

		AGENDA ITEM 7
		PSEG/03/17
Committee:	Place Services and Economic Growth Scrutiny Committee	
Date:	17 January 2017	
THIRD PARTY RESPONSIBILITIES AND FLOOD ENFORCEMENT SCRUTINY REPORT: UPDATE (Minute 6/ 22 September 2016)		
Enquiries to:	Christine Sharland, Scrutiny Officer Christine.sharland@essex.gov.uk	

### **Purpose of report**

To receive an update from Cabinet Members on the following recommendations 2 and 3 set out in the above 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.'

## **Background**

In November 2015 (Minute 8) the Committee endorsed the Scrutiny Report 'Third Party Responsibilities and Flood Enforcement in Essex'. The scrutiny report contained five recommendations, which were duly sent to the relevant Cabinet Members. The Report can be accessed via the following link: [Scrutiny Report](#)

*Alternatively the Scrutiny Report may be found on the Essex County Council website [www.essex.gov.uk](http://www.essex.gov.uk) From the Home Page, click on 'Your Council', then on 'Meetings and Agendas', then on 'Public Documents' followed by 'Scrutiny Reports'. Finally, select the scrutiny reports from the list reports that have been published.*

Interim Cabinet Member responses were reported to the Committee in March 2016 (Minute 8), and May 2016 (Minute 9).

On 22 September 2016 (Minute 6) Councillor Walsh, Cabinet Member for Environment and Waste, and Councillor Johnson, Cabinet Member for Highways and Transport, provided a detailed update in respect of recommendations 2 and 3 that relate to their Cabinet portfolios. The original briefing paper setting out that update is attached at the Appendix to this report.

*The following link can be used to access the full report submitted to the Committee in September: [September committee report](#)*

## **Analysis**

Councillor Walsh, Cabinet Member for Environment and Waste, and Councillor Johnson, Cabinet Highways and Transport, have been invited to this meeting to give oral updates on those matters referred to in the aforementioned recommendations as they relate to their portfolios.

This item provides the Committee with a further opportunity to ask questions of Cabinet Members on matters relating to this particular Scrutiny Report with the aim of drawing this particular scrutiny project to a conclusion.

As part of the planning for this meeting Councillor Guggleilmi took the opportunity to propose the following questions that he wished Cabinet Members to answer at the meeting:

‘There is an on-going frustration at the lack of enforcement from Essex County Council (ECC), against riparians when complaints are raised with regard to properties, which have been subjected to flooding because of the lack of fulfilling their maintenance obligations.

Within the September briefing paper prepared by the Lead Local Flood Authority Manager on 22nd September 2016 (*reproduced at the Appendix to this report*), it is stated:

‘3.15 The pilot Highway Enforcement Project has built a strong working relationship with the Flood and Water Management Team, the immediate need to secure a memorandum of understanding with them to use the Land Drainage Act 1991 was fundamental to allow the Highways Enforcement Team to potentially recharge landowners who fail to undertake works to their watercourses.’

1. What progress has been made?
2. Have all Parish Councils in Essex been made aware of the “Where Does Water Go” (WDWG) projects, which involves Parish Council and other volunteer groups in mapping and collecting data on local ordinary watercourses?
3. Is there a clear Enforcement Strategy that sets out how ECC will respond and deal with alleged breaches?
4. Can Parish Councils be provided with some clear information on who to contact in case of flooding in their area? What response can they expect from ECC, especially in an emergency?
5. Is there a protocol in place with District and Borough Councils when flooding occurs, beside Gold Command in very extreme cases? In my particular situation Tendring DC has a very good track record when responding to a flood emergency, even though it is not their direct responsibility, but I am not aware that there is a formal agreement with ECC. Is this something that should be considered?’

Councillor Pond, who was a member of the original Task and Finish Group that conducted the in depth investigation, has drawn attention to the update sought in recommendation 2(3) on an evaluation of the Maldon pilot and its roll-out to the rest of Essex.

