

CABINET

8 APRIL 2014

FLOOD AND WATER MANAGEMENT ACT 2010 – ROLES AND RESPONSIBILITIES AND THE LOCAL FLOOD RISK MANAGEMENT STRATEGY

Portfolio Holder: Councillor Phil Filmer, Front Line Services
Report from: Robin Cooper, Director of Regeneration, Community and Culture
Author: Priscilla Mumby, Flood Risk Management Officer

Summary

To reiterate recent changes in legislation and seek approval to carry out new statutory duties imposed.

To introduce the Local Flood Risk Management Strategy required under the Flood and Water Management Act 2010 and seek comment and approval to go out to public consultation.

1. Budget and policy framework

- 1.1 The Flood and Water Management Act 2010 and the Flood Risk Regulations 2009 (FRR 2009) established Medway Council as a Lead Local Flood Authority (LLFA). The FRR 2009 and the Flood and Water Management Act (FWMA) 2010 sets out a number of roles and responsibilities for LLFA's with respect to the management of local flood risk (i.e. from surface water, groundwater and 'ordinary watercourses').
- 1.2 The costs of implementing the roles and responsibilities are covered by the approved budget via an Area Based Grant from the Department of Food and Rural Affairs (DEFRA).
- 1.3 Whilst the imposed duties are statutory, the new roles and responsibilities will directly contribute towards three of the five council priority areas included within the Council Plan 2013/2015 outlined below, as well as

several ambitions and principles included within the Sustainable Community Strategy 2010-2026.

- Safe, clean and green Medway.
- Everybody travelling easily around Medway.
- Everyone benefiting from the area's regeneration.

1.4 The Leader has the authority to make changes to executive functions within the employee scheme of delegation.

2. New duties under the Flood and Water Management Act 2010

2.1 The FWMA 2010 imposes specific statutory, executive duties on the Council:

- Cooperate with other relevant bodies to manage flood risk.
- Develop, maintain, apply and monitor a strategy for local flood risk management.
- Take over the Environment Agency role for 'ordinary watercourse regulation' under the Land Drainage Act 1991 (as amended by FWMA 2010).
- Investigate flooding incidents.
- Maintain a register of assets and structures that have a significant effect on flood risk.
- Designate assets and structures, which are considered to have a significant effect on local flood risk in an area.
- Set up a Sustainable Urban Drainage System (SuDs) Approving Body (SAB), responsible for approving, adopting and maintaining SuDs, which serve more than one property.
- To plan for the emergency management of flooding.
- To review and scrutinise the activities of Risk Management Authorities in implementing their flood risk management functions.

2.2 On 3 March 2011 the Council agreed to add the responsibility for the review and scrutiny of flood and coastal erosion risk management functions under the Flood and Water Management Act 2010 to the Regeneration, Community and Culture Overview and Scrutiny Committee's terms of reference.

2.3 In relation to the other duties listed above most of these functions would be appropriately discharged by officers, with the exception of approving of the Flood Risk Management Strategy that would be reserved for Members. It is proposed that the Employee Delegation Scheme (Chapter 3 of the Constitution) be amended to include the following additional delegation for the Director of Regeneration, Community and Culture

Description of delegation	Responsibility delegated from
<p data-bbox="325 394 738 427">8.25 Flood Risk Management</p> <p data-bbox="325 465 1002 678">To manage the Council's functions in relation to flooding and drainage in compliance with current legislation and policies of the Council (including without limitation the Land Drainage Act 1991, Flood Risk Regulations 2009 and the Flood and Water Management Act 2010).</p>	<p data-bbox="1066 394 1286 427">Leader/Cabinet</p>

