case for locality based provision

Our key message is that the role of local government in Greater Essex in careers advice, skills training and welfare to work programmes can and should be significantly enhanced. We found that current provision in Greater Essex is too detached from the local context, and believe that outcomes would improve considerably with devolved funding, accountability and responsibility at the Greater Essex level. This is particularly relevant with top-tier local authorities' strategic responsibilities for both education and economic development.

The direction of travel must be to ground systems and services in the local context. This can deliver:

- Improved integration of education and industry, including for school careers services;
- Better communication between education and skills providers and business to identify skills for economic growth;
- Increased involvement of local employers in skills development programmes;
- Greater accountability at local government level for delivery of employment, skills and welfare outcomes.
- Support for vulnerable residents who are presently excluded from the opportunity to work.

The establishment of the pan-Essex Employment and Skills Board provides an important first step to improving the responsiveness of local systems, but this should not be the limit of our ambition.

Next steps

- Group to complete the final scrutiny report for submission to the Committee in January 2016 for its formal endorsement and publication.

	AGENDA ITEM 6
	PSEG/24/15
Committee:	**Place Services and Economic Growth Scrutiny Committee**
Date:	**26 November 2015**
DEVOLUTION IN GREATER ESSEX	
Enquiries to:	**Christine Sharland, Scrutiny Officer** Telephone no 03330134569 **Christine.sharland@essex.gov.uk**

At the Committee's last meeting there was some discussion that touched upon proposals for devolution for Greater Essex, and the Chairman indicated that arrangements were in hand for an item to be brought to this meeting.

The briefing paper that is attached at the Appendix to this report has been provided by Councillor Finch as Leader of the Council to inform the Committee of the current position as at 4 November 2015.

Action to be taken by the Committee

It is proposed that the report be noted.

Appendix

Devolution in Greater Essex

Briefing Paper for: Place Services and Economic Growth Scrutiny Committee
Date: 4th November 2015

1. This briefing provides information on HM Government's position on devolution to local communities, and on the work being done by local partners to develop devolution proposals for Greater Essex.

Background

2. Following the 'no' vote in the September 2014 Scottish independence referendum, the Prime Minister announced that, alongside proposals for additional devolution to Scotland, Wales and Northern Ireland, the Government would bring forward plans to devolve power to cities and communities across England.

3. Subsequently, in November 2014, a 'devolution deal' was announced by HM Government and the Greater Manchester Combined Authority. This deal followed extensive negotiations, and provides new powers for the GMCA, and for a directly elected directly-elected mayor to be established for the whole Greater Manchester area.[1] Further announcements on devolution to Greater Manchester followed in February and July 2015.[2] Further deals also followed with Sheffield (December 2014 and October 2015), West Yorkshire (March 2015) and Cornwall (July 2015).

4. The Conservative Party 2015 General Election manifesto underlined its commitment to devolving budgets and powers to boost growth, indicating that it would do this through a process of bespoke deals with local partners, and that reforms to local governance structures would be required to unlock far-reaching devolution.

> "We will devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors… we will deliver more bespoke Growth Deals with local councils, where locally supported, and back Local Enterprise Partnerships to promote jobs and growth."[3]

5. Following the General Election, the Chancellor, George Osborne, gave a speech on 14 May in which he said that a 'Cities Devolution Bill' would feature in the 2015

[1] See the *Greater Manchester Agreement*, 3 November 2014, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/369858/Greater_Manchester_Agreement_i.pdf

[2] See *Greater Manchester Health and Social Care Devolution Memorandum of Understanding*, 27 February 2015, available at http://www.nhshistory.net/mou%20(1).pdf and *Further devolution to the Greater Manchester Combined Authority and directly-elected Mayor*, July 2015, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443087/Greater_Manchester_Further_Devolution.pdf

[3] Conservative Party Election manifesto, April 2015, available at: https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf

Queen's Speech. Following representations from DCLG, the LGA, and a range of think-tanks and research group, the focus of this proposed legislation was expanded beyond city areas to include other groups of local authorities.[4]

6. The '*Cities and Local Government Devolution Bill*' has subsequently passed through the House of Lords, has entered the Commons, and is currently passing through Committee Stage of the Whole House. The Government has overturned a Lords amendment that would have prevented a directly elected mayor from being a precondition of substantial devolution. However, it has not sought to substantially overturn the amendments which limit devolution of NHS powers.

7. The Bill is still in committee stage and is expected to receive Royal Assent in November. It will give statutory foundation to various aspects of current and future devolution deals.

Devolution in Greater Essex

8. In November 2014, ECC and the Leaders of local authorities within the Essex, wrote to Ministers to outline their "ambition and commitment to taking on more powers", and a corresponding desire to "explore options to strengthen and improve joint governance and partnership working". This was followed, within Essex County Council by a motion, carried at Full Council on 9th December 2014, welcoming measures taken by HM Government to devolve powers and urging further devolution in areas including skills, transportation, business rate retention and tax raising responsibilities.

9. This marked the beginning of a programme of discussions across all fifteen local authorities in the Greater Essex area (Essex, Southend-on-Sea and Thurrock). Leaders and Chief Executives met regularly to explore devolution issues, to consider the potential case for devolution and to develop potential asks of Government. This programme of work included two 'devolution conventions' attended by local authority Leaders and Chief Executives from across Greater Essex. This work programme has been led by Cllr Howard Rolfe, Leader of Uttlesford District Council, and Nicola Beach, Chief Executive of Braintree District Council.

10. Following the general and local elections in May 2015 a further devolution convention was held to re-affirm partners' commitment to exploring a devolution deal with HM Government. Following this, work began to develop proposals to support a submission to Ministers in early September – a semi-formal milestone set by HM Government to feed into thinking about the next spending review period. A submission was developed with input from all local authorities in Greater Essex, and shared with Rt Hon. Greg Clark MP, the Secretary of State for Communities and Local Government on 4th September.

11. This September submission set out partners' ambition that, by 2025 and with a devolution deal in place, Greater Essex will have:

[4] See Sandford, M, Oct 2015, Briefing paper - Cities and Devolution Bill 2015-16, House of Commons Library, available at http://researchbriefings.files.parliament.uk/documents/CBP-7322/CBP-7322.pdf

- the strongest economy outside London, increasing its economic output from £33.5bn to £60bn by supporting growth areas to realise their full potential;
- a reputation as an internationally recognised and successful location for inward investment, having doubled the number of businesses exporting from 7% to 14%;
- outstanding connectivity, both transport and digital, that enables businesses to grow and strengthens links between key transport hubs, with London and with neighbouring areas;
- further improved the rate and reliability of housing delivery to meet local housing needs;
- the most technically skilled workforce in the UK with the number of higher apprenticeships completed increased by 20%, focusing upon key growth sectors;
- financially sustainable solutions that transform complex public services, focused on supporting sustainable communities, promoting economic wellbeing and healthy lifestyles; and
- increased its net return to the exchequer and reinvested in growth areas and in public services, to create a virtuous investment circle.

12. On the issue of governance, the September submission indicated that local authority partners were "exploring a combined authority model which captures the cumulative strength and advantage of Greater Essex, but which is based upon our natural economic areas and proposed growth area boards." It indicated that any future Combined Authority would:
    - consist of the Leaders of the fifteen authorities within Greater Essex;
    - take decisions and commission activity where there are strategic benefits or gains from economies of scale; and
    - explore the appropriate devolution of powers by County, City, District & Borough councils to lower tier authorities and communities

13. Any new Combined Authority would also recognise a role for 'growth area boards' - creating an opportunity for localised decision-making; and would align to the current federated working model within SELEP.

14. In response to this submission, officers received a letter from civil servants recognising the work that has been done to bring forward proposals, and suggesting that local authorities and Whitehall departments should work on a devolution deal through an iterative process. As a first step in this process, officers from across Greater Essex partners prepared a series of working papers which were shared with civil servants on 7th October. Bi-lateral discussions are now beginning and it is hoped that the terms of any potential deal with Government will emerge from these discussions.

15. Leaders continue to oversee this process through regular meetings and discussions. More detailed work to develop proposals is being taken forward through multi-partner workstreams. These are summarised overleaf.

Greater Essex Devolution workstreams

16. Each workstream is led by a local authority Leader with the support of a local authority Chief Executive and a multi-partner team of senior officers. Details of these workstreams, their lead Members/officers and their focus is as follows:

Workstream	Workstream leads	Issues being explored
Economic Growth and Connectivity	Cllr Phil Turner (Leader, Basildon District Council) David Marchant (Chief Executive, Castle Point Borough Council	• Major infrastructure – identifying 'game changing' infrastructure programmes to enable growth and increase productivity • Growth hubs – delivering growth areas that enable new inward investment; and growth in key sectors; • World class transport – integrating passenger transport networks, increasing capacity and quality; and looking at regional solutions for our major road and rail arteries • Smart Greater Essex – the ultrafast broadband and the digital infrastructure for transport and new communities and developments
New Homes and Communities	Graham Butland (Leader, Braintree District Council) Glen Chipp (Chief Executive, Epping Forest District Council	• Mechanisms to improve the rate and reliability of housing delivery to meet local housing need • Mechanisms through which local partners can promote a targeted number of locally identified large-scale developments, including those on garden settlement principles, and utilising brownfield and public land • Creating a repository of all publicly owned land to support and unlock development
Employment and Skills	Cllr Ron Woodley (Leader, Southend-on-Sea Borough Council) Rob Tinlin (Chief Executive, Southend-on-Sea Borough Council)	• How best to increase the number of higher apprenticeships completed • Skills supply in key growth sectors, such as advanced manufacturing and engineering, health and life sciences, low carbon and renewables, digital and creative industries and ports and logistics.
Fiscal Devolution	Cllr Louise McKinlay (Leader, Brentwood BC) Margaret Lee (Executive Director, Essex County Council)	• Pooling and managing revenue and capital budgets over longer budget cycles • Reforming aspects of the council tax system to strengthen local accountability • Developing 'gainshare' arrangements with HM Government to enable Greater Essex to retain more of the proceeds of growth
Governance	Cllr Neil Stock (Leader, Tendring Borough Council) Lyn Carpenter (Chief Executive, Thurrock Council)	• The governance arrangements that might shape the operation of any combined authority • The potential for developing shadow structures to allow partners to test how a combined authority might operate practice

Timeline and next steps

17. Based on correspondence between local officers and civil servants, it is unlikely that any Greater Essex Devolution Deal could be announced as part of the Spending Review in late November. However, the current aim is to secure an announcement in the early months of 2016, if sufficient detailed work can be done and proposals agreed.

18. To this end, the work of Greater Essex partners will focus on:
    - undertaking a programme of discussion with civil servants to develop and refine proposals;
    - developing detailed proposals through multi-partner workstreams with a view to preparing a further set of working papers to be shared with HM Government/civil servants in early December; and crucially,
    - exploring the practical local impacts of any proposals. It is by no means a forgone conclusion that Greater Essex partners will pursue a Devolution Deal with HM Government – all partners will need to be satisfied that any emerging deal is in the best interests of our communities.

	AGENDA ITEM 7
	PSEG/25/15
Committee:	**Place Services and Economic Growth Scrutiny Committee**
Date:	**26 November 2015**
LOCAL BUS CONSULTATION **(Minute 7/ November 2015)**	
Enquiries to:	**Christine Sharland, Scrutiny Officer** Telephone no 03330134569 **Christine.sharland@essex.gov.uk**

At its last meeting (Minute 7/ October 2015) the Committee considered a report setting out a record of the briefing it had received on the Local Bus Consultation in September 2015, and agreed the following recommendations:

1. It is recommended to the Cabinet Member for Transport, Planning and Environment that consideration be given to:

    - Seeking feedback on bus consultations through targeted focus groups including the Young Essex Assembly,

    - seeking representation on the new Bus Strategy Forum from the Parish Forum, and Employers/ Training sector ie to reflect the needs of people relying on passenger transport to access work and training opportunities across Essex, and

    - that Councillor Simon Walsh, as Committee Chairman, and Councillor David Kendall be appointed as the Scrutiny Committee's representatives on the Bus Commissioning Strategy Board.

2. That the Committee's representatives on the Bus Commissioning Strategy Board be tasked with reporting back to the Committee as and when necessary on the development of the Bus and Passenger Transport Strategy.

The following response has been received from Councillor Hirst as the Cabinet Member with portfolio responsibility for passenger transport following the last full Council meeting in October:

> ‘I am grateful to the Scrutiny Committee for the time they have taken to engage with the work on the bus strategy and the contribution that they have made to shaping it. I agree that the use of focus groups, including the Young Essex Assembly, is helpful in developing our proposals and I have asked the bus team to include this in the next steps of their work.
>
> I am very happy to include representatives from the Parish Forum and employers and training stakeholders on the Bus Forum. I am also happy to invite Cllrs Walsh and Kendall on to the Bus Board.
>
> Finally, I am happy to reassure Cllr Kendall that his points will have been reflected in our consideration. Cabinet is expecting to make final decisions on the procurement next week and if Cllr Kendall has any queries ahead of this I know that Helen Morris will be happy to discuss.’

As Councillor Hirst has agreed recommendation 1 that was referred to him, it is necessary to determine how to ensure that recommendation 2 is implemented successfully. Therefore the Chairman will liaise with colleagues on how to ensure that the Committee’s representatives keep it abreast of development on the Bus and Passenger Transport Strategy.

The outcomes of the Local Bus Consultation are being considered at the Cabinet meeting on Thursday 19 November, and a copy of that report is available via the Committee Management Information System (CMIS) on the Council’s website.

Action to be taken by the Committee

> **The Committee is asked to note the content of this report, and a further report will be submitted in due course confirming how representatives will report back to the Committee itself.**

	AGENDA ITEM 8
	PSEG/26/15
Committee:	**Place Services and Economic Growth Scrutiny Committee**
Date:	**26 November 2015**
THIRD PARTY RESPONSIBILITIES AND FLOOD MANAGEMENT SCRUTINY REVIEW (Minute 6/October 2015)	
Enquiries to:	**Christine Sharland, Scrutiny Officer** Telephone no 03330134569 **Christine.sharland@essex.gov.uk**

In October 2015 (Minute 6) the full Committee had an opportunity to seek clarification on matters relating to the scrutiny review undertaken by the Third Party Responsibilities and Flood Management Task and Finish Group, prior to the formal submission of that Group's final scrutiny report for formal endorsement and publication.

The terms of reference for the review were deliberately chosen to narrow the scope of the review, and read as follows:

> 'To consider the preventative measures available to the County Council that may be taken to enhance improvements in flood management across Essex, with particular emphasis upon the enforcement of third party responsibilities.'

Councillors Graham Butland, Chris Pond, and Simon Walsh undertook the review, and a copy of the full scrutiny report 'Third Party Responsibilities and Flood Enforcement' is attached at the appendix to this report. The Group's findings are summarised in the Executive Summary situated towards the front of the report.

The Group commends the scrutiny report to the Committee and seeks its endorsement to its publication, and to the forwarding of the recommendations to Cabinet members:

1. **That the Cabinet Member for Transport, Planning and Environment; Infrastructure; and Highways Delivery be advised that the Committee commends the LLFA and HA for the positive way that they are taking forward the County Council's flood management role, and in particular the framework of preventative measures being developed as featured in this scrutiny report.**

2. **That the Cabinet Members for Transport, Planning and Environment; Infrastructure; and Highways Delivery be requested to provide progress reports to the Committee on the following matters in June 2016 so that**

the outcomes of the particular pieces of work identified can be reviewed:

(1) The Committee supports those projects such as the LLFA 'Where does water go?' that is assisting in the mapping of watercourses and the development of highways asset databases that will contribute to the creation of comprehensive records for more effective flood management across Essex in the future. An update is requested on the production of the databases that are being developed to enhance flood management.

(2) Given the benefits that could accrue from the co-ordination of LLFA and HA activity, the Committee welcomes the steps taken so far to formalise flood enforcement activity. Nevertheless an update is sought on what outcomes may accrue as a result of the Teams working more closely together and the formal Memorandum of Understanding (MoU).

(3) Given the implications for enhanced enforcement activity, the early success of the Maldon Highway Enforcement Pilot Project is welcomed by the Committee. Consequently when that Project is reviewed in early 2016 the Committee would wish to receive an update on any proposals that may be considered **by the Cabinet Member for extending the project to other parts of the county, and its impact upon local flood alleviation.**

3. That, in view of the links between flood management and planning that the review has highlighted, the Cabinet Member for Transport, Planning and Environment be recommended to engage LPAs in the matter of:

- **raising the profile of surface water drainage in strategic planning and development control in the way that flood management and preventative measures are implemented across Essex; and**

- **establishing the principle of seeking Community Infrastructure Levy (CIL) to address local flooding issues as appropriate eg ensure it is added to the strategic list for contributions.**

The Cabinet Member is requested to provide the Committee with a response in April 2016.

4. That the Cabinet be requested to provide the Committee with a briefing paper in Spring 2016 that explains how the County Council itself co-ordinates its own activities in order to identify and address overall infrastructure needs in Essex including flood risk management and preventative measures associated with new development. The Committee will provide a scoping document setting out the key

questions that it will ask the Cabinet to address.

5. **That the Task and Finish Group conduct a short supplementary scrutiny review of the IT and Communications support provided for the delivery of frontline flood management services using the website and social media, with the aim of reporting to the Committee early in the New Year.**

Subject to the Committee's endorsement of the scrutiny report now submitted the outcomes of the review will be monitored as indicated in the recommendations.

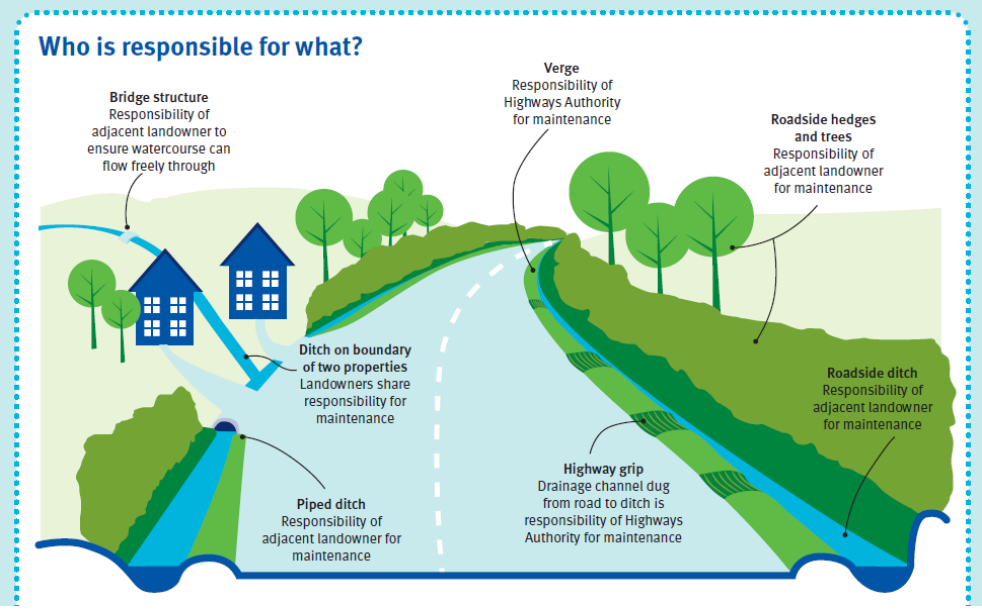
Action required by the Committee at this meeting:

To consider the endorsement of the attached scrutiny report, and its recommendations set out above for ease of convenience.