**Action required by the Committee at this meeting:**

**To note the Cabinet Members' responses in respect of recommendations 2 and 3, and for Committee Members to clarify any related points that may be outstanding so that this particular review may be drawn to a final conclusion.**

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**Note**

*Aside from the matters specifically referred to by the Cabinet Members as part of this item, two other recommendations from the scrutiny report will be the subject of separate items to this Committee namely:*

- *At today's meeting there will be a briefing to provide an overview on 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 (recommendation 4); and*
- *at the meeting on 23 February there will be an item about IS and Communications support in raising public awareness about the Council's services such as flood management (recommendation 5).*

## Appendix



**Cabinet Office**  
County Hall  
Chelmsford  
Essex CM1 1QH

To: Councillor Derrick Louis  
Chairman of the Place Services and Economic Growth Scrutiny Committee

13 September 2016

Dear Cllr Louis,

### **Scrutiny Report on Third Party Responsibilities and Flood Enforcement**

Having been closely involved in the scrutiny review itself, we are both mindful that the Committee would find it useful to have an update on the progress we have made in relation to those matters highlighted in the recommendations. Officers have developed the attached report helping to identify actions taken across our two portfolios to coordinate flood prevention and enforcement activity since the publication of the report.

With particular reference to recommendation 4 concerning *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*, we confirm that work is underway to coordinate a cross-portfolio update to the Committee.

Similarly we understand that arrangements are to be made for the Committee to receive a briefing on IT and Communication support across the Council's frontline services including the Flood Management Team.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Walsh', with a long horizontal stroke extending to the right.

**Cllr Simon Walsh**  
**Cabinet Member for Environment**  
**and Waste**

A handwritten signature in black ink, appearing to read 'Eddie Johnson', with a circular flourish at the top and a long horizontal stroke extending to the right.

**Cllr Eddie Johnson**  
**Cabinet Member for Highways**  
**and Transport**

<b>Report title:</b> Third Party Responsibilities and Flood Enforcement in Essex Scrutiny Report; Update on recommendations	
<b>Report to:</b> Place Services and Economic Growth Scrutiny Committee	
<b>Report author:</b> Lucy Shepherd Lead Local Flood Authority Manager	
<b>Date:</b> 22 <sup>nd</sup> September 2016	<b>For:</b> Discussion
<b>Enquiries to:</b> Lucy Shepherd, Lead Local Flood Authority Manager, <a href="mailto:lucy.shepherd@essex.gov.uk">lucy.shepherd@essex.gov.uk</a> ; John Meehan, Acting Head of Environment and Flood Management, <a href="mailto:john.meehan@essex.gov.uk">john.meehan@essex.gov.uk</a> ; Peter Massie, Head of Commissioning Essex Highways, <a href="mailto:peter.massie@essex.gov.uk">peter.massie@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## **1. Purpose of Report**

To report back to the Committee on progress against the recommendations outlined in the Scrutiny Report on Third Party Responsibilities and Flood Enforcement in Essex.

## **2. Recommendations**

- 2.1 Note the progress made against the recommendations included within the Scrutiny Report on Third Party Responsibilities and Flood Enforcement in Essex.

## **3. Summary of issue**

- 3.1 The Scrutiny Report on Third Party Responsibilities and Flood Enforcement in Essex was endorsed and published by the Place Services and Economic Growth Scrutiny Committee in November 2015. An update on progress towards delivering the recommendations outlined in the report is provided below by recommendation in sequence.
- 3.2 A full list of recommendations taken from the Scrutiny Report on 'Third Party Responsibilities and Flood Enforcement in Essex' has been highlighted within **Appendix 1**.
- 3.3 Befitting the partnership approach to this piece of work Action points falling within the remit of both Essex County Council's (ECC) Flood and Water Management Team and Essex Highways are covered within the report.

### *Recommendation 2a) Where Does Water Go?*

- 3.4 The Committee requested:

*'An update on the production of the Where Does Water Go databases that are being developed to enhance flood management.'*

- 3.5 Where Does Water Go (WDWG) projects involve Parish Council and other volunteer groups mapping and collecting data on local ordinary watercourses.
- 3.6 The project has been a great success and in 2015/16. We gained a total of 62 volunteers who have contributed 496 hours in total.
- 3.7 **Table 1** below shows those parishes or groups that have been involved in 2015/16, and those who we are engaged in new projects in 2016/17.

