

Local Members' Interest
All

## **Prosperous Staffordshire Select Committee – 24<sup>th</sup> January 2014**

### **Flood & Water Management Act 2010 – Update on Lead Local Flood Authority Responsibilities**

#### **Recommendation**

That the Select Committee note progress with regards to the implementation of the Flood & Water Management Act and the County Councils progress with regards to its new responsibilities as Lead Local Flood Authority (LLFA) for Staffordshire.

**Report of Mark Winnington, Cabinet Member – Economy and Infrastructure, supported by Gill Heath, Cabinet Support Member – Environment and Rural Affairs**

#### **Summary**

##### **What is the Select Committee being asked to do and why?**

At the Prosperity, Skills and Education Select Committee meeting held on 26 November 2012, it was agreed that an update be reported back to the committee with regard to the County Councils progress in delivering its new responsibilities as LLFA and the joint working arrangement with Shropshire Council. This report outlines the progress made to date and provides information on further new responsibilities in respect of approving and adopting Sustainable Drainage Systems (SuDS) which Defra are hoping to implement in April 2014

#### **Report Background**

The Flood and Water Management Act (FWMA) received Royal Assent on 8 April 2010. The Act is being implemented by a series of ministerial orders and imposes new responsibilities on the County Council under its role as Lead Local Flood Authority (LLFA) for Staffordshire. The majority of the legislation which implements these new responsibilities is now in place with the exception of Schedule 3 – Sustainable Drainage Systems which is expected to be enacted in April 2014.

#### **LLFA Flood Risk Management responsibilities already commenced**

Listed below are the new responsibilities that have already been commenced through ministerial orders in relation to the Flood & Water Management Act 2010:

- Creation of Lead Local Flood Authority role for upper tier authorities with responsibilities for flooding associated with surface water, groundwater and ordinary watercourses.

- Duty to produce a Local Strategy for Flood Risk Management.
- Duty to maintain an asset register
- LLFA's to investigate flooding incidents, understand the cause, and ensure that appropriate bodies play their role in effective management of the flooding and recovery.
- Requirement to carry out Preliminary Flood Risk Assessments and where necessary Surface Water Management Plans.
- Consenting and enforcement for ordinary watercourses.
- Designation of features that have an impact on flood risk.
- Requirement to work in collaboration with key partners including duty to share information and co-operate.

## **Progress in delivering new responsibilities**

### **Local Strategy for Flood Risk Management:**

In conjunction with Shropshire Council work is currently ongoing with the production of the Local Strategy for Flood Risk Management which has been jointly procured with through competitive quotes from our respective framework consultants.

The Strategy will comprise a suite of documents and assessments that will provide the overall strategic direction for the management of local flood risk in both counties. As well as outlining our joint approach for the delivery of our flood risk management responsibilities, the document must also specify the names and responsibilities of other risk management authorities such as the Environment Agency and Water Companies.

In developing the Strategy we have identified seven key objectives which are aligned with the Environment Agency's National Strategy for Flood and Coastal Erosion Risk Management and also the corporate priorities of the County Council's strategic plan. The objectives which are summarised below for information will inform the development of an action plan, detailing how we intend to deliver the Local Flood Risk Management Strategy:

- 1) Develop a strategic understanding of flood risk from all sources.
- 2) Promote effective management of drainage and flood defence systems.
- 3) Support communities to understand flood risk and become more resilient to flooding.
- 4) Manage local flood risk and new development in a sustainable manner.
- 5) Achieve results through partnership and collaboration.
- 6) Be better prepared for flood events.
- 7) Secure and manage funding for flood risk management in a challenging financial climate.

In developing the associated action plan, it is important to note that it will not be possible to deliver all potential flood risk management measures in the short term. We will, therefore, be taking a proportionate approach to focus effort and investment to deliver actions where they will be most effective. To support this approach and identify priority areas, we have undertaken a county wide property count analysis using national scale fluvial and surface water flood maps produced by the Environment Agency.

The Strategy will be subject to a three month public consultation period which is anticipated to commence in March 2014.