_____

Appendix

Scrutiny Report on
Third Party Responsibilities and Flood Enforcement in Essex



Report by Third Party Responsibilities and Flood Management Task and Finish Group of the Place Services and Economic Growth Scrutiny Committee

Dated November 2015

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Foreword

In order to ensure the County Council is suitably equipped to meet its new responsibilities for flood management, the Place Services and Economic Growth Committee established a small task and finish group to investigate this area further.

Much like flood water, this proved to be a fast moving topic, with new policies emerging as our work progressed. The group welcomed the opportunity to be consulted on these and to make contributions during their development.

In meeting with Lead Councillors, Council Officers and members of the public directly affected by flooding, the group concluded that much has already been achieved by the County Council. In particular that it was actively engaging with communities to enable self-help and with other Essex Local Authorities to develop a consistent approach to this area.

Although the County Council will not be able to stop the rain, it can act to mitigate the impact of severe flooding. We concluded that the Council was in a good position to help prevent the impact of flooding in the future.

This report draws together a number of strands, with recommendations focussing on reviewing outcomes of actions already in train. In doing so, I hope this report provides reassurance to the public that their Local Flood Authority, Essex County Council is well advanced in its planning and preparation, and that it is actively working with partners and communities to ensure minimal disruption from flooding occurs.

I would like to thank my colleagues, Councillor Graham Butland and Councillor Chris Pond for their participation as members of the task and finish group, and they join me in commending this report.

Simon Walsh

Chairman of the Place Services and Economic Growth Scrutiny Committee

Executive Summary

Modern legislation means that Essex County Council has acquired increased responsibilities for flood management not least in its new role as a Local Lead Flood Authority. Flooding is a popular topic that attracts public attention. It is not necessarily an easy topic to understand. However, given its importance as a new area of activity it was considered that scrutiny could provide valuable critical friend challenge to influence how flood management is implemented in Essex.

Flood management and highways matters fall within the remit of the Place Services and Economic Growth Scrutiny Committee. Its Members chose to focus a scrutiny review upon the preventative measures available to the County Council to enhance improvements in flood management across Essex, with particular emphasis upon the enforcement of third party responsibilities.

While the investigation was undertaken primarily by a task and finish group, the Committee was also engaged in some evidence gathering via briefings to ensure that Members acquired a more detailed understanding of the complex issues before final conclusions were reached.

Flooding itself is a part of the natural environment. It is not bound by administrative boundaries and therefore partnership working has to be fostered to deliver benefits in the way flooding is managed. This report sets out the partnership working that is taking place ranging from how different functions work together within the County Council, to its relationship with districts and parish councils, to volunteers such as the Sturmer Flood Action Group and Essex Fire and Rescue Service, and ultimately those third parties who have responsibilities.

There is no doubt that the report contains a lot of information, and aside from its findings it is hoped that it will be used as a valuable reference to promote understanding about the way that flood enforcement is being taken forward in Essex. The appendices set out much of the evidence provided by contributors, with a summarised version forming the main body of the report based upon the following themes that were used to plan the review itself:

- Strategic framework, and the relationship between the County Council's Local Lead Flood Authority and Highways Authority,
- Operational matters, and
- Public awareness.

The outcomes of the review have been affected by the fact that the Group's investigation has co-incided with intense activity undertaken by those Teams engaged in flood management to implement new policies designed to provide clarity on how the County Council will use flood enforcement, and to work with partners to ensure that there is a consistent approach across Essex. The Group did have the opportunity to comment upon proposals before they were put into effect, and so the recommendations reached in this report focus upon monitoring the outcomes of current initiatives and the wider implications of the Council's new responsibilities. In doing so it means that the Committee will be able to judge whether or not the

Council's intentions are being delivered, and where necessary suggest changes to the framework being put into place to promote flood alleviation.

The Task and Finish Group submitted this scrutiny report to the full Committee on 26 November 2015 for its endorsement, and it was agreed to forward the following recommendations to the Council's Cabinet:

1. That the Cabinet Member for Transport, Planning and Environment; Infrastructure; and Highways Delivery be advised that the Committee commends the LLFA and HA for the positive way that they are taking forward the County Council's flood management role, and in particular the framework of preventative measures being developed as featured in this scrutiny report.

2. That the Cabinet Members for Transport, Planning and Environment; Infrastructure; and Highways Delivery be requested to provide progress reports to the Committee on the following matters in June 2016 so that the outcomes of the particular pieces of work identified can be reviewed:

    (1) The Committee supports those projects such as the LLFA 'Where does water go?' that is assisting in the mapping of watercourses and the development of highways asset databases that will contribute to the creation of comprehensive records for more effective flood management across Essex in the future. An update is requested on the production of the databases that are being developed to enhance flood management.

    (2) Given the benefits that could accrue from the co-ordination of LLFA and HA activity, the Committee welcomes the steps taken so far to formalise flood enforcement activity. Nevertheless an update is sought on what outcomes may accrue as a result of the Teams working more closely together and the formal Memorandum of Understanding (MoU).

    (3) Given the implications for enhanced enforcement activity, the early success of the Maldon Highway Enforcement Pilot Project is welcomed by the Committee. Consequently when that Project is reviewed in early 2016 the Committee would wish to receive an update on any proposals that may be considered by the Cabinet Member for extending the project to other parts of the county, and its impact upon local flood alleviation.

3. That, in view of the links between flood management and planning that the review has highlighted, the Cabinet Member for Transport, Planning and Environment be recommended to engage LPAs in the matter of:

    - raising the profile of surface water drainage in strategic planning and development management in the way that flood management and preventative measures are implemented across Essex; and

- establishing the principle of seeking Community Infrastructure Levy (CIL) to address local flooding issues as appropriate eg ensure it is added to the strategic list for contributions.

The Cabinet Member is requested to provide the Committee with a response in April 2016.

4. That the Cabinet be requested to provide the Committee with a briefing paper in Spring 2016 that explains how the County Council itself co-ordinates its own activities in order to identify and address overall infrastructure needs in Essex including flood risk management and preventative measures associated with new development. The Committee will provide a scoping document setting out the key questions that it will ask the Cabinet to address.

5. That the Task and Finish Group conduct a short supplementary scrutiny review of the IT and Communications support provided for the delivery of frontline flood management services using the website and social media, with the aim of reporting to the Committee early in the New Year.

Overall this scrutiny review has provided a glimpse of the positive stance that Essex County Council has adopted using its statutory and permissive powers to prevent and mitigate flooding across Essex.

The Committee has been impressed with the enthusiastic and professional approach taken by the Lead Local Flood Authority, and inter alia the Highways Authority, to embed good practice, share expertise, and engage with others. The Committee welcomed the way that the Teams who have contributed to the review are engaging with one another to ensure that the County Council is able to provide a coherent service to the public and other partners. Given the complex and cross cutting nature of flood management, it is providing a positive example of how services may be co-ordinated across teams to deliver both effective and efficient services to the public rather than working in isolation with the result that the organisation presents a fragmented picture to the community at large.

Ultimately an inquiry is only as sound as the evidence and support it receives, and in this case the Committee wishes to place on record its appreciation to all the professionals and volunteers who have contributed their expertise, time and interest to the consideration of third party responsibilities and flooding enforcement. In reaching its conclusions the Task and Finish Group considered carefully all the information it received as reflected in this report, and it is hoped that contributors will feel that the time they have given up to participate in the review has been worthwhile in supporting the development of flood management in Essex.

Introduction

The original purpose of this scrutiny review was to investigate the enforcement powers available to the County Council in flood management matters, and the way that those powers may be exercised. The Place Services and Economic Growth Scrutiny Committee ('the Committee') chose the topic because flooding has become more of a priority as the number of major incidences across the country have generated significant public and media interest, and important changes in national legislation are being implemented that seek to address identified problems. In terms of scrutiny conducted by other local authorities there are examples where flood risk and local flooding have been reviewed but little attention appears to have been given to the particular issues of enforcement and third party responsibilities.

Under the Flood Regulations 2009 and Flood and Water Management Act 2010 Essex County Council (ECC) acquired new statutory flood management responsibilities and enforcement powers in addition to existing powers under the Highways Act 1980. It is now a Lead Local Flood Authority (LLFA) with management responsibility for local flooding (in respect of surface water, and groundwater, (management of ordinary watercourses remain with the Districts. - the definitions for these terms are included in the glossary). ECC also has enforcement powers in relation to ordinary watercourses. There is an increasing public expectation that the Council will use its powers to combat flooding problems as underpinned by the number of flooding cases being referred to the LLFA.

The Council has various statutory and permissive powers to prevent and mitigate flooding. Third party responsibilities play a significant role in flood management and there are a variety of measures available to enforce necessary action and works that prevent or mitigate flooding. Notwithstanding its community leadership role, the Council has opportunities as a LLFA and Highways Authority (HA) to improve flood management in Essex, but to do so it is important to ensure that there is co-ordination across its roles and it is making effective use of the powers available.

As flood management is a broad and complex topic, it was necessary for the Committee to narrow the focus of its review in order to find a way to add value and propose tangible outcomes for the Council's consideration. The Council has acquired enhanced powers and increased responsibilities to reduce the incidence of flooding across the county, and a failure to discharge some of its duties could result in claims against the Council. When the review was planned initially the Council's policies with regard to using its powers for enforcing third party responsibilities associated with flooding or drainage had not been fully developed. Consequently a scrutiny review was seen as an opportunity to provide some critical friend challenge to the way that the Council's Executive was tackling the task, a vehicle for raising awareness, and ultimately a forum to consider the range of enforcement powers available and how to mitigate the types of flooding problems where enforcement measures might be used.

The following terms of reference were approved by the Committee to underpin the scrutiny review (Minute 5/ June 2014 refers):

‘To consider the preventative measures available to the County Council that may be taken to enhance improvements in flood management across Essex, with particular emphasis upon the enforcement of third party responsibilities.’

2. How was the review tackled?

The Committee approved the formation of a task and finish group in June 2014 to conduct this scrutiny review ('the Group'). Councillors Graham Butland, Chris Pond, and Simon Walsh comprised the Group, which met for the first time in September 2014 to plan the review.

The key lines of enquiry were based around the following themes:

1. General background: What are a county council's overall statutory roles and responsibilities in relation to flood management?

2. Strategic: What is the strategic approach being developed by Essex County Council (ECC), and what level of resource does it want to allocate to enforcement?

3. Operational: How can ECC embed effective enforcement action and promote best practice to prevent and mitigate flooding in Essex using the powers available to it?

4. Education: How can county councils promote better public understanding about flood alleviation in a way that would reduce the need for enforcement action to be taken?

The Group collated evidence through various meetings including those held with the following contributors:

- Councillor Roger Hirst, Cabinet Member for Transport, Planning and Environment
- Deborah Fox, Head of Commissioning, Sustainable Environment: Protection
- Graham Thomas, Head of Planning and Environment
- Natasha Taylor, Section Leader, Essex Legal Service
- Lucy Shepherd, Lead Local Flood Authority Manager
- Dave Chapman, Delivery and Enforcement Manager, Flood Team
- Lee Sencier, Watercourse Regulation Engineer, Flood Team
- Councillor Rodney Bass, Cabinet Member for Infrastructure
- Councillor Eddie Johnson, Cabinet Member for Highways Delivery
- Paul Bird, Director for Commissioning : Transport and Infrastructure
- Peter Rose, Policy and Performance Manager, Essex Highways
- Emma Brown, Senior Legal Advisor, Essex Highways
- Sue Stranders, Engineering, Drainage & Water Team Leader, Epping Forest District Council
- Trevor Baker, Land Drainage Engineer, Engineering, Drainage & Water Team, Epping Forest District Council
- Andrew Cook, as Chairman of the Essex Planning Officers Association
- Kathryn Goodyear, Development and Flood Risk Manager, Flood Team
- Sturmer Flood Action Group: Representatives: Bev and Linda Bevan, Alan Carter and Mary Sail

Note:

The Group noted that the ECC's Emergency Civil Protection and Emergency Management Team is also proactive in furthering flood risk education. A previous scrutiny review by the Committee around Control of Major Accident Hazards Sites had highlighted the good work conducted by that service. However, this aspect of flood management was not investigated as part of this particular review that was focussed primarily upon third party responsibilities and enforcement.

3. Background and Evidence

- **Statutory Role and Responsibilities**

At the outset of its investigation it soon became apparent to the Group that even though when flooding occurs it may be clearly visible to the eye, the source of the problem can be complex to understand and therefore much more difficult to resolve. The underlying complexities range from identifying the source(s) of the flooding, the tools available to mitigate flooding from the legislative framework, third parties responsibilities, public awareness, and the effectiveness of enforcement action itself. As part of a briefing in May 2014 the full Committee itself learned about some of the intricacies of flood investigation by reference to real cases, and some that had not been resolved because ownership of land and third party responsibilities could not be satisfactorily addressed.

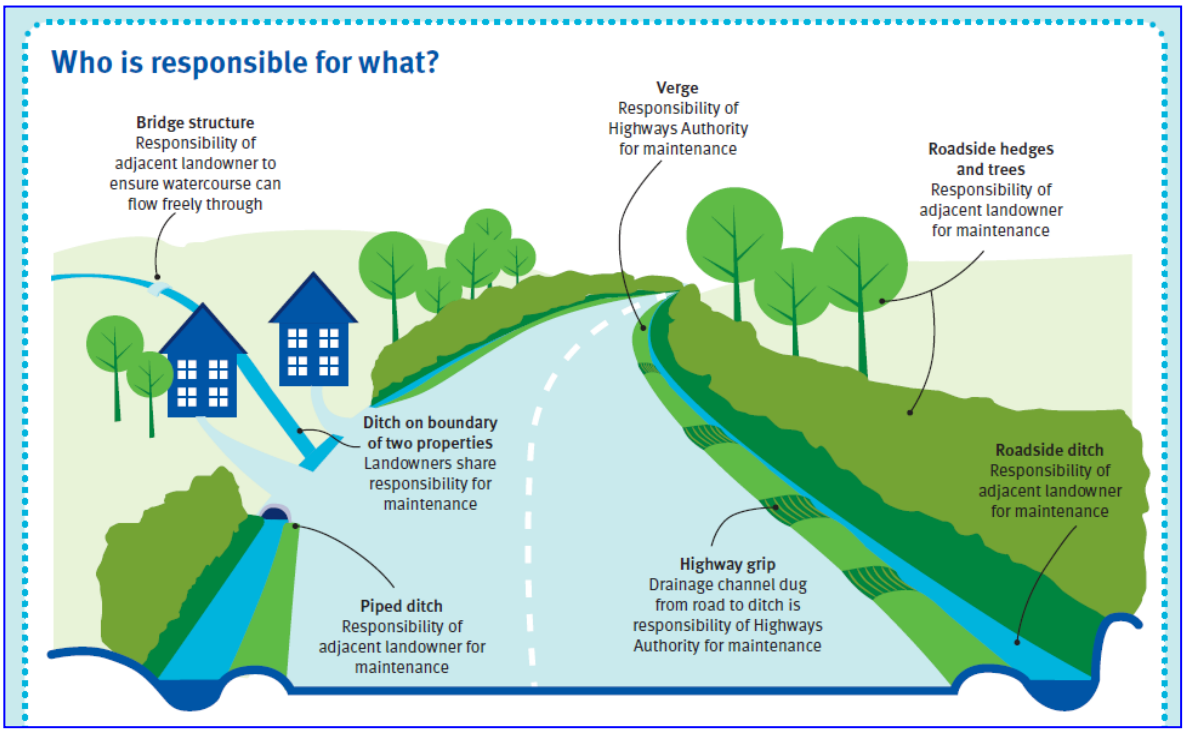
The County Council's overall statutory roles and responsibilities in relation to flood management fall into two strands of legislation namely that of a Local Lead Flood Authority (LLFA) and a Highway Authority (HA). Both those roles are referred to in this report with more detailed explanations being set out at the appendices, and some of the technical terms are included in the Glossary for ease of reference. However, it is important to emphasise that the two roles do not carry the same weight in practice as one has powers that it can use to effect change, whereas the other has duties that are more difficult to exercise in terms of enforcement action.

Under the Flood Risk Regulations 2009 and Flood and Water Management Act 2010 (FWMA 2010) the County Council acquired new statutory flood management responsibilities whereby it has powers that it must exercise effectively. These are in addition to its existing duties as a HA under the Highways Act 1980 (HA1980). Failure to discharge some of its LLFA powers in particular could result in claims against the Council. In terms of its organisational structure the two roles are managed separately by different teams.

As a LLFA the County Council has overall enforcement responsibility for local flooding (surface water, groundwater and ordinary watercourses). This has led to an increasing public expectation of the Council to utilise its powers as illustrated by the number of flooding cases being referred to it as the LLFA. Within the context of the FWMA 2010 and for the purposes of this particular scrutiny review, the Group's attention was focussed upon the responsibility of the LLFA for the regulation of privately owned ordinary watercourses under the Land Drainage Act 1991 (LDA 1991) to ensure that flood risk is managed appropriately.

In respect of enforcement ECC as the LLFA has the power to enforce against land owners where certain conditions apply. In October 2014 the Cabinet Member for Customer Services, Planning and the Environment approved the Land Drainage Enforcement Policy (the Policy), which is attached at Appendix A (Annex B). It sets out threshold criteria, how the Council intends to exercise its LLFA role, and resolve flooding problems. In summary there must be an ordinary watercourse, with an impediment preventing the proper flow of water, causing harm to a receptor. If these

conditions exist ECC can take a range of actions. This can be as a result of lack of maintenance or due to unconsented works having taken place altering the ordinary watercourse. The starting point is informal discussions and working with the landowner concerned. If this does not remedy the situation then an Enforcement Notice requiring works to be done will be served upon them. If the responsible person then fails to undertake the work in breach of the notice ECC has two options available. It can either prosecute for the breach or undertake the work and recover the costs as a civil debt. The governing sections for these types of enforcement are Sections 24 and 25 (LDA 1991).



