**Medway LLFA Statutory Consultee Performance Report 15 April 2015 – 31 Mar 2016**

**August 2016**

1. **Introduction**

Medway Council in its remit as Lead Local Flood Authority was made statutory consultee in respect of surface water for major development on April 15 2015. The role of statutory consultee is defined through the Town and Country Planning Act 1990; Town and Country Planning (Development Management Procedure) (England) Order 2015; and, Planning and Compulsory Purchase Act 2004.

Statutory consultees have a duty to respond to statutory consultations within 21 days in accordance with Article 22 of the Development Management Order. The 21 day period does not begin until the statutory consultee in question has such information to enable a substantive response.

Subsection (5) of Article 22 defined a substantive response as one which:

* 1. states that the consultee has no comment to make;
	2. states that, on the basis of the information available, the consultee is content with the development proposed;
	3. refers the consultor to current standing advice by the consultee on the subject of the consultation; or
	4. provides advice to the consultor.
1. **Performance reporting**

In accordance with Article 23 of the Development Control Management Order, statutory consultees are required to provide reports on their performance for the period of 12 months commencing 1 April in the preceding year (on this occasion 15 April). The reports should be sent to the Department for Communities and Local Government each year, and published on the statutory consultees website.

The report must contain:

* A statement as to the number of occasions on which the consultee was consulted by a person other than a local planning authority and the number responded to within the reporting period (for example pre-application stage consultations).
* A statement as to the number of occasions on which the consultee was consulted by a local planning authority and the number responses to within the reporting period.
* In relation to occasions on which the consultee has given a substantive response outside the period referred to in section 54(4) of the 2004 Act, The reports should be sent to the Department for Communities and Local Government each year, and published on the statutory consultee’s website.
* The number of incidences where negotiated extensions to the 21 day deadline are agreed with the Local Planning Authority a summary of the reasons why the consultee failed to comply with the duty to respond within that period.
1. **Overview of compliance based on consultation type**

Table 1 below provides an overview of compliance for every consultation type received followed by a brief assessment of compliance in the relating to different consultation types.

**Table 1: Statutory Consultee compliance results 1 April 2015 – 31 March 2016**

|  |  |  |  |
| --- | --- | --- | --- |
| **Consultation Type** | **Number of****consultations received** | **Number responded to within 21 days** | **% compliance** |
| Major | 24 | 24 | 100 |
| Minor | 3 | 3 | 100 |
| Other\* | 27 | 23 | 85 |
| **TOTAL** | **54** | N/A | N/A |

\*Other refers to applications related to Change of Use, Householder, Advertisement and Condition discharge. All ‘other’ consultations within this reporting period were Condition discharge applications.

*Consultations overview*

Processes were put in place prior to the commencement of the statutory consultee role to ensure that the LLFA were consulted upon receipt of an application. However there were some instances whereby some consultations were not passed to the LLFA, and there was no obvious reason for this. This resulted in some delay, specifically to responding to three of the four consultations which were responded to outside of the statutory timescales.

Although there are a total of 54 consultations from the LPA, the actual number is higher. The figures represented are based on a single consultation relating to an application; however we are often *re-consulted* as a result of further information being submitted following initial comments or variations. The current system in place only takes into account the original consultation as opposed to a re-consultation so there is some uncertainty regarding the true number of consultations. This issue has been rectified via use of a spreadsheet to record actual number of consultations, type, and the time resource allocated to that consultation.

*Pre-applications:*

Whilst processes were put in place to enable consultation relating to major applications, no formal process was in place to receive pre application consultations. Therefore, some pre app advice given for major applications was not recorded. Our processes have been changed for the reporting period 1 April 16 – 31 Mar 17 to capture this information and ensure LLFA involvement. This is essential at pre app stage to maximise the opportunity to deliver sustainable drainage schemes in accordance with national planning policy and guidance and thus to deliver wider planning objectives.

*Consultations outside remit:*

Although we are only a statutory consultee for major applications, we have responded to consultations for minor applications where there may be concerns relating to potential drainage issues which could result in a significant impact on localised drainage and flooding problems. These do not account for a high number of applications but the Local Planning Authority is requesting more informal advice on minor applications in recognition of the fact that even minor development can have a significant impact on localised drainage and flooding problems. This is also supported by evidence of flood incidents relating to new build minor developments which received permission prior to the LLFA statutory consultee role.

We are developing standing advice and guidance which could address some of the potential issues applicable to minor applications, however often, problems are very site specific which require review at a more detailed level to ensure that there will be no detriment to flood risk and therefore our involvement is limited to those applications where there are known problems supported by appropriate evidence.

*Other consultations:*

All of the consultations recorded as ‘other’ related to the discharge of a surface water drainage condition. There were comparatively a large number of consultations for the discharge of drainage and flood risk related conditions. Many of these conditions were those that had been recommended by the Environment Agency prior to the LLFA statutory consultee role. This resulted in a resource pressure but provides a good indication of the numbers of condition discharge applications expected in a given reporting period to assist resource planning.

Table 1 indicates 85% compliance in meeting the 21 day response time and a total of 4 which were responded to outside of the statutory time period.

Of those 4 consultations, one was rejected by the LLFA outside of the statutory consultee timescale due to it being related to a minor application where there was no local flood risk issues to consider and three were responded to late due to there being no initial consultation but timescales recorded on the ACOLAID assumed the 21 day statutory consultee timescale from the date of validation of the application.

*Objections:*

The LLFA have not formally objected to any consultation received during the reporting period although there have been incidences whereby an initial objection has been informally lodged due to lack of information submitted or further information was required in order to provide evidence towards the acceptability of a drainage scheme (i.e. Site Investigation results).

1. **Summary**

Medway Council has demonstrated overall compliance for undertaking of the statutory consultee role.

Review of the processes that support the statutory consultee role has indicated areas of improvement which has led to the creation of a more robust tracker system to record and collate consultations. This will ensure that the LLFA is involved during pre-application stage which is imperative to the design of an appropriate drainage system, and will also enable more detailed reporting and tracking of different types of consultations to assist resource planning.

We are also considering the use of standing advice for minor applications, recognising that standing advice may offer a way of safeguarding those developments against local flood risks.