

***Review of Maintenance
of Rivers and Tributaries***

***Report of the
Scrutiny Committee***



***Scrutiny Committee
10 March 2009***

1. Introduction

1.1 A scoping report for this review was considered by the Scrutiny Committee on 5th August 2008 and set out a number of issues to be considered. These were as follows:

- Understanding the roles of responsibilities of the appropriate agencies and the appropriate legislation which governs maintenance responsibilities;
- Assessing the implications of future changes to those responsibilities;
- Addressing flooding issues and recommendations from the recent Pitt review of flooding;
- Assessing the impact of climate change and the adaption plans of responsible agencies including impacts on water supply, water quality and biodiversity;

1.2 Meetings to progress the review were held as follows:

- 28th October 2008 – evidence received from the Environment Agency, Internal Drainage Boards and the Borough Council's Engineering Projects Team.
- 13th January 2009 – evidence received from the Kent Wildlife Trust and the Medway Valley Countryside Partnership.

2. Key Issues Emerging from the Review

2.1 The Review Group received presentations and supporting information from each of the agencies invited to take part in the review as listed above. From those discussions, a number of issues have arisen as follows.

(a) Responsibilities for Land Drainage

2.2 The review heard that working relationships between the Environment Agency (who has responsibility for all main rivers), the Internal Drainage Boards (responsible for defined ordinary watercourses) and the Borough Council (responsible for other natural streams and watercourses) were generally effective, particularly at the operational level. However, it was noted that the Pitt Review (see below) might result in changes to those responsibilities with a more significant role likely to fall to upper tier

authorities in two tier areas such as Kent, responsibilities which have not previously been exercised at that level. Any new arrangements would thus need to ensure that current effective liaison and joint working between the responsible authorities were not damaged by the imposition of a new level of responsibility, particularly where more local operational issues needed to be addressed quickly and effectively through informal liaison.

- 2.3 Better clarity over the precise responsibility for various watercourses is needed in some areas. For example, powers of enforcement on land drainage was noted as one area where clarification is required as the Borough Council currently has to refer such matters to the EA for some watercourses for which it is responsible but is able to deal enforcement issues on other watercourses itself.
- 2.3 The review did highlight a potential need to ensure that public awareness of the split of responsibilities for land drainage matters is improved, particularly for those riparian landowners who have responsibilities for watercourses running through or adjacent to their landholdings. More publicity about these roles (pending the outcome of the Pitt Review) could assist in this and once any new arrangements had been agreed, the development of a single point of contact for drainage issues could also improve the way in which queries or concerns about drainage and maintenance issues are dealt with.
- 2.4 As an example of good practice in this area, a drainage maintenance plan is in the course of preparation for the East Peckham area as an adjunct to the successful works that have taken place around the village, including the dam. The maintenance plan will set out the key elements of the drainage system, what the maintenance regime is, flooding hotspots and contacts and responsibilities in times of flood. This exercise has obviously been built on a significant amount of joint working and has demanded significant resource input by all the agencies.
- 2.5 A further issue identified via the review related to the need to ensure all riparian landowners are aware of their responsibilities for the maintenance of water courses across their land and to ensure agencies have up to date and accurate information on land ownership.

(b) Nature Conservation Issues

- 2.6 The review heard from the Kent Wildlife Trust and the Medway Valley Countryside Partnership of the need to balance issues of biodiversity with those of land drainage and the maintenance of flows in rivers and streams.
- 2.7 It is now a statutory duty to promote biodiversity and such interests should generally take precedent over other considerations. However, both the EA and the IDB confirmed that they sought to strike an

appropriate balance between such considerations when undertaking improvement works locally. A particular area of conflict related to the need to maintain land drainage to support agricultural use of the land affected and to maintain flows to ensure continued recreational use of watercourses. It was acknowledged that, in these cases, works to watercourses where nature conservation arose needed to be carefully balanced with the need to maintain economic use of adjacent land where agricultural or recreational uses were considered important. The proposed new local drainage partnerships, as suggested by the Pitt Review, might be one means by which such conflicts could be resolved.