There is also provision within Section 100 HA1980 that allows for work to be undertaken when there are flooding issues on the highway. This provision does not allow for the costs of remedying the situation to be recouped via civil debt recovery unless there has been deliberate obstruction of a ditch laid by the Highway Authority. These situations are rare as ECC uses its powers to drain into existing ditches rather than to create new ones. Any actions against land owners with ditches at the side of the highway should therefore be dealt with under the LDA 1991 in order that the costs of remedying the situation can be reclaimed from the owner.

There is also a power under Schedule 2 of the FWMA 2010 to enforce against owners of designated structures or features who alter or remove them. This policy is still being developed but will be very similar in content to the existing LDA1991.

In summary there are in principle five main ways in which enforcement can be taken by ECC to address flooding problems:

- Via informal discussions and working with the owner concerned offering advice and solutions.

- By serving an Enforcement Notice which brings about the necessary actions required of the landowner.
- If the enforcement notice is breached prosecute for that breach (although this has criminal sanctions of a financial penalty and a conviction, it does not actually solve the flooding issue).
- Undertaking the work and claiming the cost of such work from the owner via civil debt recovery.
- Finally undertake the work under HA 1980 (but it is unable to claim back the costs).

- **ECC Organisational structure**

As part of the review the Group had to be cognisant of the way that the County Council itself fulfils its respective roles of LLFA and HA in terms of its organisational structure.

In terms of its Executive structure there have been three cabinet portfolios with responsibilities for different aspects of flooding management during the course of the review:

- Flood Management (LLFA) – Councillor Roger Hirst as Cabinet Member for Customer Services, Libraries, Planning and the Environment *(subsequently retitled as 'Transport, Planning and Environment')*
- Strategic Highways – Councillor Rodney Bass as Cabinet Member for Highways and Transportation *(subsequently retitled as 'Infrastructure')*
- Highways Maintenance – Councillor Eddie Johnson as Cabinet Member for Highways Maintenance and Small Schemes Delivery *(subsequently retitled as 'Highways Delivery')*

Please note that the titles of cabinet portfolios do change from time to time as has occurred over the duration of this review and reflected in this report. In October 2015 the portfolios were revised and the new titles are indicated in italics above.

In terms of the County Council's organisational structure, flood management is commissioned by the Director for Commissioning: Waste and Environment. There are primarily two County Council operational teams that may pursue enforcement action to resolve flooding problems.

As the LLFA this Council established a dedicated Flood & Water Management Team to undertake the new statutory duties introduced by the 2010 Act, and the wider flood management role and responsibilities. Within this team there are three water regulations engineers who undertake land drainage enforcement within Essex and this team work closely with Essex Legal Services on tackling governance issues including the implementation of new policies, procedures, and formal links with other interested parties.

For the Highways Service historically the handling of flooding matters has been split across various teams, and addressed as more of a maintenance/highways engineering matter. The Group learned from Highways contributors that new emphasis is being placed on highways enforcement, and new policies and

procedures are being put into place to raise its priority within Essex. In recent years a narrow remit of highways enforcement was transferred to a team in Essex Trading Standards, due to the size and complexity of the issues it did not include the resolution of flooding problems. However, the Group learned from Highways contributors that new emphasis is being placed on highways enforcement in general with new policies and procedures being put into place to raise its priority within Essex. There is a live Highways Enforcement Pilot Project in Maldon District that may affect the way that such enforcement is undertaken in the longer term.

- **District Councils**

Prior to 2012 district councils had broader flood management responsibilities, which changed when the LLFA came into being. Consequently the County Council is trying to foster a better understanding of what flooding activity individual District Councils may have taken in the past and continue to take across Essex and, in turn, to understand how greater co-operation may be achieved in practice. District Councils may be able to make a valuable contribution to the consideration of enforcement action because of their local knowledge and contacts.

Whilst all Districts participate in the Essex Flood Partnership Board and Executive Officer Group, there appear to be a lot of differences in the way that they perceive and/ or prioritise flooding. Contributors alluded to the fact that difficulties had been encountered with some individual districts in forging good working relationships, and in the task of collating information in order to obtain a countywide perspective.

Again the Highways Service also has its own historical relationships with individual districts in terms of resolving flood problems on the highway, primarily by carrying out maintenance rather than taking any formal action that would involve third parties.

3. Analysis

Having collated a lot of evidence the Group reflected on what it had learned over the course of the scrutiny review so that it could reach some conclusions in respect of its original terms of reference namely ‘to consider the preventative measures available

to the County Council that may be taken to enhance improvements in flood management across Essex, with particular emphasis upon the enforcement of third party responsibilities.'

The Group was mindful that its own investigation had co-incided with changes that were also already taking place in the way that the County Council was tackling its role and responsibilities in flooding matters. Indeed its Members had had an opportunity to influence the changes that were taking place through its sessions with contributors, as they had provided a forum for discussion and challenge both with and between contributors.

Before it was adopted formally the Group was given the opportunity to consider the LLFA's proposed Enforcement Policy setting out what the ECC will do, and the subsequent Protocol on how it will implement that policy. Rather than the emergence of that policy early on in the review becoming the focus of its investigation, the Group found that it provided a positive means for cross examining the relationships that exist around the way that local government may tackle flood mitigation. ECC is one of the first LLFAs to adopt an enforcement policy and protocol aside from the existing culvert policy (widely adopted by LLFA authorities, which was taken from the Environment Agency).

The investigation itself reinforced the fact that third party responsibilities and flood management is complex. It was necessary for the Group to delve quite deeply into the legislation background in order to understand how in reality problems may be resolved or not, and in doing so the breadth of the topic began to emerge. Aside from the County Council's own roles as LLFA and HA, the Group identified various planning considerations that are crucial in terms of flood alleviation, and the impact of historical considerations such as the lack of information on watercourses and drainage assets. Outside of a meetings format a visit to meet the Sturmer Flood Action Group highlighted how difficult it is to identify and resolve drainage and flooding problems at a local level (see Appendix F). While the natural environment is central to flood management, the way that development has emerged over time and people have affected natural drainage patterns, it remains a fact that action or lack of action by third parties can cause flooding problems for others creating the need for more proactive steps to be taken to alleviate problems through flood management. The new legislation reinforces an expectation that flood mitigation will be treated as a higher priority.

The preventative measures available to the County Council are set out in some detail at the appendices to this report. Those measures arise from legislation, and how they may be implemented in practice. Recently the Council has acquired opportunities as a LLFA to take an enhanced strategic role in Essex to promote flood alleviation, and through its new powers it may also be able to take more effective action in the way that it exercises its duties as a HA. This information proved pivotal to the way the Group proceeded with its investigation. For analysis purposes three broad themes, identified in the original scoping document, have been used to present the grounds for the conclusions reached: Strategic Framework, Operational, and Public Awareness.

A. Strategic Framework

The review has focussed upon ECC as a LLFA and a HA, and those roles are defined by different legislation and affected by the context in which those responsibilities are exercised. The way the roles have evolved has also shaped the way ECC has responded to their implementation.

As a HA flood management is only one aspect of a much bigger highways role. It has been affected by the limitations of the legislative tools available, funding and need to prioritise overall highways resources. Its evolution has been shaped over the longer term by many factors. Historically it has not had a dedicated team to manage flooding issues. While the HA has a duty to maintain public highways including a duty to prevent water gathering on the surface of the highway thus endangering drivers and their vehicles, it does not necessarily have effective powers to address any problems through enforcement action. Contributors confirmed that the HA does undertake maintenance works to resolve flooding problems, and where necessary tried to negotiate solutions with third parties where known without resorting to enforcement action.

The incidence of more extensive flooding has increased over recent years as highlighted by national and social media; and at the same time public awareness is much greater than may have been the case in the past and may reflect increased traffic movement and hence attention upon the HA where roads flood regularly. The creation of the new role of LLFA as a part of legislation promoted to address the modern flood management agenda has presented the Council with new obligations and duties. Powers that were originally in the hands of the Environment Agency and district councils have been transferred to the LLFA together with a wider remit of responsibilities. In practice the role provides a more powerful tool in that the ECC has clearer powers at its disposal to mitigate flooding including provisions that have the potential for more effective enforcement action, and is coupled with the need to demonstrate that it is fulfilling its responsibilities. ECC has been proactive in its response to the FWMA 2010, for instance the early establishment of a skilled Flood and Water Management Team, allocation of specific resources, and one of the first LLFA in the country to adopt a Land Drainage Enforcement Policy. It is also understood that Essex is the first LLFA to develop a comprehensive land drainage enforcement protocol to explain how it will apply the policy. Other LLFA's are now copying the Essex land drainage protocol.

- **Relationship between the County Council's LLFA and HA functions**

In a large number of flooding cases, there is likely to be an overlap in the responsibilities of the County Council as both a LLFA and HA. During the course of its investigation the Group was keen to examine the relationship between the two functions and the opportunities for more effective flood management through collaborative working and application of their respective powers and duties. The Group was mindful that situations could arise where the LLFA might consider enforcement action against the HA where it had third party responsibilities it was failing to maintain. However, contributors confirmed that such situations would not arise as they would be resolved and addressed via other means.

Equally, there will be other situations where the HA will find it helpful to collaborate with the LLFA in order to use its powers to resolve a flooding problem on the highway. It is notable that both services have now implemented new policies and procedures to reinforce the County Council's intention to pursue more proactive intervention and ultimately enforcement action if appropriate.

In addition the two Services signed recently a Memorandum of Understanding (MoU) to clarify and explain how the Flood and Water Management Team and the HA Enforcement Team will operate to provide a joined up service to the customer. The HA will abide by the LLFA's Flood and Water Management Policy and Protocol in undertaking investigations under the LDA 1991. However, any action may only be authorised by the Head of Planning and Environment after considering a report from the Head of Maintenance and Operations (HA). The Head of Planning and Environment is the appropriate officer who has been delegated to make these decisions on behalf of the County Council.

The MOU is only applicable to work undertaken by the Highways Enforcement Pilot Team rather than the HA service as a whole and enables That team will be able to pursue enforcement under the LDA 1991 in the same way as the LLFA, with emphasis being placed on flooding to the highway as a receptor, rather than property.

Through the LLFA, ECC has been championing its new role and responsibilities, by seeking positive engagement with a wide range of relevant parties including district councils, the HA, Essex Fire and Rescue, and at the same time raising public awareness about flooding mitigation. Early on in the review the Group learned of the development and adoption of the Land Drainage Enforcement Policy, which provides greater transparency than existed before on how flooding problems will be addressed across Essex. It also provides a framework for working with other agencies and individuals. In the case of the HA the policy may provide ECC with an alternative option where there are problems around third party responsibilities that cannot be resolved effectively through the application of highway legislation alone.

At the same time higher priority is being attributed by the HA to highways enforcement in general, and perhaps in due course experience from the Maldon Highways Enforcement Pilot Project might assist the development of flooding enforcement as well as fostering closer working.

Early on in the review the Flood Team indicated that steps were being taken to tie up its working practices with Essex Highways, and draw expertise from the other service given its local knowledge and drainage experience. An example was an agreement with the Vehicle Access Crossing Team that it will determine any applications to install a culvert as part of the standard crossing application, rather than the customer having to apply for two permissions from two different teams.

While the Flood & Water Management Team provides a clear source of information for work undertaken by the LLFA, it was apparent to the Group that the implications of flooding are more diversified in terms of the way they may be handled under the organisational structure of the HA.

The Highways Service is an established service that has been shaped by the immense pressure upon the service as a whole affecting its priorities over many years, and its experience of working with the regulatory tools available. The emergence of the LLFA challenges the Council's original status quo and has created options for more effective enforcement action against third parties where there are flooding problems on the highway. The Group was mindful that if the HA was found to be in breach of its third party responsibilities, then the new Land Drainage Enforcement Policy does not preclude a scenario arising whereby enforcement action could be contemplated by the LLFA.

The Group welcomed the formal MoU that had been agreed in July 2015 between the LLFA and HA whereby they will work together using the legislation and resources available to best deliver outcomes. Indeed in the initial stages of the review the Group itself had been minded to propose a recommendation along these lines to encourage more joined up working.

While the Group was hopeful that the MoU underpinned the intention to foster a more strategic /integrated approach to flood management between the LLFA and HA, the Scrutiny Committee would wish to review if the MoU does in fact result in closer working between the two arms of the Council after a suitable period of time has elapsed. Consequently it was proposed that a recommendation should be designed along these lines. At the same time the Group was mindful that the HA Enforcement Team was a pilot project being specifically applied to the one District of Maldon rather than being applicable across the County as a whole, or indeed the longevity of the HA enforcement project.

B. Operational

Aside from having a clear strategic approach to flood management, the Group considered how at an operational level the County Council might embed effective enforcement action and promote best practice to mitigate flooding in Essex using both the powers and resources available.

The evidence the Group received from Epping Forest District Council was very useful because of that Council's operational experience and the way it has raised local residents' understanding about flood alleviation. Aside from treating the topic as a higher priority over the longer term, that Council is unique in that it has been proactive in the implementation of land drainage byelaws, and has chosen to retain the benefit of a team with land drainage expertise. This approach has not been replicated elsewhere in Essex, and there was no evidence to suggest that other councils would follow suit. In addition to land drainage provisions, the District Council has a holistic approach to local flood management that is reinforced by the close working relationship between its engineering, drainage and water function, and planning function. Planning considerations are referred to in more detail below.

The District Council acknowledged that despite the fact that it was still in its infancy, the new LLFA is making positive progress to establish a flood management framework across Essex. It is also notable that ECC has adopted a similar approach

to the District Council as it has set up a team with relevant expertise to implement its new powers, and published clear guidance on how it proposes to take forward flood mitigation plus any enforcement action that may become necessary. Given that the team has a clear purpose it will be instrumental in the co-ordination of ECC related work.

Operational considerations are closely aligned with the strategic matters referred to above, and the Group was mindful that it would be appropriate to seek an update on how flood enforcement activity has been developed in practice after more time has elapsed.

In July 2015 the Group received an update on the proposed MoU with the districts, which had been drawn up for formal agreement. The LLFA's Head of Service has signed the MoU and Braintree District Council was the first Council to sign the agreement on 28th August. Other District and Borough Councils would sign individual MoU during the autumn, which should result in a consistent approach to enforcement within Essex. The MoU is an important document as it sets out how the districts and ECC will operate when becoming aware of a complaint from a resident. It is crucial to ensure that correct procedures as laid down in the Protocol are abided by if a District starts any preliminary investigation (NB Districts still have management responsibilities for ordinary watercourses). Furthermore the MoU is important to ensure that the appropriate evidence is gathered and retained to support the likelihood of success in any Court action.

A separate MoU was being negotiated with Epping Forest DC as it had to take into account that that Council may undertake enforcement by virtue of its byelaws, and so the way that the two Authorities may operate needed to be tailored to accommodate the specific situation.

Another important operational factor the Group considered was associated with the County Council's need to implement Flood Alleviation Schemes (FAS) to provide mitigation for the residents of Essex against flooding, and £19m has been earmarked to spend over the next five years on FAS. To manage the schemes a new Delivery and Enforcement Manager had been appointed and started in post in April 2015. Another part of that role was to oversee the enforcement side of the LLFA's responsibilities. This will involve working closely with Essex Legal Services, and is nominated as the Special Point of Contact (SPOC) for boroughs/districts and the HA to discuss and resolve enforcement issues in line with ECC's policy and protocol.

The action now taken by the LLFA by the appointment of a Delivery and Enforcement Manager together with the new land drainage enforcement policy and protocol will provide a lot more clarity for engaging with others by explaining when the County Council will intervene as well as what can and cannot be done. By providing a clear management focus the Councils LLFA enforcement team can provide a much more streamlined service than previously existed. And this improvement in service delivery has been proving to be successful in a relatively short period of time. The number of live enforcement cases has been reduced from over 80 cases to now operating at around 30 cases, which is a marked improvement.

The photograph below illustrates before and after enforcement intervention:

- **Planning and Development Management**

During the review the Group's attention was drawn to the role that planning and development management could play in flood mitigation, and inter alia influence developers and reinforce awareness about the significance of third party responsibilities.

Links to the planning function were highlighted by Epping Forest District Council, and the Group chose to pursue the line of enquiry as a means to control the creation of new or worsening flooding problems in the future. As part of its overall approach that District Council has incorporated its own unique Flood Risk Assessment Zones in its Local Plan as a way to mitigate flooding through the planning process; and it attaches standard flood risk conditions to planning permissions where appropriate together with informatives covering potential requirements for Land Drainage Consent and Sustainable Drainage System (SuDS).

The Group met the Chairman of the Essex Planning Officers' Association to investigate the role planning could play around preventative measures. While changes over the past 5 years such as the establishment of LLFAs may have provided more clarity in flood management, in terms of planning and development management the situation is less so. On 15 April 2015 the County Council as LLFA became a statutory consultee for planning applications. This means whilst the LLFA will advise the Local Planning Authority (LPA) on the acceptability of the SuDS proposals to manage surface water arising on the development site(s) proposed by the planning application, it is ultimately the LPA that is responsible for ensuring the new development and the SuDS supporting this development is constructed correctly and maintained so that they continue to operate as intended by the grant of planning permission. ECC has resourced a new team to develop its new SuDS statutory consultee role as it will be an important part of its flood management framework. The Team issues advice in the form of planning conditions to address

both SuDS and surface water, which takes account of ordinary watercourses. The advice given also promotes good practice in terms of watercourse maintenance and development layouts, to ensure SuDS and watercourses are well integrated into the design of the new development rather than tacked in as an afterthought.

The SuDS Team is proposing a service level agreement (SLA) with Essex Districts concerning operational matters in practice and to extend advice on planning applications beyond the statutory requirements. However, further action on the SLA has been held in abeyance pending the signing of the Enforcement MoU by all the Districts first to avoid confusion. This SLA will outline what additional services the FWMT can offer to Districts. There will be a costs schedule attached to this document. This work is due to be progressed as the next step of developing a relationship with the LPAs. Early feedback from the LPAs on the advice given by the SuDS Team on major planning applications (i.e. over ten homes) is very positive. It would seem that the LLFA is providing much more detail than previously provided by the Environment Agency, who fulfilled this statutory role prior to April 2015.

When the Committee was updated on progress in October 2015, it was confirmed that more detailed discussions were underway with individual district councils to ascertain what level of flood management advice they might wish to acquire from the LLFA for the consideration of both major and minor (ie less than ten dwellings in a development) planning applications.

When the SuDS Team was launched in April 2015 it focused initially upon providing training and advice to LPAs and larger businesses. While the Committee understood this approach, it was mindful of the importance of raising the awareness among smaller building companies to comply with drainage regulations. In response that Team had confirmed that it was developing an understanding of what was required to fulfil its role effectively, and that engaging with small businesses would be considered in due course.

As a general observation, it was felt that in the future it would be preferable if responsibilities for watercourses and land drainage systems could be identified as a part of the standard land search process. However, it was acknowledged that it would be difficult to achieve at present in the absence of comprehensive databases of drainage systems across the country as a whole.

