

Association of Drainage Authorities

POLICY AND FINANCE COMMITTEE

Minutes of the Meeting held on Wednesday 21 January 2015 at the The Farmers Club, London

Present: **Ian Thornton (IT) Chairman**
Peter Bateson (PB) (Ex Officio), Henry Cator (HC), Karen Daft (KD), Nigel Everard (NE), Tim Farr (TF) Jane Froggatt (JF), Robert Hill (RH), Kathryn Holdsworth (KH), Stephen Morris (SM), Andrew Morritt (AM), David Sisson (DS), Bill Symons (BS), Carol Tidmarsh (CT), Jean Venables (JV), Michael Watson (MW), Phil Winrow (PW)

Apologies: None

In Attendance: Sharon Grafton (SG) ADA, Ian Russell (IR) EA/ADA, Innes Thomson (ITH), Chris Trotman (CTr), David Thomas (DT), Trevor Purlant (TP)

Ref	Minute	Action
1288	Declarations of interest None	
1289	Minutes of the meeting held on 9 September proposed by SM, seconded by TF and were agreed as a true and fair record and signed by the Chairman	
1290	Matters arising Min 1277: JV told the committee that work towards the production of guidance documentation regarding setting a surface water contribution rate was ongoing. Min 1278: BS said that the situation regarding the Yorkshire IDB boards withholding their precept was ongoing, and there is a desire to see work done and address the situation locally. Min 1283: JV said that ADA was awaiting further comment from George Weiz regarding the treatment of fixed assets in the external audit of IDB annual accounts. JF added that there was a concern that if ADA were to circulate guidance, and external auditors were to then give contradictory advice this would reflect badly on ADA Min 1284 IR told the committee that 28 PSCA are now signed, with more in progress for the forthcoming year. There have been issues raised regarding insurance and powers to work on main rivers, which have been looked into by the Environment Agency legal team and insurance advisor. If there are any amendments which IDBs would like to see made to the PSCA it is requested that it is forwarded to IR for discussion. AM said that following discussions with Towergate Insurance it appeared that their concerns centred on the scale of the work being done, and that maintenance work was not such an issue. JF concurred, adding that as long as the work was from one flood risk management authority to another, was not provided for hire or reward, was proportionate and was only covering costs then there were no problems SM added that the NFU have also taken the same opinion NS said that, upon approaching Towergate it appeared that the level of cover the board had in place was not sufficient, and that sharing liability was something that concerned the insurers. PW reminded committee members that capital schemes insurance is an allowable cost for any capital scheme.	ADA BS
1291	Defra Items CT updated the committee regarding the following items <ul style="list-style-type: none">On 2 December Defra had published its investment plan, alongside the Environment Agency's 6 year plan.Defra wrote jointly with the Local Government Association to Local Authorities in July 2014 regarding Local Flood Risk Management Plans, encouraging them to	

complete. Information is now being requested from RFCCs.

- Following a recruitment campaign three new RFCC chairs have been appointed, with a fourth imminent. Eddy Poll will chair Anglian (Northern), Vijith Radeniya will chair Trent and David Jenkins will chair Wessex. Yorkshire RFCC is also due to be announced; however a decision has not yet been made as the Minister wishes to meet candidates.
- The Secretary of State had signed a memorandum of understanding regarding the Somerset Rivers Authority, providing £1.9 million of funding. The Authority is to be formed by the end of January, and a funding review will take place in 2016/17.
- A consultation into the integration of flood defence consents into the environmental permitting framework had been released, with a deadline of 17 February.
- Progress was being made regarding the IDDs in Kent and Sussex which the Environment Agency are withdrawing from. The Environment Agency advertised an abolition order for Lombards Wall to Gravesend Bridge IDD in December 2014, with three further orders due in 2015 and the remaining four by March 2016. It is likely that there will be new IDBs established; East of Gravesend IDD as one and some in Sussex.
- From 1 November 2014 the River Lugg had taken responsibility of the English section of the River Wye IDB.
- Research undertaken for IDBs to develop a toolkit and performance indicators would be published late January 2015.
- A research project had begun, investigating barriers to FCRM Schemes (“Enhancing ex-post evaluation of FCERM plans”), with a desire for IDBs to work with the project, either on steering groups or being interviewed.

