

## READING BOROUGH COUNCIL

### REPORT BY DIRECTOR OF ENVIRONMENT, CULTURE AND SPORT

TO:	Strategic Environment, Planning & Transport Committee		
DATE:	9 <sup>th</sup> July 2013	AGENDA ITEM:	13
TITLE:	FLOOD & WATER MANAGEMENT ACT 2010 - LEAD LOCAL FLOOD AUTHORITY DUTIES: DELEGATION OF AUTHORITY TO HEAD OF HIGHWAYS & TRANSPORT		
LEAD COUNCILLOR:	COUNCILLOR	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT
SERVICE:	TONY PAGE	WARDS:	BOROUGH WIDE
	TRANSPORT		
LEAD OFFICER:	SAM SHEAN	TEL:	0118 937 2138
JOB TITLE:	ASSISTANT HIGHWAYS MANAGER	E-MAIL:	<a href="mailto:sam.shean@reading.gov.uk">sam.shean@reading.gov.uk</a>

#### 1. EXECUTIVE SUMMARY

- 1.1 To seek Strategic Environment, Planning & Transport Committee approval to delegate authority to the Head of Highways and Transport to carry out the Lead Local Flood Authority Duties as set out in the Flood & Water Management Act 2010 and Flood Risk Regulations 2009.

#### 2. RECOMMENDED ACTION

- 2.1 That the Strategic Environment, Planning & Transport Committee delegate to the Head of Highways and Transport authority to exercise the powers and duties of Lead Local Flood Authority in the Flood & Water Management Act 2010, the Flood Risk Regulations 2009, and the Land Drainage Act 1991.

#### 3. POLICY CONTEXT

- 3.1 To secure the most effective use of resources in the delivery of high quality, best value public service.
- 3.2 To prevent loss of life or serious injury, maintain access for emergency services, protect vital facilities within the community and to protect Reading Borough Council property.

#### 4. BACKGROUND

- 4.1 The Flood and Water Management Act 2010 (FWMA) gained Royal Assent on 8<sup>th</sup> April 2010. This includes statutory provisions for implementation of recommendations in the Pitt Review following the July 2007 exceptional rainfall event. County and Unitary Authorities have been designated as the Lead Local Flood Authority (LLFA) and given the leadership role for local flood risk management from all sources of flooding, except main rivers and the sea.
- 4.2 The FWMA 2010 identifies areas where the LLFA is expected to carry out duties as set out in Section 5 of this report.
- 4.3 The Council also has a statutory obligation under the Flood Risk Regulations (2009), which sit side by side with the FWMA, and this obligation includes the preparation of a Preliminary Flood Risk Assessment (PFRA) for Reading.
- 4.4 This report deals with the main areas of new responsibility assigned to the LLFA. The requirement for local flood risk management by appropriate authorities was identified through development of government policy and studies by Department for Environment, Food & Rural Affairs (DEFRA) over the last decade, together with The Pitt Review of the summer flooding events of July 2007 and its recommendations to mitigate such events in the future. The processes covered in this report reflect the legislation resulting from that process.

## 5. LEAD LOCAL FLOOD AUTHORITY DUTIES

- 5.1 Schedule 2 of the FWMA amends other Acts and under the amended Section 14A of the Land Drainage Act 1991, LLFA's have the power to carry out works to manage flood risk from surface water runoff, groundwater and ordinary watercourses, where the work is desirable having regard to the 'local strategy for flood risk management'.
- 5.2 Amended Section 23 of the Land Drainage Act 1991 - Regulation of Ordinary Watercourses transferred the responsibility for the Regulation of Ordinary Watercourses from the Environment Agency to LLFA's in April 2012, to ensure that flood risk is managed appropriately.

The Regulation consists of two elements:

- Issuing of Consents for any works to ordinary watercourses that might obstruct or alter the flow of an ordinary watercourse;
- Enforcement action to rectify unlawful and potentially damaging work to a watercourse.

The Council's consent as LLFA will now be required for works which may affect the flow of water within an ordinary watercourse, which includes any ditch or stream that is not designated as a Main River (Main Rivers remain the

responsibility of the Environment Agency). A fee (currently set by statute at £50) is payable for the application for consent.