Work is already underway with the production of Surface Water Management Plans (SWMPs), which can be used by developers and planners alike to highlight those areas where contributions towards flood alleviation schemes are of most importance. Three SWMPs are currently being prepared this year for Braintree, Witham and Epping. However, a limitation on the development control aspect of the planning process is that it is focussed on ensuring that new developments do not worsen the existing situation; LPAs can seek contributions towards improvement works but these are not compulsory for the developer. Therefore new developments will focus on managing the rainwater that falls on the site and nothing more, so in many cases cannot be used as a means of addressing existing flooding.

Again as the LLFA is raising the profile of flood management in Essex, it provides a vehicle for sharing lessons learned countywide including the impact of development

upon the water asset. It could also develop its expertise to work with partners to obtain funding for flood alleviation. The LLFA is also commenting on the preparation of policies contained with emerging Local Plans to help strengthen these in relation to understanding the surface water flooding agenda.

The Group considered the implications of any new development only being required to mitigate flood risk arising from its own construction, not wider existing flooding problems, and at what stage the ECC might challenge LPAs upon proposed development on grounds of surface water drainage. Given the division of powers and expertise in two tier local authority areas then the process may be difficult with a less holistic approach being taken than that by unitary authorities.

At a strategic level there is a programme of capital works to address existing flood problems, and a need to identify other sources of funding with developer contributions being an area for consideration. Drainage plans would assist by providing a source of information on local drainage networks for LPAs to refer to, and could influence local plans.

Up to date Local Plans have not been adopted across much of Essex. However, in the Chelmsford adopted plan, there is a strategic flood scheme for Widford and as a result there is an opportunity to seek developer contributions towards that scheme. In Maldon there is a similar approach being taken to Heybridge where a strategic flood solution is needed if further development is to take place. In both instances there is an intention to try to draw out benefits by adopting a strategic approach, but it would be more difficult to do so where a problem is less strategic. Canvey Island is another example where a strategic flood case might be included in a local plan for Castle Point.

The Group touched upon the County Council's ability to encourage LPAs to take the opportunity to address surface water drainage issues in their local plans, and establish the principle of seeking Community Infrastructure Levy (CIL) to address local flooding issues as appropriate eg ensure it is added to the strategic list for contributions.

Given the need to ensure that proposed development does not take place without regard to flooding risks, the Group considered that the potential for encouraging preventative measures through planning and development management should be fully explored with LPAs, as well as the opportunities for raising awareness about third party responsibilities via the planning framework as in Epping Forest. EFDC is unique because the planning department automatically inform the flood team of planning matters thereby giving colleagues prior warning of what is coming. This works really well, but unfortunately this is unique to that Council.

It is notable that the County Council has chosen to be proactive in the way it has developed its new roles in flood management and as a result it is creating a source of expertise in Essex, and as such will be a useful resource for others to draw upon for advice. It also provides a focal point for others to input into, and to share good practice and promote proposals for more effective partnership working. The LLFA and Essex Flood Partnership Board, which all the Districts are represented on, provide an existing forum for developing consensus in the way that related functions

such as planning may be utilised to tackle flood management issues from the broader perspective of local government activity rather than relying on the provisions of specific legislation to address what is a complex topic. There is also an Executive Officer and an Operations Officer group, so there is representation of views and discussion between ECC and Districts from Officer to Councillor levels.

The Group was mindful that strategic planning as an issue had been identified for inclusion in the Committee's work programme moving forward, albeit the focus of that review had not been finally decided. Legislation is redefining roles and responsibilities, and in doing so relationships and priorities are changing. This review has reinforced Members' belief that it in the best interests of all tiers of local government to work together to manage flood risk, and the planning framework presents another opportunity to work towards the delivery of a joined up approach to flood mitigation on behalf of all communities in Essex.

From its investigation the Group was satisfied that the LLFA is actively implementing effective ways of working to promote its own role in flood management, and through its relationship with the HA.

The County Council is also a statutory consultee to the planning process for flood management purposes, which includes local plan consultations and CIL related matters. As a result the Flood and SuDS teams will be able to assess their requirements for a given area and feed those into the debate on infrastructure provision.

Nevertheless the Group considered that in parallel with raising public awareness the County Council itself as a corporate body needs to take a community lead and be able to demonstrate that it has itself taken a broader approach to flood alleviation, and embedded it in the way that it tackles infrastructure matters both at the strategic and local levels. Consequently it was proposed that a recommendation should be designed along these lines.

C. Public Awareness

As the Group learned more about flood management and third party responsibilities in particular, Members were reminded of the importance of communication and raising public awareness on a topic that can have wide ranging implications for the whole community.

Historically flood management is often portrayed in the media as an issue where there are a bewildering number of agencies and uncertainty as how responsibilities fall not only for the public but other agencies too. However, that supposition overlooks the fact that flooding itself is not simple. The source(s) of flooding may be difficult to identify and not necessarily adjacent to the problem itself, and at the same time there may be cross cutting and sometimes conflicting implications for individuals, communities and organisations.

A primary objective of this review has been around the ability of ECC to take enforcement action and the evidence confirmed that the foundations for more

proactive activity were being put into place. Nonetheless as the Group's own knowledge grew so the question of how to promote better public understanding about flood alleviation became more important given that engagement with third parties may be crucial in the mitigation of flooding.

The Committee itself took part in a briefing that was framed around the following questions, and are addressed at Appendix E:

- What role do home and landowners have in terms of flood mitigation, and what are their third party responsibilities?
- What action should home and landowners take in order to fulfil their responsibilities?
- How are home and landowners likely to be aware that they have third party responsibilities?
- If they fail to fulfil their responsibilities, what courses of action may be taken against them? eg by other individuals affected by their failure to take action, and by other agencies.

These are questions that are being addressed by the LLFA in a variety of ways not least by publishing information on the ECC website, and people are referred to appropriate officers through Contact Essex.

The adoption and implementation of enforcement policies will contribute to greater transparency and understanding of the Council's intentions, which together with the associated protocols clarify where individual responsibilities lie and the expectation that where there is a flooding problem the likelihood is that action will be taken to resolve it by engaging those third parties who have legal responsibilities. Public education about their responsibilities will be important in the way that the LLFA will evolve, and impact upon its effectiveness.

The LLFA Flood Team has taken various actions to raise awareness about third party responsibilities and flood alleviation, and some examples are set out below:

- A 'ditch maintenance document' is circulated to landowners as and when the Team is made aware of specific maintenance issues. It is available on the ECC website. http://www.essex.gov.uk/Environment%20Planning/Environment/local-environment/flooding/Watercourse-regulation/Documents/ditch-maintenance.pdf

- A number of articles have been published in Parish newsletters on the subject of riparian responsibilities. The Team also attends parish meetings and engagement events/ shows on a regular basis. Ditch maintenance is referred to at these events.

- The Team is in the process of building a public register of 'flood risk assets', which will include privately owned watercourses and pipes. Its aspiration is to

send an annual reminder to all landowners identified on the register about their responsibilities. It is hoped that in conjunction with the ECC Information Systems (IS) Team and digital channels projects that the website can be improved for instance by the register of assets being available using a mapping application to the public viewed. However, the Group was advised that IS support for an online mapping tool had been slow and data sharing between organisations was hampered by restrictions.

In general it was felt that the lack of responsiveness in the provision of IS services to the LLFA was having a negative impact upon the delivery of flood management services, and the ability of the LLFA to be able to adapt quickly to the changing demands of legislation and more importantly customer needs. While the LLFA has been proactive in trying to provide more transparency around flood management in Essex and to engage the public in sharing information, the failure of effective IT platforms on the ECC website could generate public criticism rather than being helpful in taking forward measures to support improved flood alleviation.

Corporate support was an issue that arose as a similar criticism in the Committee's 2013 scrutiny report on the Off Site Emergency Planning Requirements around COMAH Sites in Essex ('COMAH') whereby services may feel that they are not necessarily well supported corporately in their quest to raise public awareness of matters they provide on behalf of the public.

The Group also noted that a common strand through the recommendations that are being progressed by a Multi-Agency Task and Finish Group led by the LLFA to address flooding problems on Canvey Island as a result of widespread flooding in July 2014, is effective communication and raised public awareness. This scrutiny review has reinforced the requirement that it is essential to ensure that the County Council has the proper resources to enable the LLFA to embed better public awareness of flood management issues across Essex.

The Group also approached Epping Forest and Braintree District Councils to obtain some additional views on steps that those Councils had taken around communication. While the importance of imparting information through good electronic means cannot be overstated, contributors reinforced Members' own sentiments that a variety of communication channels need to be used including the internet, social media, distribution of leaflets, and attending meetings and other forum to engage directly with the public. At a practical level all information that is published should be easy to understand and navigate, informative in content, with key information such as telephone contact numbers and related website links being clearly provided in prominent positions.

- **Project 'Where does water go?'** This is a project aimed at working with Parish Councils and local community groups to actively engage in a project in their own area. It allows action to be taken to resolve water management issues it is essential to build up a database of drainage systems and their ownership. The LLFA has initiated a project called 'Where does water go?'

that draws upon parish councils and local volunteers to collate information on local drainage in order to create the database. The LLFA and HA must be able to provide evidence for each case they are trying to resolve in order to determine what action may be necessary, and the identity of third parties.

As the information is collated it will be transferred into an electronic database. Although the information may not necessarily be exact or comprehensive, it will provide a lot more knowledge than has existed so far. It is also an opportunity to educate local landowners about their responsibilities.

Last year the Pilot Project comprised five parish councils and a flood action group, who have been provided with tools and instructions to enable them to map watercourses in their own areas and report back to the County Council. Councillor Walsh met the Sturmer Flood Action Group on site to find out about its experience from participating in the Project, and what had been learned to address local problems (more information set out at Appendix F). It is a drawback that the information being gathered is primarily recording surface features because not all watercourses etc are necessarily obvious to the naked eye. Nevertheless by liaising with other agencies such as the HA and water companies the ownership of more and more assets are being identified, and at same time providing opportunities to improve awareness of local third party responsibilities.

Last year's Project was seen to be a success and has been used to promote its extension. For the 2015/16 period ten parishes have been identified and training has been organised throughout September and October. The aim is to collect the data in April/May albeit this will depend on the progress of individual parishes.

- **ECC Flood Management Website**

In June 2015 with the endorsement of the Essex Flood Partnership Board, the Flood & Water Management Team launched an animated version of the Essex Flood Risk Strategy on all forms of media including the County Council's website hosted under the 'what we do' pages, about the LLFA's Strategy. The site includes a three minute video, and provides seamless referral to the correct body responsible for different flooding issues. Unfortunately on the day that the Group viewed the website not all the links were fully functional.

It is available via the following link- www.essex.gov.uk/flooding

http://www.essex.gov.uk/Environment%20Planning/Environment/local-environment/flooding/View-It/Pages/What-we-do.aspx

There are proposals to develop online facilities via the website too so that advice can be sought easily, and processes around Section 23 consents and SuDS can be handled more efficiently.

The Flood Team drew attention to the toolkit that has been published by Northamptonshire County Council and is considered to be very good being held

up as best practice by other LLFAs. However, it is expensive to acquire the toolkit and ECC has no proposals to acquire it.

Overall the Group was mindful of the importance of good information technology and its effective application. On behalf of the Group Councillor Pond had sought the views of the Epping Forest District Council contributors given their proven experience in raising public awareness about flood alleviation. While that Council had conducted some successful campaigns using informative printed leaflets, their distribution had been limited to targeted areas and delivery to households. It was agreed that publication of information via the internet is now essential providing access for a much wider audience than in the past. Similarly Councillor Butland had sought the views of Braintree District Council to obtain some additional views on steps that those Councils had taken around communication.

While the importance of imparting information through good electronic means cannot be overstated, contributors reinforced Members' own sentiments that a variety of communication channels need to be used including the internet, social media, distribution of leaflets, and attending meetings and other forum to engage directly with the public. On a practical level information that is published should be easy to understand and navigate, with key information such as telephone contact numbers and related website links being clearly provided in prominent positions.

The Group's consideration of the action being taken to raise public awareness using electronic means was at a time when changes were in the process of being made. IT and social media are a key component in the ability of the LLFA to engage more closely with the community in order to fulfil the County Council's statutory duties around flood management. This also co-incides with the Council's strategic actions on the indicator 'Preventable flooding incidents' in the commissioning strategy 'People in Essex experience a high quality and sustainable environment'.

At a late stage in the production of the scrutiny report, concerns arose about the IT support and facilities available to the Flood Team that will play a key role in the development of frontline commissioned services. Aside from the need to be able to deliver effective online services, the Group learned that some members of the public had drawn the Team's attention to difficulties encountered in accessing online services via the County Council's website.

The scrutiny investigation has highlighted flood management as a positive example of a new evolving service where joined up working across services and teams as well as with other external bodies, is producing positive benefits. It is an area of high profile activity that is growing in stature not only as a result of the LLFA's proactive approach to embedding a new service necessary to fulfil the County Council's statutory responsibilities, but in terms of the wider flood agenda such as SuDS and infrastructure.

The impact of current IT facilities upon the development of flood management in particular is perhaps an area where the Task and Finish Group should undertake a short supplementary investigation. While welcoming the progress that has been made by the Flood and Highways Enforcement Teams during the scrutiny review, councillors were mindful that effective online facilities are crucial to the roll out of

flood prevention measures. In practice the scrutiny review has proven to be a useful vehicle providing third party challenge to the way flood enforcement is moving forward, and it could be construed as an oversight if the matter of corporate IT support in the delivery of flood management services is not addressed satisfactorily given its underlying importance for engaging with the public.

4. **Conclusions**

Public demand for more positive action to be taken to address flooding problems has increased as weather patterns have changed, with more incidences of flooding occurring and heightened media coverage of major incidences such as the flooding of the Somerset Levels and locally Canvey Island in 2014.

This review has provided a vehicle for promoting a better understanding of the role of the County Council in flood management as both a LLFA and HA, and the complexities associated with resolving any problems given the natural environment and drainage systems, the way that development has affected the flow of water, land ownership, a lack of historic records, and the implementation of the legislation itself. While it is often assumed that public bodies are responsible for resolving flooding problems, in fact many individuals, as house and land owners, have third party responsibilities and their actions or failure to take action can have an impact on local drainage systems with knock on effects on others' homes and land.

During the course of the review opinions have been expressed by those on the periphery of the review about specific flooding problems. What the review has been able to do is put those problems into the wider context of flood management highlighting how roles and responsibilities fall to private individuals as well as public agencies. In practice it may be difficult to identify a local source of flooding particularly in the absence of reliable local historical records, and land ownership issues have hindered solutions in some cases.

Historically enforcement has not been used as a tool by local authorities in Essex to resolve flooding problems except in Epping Forest District where that Council has been proactive in flood management activity for many years and has byelaws in place. However, changes in legislation mean that the County Council as a LLFA has new responsibilities that it must fulfil with the benefit of clearer enforcement powers.

In the past the County Council as a HA has not necessarily taken a proactive approach to enforcement for reasons set out elsewhere in this report. Although affordability is an issue, the lack of enforcement around highways flooding is not just a monetary issue, because there is a history of the HA undertaking work under Section 100 (HA 1980) and paying for it. An obstacle has been the lack of a proper legal solution as although there is an expectation that the HA can enforce to an effective standard, the tools to do so successfully are simply not there outside the LDA1991. As a LLFA the County Council now has that capability, and action has been taken via the MoU to enable the HA to draw formally upon that capability should the Council choose to retain and roll out the HA enforcement pilot to a wider are of the County.

Moving forward the HA is in the process of raising its priorities around highways enforcement more generally taking into account an objective view of what in practice can be achieved against resources required for implementation. The Maldon Pilot Enforcement Project will provide an opportunity to assess what can be achieved by taking a more proactive approach, and the viability of rolling out that project across Essex. The new Highways Enforcement Policy forms an intrinsic part of the Council's revised approach, and through its implementation it is hoped to change

poor behaviour and improve third party compliance. While in the past there may have been a general presumption that the HA would not take enforcement action, the new policy provides a clear framework of its intentions to resolve enforcement problems.

It is likely that had the adoption of the new enforcement policies and protocols of the LLFA and HA not occurred during the course of the scrutiny review, then the Group would have been minded to propose that such action should be taken to provide a clear intent of the County Council's resolve to use those powers at its disposal to improve flood management. Nevertheless those policies have yet to be fully implemented and or their effectiveness been proven. Therefore it is proposed that the Committee should pursue an update on how the policies and protocols may have been used in practice over the next year, and if they have in fact enhanced the way that ECC is developing flood preventive measures.

While changes in legislation means that Essex County Council as a LLFA and HA has increased responsibilities in flood management, it is important that it develops partnership working with the twelve district councils. The districts can assist in the resolution of problems because of their local knowledge and influence, especially as collating evidence is often crucial to success or otherwise of an enforcement case. Nevertheless identifying the owners of property can prove extremely time consuming and difficult.

The LLFA is taking steps to build more effective partnership working with districts. This is important as the resolution of flooding problems may require the combined powers of a range of partners, and Councillor Pond drew attention to one case where there were twelve land owners, the HA had not taken action and eventually a Water Utility had served an enforcement notice to achieve a remedy.

Overall steps have been taken to embed good practice as part of the Council's new role in flood management, but that work is in its early stages. The recommendations set out below reflect that fact. However, the Committee is keen to find out what the outcomes of that work are in practice rather than relying on the assumption that the framework will automatically resolve problems. While there are a number of aspirations being taken forward, they do rely on the ability of the LLFA and HA to forge positive working relationships with other bodies, and at the same time the willingness of others to engage with the County Council. There are already good examples such as Epping Forest District Council and other Districts that have entered into individual Memorandum of Understanding; and the willingness of volunteers to engage in projects to record local watercourses for inclusion in a new database is extremely valuable.

Finally raising public awareness about third party responsibilities is an integral part of the County Council's programme for rolling out its flood management programme, and it is evident that it will rely quite heavily upon the effectiveness of the internet, online services, and social media. Overall the Group was satisfied that its conclusions were based upon well evidenced information. However, in the matter of IT support it was considered that further investigation was required before any final conclusions or recommendations could be reached.

Based upon its conclusions the Committee has approved the following recommendations for forwarding to the Cabinet.

Recommendations

6. **That the Cabinet Member for Transport, Planning and Environment; Infrastructure; and Highways Delivery be advised that the Committee commends the LLFA and HA for the positive way that they are taking forward the County Council's flood management role, and in particular the framework of preventative measures being developed as featured in this scrutiny report.**

7. **That the Cabinet Members for Transport, Planning and Environment; Infrastructure; and Highways Delivery be requested to provide progress reports to the Committee on the following matters in June 2016 so that the outcomes of the particular pieces of work identified can be reviewed:**

   (4) The Committee supports those projects such as the LLFA 'Where does water go?' that is assisting in the mapping of watercourses and the development of highways asset databases that will contribute to the creation of comprehensive records for more effective flood management across Essex in the future. An update is requested on the production of the databases that are being developed to enhance flood management.