#### **Asset register:**

Central to the improved management of local flood risk is a better understanding of the flood defence and drainage assets (both underground such as culverts and sewers and overland such as rivers, watercourses and flood defence structures) within the county. The age and condition of our drainage infrastructure varies greatly, from culverts originally constructed hundreds of years ago, to purpose built sewers and flood defence systems designed to modern day standards. The availability of records for much of the older drainage assets is limited and, given the size of the county, this poses a major challenge in terms of undertaking surveys to obtain the necessary records.

As a consequence, we are taking a risk-based approach to the collection of additional and more detailed asset information for these historic systems as it is recognised it may take many years to collate this information. We have undertaken an assessment of settlements at risk of flooding across the county to help us prioritise this work. This will be supplemented by recording asset information as part of any investigation that is carried out after a flood event.

Whilst the latest flood mapping can give a good indication of where flooding issues may arise, it is also recognised that flooding can occur in other locations due to blockages, capacity issues or failure of drainage assets.

For the above reasons, we will share and obtain all available flood defence and drainage asset information from Risk Management Authorities and other organisations. We will also set in place a process for updating this information on a regular basis.

Given our future responsibilities for the approval, adoption and maintenance of Sustainable Drainage Systems (SuDS) serving new developments, we will set up procedures for the incorporation of this data into the Asset Register.

Currently, our Asset Register is held within Geographical Information Systems (GIS). This means that it can also be viewed in the context of a wide range of other information, such as environmental and land ownership data. Due to the fact that much of the Asset Register will be made up from third party data, which may not always be up to date, we are not intending to make the information available online. However, we will make the Asset Register available for public viewing, at all reasonable times, on request.

### **Preliminary Flood Risk Assessments & Surface Water Management Plans:**

The Preliminary Flood Risk Assessment was completed in April 2011 and subsequently endorsed by the Environment Agency. 5 Surface Water Management Plans have been produced in conjunction with District Council partner organisations to assist with development site allocation decisions. A further hydraulic study of the Kidsgrove area is currently being undertaken with a view to gaining a better understanding as to the causes of surface water flooding in the area. Following this it is intended to consider what options are available to manage the consequences of any future flooding within the areas identified at risk.

### **Investigation of flooding incidents:**

Arrangements for carrying out investigations into flood events are being shared with Technical Review Officers within Highway Operations. The involvement of the Flood Risk Management team will be dependant upon the nature and severity of the incident. The summer floods of 2012 that affected many parts of Staffordshire has led to a considerable number of locations where survey work and hydraulic analysis has been required in order to understand the root cause of the problem. This has led to bids being made to Defra in order to secure funds for the design and construction of flood alleviation projects at the following locations:

- Lower Tean
- Perton
- Huntington
- Rolleston on Dove
- Barton under Needwood
- Kinver
- Moreton
- Stretton

Confirmation of the budget allocations is anticipated to be confirmed at the Regional Flood and Coastal Committee meeting to be held on 14 January 2014. Within the current financial year a £300k scheme to reline an existing brick culvert in brick culvert in Elford was recently completed in October 2013. These works will extend the life of the culvert and thus maintain the level of flood protection within the village.

### **Consenting and enforcement for ordinary watercourses:**

On the 6 April 2012 the County Council took over the regulation of ordinary watercourses within Staffordshire a function which was previously administered by the Environment Agency. (Note this excludes watercourses located in the area managed by Sow & Penk Internal Drainage Board who are responsible for the consenting role for assets they directly maintain).

The regulation process is made up of two parts:

- Consenting of permanent and temporary works that are likely to affect the flow of an ordinary watercourse.
- Enforcement to rectify unlawful and damaging or potentially damaging work that has an adverse affect on flow of an ordinary watercourse.

Based upon our experience to date we have found that unregulated work affecting watercourses has, in many cases, been carried out in a manner which has resulted in increased flood risk. Typical issues include:

- flooding due to inappropriately sized culverts;
- the inability to carry out maintenance due to access restrictions;
- increased likelihood of blockage due to poor design (e.g. blockage of trash screens, build-up of silt);
- a lack of understanding of riparian ownership responsibilities;
- a lack of records leading to accidental damage by third parties, or;
- a lack of inspection and monitoring of condition.

In view of this we will, when considering land drainage consents, seek to preserve the natural state of land drainage systems and minimise the number of man-made alterations to watercourses.

