

		AGENDA ITEM 7
		PSEG/34/14
Committee:	Place Services and Economic Growth Scrutiny Committee	
Date:	27 November 2014	
Third Party Responsibilities and Flood Management Task and Finish Group – Progress Report (Minute 7/ October 2014)		
Enquiries to:	Christine Sharland, Scrutiny Officer 01245 430450 Christine.sharland@essex.gov.uk	

In June 2014 (Minute 5) the Committee agreed that a task and finish group be established to conduct a scrutiny review around third party responsibilities and flood management.

As reported to the Committee in October 2014 (Minute 7) the Third Party Responsibilities and Flood Management has been meeting since September and a scoping document is now attached at the Appendix for endorsement. The document sets out the framework for this scrutiny review based on the Group's preliminary research. However, the Group is mindful that since the review was agreed in June the Executive has been introducing some new initiatives such as a Land Drainage Enforcement Policy, and a Highways Pilot Enforcement Project in Maldon. These will have to be taken into account as a part of the review and may affect the way it moves forward.

Since the Committee's last meeting Councillor Andy Wood has advised that due to other commitments he has resigned from this Task and Finish Group.

Action required by the Committee at this meeting:

To endorse the scoping document as now attached to this report.

**Essex County Council
Overview and Scrutiny Committee
Review Scoping Document**

This form is a tool that should be compiled at the start of each inquiry to set out clearly the aims and objectives of the committee's involvement in a particular matter, and will be completed at the end of the inquiry to confirm what has been achieved. The form also provides an audit trail for a review.

Review Topic (Name of review)	Third Party Responsibilities and Flood Management
Committee	Place Services and Economic Growth Scrutiny Committee
Terms of Reference	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.
Lead Member, and membership of Task and Finish Group	Councillors Graham Butland, Chris Pond, Simon Walsh, and Andy Wood
Key Officers / Departments	Lucy Shepherd, Flood Risk Partnership Manager Peter Rose, Policy and Performance Manager, Essex Highways
Lead Scrutiny Officer	Christine Sharland, Scrutiny Officer
Relevant Portfolio Holder(s)	Cabinet Members for Libraries, Community and Planning, Councillor Hirst, and Cabinet Member for Highways and Transportation, Councillor Bass
Relevant Corporate Links	<i>TBC Checking latest corporate plans decision making eg new policy and protocol underway Statutory responsibilities</i>
Type of Review	In depth investigation by a Task and Finish Group

Timescales	<p>The in depth review the review will focus upon the enforcement powers available to the Council and the way that those powers may be exercised effectively. The aim is to complete the review within a six month timeframe subject to detailed planning.</p>
Rationale for the Review	<p>The Council recently acquired new statutory flood management responsibilities under the Flood and Water Management Act 2010 in addition to existing powers under the Highways Act 1980. Given the Council's enhanced powers and increased responsibilities to reduce the incidence of flooding across the county, there are management and resource implications for more than one of its services. Failure to discharge some of its duties could result in claims against the Council.</p> <p>Flood management is of significant public interest especially as the incidence of flooding has increased in recent years. Major changes in national legislation have been implemented to try to address identified problems.</p> <p>Aside from its original responsibilities as a Highways Authority, the County Council is now a Lead Local Flood Authority (LLFA) with overall responsibility for local flooding (surface water, groundwater and ordinary watercourses). Critically there is an increased expectation of the Council to utilise its powers as illustrated by the number of flooding cases being referred to it as the LLFA. Briefings to promote understanding of the changes that have taken place, have been held for County Councillors.</p> <p>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. In view of the opportunities to the Council as a LLFA and Highways Authority, and in its community leadership role, it is important to ensure that it is co-ordinating its flood management activities and making effective use of the powers available.</p> <p>At the time of developing this review the County Council's policies with regard to using its powers for enforcing third party responsibilities associated with flooding or drainage have not been fully developed. Given the nature of the topic and public interest (and indeed potentially competing interests of rural/urban landowners and residents) a scrutiny review could provide a vehicle for raising awareness, as well as a forum for the consideration of policies and resources towards the effective use of the range of enforcement powers that it may exercise.</p>

Scope of the Topic	<p><u>Included</u> The following is included in the scope of the review:</p> <ul style="list-style-type: none"> County council flood management related enforcement powers in terms of third party responsibilities <p><u>Excluded</u> The following falls outside the scope of the review:</p> <ul style="list-style-type: none"> Broader flood management matters
Key Lines of Enquiry	<p>A fuller list of the key lines of enquiry and questions are set out at the Appendix. However, the following themes highlight the main areas of the enquiry:</p> <ol style="list-style-type: none"> 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?
Other Work Being Undertaken	<p>Changes in national legislation mean that flood management is evolving as a new area of activity for county councils. There is a lot of national and local activity taking place in relation to implementing the changes as well as addressing the effects of major flooding that has taken place in recent years across the whole country. Consequently there is an increasing impetus to address local issues and implement improvements in the way flooding is managed. This review will focus on one particular area namely enforcement and third party responsibilities.</p> <p>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.</p>