   (5) Given the benefits that could accrue from the co-ordination of LLFA and HA activity, the Committee welcomes the steps taken so far to formalise flood enforcement activity. Nevertheless an update is sought on what outcomes may accrue as a result of the Teams working more closely together and the formal Memorandum of Understanding (MoU).

   (6) Given the implications for enhanced enforcement activity, the early success of the Maldon Highway Enforcement Pilot Project is welcomed by the Committee. Consequently when that Project is reviewed in early 2016 the Committee would wish to receive an update on any proposals that may be considered **by the Cabinet Member for extending the project to other parts of the county, and its impact upon local flood alleviation.**

8. **That, in view of the links between flood management and planning that the review has highlighted, the Cabinet Member for Transport, Planning and Environment be recommended to engage LPAs in the matter of:**

- **raising the profile of surface water drainage in strategic planning and development control in the way that flood management and preventative measures are implemented across Essex; and**

- **establishing the principle of seeking Community Infrastructure Levy (CIL) to address local flooding issues as appropriate eg ensure it is added to the strategic list for contributions.**

The Cabinet Member is requested to provide the Committee with a response in April 2016.

9. **That the Cabinet be requested to provide the Committee with a briefing paper in Spring 2016 that explains how the County Council itself co-ordinates its own activities in order to identify and address overall infrastructure needs in Essex including flood risk management and preventative measures associated with new development. The Committee will provide a scoping document setting out the key questions that it will ask the Cabinet to address.**

10. **That the Task and Finish Group conduct a short supplementary scrutiny review of the IT and Communications support provided for the delivery of frontline flood management services using the website and social media, with the aim of reporting to the Committee early in the New Year.**

Appendix A

The role of a Lead Local Flood Authority

Flood and Water Management Act 2010

Under the Flood and Water Management Act 2010 (FWMA 2010) the County Council acquired new statutory flood management responsibilities in addition to existing duties under the Highways Act 1980 (the HA 1980). Failure to discharge some of its powers could result in claims against the Council.

The County Council is now a Lead Local Flood Authority (LLFA) with overall responsibility for local flooding (surface water, groundwater and ordinary watercourses). It is important to point out that under the legislation the LLFA has powers that it must exercise, whereas in its role as a Highways Authority (HA) it has duties.

Lead Local Flood Authority

ECC now has permissive enforcement powers under Sections 24 and 25 of the Act.

- Section 24 prohibits the erection of obstructions or the making of alterations to existing structures which impedes the flow of ordinary watercourses.
- Section 25 requires that appropriate maintenance is carried out by riparian owners on ordinary water courses.

Failure of riparian owners to comply with Sections 24 or 25 can result in enforcement action if it is deemed that a lack of maintenance or alteration to a water course poses a flood risk.

If a landowner carries out actions that adversely impacts on the flood risk to (another landowner's property) NB Not just another landowner's property, it can be any receptor within the definition. ECC has the right to serve a legal notice on the responsible party to carry out remedial work to resolve the issues. It should be noted that these powers are permissive and not a duty and as such the exercising of these powers is at the Council's discretion.

Under the FWMA 2010 the responsibilities and powers of Sections 23, 24 and 25 of the LDA 1991 were transferred to ECC as a new LLFA on 6 April 2012 as summarised below.

Change to Land Drainage Act	What it means	Pre April 6th 2012	Post April 6th 2012
Section 23	Determining applications to install pipes or other obstructions to the flow of an ordinary watercourse	Environment Agency Epping Forest District Council	Essex County Council
Section 24	Contravention of Section 23, ability to enforce the removal of unconsented works.	Environment Agency	Essex County Council
Section 25	Ability to enforce maintenance where the flow of water is impeded or do works and recover the expense.		Essex County Council

ECC as the LLFA may delegate any of the above powers back to the district councils, albeit overall responsibility would remain with the County Council. When each District was contacted to seek their views on whether or not they would be interested in any delegation arrangements, a small number expressed an interest but more than half provided a mixed response or had no interest.

The reason for this change in legislation is not explicit, but in view of the recommendations from the Pitt Review, it is a change that brings land drainage and ordinary watercourse regulation together within a single authority. From a customer and legal point of view it was considered that having these responsibilities aligned would be desirable.

Districts did have, and still have the power to introduce byelaws which gives them the power to enforce for land drainage matters. Defra produced model byelaws for the Districts. The Districts retain their management responsibilities for ordinary watercourses (all watercourses save for the sea and main rivers which are retained by the Environment Agency). Historically it appears that enforcement did not take place in Essex save for Epping Forest District Council, which has active byelaws in place. All other authorities have confirmed that they do not intend to bring in byelaws.

District Councils have retained the management responsibilities of ordinary watercourses, and while they can undertake work to remedy situations they cannot claim for the cost of doing so.

Enforcement Powers

Under the FWMA 2010 enforcement powers derive when a County Council in the absence of an Internal Drainage Board, is designated the LLFA as in the case of

Essex. For reference purposes only an overview of the Boards is set out at the Annex A.

Ordinary watercourse

Within the context of the FWMA 2010 and for the purposes of this particular scrutiny review, the Group's attention was focussed upon the responsibility of the LLFA for the regulation of privately owned ordinary watercourses under the Land Drainage Act 1991 (LDA 1991) to ensure that flood risk is managed appropriately.

In respect of enforcement ECC as the LLFA has the power to enforce against land owners in certain conditions. In October 2014 the Cabinet Member for Customer Services, Planning and the Environment approved the Land Drainage Enforcement Policy (the Policy), which is attached at Annex B. In summary there must be an ordinary watercourse, with an impediment preventing the proper flow of water, causing harm to a receptor. If these conditions exist ECC can take a range of actions. The starting point is informal discussions and working with the landowner concerned. If this does not remedy the situation then an Enforcement Notice requiring works to be done will be served upon them. If the responsible person then fails to undertake the work in breach of the notice ECC has two options available. It can either prosecute for the breach or undertake the work and recover the costs as a civil debt. The governing sections for these types of enforcement are Sections 24 and 25 (LDA 1991).

There is also provision within Section 100 of the HA1980, which allows for work to be undertaken when there are flooding issues on the highway. This provision does not allow for the costs of remedying the situation to be recouped via civil debt recovery. Any actions on land owners with ditches at the side of the highway should therefore be dealt with under the LDA 1991 in order that the costs of remedying the situation can be reclaimed from the owner.

Types of Enforcement Action

There are in principle five main ways for enforcement to be successful:

1. Via informal discussions and working with the owner concerned offering advice and solutions.
2. By serving an Enforcement Notice which brings about the necessary actions required of the landowner.
3. If the enforcement notice is breached prosecute for that breach (although note that this has criminal sanctions of a financial penalty and a conviction it doesn't actually solve the flooding issue).
4. Undertaking the work and claiming the cost of such work from the owner via civil debt recovery.
5. Finally undertake the work under HA 1980 (but note that it is unable to claim back the costs).

The level and success of enforcement activity will be closely linked to the level of resources available, both personnel and financial. Realistically, even with the threshold drafted into the approved policy the LLFA will not be able to deal with every location at risk. Officers have devised a flood matrix to assist them in prioritising the risks. It is crucial for successful enforcement that evidence is gathered at an early opportunity recorded and retained throughout the case process. Enforcement action in the Courts is only as good as the evidence provided. For this reason a set of protocols setting the process together with pro-formas to be used in every case has been put into place.

Informal discussions can bring about the necessary change and is a cost effective way of dealing with breaches, but may be of limited success if individuals chose to ignore the 'soft touch' approach. An Enforcement Notice is also cost effective in that it may bring about the necessary change again with little expenditure. Prosecuting for breaching an Enforcement Notice provides a financial penalty on the owner, but the court does not have any other sanctions at its disposal. Therefore it does not actively go towards remedying the problem. It does provide useful evidence if the County Council proceeded to undertake the work and reclaim the costs in the civil courts. Prosecution also incurs legal costs. Remedying the breach may result in a large upfront expense. This will require legal advice in the drafting of powers of entry notices. Although this does remedy the situation the Council then has to incur further expense and time in bringing the matter to court as a civil debt. However, legal costs can be reclaimed in addition to the cost of undertaking the work.

Powers under the HA 1980 are least favourable as although the Council may remedy the breach, there is no provision to recover the costs of doing so.

ECC Policy and Protocols

The ECC's Land Drainage Enforcement Policy was agreed formally by Councillor Roger Hirst, the Cabinet Member for Libraries, Community and Planning in October 2014, and supported by the Essex Flood Partnership Board and the Flood Partnership Officers Group.

The policy relates directly to the County Council's role and responsibilities as a LLFA. A key aim is to persuade and influence parties to fulfil their obligations rather than relying on the legal avenues open for enforcement to mitigate flooding problems.

In addition to the new policy, a series of operational Protocols are being put into place to underpin the implementation of the new Enforcement Policy. There are two distinct enforcement procedures: unconsented works affecting the flow of an ordinary watercourse eg. culverts, and failure to maintain ordinary watercourses. A matrix has also been produced to illustrate what action will be taken in different situations, and the priority that will be assigned to it.

The establishment of the LLFA has provided an opportunity for the development of a more consistent approach to flood management throughout Essex, and it is intended that through the adoption of the Policy and Protocols there will be greater

transparency of its intentions and enhanced understanding for all parties on how flooding problems will be addressed.

Contributors believe that best practice could be achieved across Essex by the LLFA encouraging adherence to the agreed new protocols, which have received the support of the Essex Flood Partnership and the Flood Partnership Officers Group. This is key as some of the Districts have resources available to investigate breaches. If they follow the LLFA policy and protocols then the gathering of evidence will be consistent, so that cases are passed to ECC are at the stage when any final enforcement action needs to be taken. Action is being taken to formalise this situation with proposals for the formal adoption of agreements of working between ECC and the District Councils ie Memorandum of Understanding.

With particular reference to the making of byelaws, it was considered that if individual District Councils were to implement new byelaws it could introduce more uncertainty of approach at a local level and so make enforcement action more difficult to achieve through the courts. However, in the light of feedback from those Councils the making of local byelaws was considered highly unlikely.

The costs and savings associated with enforcement action will depend on the type of enforcement undertaken. Informal enforcement through to issuing of an Enforcement Notice is relatively low in cost. Prosecuting and reclaiming costs in the civil courts is more expensive as legal costs are involved.

The Group was also mindful that given the County Council's own HA responsibilities there could be situations where the LLFA might consider enforcement action where the HA itself was failing in its third party responsibilities. It was agreed that if appropriate application of this policy would have to be considered as an option.

Annex A

What is an Internal Drainage Board?

An Internal Drainage Board (IDB) is a local public authority that manages water levels. They are an integral part of managing flood risk and land drainage within areas of special drainage need in England and Wales. There are 121 IDBs in England and Wales. Most IDBs today were established by the Government under the Land Drainage Act 1930. The activities and responsibilities of IDBs are currently controlled by the Land Drainage Act 1991 as amended by subsequent legislation. IDBs are also identified as risk Management Authorities within the Flood & Water Management Act 2010 alongside the Environment Agency, local authorities and water companies.

IDBs manage drainage districts which occur in areas of special drainage need. The district each IDB covers is therefore determined by the local hydrology (ie water catchment areas within a given region) and not by political boundaries such as those of counties. They either occur in broad open areas of lowland such as The Fens, Somerset Levels or Humberhead Levels or within the floodplains of rivers. IDBs are geographically concentrated in Cambridgeshire, Kent, Lincolnshire, Norfolk, Nottinghamshire, Somerset and Yorkshire. There are no IDBs in Essex.

IDBs are responsible to Defra from whom all legislation/regulations affecting them are issued. The work of an IDB is closely linked with that of the Environment Agency which has a range of functions providing a supervisory role over them.

Each IDB has permissive powers to undertake work to provide water level management within their Internal Drainage District (IDD), undertaking works to reduce flood risk to people and property and manage water levels for local needs. Much of their work involves the maintenance of rivers, drainage channels, outfalls and pumping stations, facilitating drainage of new developments and advising on planning applications. They also have statutory duties with regard to the environment and recreation when exercising their permissive powers.

Annex B

Essex County Council

Land Drainage Enforcement Policy

November 2014

An explanation of our policy regarding the enforcement of unconsented works or lack of maintenance to ordinary watercourses which result in a flood risk

LAND DRAINAGE ENFORCEMENT POLICY
Essex County Council

Background

As of 6 April 2012, Essex County Council gained certain powers under the Land Drainage Act 1991 (LDA) concerning enforcement of ordinary water courses. Essex County Council now has permissive enforcement powers under Sections 24 and 25 of the Act. Section 24 of the Act prohibits the erection of obstructions or the making of alterations to existing structures which impedes the flow of ordinary watercourses. Section 25 of the Act requires that appropriate maintenance is carried out by riparian owners on ordinary water courses. Failure of riparian owners to comply with sections 24 or 25 can result in enforcement action if it is deemed that a lack of maintenance or alteration to a water course poses a flood risk.

If a landowner carries out actions that adversely impact on the flood risk to another landowner's property, ECC has the right to serve a legal notice on the responsible party to carry out remedial work to resolve the issues. It should be noted that these powers are permissive and not a duty and as such the exercising of these powers is at the Council's discretion.

This policy sets out ECC's approach to the use of its powers under the Land Drainage Act 1991.

Aim

ECC believes that prevention is better than cure. The general approach will be to educate landowners, developers, farmers, and businesses to enable compliance.

The desired outcome is always to ensure compliance through discussions and negotiations. Where it is not possible to make progress due to lack of willingness on the part of the offender to work with the Council, enforcement action will be commenced in order to ensure that lives and properties are not put at risk.

Enforcement Actions

ECC takes a risk based approach in managing flooding within Essex. Any enforcement action will be proportionate to the flood risk issues faced at the location. ECC will take action where it is suspected that an offence has occurred or about to occur. This may range from providing advice and guidance; serving notices; through to prosecution; or any combination which best achieves the desired outcome. In order to improve land drainage, the Council will use its powers of enforcement under the LDA 1991 to require water courses to be cleared if matters cannot be resolved by the provision of advice and guidance.

Enforcement threshold

In order for enforcement action to be appropriate it will be necessary to establish that an ordinary water course is in such a condition that the proper flow of water is impeded and that this impediment is causing harm to a receptor.

In line with the above statement the following elements are necessary before a notice can be served:

1. Existence of an ordinary water course (as per definition).

2. With an impediment to prevent the proper flow.

3. Which is causing harm.

4. To a receptor.

Exceptions

The above threshold will trigger enforcement unless the event described is due to exceptional circumstances, such as, but not limited to the fall of precipitation where the volume is a rare occurrence.

Definitions

Ordinary water courses

This means any water course that does not form part of a main river. This includes all rivers and streams and all ditches, drains, cuts, culverts, dykes, sluices, sewers (other than public sewers) and passages, through which water flows. This would include channels that are drier other than at times of high rainfall.

Impediment

An impediment to flow would include a wilful act leading to a blockage or may be due to lack of maintenance or neglect of the water course if it became blocked.

Receptor

Can include:

- A “habitual property” defined as any building or structure that is used for human habitation or business.
- A “highway” as defined by the Highways Act 1980 but for the avoidance of doubt including footpaths and bridleways.
- An “ancillary property” defined as any building or structure that is used for all purposes ancillary to a habitual property.
- Features of “acknowledge importance” including but not limited to buildings, sites and objects of archaeological, architectural or historic interest and designated wildlife sites.
- Any other building or structure that is in the opinion of the Council considered to be of amenity value to the residents of the affected area.

Harm

- Damage to, or threat of damage to a receptor.
- Enjoyment of a receptor affected or impaired.
- Use of a receptor impacted or diminished.
- Any other harm that in the opinion of the Council is causing either perceived or actual damage to a receptor.

Scope of Policy

This policy is designed to be used by officers of the Council where there is an impediment in an ordinary water course, which they have either discovered themselves or where it has been reported to them by members of the public, which is causing harm to an identified receptor. Upon discovering a problem, and where negotiations with those responsible do not resolve the problem, the Council may serve a notice requiring those responsible to remedy the problem by removing the impediment.

A notice served pursuant to this power may be served on the owner/occupier of the land adjoining the affected water course or any other person having control of the water course where the impediment occurs or any person causing the impediment to occur. Upon whom the Council serves a notice will be considered on a case by case basis.

Purpose of Policy

The threshold criteria are designed to cover the situations where it is considered the biggest problems arise from water courses becoming impeded which will have the biggest impact for residents.

ECC believes in firm but fair regulation. Underlying the commitment to firm but fair regulation are the principles of

- Proportionality in the application of the law and in securing compliance. All enforcement action will be proportionate to the risks posed to people and the environment and also to the seriousness of the breach and its impacts on the local community.
- Consistency of approach, by the operation of the threshold criteria.
- Transparency about how we operate and what those we regulate may expect from us.
- Accountability for the enforcement action taken.

This policy should be read in conjunction with the following protocols and guidance documents together with their respective appendices

Annex 1: Protocol relating to consent under s.23 Land Drainage Act 1991
Annex 2: Protocol relating to enforcement under s. 24 Land Drainage Act 1991
Annex 3: Protocol relating to enforcement under s.25 Land Drainage Act 1991
Annex 4: Powers of Entry Guidance for Land Drainage Officers

NB: The Protocols and guidance are not included with this scrutiny review.

Appendix B

Epping Forest District Council

As part of its investigation in January 2015 the Group met with Susan Stranders, Engineering Drainage & Water Team Manager, and Trevor Baker, Land Drainage Engineer with the Engineering, Drainage & Water Team at Epping Forest District Council, who were able to share with the Group their operational experience, and how that Council has promoted better public understanding about flood alleviation.

In Essex Epping Forest District Council (EFDC) is unique in the way that it has handled land drainage matters across its area, and has maintained a professional Engineering, Drainage & Water Team (EDWT) to lead in that work.

Historically EFDC has taken a proactive approach towards flood management, including the implementation of its own local Land Drainage Byelaws. The Council first introduced such byelaws in 1983 under earlier legislation, and later under Section 66 of the LDA 1991. An important aspect of the EFDC byelaws is that land drainage consent is required for works within eight metres of an ordinary watercourse, and formal action may be instigated for breach of the byelaws and consents.

The Group learned that the District has suffered from flooding in the past. The hydrology of the area including river catchments and past major flood alleviation schemes such as the construction of five flood storage areas within its boundaries, underpin why there is heightened awareness locally about flood management. This may contrast with other areas where flooding may be more sporadic and, in turn, flood management may not be a high priority for some councils.

While the FWMA 2010 places ordinary watercourses under the jurisdiction of the LLFA, Section 66 of that Act still allows local authorities to make byelaws. However, those councils that implement byelaws have to have resources in place in order to deliver desired outcomes.