### **Designation of features that have an impact on flood risk:**

As part of the review of the 2007 floods it was identified that certain structures or features have the ability to affect flood risk. This can be either intended or coincidental depending on the nature or location of the asset. An example of this is a boundary wall acting as an informal flood defence by redirecting surface water away from properties which would otherwise flood. In this example, whilst the presence of the wall would clearly have an unintended but

beneficial purpose in terms of flood risk, there has historically been no legal means through which to prevent its removal or alteration by its owner in the future.

To address this issue, Schedule 1 of the Flood and Water Management Act 2010 has introduced new powers that enable us to formally designate structures or features which can affect flood risk. By designating these assets, any alteration or removal by existing or future owners will require our formal consent, so we can ensure that flood risk will not increase as a result. We will consider the need to designate existing structures or features on a case by case basis as part of our work investigating flooding incidents.

Additionally, the designation process will become more widely used once Schedule 3, Sustainable Drainage Systems of the Flood and Water Management Act 2010 has been enacted. This will require all new developments to be drained by such systems. Where Sustainable Drainage Systems (SuDS) serve more than one property, we will have a duty to adopt and maintain them to ensure they function appropriately. The duty to adopt does not apply to those parts of drainage systems which serve single properties. In these cases we will designate all sustainable drainage features serving single properties. This will mean that they cannot be altered or removed without our prior approval and should help ensure that the drainage of development sites will continue to operate as originally designed.

### **Collaborative working:**

Shropshire Council and Staffordshire County Council have agreed to work together to deliver a collaborative working approach towards flood risk management for their geographical areas. This approach fits in with the corporate values of both authorities and is providing opportunities for efficiencies through the sharing of resources and joint procurement of services as well as pooling of specialist flood risk management skills which are nationally in short supply.

The aims of the collaborative approach are to:

- work together collaboratively to fulfil our roles as Lead Local Flood Authorities (LLFA's) in accordance with the spirit of the Flood and Water Management Act 2010;
- work effectively together towards a common objective based on a culture of partnering and trust and sharing of ideas, resources and methods, and;
- ensure that wherever surface water and flood risk management issues are contiguous with other issues such as community resilience, emergency planning and, climate change strategies and adaptation etc, the collaborative working approach will seek to support these functions.

There is a wide range of organisations and individuals with an interest in flood risk management across Shropshire and Staffordshire. These range from the Risk Management Authorities outlined such as the Environment Agency and Water Companies; to local town and parish councils, community flood action groups and individual riparian owners. Finding an appropriate way for this wide range of interested parties to be involved and to interact with the Local Flood Risk Management Strategy is a priority for us, as Lead Local Flood Authorities. However, it is also recognised that the process of arranging frequent meetings can be a strain on resources for those involved.

To this end, through the Local Flood Risk Strategy we are proposing an approach to partnership working based on strategic overview as well as local delivery. This will ensure that the appropriate bodies and organisations are present at the appropriate time. To support the collaborative working approach, a new governance structure has been established to provide appropriate scrutiny of the progress of this strategy and effective engagement between Regional Flood and Coastal Committees, partner organisations and community groups (see figure 1 below).