What primary / new evidence is needed for the scrutiny?	<p>Existing legislation Existing case law A collaborative account of existing ECC enforcement policy from relevant services involved, together with an account of the existing resources allocated to the Council's respective roles and responsibilities subject of the review</p>
What secondary / existing information will be needed?	<p>Approach taken by other local authorities</p>
What briefings and site visits will be relevant to the review?	<p>Site visits – where there may be merit in the Group seeing firsthand the difficulties associated with enforcement</p> <p>Meeting contributors outside of County Hall</p>
Who are the witnesses who should be invited to provide evidence for the review?	<p>ECC Officers from relevant services</p> <p>Cabinet Members</p> <p>Other Essex districts including Epping Forest District Council (Flood Management Team), Maldon District Council (where pilot enforcement to be conducted)</p> <p>Environment Agency and Local Authorities previously held the powers under the Land Drainage Act prior to them being transferred to ECC in 2011. They may have evidence of the challenges.</p> <p>Representatives of third parties with responsibilities for flood mitigation eg NFU, CLA –utilities and railways</p> <p>Members of the public who may have requested ECC to use its powers if their cases need to be presented.</p> <p>As more services are delivered with partners or are shared with other Councils, scrutiny needs to ensure that those partners are an integral part of the review process, so identifying them at the scoping stage will ensure they are included eg Essex Highways .</p>

Implications	<p>In terms of topic, have the following matters been taken into consideration in the planning of this review:</p> <p>Legal implicationsYes Financial implicationsYes Equality and diversity issues..... Yes Other critical implications..... <i>Reputational/Political</i></p>
What resources are required for this review?	<p>There will be travel expenses associated with collating evidence from contributors and a site visit. Also conferences if relevant to review.</p>
Indicators of Success	<ul style="list-style-type: none"> • An effective co-ordinated ECC approach to flooding and drainage enforcement of third party responsibilities with clear policies and protocols. • Improvements in the decision making process and service delivery • Reduced expectation of ECC to undertake works which are a third party responsibility. • Reduction in the number of flooding cases referred where third party responsibilities have not been fulfilled
Provisional Timetable	<p>First meeting 17 September, with aim to conclude investigation within six months. It would be helpful to undertake a review fairly urgently to feed into the developing Commissioning Strategy.</p> <p>Other identified meeting dates: 27 October, 13 November (cancelled), and 1 December.</p>

Audit Trail

Date review formally proposed	Minute 5/ June 2014 (inclusion in work programme and abbreviated draft scoping document)
Date of Committee's approval of original scoping document	Identify minute number and date of meeting
Date of Committee's approval of Scrutiny Report	Identify minute number and date of meeting
What was the outcome of the review?	Summarise outcome of review and identify if any recommendations have been agreed.
Date proposals arising from review are formally forwarded to the Executive	
How will the outcomes of the review be monitored?	
Date outcomes of review monitored formally by the Committee	Identify minute number and date of meeting

Appendix

Third Party Responsibilities and Flood Management Task and Finish Group

Key Lines of Enquiry and Questions

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

- What measures does a county council have at its disposal to prevent and mitigate flooding with particular reference to enforcement powers on public and private land?
- How may the various enforcement powers be applied and what options in practice does a county council have at its disposal to ensure appropriate action is taken by third parties who have flood mitigation responsibilities?
- In practice what are the local barriers that a county council may face in the effective use of the various powers at its disposal? What are the strengths and weaknesses of the various powers available?
- What flood management powers did district councils have in the past before they were transferred to county councils or other bodies? What powers have they retained?
- What funding support does a local authority receive from central Government towards its flood management roles?

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?

- What policies and protocols does ECC have in place for both land drainage and highways flood management enforcement?
- Does the Executive have any planned activity to review and implement any new policies and protocols, and how will they be funded and implemented and what would the proposed timescale be?

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?

- What resources has ECC deployed currently for the enforcement of those powers that are at its disposal? (to include an overview of funding, staff, data,

access to external resources, and the co-ordination of the activities of different Teams).

- For the purposes of this review, what relevant data is available on the number and nature of 'flooding cases' referred to ECC where it has the potential to take enforcement action upon third parties to mitigate flooding? What data is available at a national level by way of comparison?
- What are the costs and savings associated with enforcement action?
- How can ECC promote best practice? As some land drainage powers were formerly within the purview of district councils, does the County Council have any working arrangements with the district councils around flood management given their experience and, inter alia, what are the opportunities or otherwise for greater partnership working, and the spread of best practice.

What lessons of best practice in flood management enforcement can be found elsewhere in the country?

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

- What measures does ECC have in place to promote better public understanding of third party responsibilities and educate the public about effective flood alleviation? Are there any plans to change its current approach?
- How does the ECC approach compare with other local authorities, and is there any best practice that could be harnessed in Essex?
- Are there any local conditions that pose difficulties for developing an effective programme to inform and educate Essex residents about their own roles in flood alleviation?
- Given the structure of ECC flood management resources, is there any co-ordination of promotional materials and resources so that there is clarity for residents in the quality and delivery of information?
- How could an effective educational programme for flood management be delivered and reduce the need for the ECC to pursue enforcement action where third parties have failed to fulfil their statutory responsibilities.