Since the changes in responsibilities brought about by the FWMA 2010 and the establishment of the LLFA in Essex, EFDC indicated that it had been delegated authority from ECC to operate under Sections 23, 24, and 25 of the LDA 1991 as amended by the 2010 Act only under a letter of understanding.

Subsequent clarification from Essex Legal Services has confirmed that the LLFA cannot delegate its powers to another council because failure to exercise those powers even if the LLFA has allegedly ‘delegated the power’ then potentially ECC will still be responsible for any alleged breach and civil actions that ensues as a result. Therefore if the LLFA enters into a Memorandum of Understanding outlining that if the other council does not consider it appropriate to act in a particular situation, then that council should notify ECC to enable the LLFA to consider whether that particular situation falls within its threshold criteria and thereby prompting actions.

In essence, the agreement will be that EFDC take primary control under its byelaws (as it wants to have) but if it does not then it should notify ECC so it can consider as the LLFA if it should take action.

While there is no evidence other Districts will introduce Byelaws, similar working arrangements could be adopted to those between ECC and EFDC.

Other flood risk work carried out by EFDC includes the regular inspection and maintenance of the District Council's flood risk assets, use of the website leaflets, and participation in flood fairs/ corporate events.

While ECC makes a nominal contribution (approximately £10,000) towards the costs of the delegated work carried out by the EDWT, the majority of the Team's costs continue to be funded by the District Council.

The Group discussed what may influence the various levels of individual local authority interest and engagement in flood management related activity: EFDC has developed confidence and experience over time in response to identified local need, whereas ECC's LLFA role and actions have been introduced by recent legislation and a perceived national need to raise the profile of flood management across the country. It was acknowledged by the contributors that ECC was taking positive steps to raise the profile of flood management across Essex, and that given time it would develop the necessary experience to fulfil its new role.

It appeared to the Group that the District Council has adopted a holistic approach to local flood management as highlighted by the close working relationship between drainage and planning colleagues, and inter alia ability to draw on the expertise it has nurtured over time. Underpinning its local planning framework is the EFDC's own unique Flood Risk Assessment Zones (FRAZs), which are set out in its Local Plan. The FRAZ should not to be confused with Environment Agency Flood Zones. Some of the features of the FRAZs are:

- The purpose of the FRAZ was to manage surface water flooding from incremental development.
- FRAZ are areas identified in the district as being of particular risk from surface water flooding and therefore developments face stricter flood risk management controls in these areas.
- Zones were based on a review of areas of historical flooding and flooding hotspots, and then extending the zones from those points outwards to encompass the entire catchment of that area.

Official FRAZ definition in the Local Plan Alterations 2006:

Flood risk assessment zones are catchments of ordinary watercourses which have been identified by the Council. These may contribute to main river watercourses or where there is a known risk or history of flooding. Within these zones any development in excess of $50m^2$ (other than house extensions) will require a FRA. The boundaries of the flood risk assessment zones are shown on the Proposals

Map. For sites outside FRA zones, any development in excess of 235m^2 will also require a flood risk assessment. The figures of 50m^2 and 235m^2 refer to the area of new buildings.

The FRAZ has proven an effective tool for mitigating flooding through the planning process.

Flood risk has been identified in the EFDC Local Plan and Policies, to underpin its implementation of flood management and raise awareness of local requirements. Furthermore standard flood risk conditions are attached to planning permissions where appropriate, as well as the addition of informatives covering the potential requirements for Land Drainage Consent and SuDS on every planning decision notice. There is regular communication between the relevant teams so that the EDWT can identify what may be required and comment upon applications, and it checks the weekly planning list. Standard letters are sent to planning applicants if on an initial assessment Land Drainage Consent may be required for the works. Any planning enforcement that may be required relating to a drainage matter will be pursued by the EDWT.

The District Council also confirmed that, where appropriate, it regularly uses the provisions of the Building Act 1984 to resolve surface and foul water problems from certain premises.

By having a clear ethos the District Council has created a clear understanding among developers and architects of what they need to do in terms of planning and drainage matters. Similarly as the byelaws have been in place for over 30 years, at a local level there is heightened awareness of their existence and that if they are broken then the District Council will consider action to enforce them – there have been three successful cases in recent years. Formal enforcement often becomes unnecessary because officers actively visit sites and liaise locally to resolve problems before they escalate.

It was acknowledged that that Council has developed and retained its drainage expertise through the EDWT despite changes in legislation, whereas a large number of Districts no longer employ drainage engineers. Concerns were expressed that if there is a lack of such expertise in practice then more difficulties may arise in the future.

The emergence of the LLFA will increase the profile of flood management in Essex in the longer term, and promote awareness of some of the strategic issues that need to be addressed. Although the LLFA is still in its infancy the EDWT considered that the ECC has been making some positive progress across the county despite having limited resources.

While the 2010 Act resulted in the transfer of responsibilities to ECC, it was still unclear how much priority individual districts have attributed to flooding and drainage matters both in the past and the present. In some cases such activity may be subsumed as a part of broader services even though they may not have chosen to fund professional land drainage teams like the Epping Forest model.

In addition to the emergence of the LLFA Team, it was hoped that the Essex Flood Partnership Board will develop as an effective forum as it could encourage opportunities to promote more effective co-ordination across the whole county in the longer term.

Given its reputation for being proactive in flood and drainage management, EDFC confirmed that on occasion it has received requests to share ideas and expertise. There is an aspiration that in the future there may be potential to market its employees' skills and expertise.

With regard to other neighbouring authorities, it was confirmed that East Herts District Council has retained a strong team that uses the LDA1991; Cambridgeshire is covered by Land Drainage Boards and is part of The Fens area; and the situation around Greater London is not comparable.

Aside from the linkages that had been highlighted between land drainage and planning in flood mitigation, the Group quizzed the Epping Forest contributors about the impact of highways upon flooding, and the role of and relationship with the Highways Authority (HA) in enforcement matters. In response they acknowledged that historically records on highways drainage asset were incomplete, which was in part due to the fact that the asset has grown incrementally over many years. As highways resources have fallen so spending on drainage maintenance has fallen and is treated as a lower priority for resolution. This does have implications at a local level where the HA has not been proactive in taking any enforcement action. This confirmed the situation that had been acknowledged by the County Council's own Cabinet Members in their discussion with the Group.

In general problems with drainage can be notoriously difficult to resolve, and their escalation may not be obvious or even be seen until the problems have become serious. In terms of those flooding problems where the HA could take action, separate to those drainage matters subject to local byelaws, effective outcomes may be more difficult to deliver locally. Given that the source of and responsibility to resolve flooding problems is not always easy to determine and requires investigation, then the low priority given to such problems by the HA does impact upon effective local flood management. In a situation where a third party wished to make a claim that the HA had failed to take action then that party could take civil action.

When the Group questioned what the District Council would like to see improved, it referred to improvements in effective service delivery from Thames Water Authority and the Highways Authority. This could result in the alleviation of much more localised surface water flooding.

While the Epping Forest model appears to be an effective model for local flood alleviation in that area, there was uncertainty around its implementation across all districts, and if it would be cost efficient especially where significant changes had to be made. While the strategic nature of the LLFA was welcomed, it was felt unlikely that a single model covering the whole county would necessarily reflect variation in local conditions. The local knowledge and delivery that the EDWT has built up is crucial to the success of the District's model, coupled with the close working

relationship between its drainage, planning and building regulation teams. Epping Forest Officers are aware of local assets and understand where the problems lie, and have contributed to improved public awareness and local understanding. They provide a 24/7 Emergency Flood Service and are available to liaise with local residents.

It was confirmed by ECC contributors that other District Councils have indicated at the Essex Flood Partnership Board meetings that they do not intend to introduce byelaws due to limited resources.

A county wide central office would be unable to deliver the same level of service given its geographical size and make up. While many of the other agencies may be geared up to respond to large incidents, localised issues are unlikely to be picked up so readily. However, EFDC is familiar with its high risk flood area and has placed a high priority upon seeking resolution to related problems eg Loughton High Street. This approach is also supported by locally elected District Councillors.

It was acknowledged by EEC Officers (LLFA) that EFDC had been effective in the way that it had used its byelaws, and had reduced the need to resort to enforcement action to implement their provisions. However, it was not felt that many other districts wished to adopt the Epping Forest model.

Addendum Rochford District Council

When the Committee considered third party responsibilities in March 2015 Councillor Cutmore drew attention to the Rochford District Council's Surface Water Flood Forum that meets every two months. Although district councils no longer have responsibility for flooding, Rochford had decided to set up the Forum in its bid to support its residents by inviting relevant agencies to work together to resolve local flooding problems. Of 40 different cases brought to the Forum's attention, 27 had been resolved at that time.

Appendix C

Planning Related Issues

During its investigation the Group's attention had been drawn to the role that planning policies and development control could play in flood prevention and reduce the need for enforcement measures to be taken.

Epping Forest District Council had highlighted how it has incorporated planning policies into its Local Plan and used standard planning conditions through development control to mitigate flooding in its area. At that stage it appeared that its approach is not mirrored elsewhere in the county. Nevertheless it highlighted a useful avenue for investigation so the Group sought to learn about experience elsewhere in Essex and indeed across the country where the planning function may have been used to mitigate potential flooding problems. The Essex Design Guide was also cited as a means for raising awareness about third party responsibilities.

In April 2015 the Group invited the Chairman of the Essex Planning Officers' Association, Andrew Cook, to give a more strategic planning perspective on the matter.

While changes over the past 5 years such as the establishment of LLFAs may have provided more clarity in flood management, in terms of planning and development control the situation is less so. On 15 April 2015 the County Council/ LLFA became a statutory consultee for planning applications. This means whilst the LLFA will advise the Local Planning Authority (LPA) on the acceptability of the Sustainable Drainage System (SuDS) proposals to manage surface water arising on the development site it is ultimately the LPA which is responsible for ensuring they are constructed correctly and maintained so that they continue to operate as intended.

The planning process is also focussed on ensuring that new developments do not worsen the existing situation. LPAs can seek contributions towards improvement works but these are not compulsory for the developer. Therefore new developments focus on managing the rainwater that falls on the site and nothing more, so cannot often be used as a means of addressing existing flooding.

ECC has been proactive in the way it has developed its role as LLFA, and has resourced a team to develop its new role including that of a consultee.

Work is already underway in the production of surface water management plans that can be used by developers and planners alike to highlight those areas where contributions towards flood alleviation schemes is of most importance.

Having existing flood management and SuDS teams does put ECC in a strong position to respond to emerging legislation and promote its responsibilities. Cambridgeshire and Northamptonshire County Councils have produced public information and good practice on their websites around planning and surface water

drainage. ECC has referred to that information and produced its own version for raising public awareness.

It was pointed out that developers will be more familiar with their responsibilities around surface water drainage because they are engaged with the planning process, and know what measures they need to propose to make the development acceptable in flood risk terms. Whereas landowners in general are less likely to recognise that they have responsibilities unless they become engaged in the planning process or are faced with a specific drainage problem.

Essex Design Guide

At an earlier stage of its investigation, the Group had identified the Essex Design Guide as a potential source of information for raising awareness about third party responsibilities and flood mitigation.

The Essex Design Guide published by ECC has been in existence for some time. It provides guidance and good practice for the planning of any development. Of more relevance to flood management is the ECC SuDS Design Guide, which was adopted by this Council in April 2015. It sets out the criteria the LLFA, as a consultee to the planning process, will expect to be complied with in terms of drainage from new developments. Whilst the Guide itself is not currently used to raise awareness, when responding to planning consultations the LLFA will attach a standing advice note relating to watercourse regulation. This could be updated to explain more about riparian owners, however is unlikely to be picked up by homeowners as it will be received by the developer.

Countywide

It was confirmed that Epping Forest District Council is unique in Essex in the way that it has developed its management of surface water drainage over many years, and an important motivation has been flood risk within its area. Other districts have not prioritised flood risk in the same way albeit Maldon is seeking to address some critical flooding problems at Heybridge in its proposed local plan; and surface water flooding on Canvey Island has raised its profile in Castle Point.

The ECC SuDS Team does provide a resource for districts to obtain advice on surface water drainage, and it will propose appropriate planning conditions to be attached to any development that is approved. It has a set of standard conditions for circulation.

Now that SuDS responsibilities have been confirmed by Government as lying with LPAs, the Group noted that there would be a variety of preparedness among districts across Essex to manage new process. There was an onus on those councils to raise awareness on surface water drainage and to revise their own guidance to residents and developers for instance via their websites. Although Members noted that individuals' interest was only likely to arise if they were planning some development or were opposed to others' development, it was essential that they could access proper guidance via planning links.

The SuDS team was liaising with district councils and would be seeking to ensure that proper guidance was being given across Essex. The SuDS team is also liaising with Essex Highways to ensure what is being recommended as part of a new development is acceptable for highways adoption.

Investigations such as that carried out after the recent flooding on Canvey Island have illustrated how a significant proportion of the infrastructure has been compromised from ongoing development. It is difficult to calculate the extent of third party damage that has been caused to the county's drainage network, because the work is unseen until such time as a problem may emerge. There is evidence where utility companies have compromised the system by the poor way that they have connected new development, and overall failure of third parties to demonstrate due diligence in the design and making of those connections.

General

The LLFA is raising the profile of flood management in Essex, and it provides a vehicle for sharing lessons learned countywide, including the impact of development upon the water asset. It may also provide an opportunity to use its expertise to work with partners in order to seek funding to address flood problems.

The Group considered the point that any new development is only required to mitigate flood risk arising from its own construction, not wider existing flooding problems, and at what stage the ECC might challenge LPAs upon proposed development on grounds of surface water drainage. Given the division of powers and expertise in two tier LA areas then the process may be difficult with a less holistic approach being taken than that by unitary authorities.

While there is a programme of capital works to address existing flood problems, there is a need to identify other sources of funding and developer contributions was an area for consideration. Drainage plans would assist by providing a source of information on local drainage networks for LPAs to refer to, and could influence local plans.

Up to date Local Plans have not been adopted across much of Essex. However, in the Chelmsford adopted plan, there is a strategic flood scheme for Widford and as a result there is an opportunity to seek developer contributions towards that scheme. In Maldon there is a similar approach being taken to Heybridge where a strategic flood solution is needed if further development is to take place. In both instances there is an intention to try to draw out benefits by adopting a strategic approach, but it would be more difficult to do so where a problem is less strategic. Canvey Island is another example where a strategic flood case might be included in a local plan for Castle Point.

The Group pondered on the County Council's ability to encourage LPAs to take the opportunity to address surface water drainage issues in their local plans, and establish the principle of seeking CIL to address local flooding issues as appropriate eg ensure it is added to the list strategic list for contributions.

Appendix D

Essex County Council as a Highways Authority

Legislative Overview

- **Highways Act 1980**

ECC as a Highway Authority (HA) has a general duty to maintain highways under section 43 of the Highways Act 1980 ('the1980 Act' or 'the Act').

Section 130 of the Act makes it explicit that 'it is the duty of the HA to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority'. Section 130 comes at the beginning of Part IX of the Act which contains over 50 more sections dealing with all kinds of obstructions, encroachments and nuisances in the highway and giving Authorities powers to deal with acts of interference in the highway. Some sections create offences in respect of which Authorities can instigate prosecutions. Other sections give the Authorities power to serve notice on those responsible to take the appropriate steps for the cessation of the encroachment or interference.

Flooding on the road

In the event of failure to comply, there is usually power either for the Authority to do the work itself and charge those responsible with the costs, or to prosecute for failure to comply with the notice. Thus an Authority can require the removal of unauthorised structures from the highway (section 143) and can require adjoining landowners to lop or cut trees/vegetation overhanging the highway (section 154) and to remove barbed wire fences from land adjoining the highway (section 164).

The HA duty to maintain public highways includes a duty to prevent water gathering on the surface of the highway, thus endangering drivers and their vehicles. Section 100 of the Act gives the Authority powers to drain roads and prevent surface water flowing onto them. It can construct in the highway, or 'in land adjoining or lying near to the highway' such drains as they consider necessary and they can scour, cleanse and keep open all drains situated in the highway or in adjoining land. Drainage is accepted as one part of the normal maintenance responsibilities of the Authority. It can also fill in a roadside ditch if the adjoining occupier agrees, or pipe the ditch even if the occupier does not agree and thereafter fill it in. Compensation is payable to an owner for any damage done in exercise of these powers (section 101, 1980 Act).

HAs have a useful power under section 299 of the Act to discharge their drains into any inland waters, whether natural or artificial. Also, under the Water Industry Act 1991, section 115, the HA can enter into an agreement with the sewerage undertaker to drain water from the highway through the surface water sewers of the undertaker. The undertaker can request a HA to take their surface water in the

highway drains. If either party refuses agreement unreasonably, there is a statutory right of arbitration.

At common law the owner of higher land is not liable for water running off his land on to lower land if the water has gathered on his land naturally, for example rain water. However, if he changes the configuration of his land or surfaces it, he will be liable for damage caused by the run-off of water flooding on to his neighbour's land.

The position as regards responsibility of landowners adjoining land in relation to the run-off of their surface water across the highway is uncertain. Under the common law, the owner of lower land has to accept water flowing naturally off higher land. Even so, it could be argued that, in the case of the highway, water flowing from higher adjoining land across the highway makes it dangerous and that anything which makes the highway dangerous is a nuisance at common law and punishable as an offence. In practice, such prosecutions do not occur.

If there are ditches on an owner's land to take his water, or the water flowing from higher land, he does have to keep them cleaned out. There is a useful power in the Land Drainage Act 1991(LDA 1991), section 25 which provides:

> ' Where any ordinary watercourse is in such a condition that the proper flow of water is impeded, then …the Drainage Board or local authority concerned may, by notice, served upon a person falling within subsection (3) below require that person to remedy that condition.'

The persons falling within subsection (3) are any person having control of the watercourse and any person owning or occupying land adjoining it. If surface water from the highway is taken across fields through a system of ditches to join a watercourse lower down and the farmer allows the ditches to become overgrown and blocked, with the result that water backs up on to the road, action can be taken against him under this section.

- **Flood and Water Management Act 2010 (FWMA2010)**

The HA has a blanket responsibility as a risk management authority under the FWMA2010 that co-incide with the 1980 Act. Consequently the HA has powers to put in drains, link water into ditches, and cleanse private ditches and to do so will incur expenditure including work it undertakes on private land. However, these are not enforcement functions.

The HA does not have a similar right as the LLFA to serve a notice, carry out the work in default and then recharge, except where a deliberate obstruction has been caused to an ECC laid 'drain' – not for neglected privately owned ditches. The only power available to the HA under the 1980 Act is to carry out the cleansing out of the public purse.