**Table 1:** Volunteer Groups involved in WDWG Project

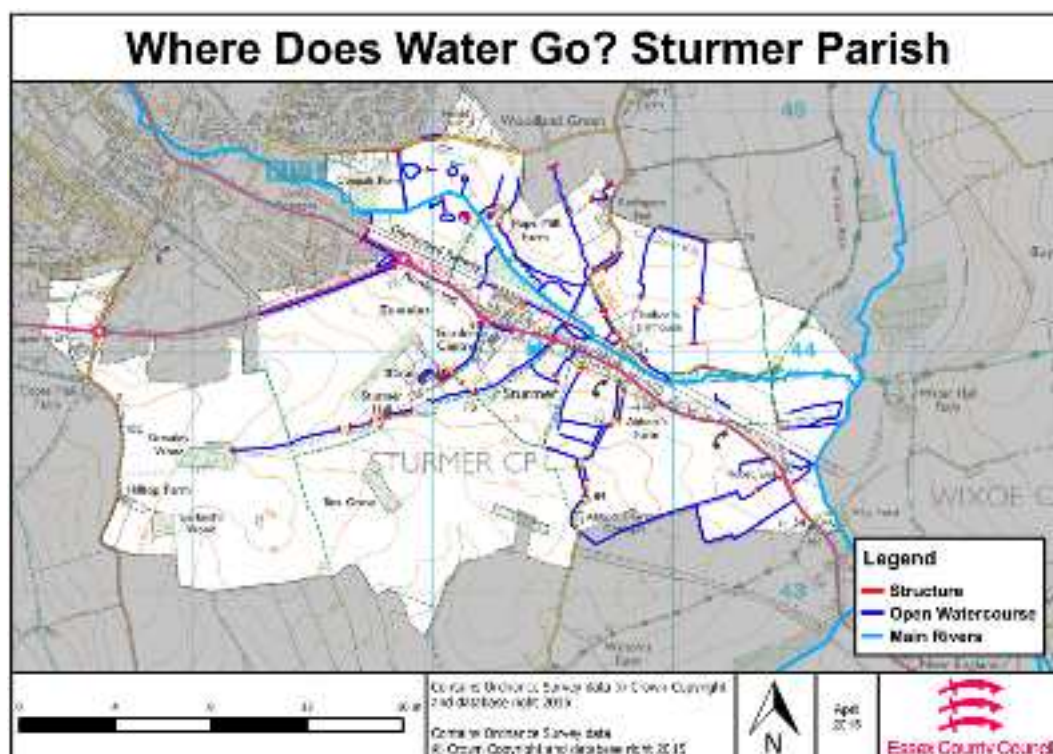
WDGW Projects 2015/16	WDGW Projects 2016/17
Canvey Island (Rural Areas)	Purleigh Parish Council
Rawreth (later dropped out)	Chapel and Wakes Colne
Halstead	Mundon
Wickham Bishops	Utling and Langford
Gold Hanger	Elsenham
South Woodham Ferrers	Berden
Steeple Bumpstead	Radwinter
Thaxted	Runwell PC
Coggeshall	
Bowers Gifford and North Benfleet	
Messing (later dropped out)	
North Fambridge	
Heybridge (later dropped out)	

- 3.8 ECC's Flood Assets Officer is currently in the process of digitising maps, photographs and reports collected by our volunteer groups in 2015/16. **Figure 1** demonstrates an example of a good dataset collected during a historic WDWG project with *Sturmer Flood Action Group*.
- 3.9 The datasets provided to us by volunteers are used by the Flood and Water Management Team to populate our flood risk 'Asset Register'. ECC have a statutory requirement to hold this register under the Flood and Water Management Act 2010.
- 3.10 On average our WDWG projects log 150 flood assets each, we've had 15 projects to date, so that's up to a third of our total asset database at just under 7000 assets.
- 3.11 Information is used on a daily basis as part of our watercourse regulation, and statutory planning role.
- 3.12 Known drainage assets are held in a highways database (*Confirm*) and information about them is being updated in line with Essex Highways delivery team work. For example, the gully records are updated as part of the gully cleansing programme, so that the levels of silt in each gully prior to cleansing

is loaded into the database. This will provide evidence to guide priority decisions concerning where to target available funds.

- 3.13 Where specific works are undertaken to assets, any formal data surveys will be uploaded to database also, for example, the work following the Canvey Island flooding incident will be used to update records in the database. This provides a growing understanding of assets and their condition.