5.3 FWMA Section 30-and Schedule 1 - Power to designate structures and features that affect flooding. The LLFA and the Environment Agency are 'Designating Authorities', allowing them to 'designate' features or structures where the following four conditions are met:

- The designating authority thinks the existence or location of the structure or feature affects a flood risk;
- The designating authority has flood risk management functions in respect of the risk which is affected;
- The structure or feature is not designated by another authority; and
- The owner of the structure or feature is not a designating authority.

If an asset becomes 'designated' its owner cannot alter or remove it without first consulting the designating risk management authority.

The aim of designating flood risk assets is to safeguard against unchecked works which could increase flood risk in the area. Designating of features is not something that should be done regularly but only when there are concerns about the asset.

An individual may appeal against a designation notice, refusal of consent, the conditions placed on consent or an enforcement notice.

5.4 FWMA Section 14 - Powers to request information from any person in connection with the authority's flood risk management functions.

5.5 The Flood Risk Regulations 2009 - Part 2, impose duties on Lead Local Flood Authorities to prepare Preliminary Flood Risk Assessment Reports (PFRA's) of past and potential future flooding in each river basin district. All Councils have now produced PFRA's which can be found on the relevant Authority's website, including Reading Borough Council. There is also a duty to identify flood risk areas.

5.6 FWMA Section 19 - Reporting Flood Incidents: On becoming aware of a flood the LLFA must, if it considers it necessary or appropriate, investigate which risk management authorities have relevant flood risk management functions and whether each authority has exercised or is proposing to exercise those functions in response to a flood. It must publish the results of its investigation and notify the risk management authorities. (Risk management authorities are the Environment Agency, LLFAs, highway authorities, water companies etc.) The collection of precise details from an actual flood incident is vital in providing an accurate picture of the flood risk across the Borough. Thames

Water and the Highways Agency may respond to certain incidents so a process needs to be formulated to allow this data to be shared with each Authority.

- 5.7 FWMA Section 19 - The aim of a Flood Investigation Report is to identify the causes of flooding, propose potential mitigation measures and flood risk management actions, and to communicate these to the public. Investigations will involve consultation with the relevant risk management authorities, landowners and private organisations involved.

Reports will provide clear and thorough understanding of flood incidents, but the duty to investigate does not guarantee that problems will be resolved. Discussions about the next steps following the incident will be made by the parties involved.

- 5.8 FWMA Section 21 - Register and Record of Flood Risk Assets, which are structures or features which are considered to have an effect on flood risk.

The LLFA's are required to keep both an asset record (for use by risk management authorities) and an asset register (available for inspection by the public at all reasonable times).

The Asset Register (for public uses) may include a map of local flood risk assets across the Boroughs and should clarify whether the Asset is publically or privately owned. The Asset Record (for LLFA use) will then provide further information about each asset, its condition and contact details of owner/maintainer if available. This can then be used to investigate cases where flood risk asset issues have been reported.

- 5.9 FWMA Section 32 and Schedule 3 - Sustainable Urban Drainage Systems: SuDS Approving Body (SAB) - Noted that implementation date still to be advised by DEFRA and EA and expected within next 18 months.

In future all construction and development works which have a drainage implication must be approved by the SAB. Applications will be either submitted to the approving body as free-standing applications or combined with an application for planning permission (either outline or full). The SuDS approval process is designed to be separate from the current planning system; however, the two bodies will liaise and advise each other of their respective decisions.

The SAB must review and assess the applications in line with the new National Standards (not yet published) for sustainable drainage and either grant or refuse consent. A number of stakeholders will be consulted as part of the review process including the Water and Sewerage Company (WaSC), the Environment Agency, relevant Highway Authority, Canals and Rivers Trust and (where appropriate) any Internal drainage boards.

The SAB will have a duty to adopt and maintain drainage systems (when requested to do so) that have been approved and constructed in accordance with the National Standards, with the exception of single property systems and publicly maintained roads.