- **Land Drainage Act 1991**

The HA does not have any direct responsibilities under the LDA1991, which is an important strand of flood management. While there are provisions under the LDA

1991 for the LLFA to serve a notice, undertake the work and recharge, which is an effective tool for this work, the HA does not have the same powers.

Cabinet Members' Overview

During discussion with Councillors Bass and Johnson, the Cabinet Members with highways portfolios, the Group sought their perspective of the Highways Authority's (HA) role in flood management.

HAs are responsible for the free passage of traffic. When flooding on the highways occurs it tends to be higher profile due to its potential impact on journey times with more people likely to be affected than a situation where an individual property is flooded.

The Cabinet Members acknowledged that basic highways maintenance has been adversely affected by budgetary constraints over the past few years eg the level of routine gully emptying, with attention being focussed on fulfilling statutory responsibilities and higher priorities. Aside from funding another constraint that has implications for the management of the highways infrastructure is the lack of a complete historical map/ record of all its features including ownership, number and location of gullies and drainage systems, which are assets that may not be visible above the ground. While the information is being collated as it is learned to inform future management including sites that are prone to flooding, it would be extremely expensive to conduct a unique project to collect and record that information.

The flooding events of recent years have provided a lot of lessons for all those organisations with an interest in flood management including the Environment Agency, Water Companies, Statutory Undertakers, and district and parish councils. All have a role to play and there are benefits of working together. While some of the organisations may have a lot of professional expertise in flood management, others like councils have important local knowledge that can assist in identifying flooding causes and solutions. As a means of addressing some of the more regular problems, all districts were asked to identify five highway flooding 'hotspots' in their areas that would be considered by ECC for alleviation measures. Furthermore the HA has secured some access via its partner Ringway Jacob to modern gully emptying equipment that is more capable of resolving problems to supplement routine maintenance.

Cabinet Members acknowledged that limited resources have been allocated to highways enforcement. Flooding problems present a dilemma for those making decisions in so far as resources could be directed to issue enforcement notices on landowners, which can be time consuming and be unsuccessful, or to take direct action to fix a problem in the first instance.

After several years of neglect Councillor Bass indicated that it was necessary to allocate capital expenditure to several surface alleviation schemes, and it was an area where he was hoping there could be co-operation with the Local Highways Panels on flood relief schemes.

The Group recognised that there could be problems where the HA may be faced with third parties who refused to accept their responsibilities and co-operate in finding a resolution to highways flooding. Cabinet Members were able to share with Members some pertinent examples. They referred to the types of measures that had to be taken and associated capital and revenue costs particularly in situations where a problem has existed for some time without resolution.

December 2014

Highways Drainage Maintenance

As drainage maintenance is sometimes perceived as an important contributor to local flooding problems, the Group sought to understand its implications for wider enforcement action.

Highways contributors to the investigation including the Cabinet Members acknowledged that spending on the drainage asset has been in decline for many years with little or no maintenance on the carrier drains and no investment in collection of asset data/mapping. In Essex, the current spend on gulley cleansing is around £1.2 million per year, which is low in comparison to other authorities with a lower number of assets on their networks (Surrey - £2.5 million, West Sussex £1.5 million, East Sussex £1.8 million).

Currently, flooding issues on the public highway are dealt with in a number of ways. Essex Highways is commissioned to carry out a routine cyclical cleansing of its 236,000 plus highway gullies and associated connections into the carrier drains. This is an annual cleanse of all recorded gullies shown on historical schedules.

Nevertheless measures are being taken to feed information as it is acquired into a more reliable asset inventory, and contributors reassured the Group that the location of a majority of gullies is now known. This will enable the HA to review its cleansing routine, build up local intelligence and prioritise according to need ie. an outcome based approach. This will also afford the HA another advantage where enforcement action may be considered as it will be able to demonstrate proactive asset management to Courts, and that reasoned courses of action have been taken for routine maintenance etc.

The lack of drainage asset data does cause problems. For instance the ability to respond to drainage problems is often hampered and an initial investigation is necessary to determine where the drainage system goes, where it discharges and what else is connected to it.

When other drainage/flooding issues are identified, they are inspected and investigated on an ad-hoc basis and repairs programmed, as required. When dealing with flooding reports, the investigations are often complex and time consuming. Where capacity problems are identified with the highway drainage system these are investigated and where they cannot be rectified through normal cleansing and jetting activities, improvements are carried out to improve capacity. Larger schemes are escalated for capital works through the Surface Water Alleviation Schemes (SWAS) process.

Where more serious flooding occurs, the LLFA will investigate and prepare Flood Investigation Reports or Section 19 reports as required by the FWMA 2010.

Flooding on the Highway

In recent years the number of flooding incidents on the highway has increased with the winter months of 2013/14 being particularly bad. This flooding affects the movement of traffic and inevitably draws a lot of public attention.

When reports of flooded highways are received, the HA responds by placing flood boards at the entrances to such roads to deter motorists from driving through them. This serves two purposes:

- Where the water is deep or fast flowing, it prevents motorists from endangering their safety or damaging their vehicles.
- Where the flood water is close to residential property, the bow wave created by moving traffic is often the cause of flood water entering the property rather than the depth of water breaching the property threshold.

If the road has a history of flooding, there may be a number of reasons for this:

- Main watercourse flooding where a breach has occurred
- Blocked or damaged highway asset
- Third party watercourse issue, often where the landowner has riparian responsibilities

When dealing with flooding caused by third parties, every effort is made to resolve issues quickly and without the need for legal recourse. Typically, where highway flooding is affecting property, it is much quicker to work with the property owner to resolve the problem. Often the problems are complex and may involve numerous agencies such as the water companies, LLFA, Environment Agency and private landowners.

In many of the cases where a resident reports an issue that involves highway flooding, the flooding is often as a result of a blocked ditch for which they are responsible. However, residents do not know that they are responsible for the ditches and may be reluctant to accept their responsibilities. Where the problem relates to a watercourse that is on the side of a busy, fast road, it is often safer for the HA to clear localised obstructions that are impeding the flow.

Historically it was acknowledged by contributors that there has been little or no formal enforcement action taken by ECC to resolve highways flooding problems.

Past Highways Flooding and Enforcement in Essex

In 2010 some aspects of highways enforcement were transferred to the new ECC Regulatory Services Team, established as a part of ECC Trading Standards. At that time, there was a drive to draw some council enforcement responsibilities together to

use shared expertise. However, in practice, the original vision of a combined regulatory service has never been fully developed.

The service level agreement (SLA) that was agreed for highways enforcement contained a limited remit that included vegetation, obstruction, A boards and road side trading. Flooding was not included in the SLA. Two highways enforcement officers were transferred to the new Team, albeit that team now comprises one enforcement officer for the whole of the County, and realistically it would not be possible for that person to tackle flooding issues as well.

Aside from the Regulatory Service the Group learned that the ECC Customer Services Team (CST) is another part of the organisation that contributes to the resolution of some third party watercourse problems. It is not part of Essex Highways. The CST itself is situated in County Hall and has responsibility for handling all incoming enquiries from the members of the public about highway related issues. The Team has to liaise with Inspectors who inspect the sites complained about, and work with them to send out replies. All activity is co-ordinated between teams through the highways Confirm database. The enquiry is assigned to the relevant team or person and then the work is picked up by that individual.

When dealing with third party watercourse problems that are causing flooding, letters are normally sent to the landowner from the CST in the first instance. The letter will advise the landowner of their responsibilities as a riparian owner and highlight the problem and location. Where necessary, drainage engineers will attend site to give advice and where significant highway flooding is evident will assist in clearing blockages and other problems.

There is a general reluctance by some residents to accept the advice given or even to acknowledge that they have riparian responsibilities. The issues are often complex, involve multiple stakeholders and, in practice, the physical drainage systems are not visible or accessible.

When dealing with flooding in rural areas, the response is mixed. Some farmers take responsibility for their ditches very seriously and are aware that they are their responsibility. Others take their responsibilities much less seriously to the point where ditches have become completely neglected, and sometimes to the extent where it is difficult to prove that they ever existed. Where there is acceptance to deal with the issues in these areas, they can be much easier to resolve with visible drainage systems (open ditches and watercourses) and the land owners are better equipped to maintain them.

Highways Enforcement Policy 2015

While contributors had provided some reassurance that there are procedures in place that are designed to address highways related flooding problems, it was apparent that in the past the HA has not pursued the formal enforcement of third

party responsibilities to mitigate those problems, and no formal policies or practice notes were in place.

When considering the LLFA enforcement policy, the Group's attention was drawn to action being taken by the HA to introduce a new highways enforcement policy. In fact the new policy was approved by the Cabinet on 24 March 2015 with the aim of creating a consistent framework for a variety of highways enforcement decisions as well as being much clearer for the public to understand. The Group was advised that no additional resources were required to implement the policy itself because it serves as a means to remedy the County Council's earlier 'ad hoc' approach to highways enforcement. It sets out how ECC will prioritise highways enforcement cases on grounds of risk, and the element of 'significant interference'. Behind the policy itself, there will be other protocols put into place that will explain in more detail how individual types of enforcement such as the removal of obstructions will be handled.

With regard to the remit of this scrutiny review, it emerged that flooding on the highway is not included in the new policy, and has no impact upon the Council's LLFA role. By way of explanation it was emphasised to the Group that the HA itself is not afforded any provision in law that enables it to 'enforce' effectively against privately owned watercourses that are causing flooding to the highway. The HA responsibilities under the 1980 Act are, in general, wide and far reaching. The Essex Highways Contract covers the maintenance duty under Section 41, and ECC may commission improvement works where appropriate to resolve problems.

Highways flooding enforcement is not an option other than under two scenarios:

- Section100 HA1980 (where an ECC laid 'drain' has been deliberately obstructed, it can remedy and recharge). This provision is of limited use for two reasons: It requires that ECC can prove it laid the drain; and deliberate obstruction is not the most common contributing factor to flooding. Neglected silted ditches are a bigger problem.

- There is a common law option available that involves taking legal proceedings in the form of an injunction. Essentially ECC could take the private individual to Court to stop the nuisance of flooding the highway by clearing their silted ditch. The problem with this solution is that there is no other option that Court may take, and the work may take some time to complete.

The new policy will support the work of the new pilot project where a team has been established to tackle highways enforcement in Maldon. While it was confirmed that there are no plans to raise public awareness about highways enforcement policy in particular, different approaches 'to getting the word out' would be trialled as part of the pilot project.

Maldon Pilot Enforcement Project

Since November 2014 a pilot highways enforcement project has been underway in Maldon led by a new Highway Authority Enforcement Team (HAET). The project is

in its early stages but the primary focus around highways enforcement will be on the following areas:

- Overhanging vegetation
- Encroachment/obstruction of the public highway
- Highway flooding
- Safety issues

Initially a manager and a legal officer were recruited to develop an enforcement policy, protocols and processes, and one case worker was recruited at a later stage. The pilot project was intended to run for a 12 month period at a cost of £234,000 to be funded from existing highways revenue budget allocations.

The adoption of a more proactive enforcement approach is designed to encourage greater compliance, with formal proceedings only being pursued as a last resort. The trigger for enforcement action will vary depending on the nature of the offence and the process being followed. In all cases, the threshold for enforcement action will be risk based and intelligence led.

As the pilot project will only deal with drainage issues where there is clear evidence of highway flooding, it was essential to work collaboratively with the Flood Team to ensure that there are clear boundaries over their respective areas of responsibility. Nevertheless the fact remains that the HA has very limited legal tools to enforce against third parties that fail to keep their ditches in a good condition, unlike the enforcement tools that the LLFA can use under the LDA 1991. Consequently the HAET had advised the Task and Finish Group earlier in its investigation that it was seeking delegated powers from the LLFA to be able to draw upon more effective enforcement tools.

When the Committee received an update briefing from the HAET in October, it was confirmed that the Pilot Project had been extended until April 2016 and had entered into a MoU with the Flood Team as follows:

- The MoU sets out the process where only the HAET may work with the Flood Team to follow the LLFA's process and policy to enforce using Sections 24 and 25 of the LDA 1991.

- There is a single point of contact on both sides, and it means that ECC has a single enforcement approach in practice.

- The MoU is particular to the HAET and the Maldon Pilot Project rather than being a tool that the HA can draw upon in its broader activities. The Flood Team liaises with other teams from across the Highways Service to resolve flooding problems elsewhere in Essex.

Contributors pointed out the importance of evidence gathering and some of difficulties that may be encountered such as establishing the ownership of land, which can undermine action to remedy individual cases. The wording of the legislation itself creates difficulties as to take action it is necessary to demonstrate

that the third party has impeded the flow of water. This work also contributes to the costs of enforcement that cannot be recovered.

Reflecting the same position as the Flood Team's position, a key feature of the HAET approach that underpins its early success is its emphasis upon raising public awareness about responsibilities. To date no enforcement notices had been served.

The photographs below illustrate two cases of highways intervention to alleviate flooding:

Director's Overview

When the Group met Paul Bird, Director for Commissioning: Transport and Infrastructure, he reminded councillors of the influences upon the way that the County Council has developed its approach to flood management. Flooding has attracted more publicity as weather patterns have changed, there have been increased incidences of flooding raising its priority, and new legislation has been introduced including the role of the LLFA.

Historically the HA has not taken a proactive approach to enforcement for reasons set out elsewhere in this Appendix. When the new Highways Service model was being developed enforcement was not included in the contract, as at that time it was envisaged that a new Regulatory Services Team would co-ordinate the broad range of the Council's enforcement activity. However, due to ongoing changes to the Council's organisational structure that has not happened with the result that there has not been proactive highways enforcement. The Ringway Jacobs Contract could be varied to include highways enforcement subject to an allocation of funding as it is reviewed on an annual basis as a business plan. Ringway Jacobs is an integrated provider and is able to acquire specialist expertise if necessary to fulfil what is commissioned to do. While it is relatively straight forward for the HA to commission enforcement works, there are difficulties associated with the delegation of powers that would need to be addressed satisfactorily in terms of proper governance, as well as the ability to draw upon the powers of the LLFA where third parties are involved.

If the HA raises the profile of highways flood enforcement then it will take an objective view of what in practice can be achieved against resources required for implementation. The legislation is not helpful in terms of enabling a HA to recover costs against third parties. The Maldon Pilot Enforcement Project will provide an opportunity to assess what can be achieved through a more proactive approach, and the viability of rolling out the project across Essex. However, in the long term if the pilot team was increased to employ an enforcement officer for each district then funding in the region of £800,000 might be necessary. In reality it would be extremely unlikely for sufficient funds to be recovered to cover the full costs of a team's operation.

The new Highways Enforcement Policy forms an intrinsic part of the Council's revised approach to enforcement, and through its implementation it will be used to change behaviour and improve third party compliance. While in the past there may have been a general presumption that the HA would not take enforcement action, the new policy provides a clear framework of its intentions to resolve enforcement problems.

Changes in legislation means that the County Council as a LLFA and HA now has a much more key role in flood management than the twelve Essex district councils.

While Epping Forest and Rochford Districts do prioritise flooding as an area for action, there was no evidence to suggest that a majority of districts did so. Although there are no resources specifically allocated for the management and resolution of local flooding issues, Paul Bird highlighted an example where the HA had tried to engage Districts in resolving local flooding problems as a result of bad weather in 2014. Every district was offered £50,000 if they could provide match funding for local flood priority projects, but the response was disappointing. It is an area where districts can assist in the resolution of problems because of their local knowledge and influence, especially as collating evidence is often crucial to success or otherwise of an enforcement case. Identifying the owners of property can prove extremely time consuming and difficult.

The LLFA is taking steps to build more effective partnership working with districts as

referred to elsewhere in this report. Furthermore the resolution of flooding problems may require the combined powers of a range of partners. Councillor Pond took the opportunity to draw attention to one case where there were twelve land owners, the HA had not taken action and eventually a Water Utility Company had served an enforcement notice to achieve a remedy.

March 2015

Ringway Jacobs Contract

In its consideration of highways flooding the Group also sought clarification on the impact that the Ringway Jacobs Contract ('the Contract') could have upon the resolution of highways flooding. The Contract allows ECC to commission the delivery of outcomes but not the discharge of its duties.

The HA may commission Ringway Jacobs to clear ditches and undertake improvement works under the various provisions of the 1980 Act to enhance the enforcement of third party responsibilities in respect of flooding on the highway. However, all of this work has to be funded from the Council's budget even though it may be undertaken to remedy private non-compliance.

It was confirmed early on in the review by Cabinet Members that highways enforcement had not been included in the original Contract (albeit enforcement around public rights of way is included in the contract). The Maldon Enforcement Pilot Project will enable the Council to consider how to address the situation in the future, and if it is successful and long-term funding is approved, then its scope could be extended to include other aspects of highways enforcement work.

The Group questioned how it had been intended for any enforcement activity to be managed when the Contract came into effect, and inter alia what has happened in practice. Historically, highway inspectors carried out a very small element of formal enforcement, as most of the contact with third parties had had an 'encouragement' focus, which relied on compliance being achieved without having to resort to legal notices. Any formal enforcement activity would have been undertaken by the Trading Standards Regulatory Team as and when required, but in practice that has not happened.

Appendix E

Focus on Third Parties

In March the full Committee considered the roles of home and landowners in the mitigation of flooding as part of the scrutiny review. Often attention tends to focus upon identifying which public agency or utility should be resolving a flooding problem, but that is only a part of the whole picture as individuals too have legal responsibilities. While the Group took the evidence into consideration in reaching its conclusions and the exploration of ideas for raising better public awareness of flood mitigation, it was important that the Committee itself could cross examine contributors so that its own understanding of third party responsibilities was enhanced.

The questions that framed the briefing were:

1. What role do home and landowners have in terms of flood mitigation, and what are their third party responsibilities?
2. What action should home and landowners take in order to fulfil their responsibilities?
3. How are home and landowners likely to be aware that they have third party responsibilities?
4. If they fail to fulfil their responsibilities, what courses of action may be taken against them? eg by other individuals affected by their failure to take action , and by other agencies.

The following information was exchanged as part of the briefing.

Challenges Moving Forward

Educating Riparian Landowners (Rights and Responsibilities):-

- **Rural Areas** – Less of a challenge as Landowners commonly have the knowledge and capability to carry out work, there are fewer stakeholders and drainage systems are more visible/ accessible.
- **Developed Areas** – More of a challenge as generally Landowners have less knowledge and capability to carry out work, there are a greater number of stakeholders and drainage systems are less visible/ accessible. Land also changes hands more frequently and the appropriate records/ information associated with the watercourse are not transferred with it.