**Figure 1:** Sturmer Flood Action Group dataset



*Recommendation 2b) and 2c)- Highways and Flood Team joint Enforcement and MoU update*

- 3.14 The Scrutiny Committee requested:  
*'an update on what outcomes may accrue as a result of the Teams working more closely together and the formal Memorandum of Understanding (MoU)', and that*

*'...Maldon Highway Enforcement Pilot Project... 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...'*

- 3.15 The pilot Highway Enforcement Project has built a strong working relationship with the Flood and Water Management Team, the immediate need to secure a memorandum of understanding with them to use the Land Drainage Act 1991 was fundamental to allow the Highways Enforcement Team to potentially recharge landowners who fail to undertake works to their watercourses.

- 3.16 Landowner liaison has proved a very successful resolution as the Enforcement team has not had to proceed with any formal action to date. Having the ability to utilise the LDA 1991 under the MoU was a vital persuasive tool in the teams work, as the ability to recharge for works is not an option under the Highways Act 1980.
- 3.17 In total the pilot team dealt with just fewer than 100 enforcement cases during the project (including other highway matters such as overhanging vegetation and weight restrictions).
- 3.18 A further positive outcome was improved links with asset management and capital project teams to promote partnership and sharing of information, providing a more joined up service for the customer.
- 3.19 Traditionally Highways has had very limited resource to undertake enforcement issues. By working together with the Flood and Water Management Team, Highways has improved its legislation knowledge and more importantly its practicable application.
- 3.20 Further to a number of meetings to discuss the pilot outcomes, the project came to an end in March 2016. However, recent developments have now meant that additional funding has been made available to extend the Enforcement Pilot for a further 12 months, with an expected start in October 2016. The team will target known flooding sites that coincide with proposed maintenance works on areas of the network with lower condition scores. This will mean that not only are flooding issues remedied, but that benefit of capital investment in roads maintenance is maximised.

### *Recommendation 3) Flood and Water Management and Planning*

- 3.21 The Scrutiny Committee requested:  
  

*'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*
- 3.22 Officers have been regularly attending the Essex Planning Officers Association Development Management Forum to raise the profile of surface water drainage and flood risk in strategic planning.
- 3.23 Recent relationship meetings have taken place with the majority of LPAs to review progress during ECC's first year as a statutory consultee for surface water flood risk on major planning applications (10+ homes, building floorspace 1000sq.m+ or 1ha+). We also presented key statistics in a report to the Essex Flood Partnership Board in April 2016.
- 3.24 The Essex SuDS Design Guide (Figure 2) and SuDS Adoption Policy are actively promoted amongst partners. In addition, we also contributed to the drafting of the Essex County Council Developers Guide to Infrastructure

Contributions. We will continue to encourage the pre-application discussion with us, both directly with developers and via LPAs.

*'establishing the principle of seeking Community Infrastructure Levy (CIL) to address local flooding issues'.*

- 3.25 Flood and Water Management Officers have also been working closely with colleagues from spatial planning to respond to Local Plan consultations, Infrastructure Delivery Plans and CIL consultations, CIL 123 list and funding gap consultations.

**Figure 2:** SuDS Design Guide



- 3.26 Our aim is to actively promote our Surface Water Management Plans as the primary evidence base for LPAs to determine their flood risk management infrastructure, and also to provide an indicative idea of the cost of delivery.
- 3.27 To date we have successfully secured developer S106 contributions for flood alleviation schemes in Castle Point Borough Council and Colchester Borough Council.

*Recommendation 4: Infrastructure update*

- 3.28 Work is underway to coordinate a cross-portfolio update to the Committee on ECC and partners approach to infrastructure, including flood elements.

*Recommendation 5: IT and communications support*

- 3.29 The Flood and Water Management team are working closely with IT and Communications support around Recommendation 5, and will provide case study material for the proposed briefing to the Scrutiny Committee.
- 3.30 The Flood and Water Management team are continuing to work with IT to improve:
- The performance of mapping tools;
  - information sharing across teams;
  - use of social media; and
  - new software that will improve the service.

#### **4. List of appendices**

*Appendix 1: Recommendations from the Scrutiny Report on 'Third Party Responsibilities and Flood Enforcement in Essex'*

#### **5. List of Background papers**

None

#### **APPENDIX 1**

List of Recommendations taken from the Scrutiny Report on Third Party Responsibilities and Flood Enforcement in Essex

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:
  - a) 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.
  - b) 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).

c) 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.