The SAB will be able to charge application fees for the design review and approvals, and recover site inspection costs during the construction process. However, there is currently no mechanism for securing commuted sums toward long term maintenance.

#### 5.10 FWMA Section 9 - Local Flood Risk Management Strategy

A LLFA must develop, maintain, apply and monitor a strategy for local management of flood risk within its area.

This provision came partially into force from 1<sup>st</sup> October 2010 and local strategy should be developed within a reasonable timeframe. The Local Strategy must include the following elements:

- a) the risk management authorities in the authority's area,
- b) the flood risk management functions that may be exercised by those authorities,
- c) the objectives for managing local flood risk,
- d) the measures proposed to achieve those objectives,
- e) how and when the measures are expected to be implemented,
- f) the costs and benefits of those measures, and how they are to be paid for,
- g) the assessment of local flood risk for the purpose of the strategy,
- h) how and when the strategy is to be reviewed, and,
- i) how the strategy contributes to the achievement of wider environmental objectives.

The LLFA must consult the other risk management authorities and the public about its Local Strategy and publish a summary. The local strategy must be consistent with the National Strategy produced by the EA for Flood and Coastal Erosion Risk Management (FCERM) for England.

The Council in conjunction with the Berkshire Five Flood Risk Authorities, (excludes Slough as they are not within Thames catchment area), has prepared a preliminary high level overarching Local Strategy for Berkshire County, which will need to be further supplemented with a detailed flood risk management strategy for Reading Borough.

## **6 PROPOSAL**

- 6.1 This report seeks **Strategic Environment, Planning & Transport Committee** approval to delegate authority to the Head of Highways and Transport, to carry out the Lead Local Flood Authority Duties and powers as set out in the Flood & Water Management Act 2010, the Flood Risk Regulations 2009 and the Land Drainage Act 1991.

## **7. CONTRIBUTION TO STRATEGIC AIMS**

- 7.1 To promote equality, social inclusion and a safe and healthy environment for all.
- 7.2 To develop Reading as a Green City with a sustainable environment and economy at the heart of the Thames Valley.

## **8. COMMUNITY ENGAGEMENT AND INFORMATION**

- 8.1 The report on the work of the Preliminary Flood Risk Assessment, Flood Risk Asset Register, Flood Incident Reports and Local Flood Risk Strategy will be placed in the public domain.

## **9. LEGAL IMPLICATIONS**

- 9.1 The Flood and Water Management Act 2010 requires the Borough Council to take the leadership role for ensuring significant risk from all sources of flooding is identified and managed. This will be done through the preparation of a Preliminary Flood Risk Assessment, a Surface Water Management Plan and the Local Flood Risk Management Strategy.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The Borough Council will continue to bid for funding from DEFRA and the EA through the annual Flood Defence Grant in Aid (FDGiA) funding mechanism.
- 10.2 The Borough Council has a dedicated Revenue budget to comply with the requirements of the FWMA.
- 10.3 The FWMA 2010 includes a statutory fee payable to the LLFA of £ 50 for each Consenting on Ordinary Watercourse application.

The financial implications arising from the proposals set out in this report are set out below:-

## Revenue Implications

Revenue Programme reference from budget book: page line	2012/13	2013/14	2014/15
	£ 50,000	£ 50,000	£ 50,000 (Subject to Cabinet Approval March 2014)

## Capital Implications

Capital Programme reference from budget book: page line	2012/13	2013/14	2014/15
	£000	£000	£000
Proposed Capital Expenditure	£ 54,000	0	Subject to LTP funding award
Funded by EA FDGiA Grant	£ 54,000 (Flood Defence Grant in Aid (FDGiA) awarded by EA)	£ 7,000 (FDGiA Awarded by EA)	TBC with future FDGiA bids
Total Funding	£ 158,000	£ 57,000	TBC

### 11 Risk Assessment.

Lead Local Flood Authority Councils are required to carry out their designated statutory duties, as described in the Flood and Water Management Act 2010.

### 12. BACKGROUND PAPERS

- Previous reports to Cabinet and CCEA Scrutiny.
- Flood & Water Management Act 2010.
- Flood Risk Regulations 2009.
- Land Drainage Act 1991.