JV expressed concerns regarding the change to Hedge Trimming rules, with now cutting now banned from starting until 1 September. ADA and IDBs were not invited to comment on the change, and have lost a year as the window for comment has now closed. Other activities can be carried out, provided surveys take place, which raises the question as to why hedge trimming is subject to a blanket ban, which makes things more difficult and costs IDBs money.

SM questioned whether the Hedge Trimming rules related to IDBs, as the rule is from the Common Agricultural Policy (CAP) and relates to farmers.

DS understood this reading of the rules, but cautioned that inadvertently cutting a farmers hedge could cost them money.

TF asked whether a derogation could be applied for

AM replied, saying that it is up to the landowner to apply for a derogation.

JF added that it would be a huge administrative burden for landowners to apply for orders so that work can be carried out.

CT said that it was a different department within Defra which carried out the consultation, and that the Flood Risk Management department were not aware of the consultation either. On speaking with the Cross Compliance department ADA have been requested to provide information as to why this change causes such a problem, which may assist in the future.

CTr said that ADA was currently collating information to be provided to Defra

Action: ADA to send collated information to Defra

ADA

JV explained that during ADAs meeting with the Secretary of State in December the issue of ratings lists was raised. There is concern that not having access to these could cause problems when moving forward with new IDBs or extending boundaries of existing IDBs. The issue was raised when the Water Bill was progressing through Parliament, in the hope that it may be included as there needs to be something dealing with this urgently.

CT said that an action plan was being drawn up, and Defra were working with Phil Camomile of the Water Management Alliance regarding this. In Cumbria, Defra have made contact with United Utilities, who may be able to provide data if postcodes are provided.

JV reminded the committee that although there seemed to be universal agreement that the cost of consent charge should rise from £50, there did not seem to be any agreement as to whether this should be a standard or variable fee, or any progression as to a change.

CT said that Ruth Thirkettle would be consulting on proposals to increase the fee in Summer 2015.

Action: Defra to send consultation to ADA upon its release

Defra

1292 EU Procurement

CTr told the committee that an email was sent to Clerks on 28 October providing an update to the new legal requirements for IDBs which are part of the proposed new Public Contracts Regulations 2015. These Regulations are not yet law, but were consulted on for a four week period until 17 October.

JV added that the new regulations shouldn't cause problems, and PSCA shouldn't be adversely affected.

PW said that the Regulation and its potential effect on the PSCA had been put to the legal department at the Environment Agency, and nothing would change if everything in the consultation goes through.

AM expressed concern that this change may have an effect on other agreements which may be in place, for example WEM.

PW thought that this was unlikely, particularly with WEM as it is very specific, however clarification will be sought.

Action: PW to seek clarification whether the EU procurement rules may have an effect on WEM *PW*

1293 Audit

a. Audit Commission, Audit Service Delivery Sub-committee and Recommendation

PB told the committee that the Sub-committee had met in October to look at the Sector Led Body (SLB) proposal which had been prepared by the National Association of Local Councils (NALC) for submission to the Department of Communities and Local Government for the provision of a loan in order to establish the SLB.

A recommendation was made to the ADA Board following this meeting, stating that signing up to the SLB would provide better value for money, greater transparency, would mean that Boards would not require a separate audit committee and an updated guide; all of which would reduce reputational risk. The alternative to the SLB would mean that ADA would need to secure its own funding, as DCLG would be unlikely to provide a loan to both bodies, a cost which would be shared by all IDBs. IDBs will be able to opt out of the SLB, however they will need to set up an audit committee. The Board agreed to write to the Department of Communities and Local Government supporting the SLB proposal.

In January it was agreed that £50,000 would be provided to fund an appraisal into the proposed SLB. NALC are shortlisting companies to carry out the appraisal, which will include the business plan, and are planning to have someone in place for the end of the month. The key output from this will be submitted to the Department of Communities and Local Government at the end of March.

It should be noted that from 1 April 2015 Public Sector Audit Appointments Limited will manage current contracts with auditors, until current contracts expire in 2017.

b. Code of Practice

A revised code of practice will be put to Parliament shortly, which includes limited assurance. ADA is keen that the new regulation will include proper practice codes, and specifically lists those that include IDBs.

c. Transparency Code

The transparency code should have been in place by the end of December, and under the regulations the smallest IDBs (those with a turnover of less than £25,000) will not require an audit at all, although they will still need to comply with the transparency code for smaller authorities.

d. Annual Return

The Annual Return form has been refreshed, taking account of the closure of the Audit Commission and replacing it with Public Sector Audit Appointments Limited.