- 2.8 The likely impact of climate change will lead to a larger number of flooding incidences potentially of greater severity than has been seen to date. There is a consequent need for additional improvements and works to be undertaken to watercourses to adapt to these climatic changes and impact. However, at the current time, there is no indication that additional funding for the responsible authorities to implement such work will be forthcoming.
- 2.9 The Borough Council, in partnership with the County Council, is preparing a Climate Change Adaption Plan to address the impact of future climate change scenarios being published shortly by the Government. As part of this work, analysis of adaptations required and the funding implications for various agencies will need to be explored.

(c) *The Pitt Report*

- 2.10 The review took place at the same time as the Pitt report on the Summer 2007 Floods was published. This was followed by the publication of the Government's response to the Pitt recommendations. Their response was to accept them all and to promote the publication of a Floods and Water Bill to bring forward the necessary changes in primary legislation to implement some of the key the recommendations. The key focus of such proposed changes is the likely enhanced leadership role for flooding matters to be given to the County Council (in two-tier areas) and the proposal to create drainage partnerships to ensure co-ordination of effort is achieved locally. It is not yet known what the expectation will be for district councils or indeed what level of additional funding will be available.
- 2.11 Many of the issues raised by this scrutiny review will be matters addressed in the draft Bill, or subsequently, by any new arrangements for flooding and drainage which are put in place. Whilst the draft Bill has not yet been published, it is evident that further clarity on the following points will be required to address adequately these review issues:
- To seek greater recognition of the role of district councils and consequential resources required to implement, in partnership with the County Council and other partners, those likely additional responsibilities on flood risk and management that the Bill will promote.

Ideally, such a responsibility should be a shared one between districts, county and partners not led by County Councils in isolation;

- To seek clarification on what powers the new proposed drainage partnerships will have to address some of the issues noted above, in particular, to promote a commitment to basing such partnerships on both specific localities (for example, district council areas) to ensure that local operational drainage issues can be properly addressed in addition to those of a more strategic nature that can be dealt with at County level;
- To ensure that the public and land owners are aware of the individual responsibilities of each agency, for example, if the proposed 'drainage partnership' could have a single point of reporting arrangement for such enquiries;
- To clarify and streamline enforcement responsibilities related drainage issues to ensure there is no overlap or duplication between responsible authorities;
- To ensure the planned partnership arrangements have the appropriate powers to resolve the balance to be struck between works to improve drainage and flooding capacity and the statutory need to promote biodiversity;
- To seek a commitment to the provision of additional financial resources to local authorities to accommodate such additional new responsibilities, including the need for additional skilled and suitably qualified staff and the need to carry out more extensive land drainage works given the impact of climate change;

3. Conclusions and Recommendations

- 3.1 The key recommendation of this review is that the Borough Council should seek to influence the content of the Draft Floods and Water Bill on the above points. The Borough Council should await its publication, evaluate its proposals in relation to the above review issues and determine how best it could take up these (and any other issues) with Government as part of the procedures required to adopt the Bill. Joint working with local partners over such issues will be required as any new arrangements are likely to be very different from the existing regime.
- 3.2 The review has been useful, however, in pinpointing a number of issues that the Borough Council can be aware of as it seeks to influence the progress of the Bill as it proceeds through its parliamentary stages. That will be a matter for the Planning and Transportation Advisory Board to advise the Cabinet on when the draft Bill is published and should any amendments be proposed through the parliamentary process

Recommendations

- 3.3 That the Planning and Transportation Advisory Board be invited to consider the draft Floods and Water Bill when published;
- 3.4 That the above issues be taken into account by that Board in formulating any comments to be made on the Bill both at the publication stage or subsequently as part of any further amendment process:
- 3.5 That the Environment Agency, Internal Drainage Boards, Kent Wildlife Trust and Medway Valley CP be invited to participate in that process in partnership with the Borough Council.