Identifying who is responsible (Land Boundaries):-

- Land Registry
- Rules of Common Law
- Unregistered Land

Compiling a Legal Case (Evidence that an offence has taken place):-

- Historic Records (Ordinary Watercourse Mapping)
- Photographic Evidence

- Witness Statements

Threshold for Enforcement Activity (When to take Action):-

- Risk Based Approach to Enforcement
- When has an Incident been reported (Timescales)

Exceedance and Improvement:-

- Climate change and increased rainfall mean there is a higher chance that capacity of a watercourse will be breached
- Riparian landowners are only required to maintain a watercourse to ensure a state of proper flow, powers do not exist to enforce an improvement to a watercourse
- Increased maintenance liability when a landowner agrees to an improvement

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Raising Awareness with Local Planning Authorities:-

- Restriction, obstruction or alteration of a watercourse taking place under planning permission without Section 23, LDA1991 consent
- Awareness to be raised with LPAs of requirements under Section 23 of LDA and potential conditions placed on permission to acquire consent from the LLFA before applicant commences with works
- Where offence has been committed, negotiate alternate solution to the problem (i.e. diversion) without requirement for formal Section 24 enforcement action as a reasonable approach
- Restriction, obstruction or alteration of a watercourse taking place under planning permission without Section 23 consent
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- Where offence has been committed, negotiate alternate solution to the problem (i.e. diversion) without requirement for formal Section 24 enforcement action as a reasonable approach

Summary

What role do landowners have in terms of flood mitigation and what are their third party responsibilities?

- Allow water to flow through their land without any obstruction, pollution or diversion, which affects the right of others.
- Must accept flood flows through their land, even if these are caused by inadequate capacity downstream.
- Must keep banks clear of anything that could cause obstruction and increase flood risk, either on their land or downstream.
- Must always leave a development free edge on the banks next to a watercourse to allow easy access for maintenance.
- Must keep any structures such as Culverts, Trash Screens, Weirs and Mill Gates clear of debris.
- Must notify the relevant RMA if they would like to build or alter a structure that acts as an obstruction to a watercourse.

What actions should landowners take in order to fulfil their responsibilities?

- Ensure proper flow is maintained within the watercourse through regular inspection and maintenance
- If unable to do works themselves employ a competent Land Drainage contractor to carry out appropriate maintenance works (See National Flood Forum Website – Blue Pages for lists of approved contractors)
- Where a restriction, obstruction or alteration to a watercourse is required ensure consent is obtained from ECC as LLFA
- Work with neighbouring Landowners to ensure a holistic approach to watercourse maintenance

How are home and landowners likely to be aware that they have third party responsibilities?

- Riparian responsibilities are not normally indicated on title deeds and it is not compulsory for legal professionals to inform home buyers of these responsibilities
- Often in more urban areas watercourses become completely fenced off meaning landowners are unaware of their existence until a flooding incident occurs. This also causes issues with access for maintenance

If they fail to fulfil their responsibilities, what courses of action may be taken against them?

- Failing informal negotiations with a Landowner potential escalation to formal enforcement action using powers under the Land Drainage Act (1991). Powers of enforcement are discharged in accordance to Essex County Councils Enforcement Policy and Protocol

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Appendix F

Working with Parish Councils/ Local Communities on project 'Where does water go?'

During the review the Group was aware that for action to be taken to resolve water management issues it is essential to build up a database of watercourses, drainage systems and their ownership. The LLFA and HA must be able to provide evidence for each case they are trying to resolve in order to determine what action may be necessary, and the identity of third parties.

The LLFA has initiated a project called 'Where does water go?', which is a project to map ordinary watercourses in Essex at a local level.

A large majority of ordinary watercourses have been historically overlooked on Ordnance Survey maps or development plans. By mapping a network of ordinary watercourses across Essex, the LLFS will be able to identify and monitor critical watercourses that are important to flood risk.

ECC is working in partnership with local Parish Councils, Essex Fire and Rescue and other volunteers wish to capture this information using local knowledge.

The overall aim of this project is to build a published database of ordinary watercourses across the County.

The benefits of the project are:

- Identification of **critical watercourses** that have an **impact on local flood risk** to an area, adding them to the asset register so their condition can be monitored.

- Identification of **landowners** and sending reminders of their **riparian responsibilities**. If required, appropriate **enforcement action** may be taken against landowners who **do not keep** critical watercourses **clear and free of obstructions to flow**.

- Information gained can be used to **understand drainage** networks to assist in **flood investigations**.

- **Increase community engagement** to aid in the understanding of **riparian responsibilities**, Essex County Council **role's in flood risk management** and the **importance** of **ordinary watercourses**.

- Information can be used to **assist** Essex Fire and Rescue's **targeted watercourse clearance programme**.

Volunteers collect key information such as is it an open watercourse (e.g. ditch) or a structure (e.g. pipe entrance), what is the condition (e.g. blocked) and an estimation

of the dimensions. Along with a photograph, this provides a valuable historic record.

The information is recorded in the field on a simple survey form and drawn on a map. Surveys are handed back to the LLFA upon completion of the project, to be added to the ECC asset database.

Originally the project was piloted with four parishes (Castle Hedingham, Sible Hedingham, Cold Norton and Canvey Island) and two other groups, the Essex Wildlife River Warden Volunteers and Sturmer Flood Action Group. Four of the six groups have completed surveying to date with positive feedback that they now have a better understanding of the local drainage network. The lessons learned from the pilot areas will inform the progression of the project.

Sturmer Flood Action Group

On 20 July 2015 Councillor Walsh together with Dave Chapman, Delivery and Enforcement Officer, Flood Team; and Christine Sharland, Scrutiny Officer visited Sturmer to meet representatives of the local Flood Action Group (SFAG) (Bev and Linda Bevan, Alan Carter and Mary Sail) to find out about that Group's work, and its participation in the 'Water does water go?' Pilot Project.

The SFAG explained how the Group started, how it worked, the composition of its membership who were all volunteers who are part of the local community. A tour of the village highlighted the value of the knowledge that had been gleaned from mapping local drainage systems and their ownership, and how it had been used to address problems.

Flooding in the village provided the impetus for the formation of the Group that has been able to encourage better local understanding of the drainage system as well as the consequences of blockages and lack of maintenance by third parties. It has also provided some of the evidence for taking action to address some of the problems identified, and a variety of responses have been achieved:

- Volunteers have taken direct action to clear blockage. A recent example in June was the clearance of a ditch at the Red Lion pub by Essex Fire Service Volunteers, local farmers, residents and others, and the ditch opposite cleared by the local landowner so that the highways culvert could be cleared.

Figure 1 Flood Team in action with Fire Service Volunteers and Sturmer Flood Action Group

- Land owners with third party responsibilities

have been encouraged to take action to address blockages for instance the Parish Council was obtaining quotes for regular clearance on land within its ownership in the future. However, in some situations where development had taken place remedial action might in practice create bigger flooding problems.

- There is a concrete blockage in the bridge in Water Lane, which the Environment Agency had agreed to model the effect of this on flooding of properties. If this proved the blockage did contribute to flooding then the SFAG intend to lobby the Highways Authority for it to be removed.

  The Fire Service had agreed a pump could be supplied at the bridge but this would be an operational decision. This had been added to the Village Emergency Plan which had been supplied to the Fire Service.

- There is a blocked culvert under Water Lane, which Highways Authority has indicated would be too expensive to clear. This had led to a ditch (now filled) that might be on ancient Highways land and therefore the responsibility of Highways to clear. This illustrated some of difficulties that have arisen where there is a lack of historical records and maintenance.

- By mapping the local watercourses the SFAG has developed a better understanding of how proposed development may contribute to flooding in the parish. There is a proposal to develop 2500 houses at Great Wilsey, which is over the county boundary in Suffolk. The SFAG has lobbied both Suffolk and Essex County Councils on the flooding implications of that development for villages that are downstream on the Stour Brook, and for the drainage assets for the development be added to the SUDs register for Suffolk.

The SFAG was complimentary of the support that it had received from the Flood Team at Essex County Council, and felt that the Pilot Project had provided a very useful framework for communities to be involved in the way that local flooding problems are addressed. The public information that was available had contributed to better understanding, and raised awareness of the importance of flood management and third party responsibilities.

Figure 2 Before Maintenance

Figure 3 After Maintenance

In general it was acknowledged that people who are affected by flooding are more likely to be interested in the formation of Local Flood Action Groups, and taking part in the County Council's pilot project. If people could be persuaded to get involved in Groups like SFAG it is important for them to be able to refer to the right contacts at

the various agencies. Groups require a variety of skills from administration to vegetation clearing, with focus and persistence being key factors.

Appendix G

Flooding on Canvey Island, July 2014

Following the wettest winter on record, Essex has encountered many drainage related problems on its highway network. This resulted in some roads being closed causing disruption and delays. In response to this, an additional £1 million revenue funding was made available to tackle the top 5 sites in each district. A total of 85 sites were identified across Essex with a diverse range of problems ranging from simple blockages to complex drainage issues requiring further capital investment.

On 20 July 2014, Canvey Island experienced unusually high levels of rainfall within a very short time period. Roads and properties were very quickly flooded as the ageing drainage infrastructure was overwhelmed. Like most of the existing highway drainage throughout the UK, the surface water drainage system is, at best, designed to cope with a 1 in 10 year storm event. The conditions experienced on 20 July were estimated to be a 1 in 316 year event. Whilst it would be impractical to design a drainage system that could cope with such an event, there is an increasing expectation that the ageing infrastructure should be updated throughout the County. The cost of such investment would run into many millions of pounds.

Paul Bird confirmed that among the problems at Canvey was the number of illegal connections and poor workmanship to the drainage system, and damage to highways property. By its nature the problems were unseen and when the flooding occurred it exposed a long standing problem that had now become a priority albeit the solutions require substantial funding.

In October 2014 ECC published a Flood Investigation Report on the widespread flooding that had taken place on Canvey Island, which contained the following thirteen recommendations that are being monitored and progressed by a Multi-Agency Task and Finish Group led by the LLFA:

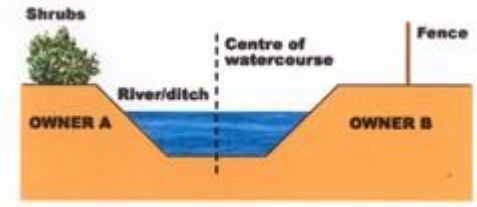
1. All RMAs – Commit to a multi-agency “task and finish” group to be led by the LLFA, which will take evidence from all stakeholders and bring forward a plan of action for managing flood risk based on evidence including the results of the IUD study.
2. All RMAs - Consideration of the feasibility of increasing the design capacity of surface water drainage systems on Canvey Island at problem points and critical drainage infrastructure as identified by the IUD study and other relevant evidence.
3. All RMAs – Review and improve their maintenance/inspection regimes of drainage infrastructure throughout Canvey Island.
4. All RMAs - Commit to greater resident involvement in any future study or works to improve drainage systems.
5. LLFA - Investigate options to provide property level protection to residents where larger flood alleviation schemes are not possible.
6. All RMAs - Confirm ownership and role of Canvey Lake, take actions to increase storage capacity (e.g. dredging and lower water levels) and investigate options to increase outflow capacity.

7. All RMAs – Map and confirm ownership and condition for all drainage assets on the island.
8. ECC/Environment Agency/ Castle Point Borough Council (CPBC)/ Communications - Raise public awareness of flood resilience measures to reduce the impact of internal flooding on property and of landowner responsibilities for maintaining private culverts and watercourses.
9. LLFA/CPBC/Emergency Civil Protection and Emergency Management Team - Use wider dissemination of information from campaigns such as “Six Steps to Flood Resilience” and “Know Your Flood Risk” to provide information to residents on what to do before, during and after flooding.
10. ECC/CPBC Emergency Planning – Consider communications before flood events, coordination of emergency response and deployment of available resources.
11. Category 1 Responders - Improve communication and joint working between responders during events.
12. LLFA – Support Emergency Planning by providing all information on flood risk available prior to an event.
13. All RMAs – Collectively bid for funding for multi-million pounds of external funding which will be required to fund capital projects to improve the drainage infrastructure, and provide for property level protection on Canvey Island.

During the course of the scrutiny review the Group considered a broad range of issues, and it is notable that a large number of the recommendations arising from the Canvey Island flooding highlight the importance of those issues touched upon by the scrutiny review. Raising public awareness is a key feature and one where effective measures need to be embedded across Essex.

Glossary and definitions

CIL	Community Infrastructure Levy
COMAH	Control of Major Accident Hazards
CPBC	Castle Point Borough Council
Defra	Department for Environment, Food and Rural Affairs
EA	Environment Agency
ECC	Essex County Council
EDWT	Engineering, Drainage & Water Team, Epping Forest District Council
EFDC	Epping Forest District Council
EFPB	Essex Flood Partnership Board
FRAZ	Flood Risk Assessment Zone (Epping Forest)
FWMA 2010	Flood and Water Management Act 2010
Groundwater	Definition - 'All water which is below the surface of the ground and in direct contact with the ground or subsoil.' *Flood and Water Management Act 2010*
HA	Highways Authority
HA 1980	Highways Act 1980
HAET	Highway Authority Enforcement Team
IDB	Internal Drainage Board
IS	ECC Information Systems (IS) Team
IUD	Integrated Urban Drainage
LA	Local Authority
LDA 1991	Land Drainage Act 1991
LLFA	Lead Local Flood Authority
LPA	Local Planning Authority
MoU	Memorandum of Understanding

Ordinary Watercourse	Definition: A watercourse that is not part of a main river… all rivers and streams, ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991) and passages, through which water flows.' *Land Drainage Act 1991*
PSEGSC	Place Services and Economic Growth Scrutiny Committee
Receptor	Can include: • A "habitable property" defined as any building or structure that is in a condition where it is capable of being used for human habitation or business. • A "highway" as defined by the Highways Act 1980. This would include footpaths and bridleways. • An "ancillary property" defined as any building or structure that is used for any purpose ancillary to a habitable property. • Features of "acknowledged importance" including but not limited to listed buildings, scheduled ancient monuments and other sites and objects recognised to be of special archaeological, architectural or historic interest and designated wildlife sites. • Any other land that is in the opinion of the Council considered to be of significant amenity value to the residents of the affected area.
Riparian owner	**Who is a Riparian Owner?** Under common law you are the riparian owner of any watercourse within or adjacent to the boundaries of your property. Where a watercourse is sited between two or more property boundaries each owner may be equally responsible.  **Riparian Owners Rights** You have the right to receive a flow of water in its natural state, without undue interference in quantity or quality. You have the right to protect your property against flooding from the watercourse and also to prevent erosion of the watercourse banks or any structures. **Riparian Owner Responsibilities** As a riparian owner your responsibilities include the maintenance of the bank and bed of your section of watercourse, in order to avoid any obstruction of flow in the watercourse.

RMA	Risk Management Authority
SLA	Service Level Agreement
SUDs	Sustainable Drainage Systems
Surface water runoff	Definition: 'Rainwater including snow and other precipitation – which is on the surface of the ground (whether or not it is moving), and has not entered a watercourse, drainage system or public sewer.' *Flood and Water Management Act 2010*
SWMPs	Surface Water Management Plans
TFG	Task and Finish Group (Third Party Responsibilities and Flood Management)

	AGENDA ITEM 9
	PSEG/27/15
Committee:	**Place Services and Economic Growth Scrutiny Committee**
Date:	**26 November 2015**
WORK PROGRAMME (Minute 11/October 2015)	
Enquiries to:	**Christine Sharland, Scrutiny Officer** Telephone no 03330134569 **Christine.sharland@essex.gov.uk**

A summary of current and future scheduled Committee activity is set out in a tracker document attached at the Appendix.

GROWTH SCRUTINY COMMITTEE WORK PROGRAMME

MONTH AT A GLANCE (with links to papers)	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16
	Cttee meeting	Activity Day	Cttee Meeting	Activity Day	Activity Day
	26 th	**17th**	**21st**	**25th**	**24th**
	Papers deadline	Papers deadline	Papers deadline	Papers deadline	Papers deadline
	3rd	**24-Nov**	**29-Dec**	**2nd**	**1st**
	Other activity dates	Other activity dates	Other activity dates	Other activity dates	Other activity dates
	TBC	**TBC**	**TBC**	**TBC**	**TBC**
	SORT by Nov-15	SORT by Dec-15	SORT by Jan-16	SORT by Feb-16	SORT by Mar-16
Work Programme Chairman and Scrutiny Officer	Update		Update		
Jobs, Welfare & Skills Scrutiny Review Cllr Kevin Bentley, Jess Hayes	Briefing and update	T&F	Final Report to be submitted for endorsement		
Ringway Jacobs Contract - Cllrs Bass & Johnson	Report to Committee on outcome of the briefing in September - deferred to January meeting		Report on content of September briefing		
Performance Reporting Business and Intelligence Team	Briefing		Update		
Bus and Passenger Transport Strategy: 'Getting around In Essex' Cllrs Bass and Johnson, Helen Morris	Cabinet member response to Committee recommendations from previous month				
Flood Management and Third Party Responsibilities - Scrutiny review Cllrs Bass,Hirst & Johnson	Final report to be submitted for endorsement				
Devolution Councillor Finch	Briefing				
Parking Partnerships - Cllr Johnson			Briefing on Partnerships and executive review		Consideration of proposals arising from executive review
Pavement Parking -Cllr Johnson			Briefing		
Utility companies & Highways Maintenance - Cllr Bass & Cllr Johnson					
Local Highways Panel Cllr Bass & Johnson, Paul Bird		T&F	T&F	T&F	T&F
Skills and Employment: Engagement with National Agencies and Programmes Cllr Kevin Bentley,					
Part Night Lighting Cllr Rodney Bass, Paul Bird					
Financial Inclusion The Leader					
Public Transport Network for Essex Cllr Rodney Bass, Paul Bird					
Local Transport Plan & Economic Growth Cllr Rodney Bass, Paul Bird					
Commissioning Strategies Cllrs Bass, Bentley, Jowers and Walters, Alaistair Gordon					
Highways Maintenance and Repair of Potholes Cllrs Bass and Johnson, David Forkin					
EU Funding and Brussels Office Cllr Kevin Bentley					
Country Parks Car Parking Charges Cllr Roger Hirst, Tim Dixon					
Stansted Airport Councillors Bass, Bentley and Hirst					

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	Other activity dates	Other activity dates	Other activity dates	Other activity dates	Other activity dates
	TBC	**TBC**	**TBC**	**TBC**	**TBC**
Speed Limit at Rivenhall (withdrawn call-in) Councillors Bass and Johnson					
Colchester Town Centre TRO (withdrawn call-in)					
Solid Recovered Fuel - Cllr Bentley					
Joint Municpal Waste Management Strategy & Visit to Tovi Eco Park Councillor Bentley					
Essex Replacement Waste Local Plan - Cllr Hirst					
Local Enterprise Partnerships/ SELEP - Cllr Bentley					
Recycling Centres for household waste - Cllr Kevin Bentley, Jason Searles					
Commissioning strategies :Environmental Aspirations - Cllr Hirst					
Bradwell Nuclear Facility -Cllr Hirst					
Strategic Planning -Cllr Hirst					