1294 Proposal to create a Somerset Rivers Authority

NS explained to the committee that the Somerset Rivers Authority (SRA) was proposed in the action plan drawn up following the winter flooding of 2013-14, the third such event in recent years. Following the flooding the public felt that maintenance on the River Parrett was being neglected, which had led to a loss in confidence in those carrying out the maintenance, although following the dredging carried out by the Environment Agency some confidence has been restored. One of the main channels is tidal. Many other tidal channels have silt excluding gates installed, however this channel does not and as a result some sections of the channel there is 40-50kg of silt per cubic metre of water.

The proposal included the recommendation that a rivers authority be established, and suggested a potential catchment wide charge. The authority is not about collaboration, but about raising additional money through being a precepting authority, as well as providing another body accountable for decision making.

Somerset Drainage Board Consortium suggested extending the catchment of the Drainage Board, which began positively but was disregarded once the district council received costing information.

It was felt that an additional charge would be viewed as being unfair by some who live in the area, particularly given that the population in Somerset is not as high as other parts of the country. This is also one of the reasons that a system similar to that in place in Lincolnshire would be unlikely to succeed.

A memorandum of understanding was signed between partners in December. The SRA will be comprised of 13 members, all of which are elected. Of these members four will be IDB members. The SRA will manage the 20 year action plan and investigate additional finance for work which is felt to be necessary to prevent widespread flooding.

DT asked whether a silt excluding gate was included in part of the plan.

NS replied that the current proposal is for a surge barrier, not an exclusion gate.

DT asked whether the SRA would be disbanded once all the actions have been implemented.

NS replied that would remain, but would reduce in size.

DS commented that it was understood that primary legislation would be required for the SRA.

NS said that the SRA was set up through a local authority agreement. Its purpose is not to set up an authority but to raise money and make local decisions. At present it doesn't have any power to raise money.

TF asked how special levy would be treated, and how precepting would be rerouted. There is some reference in the Memorandum of Understanding that the drainage authority would be protected. At the ADA South West Branch meeting it seemed as though the SRA was being established very quickly, and some people had concerns which had not been allayed, such as local farmers from outside of the drainage district contributing, but not having any representation.

NS said that confidentiality agreements meant that it was difficult to answer some questions. Progress has not been driven locally but centrally, and legislation or regulation will be specific to Somerset.

TF commented that it appeared the SRA will come into existence without a legal structure in place for it to develop.

AM was surprised that a new SRA was being set up, rather than using existing mechanisms which have the ability to raise money.

ITh asked whether a referendum to ask the local people whether they would accept the idea of raising additional money to fund maintenance.

NS said that it was raised, but was probably discounted by the county council in part due to the cost.

PW warned that the SRA would not be classified as a section 33 body under the Value Added Tax Act 1994, and would not be able to recover VAT in the same way IDBs do, advising that the SRA should register for VAT quickly. It was also questioned whether the

charge raised would be an additional charge to precept.

NS replied that the charge would only be precept.

PB said that Lincolnshire LLFA was instrumental to the Lincolnshire Partnership Model, and explained that there was no formal agreement in place, but the relevant bodies work together covering all types of flooding. Would the SRA only be limited to fluvial flooding?

NS replied that it would only be limited to fluvial flooding.

AM asked how the FDGiA spending would be affected, as it appears that the SRA would be taking a greater proportion of the benefits which should be split between all Flood Risk Management bodies, as specified in the Green Book.

TF asked, as the problem appears to be boundary related, whether it was possible to reinstate the local land drainage authority for Somerset.

NS replied that this idea was brought up, but quickly disregarded.

HC said that there was much sympathy with Somerset, and much of the solution stems from getting funding in order to carry out maintenance. Having listened to the debate it still appears that more consultation is required in order to get the right solution, as the SRA sets precedents which could affect the whole IDB community. Perhaps taking a step back and talking about a solution and working within existing legislation. Somerset is not unique and there are other areas of the UK which could have been in a very similar position, so a common solution which works across the whole country is required, rather than rushing into something.

KH suggested splitting the problem into two areas – the SRA and funding. At present it is hoped that the SRA will be a coordinating authority, like that in Lincolnshire. The Memorandum of Understanding states that the long term funding will be subject to review. Perhaps there is a need to consider the problem and the various solutions, before jumping to conclusions for presentation to Ministers.