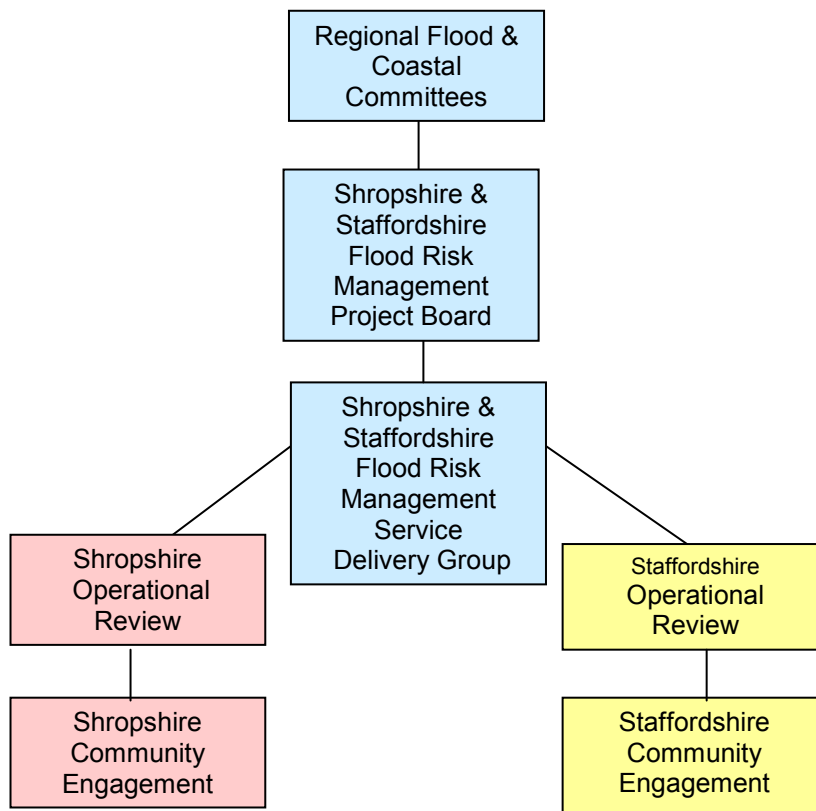


Fig 1 Shropshire Council and Staffordshire County Council Flood risk Management Governance Structure

**Flood Risk Management responsibilities still to be commenced**

The final and possibly the most significant section of the Act still to be enacted is Schedule 3 – relating to Sustainable Drainage Systems (SuDS) which Defra are hoping to implement in April 2014. When commenced, this legislation will give the council responsibility for approving Drainage Applications (to comply with National Standards for sustainable drainage systems) in relation to new development.

Implementation will be phased in with SAB approval only being applied to 'works' which constitute major development (10+ dwellings, >0.5 hectare). After 3 years, this role will expand to cover all new development.

This role not only involves the approval of drainage proposals for new development prior to construction, but also the adoption and maintenance where the SuDS system serves two or more properties. The adoption of some SuDS features will not be contained within the public highway and therefore easement agreements will be required to ensure access for maintenance and repair works. The FWMA also requires the council to designate such features as a Local Land Charge. This will mean that occupiers wishing to carry out any work that may affect the operation of the SuDS system will require prior approval of the SAB.

SuDS applications will carry a fee, designed to cover the administrative and technical costs associated with the decision making process. Additionally we will be able to levy fees, on a cost recovery basis, for us to inspect the construction of the SuDS prior to adopting them. Based upon the phased approach and data obtained from DCLG, fee income is estimated be £250K p.a. based upon 200 SAB applications.

The SAB may require a non-performance bond as a condition of approval and new forms of agreements for adoption and easements will need to be drawn up. There will be a set maintenance period during which liability will remain with the developer. This will give the SAB assurance that the SuDS will be built in line with the National Standards and will ensure that subsequent purchasers acquire properties with appropriate drainage.

Defra is currently considering how maintenance fees will be recovered to fund the LLFA ongoing costs of maintenance and repair work.

As part of the collaborative working arrangements with Shropshire Council we will be creating a 'SAB hub' in Shropshire, where the administration of the applications will take place. Technical approval work will be shared between the Flood Risk Management teams supported by Shropshire Councils framework consultant so as to manage peaks in workload and carry out detailed hydraulic assessment checks for larger developments.

Implementation timescales to meet the proposed April 2014 deadline will be tight and the support of back office teams and partner organisations will be required. Local Planning Teams have already been made aware of the proposed changes and we will work closely with them as procedures are put in place.

### **Staff Resources**

The recruitment of three new Flood Risk Officer Posts to support the work of the Flood Risk Manager took place in December 2012. All the new appointees are former employees of the Environment Agency which will prove beneficial in providing the necessary technical skills associated with flood risk management work.

The associated technical work for the SAB approval for Staffordshire will initially require an additional 2FTE. As outlined above, the work will be shared with the Shropshire Flood Risk Management team supported by their framework consultant.



Procedures will be put in place for the recharging of staff costs and the transfer of fee income to the respective authority based upon the number of applications being dealt with.

**Contact Officer**

Name and Job Title: Ian Benson Commissioner for the Sustainable County  
Telephone No.: 01785 276550  
Address/e-mail: 1 Staffordshire Place

**Appendices/Background papers**

Flood and Water Management Act 2010  
Flood Risk Regulations 2009  
Staffordshire Preliminary Flood Risk Assessment  
UKCP09 "The climate of the UK and recent trends" 2009  
UKCP09 "Climate Change Projections" 2009  
IPCC 4th Assessment Report 2007, page 13