HC suggested sending a questionnaire to IDBs and RFCC around the country in order to get knowledge of the way in which they work together.

Action: ADA to send questionnaire to IDBs and RFCCs to better understand how they work together ADA

1295 Byelaw Prosecution

NS explained that during the floods of 2013 there were incidents when a sluice gate was forced open, breaking the locking mechanism. At the time the Police considered pursuing a case for criminal damage; however the accused pleaded that they were trying to protect their homes, so the case was dropped. This caused much local disquiet, as it is possible the opening of the gates contributed to flooding downstream, so Parrett IDB agreed to take forward a private prosecution. One of the first things requested by the defence was a signed copy of the Boards bylaws, which had been bought in prior to amalgamation, but had not been signed meaning Defra had to provide statements for the case.

It is important to note that if a defendant pleads guilty the prosecution states their case and the defendant can then say what they like in reply, and can't be challenged by the prosecution. The defence can also request that a private prosecution be taken over by the CPS, which enables the defence to then argue that the case is not in the public interest and for it to be dropped.

IDBs should also ensure staff are trained in Code B practice in order to ensure that evidence gathered meets requirements.

BS told the committee that one of the Boards he is Clerk to is considering taking action against a developer which has built up to the edge of the watercourse, not leaving the 9 metres maintenance margin as required by the Board and stated on the planning application.

RH said that one of the Boards within the Middle Level area had also had problems of this nature. Once a case goes to court the first thing a judge does is queries what is fact, so Boards need to be sure of their case.

1296 IDB Governance

JV told the committee that there had been an increase in the number of Boards which had received a qualified opinion relating to the 2013/14 audit. A majority of cases the cause was a slight administrative error, for example an incorrect date on a form, although there were

also issues regarding the information being provided by an internal auditor and what an external auditor is looking for. None of the qualified opinions were due to misconduct, and all of the reasons for the opinions have been explained to Defra. Situations which can lead to a qualified opinion are details within the Annual Return.

BS commented that the qualifications were not major, and could perhaps be viewed as advisory.

AM explained that Ouse and Humber Drainage Board had received a qualified opinion. This was due to PKF Littlejohn taking the view that the Boards arrangement with its internal auditor to carry out audits three times a year following amalgamation in order to check the Board was following procedure was not correct.

RH added that there appeared to be inconsistency within the same audit firm within the Middle Level areas. Some Boards procedures were picked up, while other Boards with the same procedures were not. The Auditors were not prepared to go back and reinvestigate the matter.

1297 IDB Dairy Quota

JV said that it has been confirmed that the Dairy Quota would be abolished on 31 March 2015, and asked whether this would affect the value of land.

SM said that it would not have any affect. There was no revaluation when the Potato Quota was dropped.

PW added that changing values due to this could lead to changing land values every time a crop changes value.

NS stated that due to the abolition of the Quota Somerset Drainage Boards would remove around £90,000 of rateable land, as it switches to special levy.

PB asked why this was the case, as it is the buildings which are rated.

AM added that the legal standing for revaluation is for this to be based on the 1991 values.

HC suggested that NS speaks with the Central Association of Agricultural Valuers, in order to obtain clarification, but the committee's opinion was that the removal of the Dairy Quota would not affect IDBs.

1298 ADA Associate Members of T&E and P&F Committee

JV explained that when requests for applications to join the T&E and P&F Committees were sent in 2014 a commercial member had applied. They were not selected, but the application raised the question of whether commercial members could sit on ADAs committees. During the selection process members are selected on merit, so the type of member they are should not make any difference.

TF felt that it would be of benefit to the committees

NE asked whether an amendment to the code of conduct would be required

PB replied that the declaration of interests, carried out at the start of every meeting, would cover this.

It was agreed to put the proposal to the ADA Board

Action: ADA to put proposal to for Commercial Associate Members to the ADA Board in ADA March 2015

1299 Any Other Business

HC told the committee that this meeting was the last with JV as Chief Executive of ADA, and he expressed gratitude to her and to her staff for the professional way they have conducted themselves, adding that he hoped that she would continue to be involved with ADA.

Date of next meetings

Wednesday 13 May 2015	13.30 – 16.00
Wednesday 16 September 2015	13.30 – 16.00