3. Progress to date

- 3.1 Council staff responded well to recent flood events including the tidal surge during December 2013, which involved several services and more recent heavy rainfall which resulted in isolated incidents of surface water flooding, including two counts of internal property flooding.
- 3.2 The council is making good progress with the requirements of the FWMA 2010, which includes a cross functional approach between Highways, Corporate Capital Projects, Emergency Planning, Development Management and Regeneration Teams as well as continued dialogue with other Risk Management Authorities (i.e. Medway Internal Drainage Board, Environment Agency, Southern Water).
- 3.3 In particular, the SuDs Advisory Body role (SAB) represents a significant step to deliver efficient and effective SuDs but it will present a burden to the council and significant work will be required to fulfil this duty properly.
- 3.4 The SAB will be responsible for approving, adopting and maintaining new surface water infrastructure serving one or more dwellings. The legislation for this role was due to be enacted in April 2014. This will be a phased, with the requirement only valid for large developments with more than 10 dwellings for the first three years.
- 3.4 Due to delays at a national level in respect of the production of national standards and guidelines, and in recognition of the significant amount of work required by authorities to deliver this role, DEFRA have recently advised that implementation will not occur until some time after. Whilst this timeframe is unclear, it is anticipated that implementation will occur in October 2014. Members will be fully briefed on this aspect as soon as further information is available.

4. Medway draft Local Flood Risk Management Strategy

- 4.1 Section 9 of the FWMA 2010 states that a Lead Local Flood Authority must develop, maintain, apply, and monitor a strategy for local flood risk management in its area (a Local Flood Risk Management Strategy).
- 4.2 A strategic approach reduces the likelihood and detrimental consequences of flooding in a way that does not compromise the interconnected needs of the economy, society and environment in the future. It is the document against which local flood risk management activities should be assessed and measured.
- 4.3 The primary aim of the strategy is to outline the approach Medway Council as LLFA will take to local flood risk management, record how this approach has been developed and agreed and to deliver the legislative requirements of the FWMA 2010.
- 4.4 The LFRMS complements and supports the National Strategy published by the Environment Agency, which outlines a national framework for flood and coastal risk management and aims to balance the needs for communities, the economy and the environment.
- 4.5 The strategy culminates in a number of objectives and measures consistent with the EA's National Strategy aimed at delivering the legislative requirements of the FWMA and adopting a more coordinated approach to local flood risk management. The objectives are included within the Executive Summary and are concerned with:
 - Understanding the risks.
 - Preventing inappropriate development.
 - Managing the likelihood of flooding.
 - Improving flood prediction, warning, and post recovery.
- 4.6 The measures and objectives were borne out of significant consultation with functions within the Council, and with Risk Management Authorities. Through the strategy, stronger links, understanding, and partnership working have been established with Risk Management Authorities.
- 4.7 The delivery of the LFRMS rests primarily within the Flood Risk Management Officer; however, the support of other relevant services within the Council, including Highways, Development Management and Emergency Planning will be required.
- 4.8 The full draft document and accompanying Technical Appendices is attached as Appendix 1.

- 4.9 European Directive 2001/42/EC requires that a Strategic Environmental Assessment (SEA) be carried out for all plans and programmes which are subject to preparation and/or adoption. In accordance with that, an SEA screening report has been undertaken to determine if the contents of the LFRMS require a SEA.
- 4.10 The screening exercise concludes that it is unlikely that there will be any significant environmental effects arising from the objectives and measures included within the LFRMS and as such does not require a full SEA to be undertaken.
- 4.11 A Diversity Impact Assessment screening report will be completed and submitted with any future Cabinet Report. It is anticipated that a full Diversity Impact Assessment will not be required. The assessment will be reviewed following the consultation process set out in Section 6.
- 4.12 Appendices 1 and 2 (see Supplementary Agenda No.1) have been sent to Cabinet Members, Group Rooms and the Chatham Community Hub. Further copies are also available from the following link:

<http://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=2767&Ver=4>

5. Review and update

- 5.1 The strategy should be viewed as a living document and the approach taken is that much more comprehensive and robust information must be gathered from many sources in order to inform optioneering for structural measures. This will be achieved via completion of a Surface Water Management Plan (SWMP) and is one of the objectives of the strategy.
- 5.2 Annual action plans will be produced to review progress of the strategy and to provide update as required as a result of new information, further studies or legislation. These will be reported to the Regeneration, Community and Culture Overview and Scrutiny Committee annually.
- 5.3 Review of the strategy itself is planned for April 2018 to coincide with the six yearly update cycle required for the review of the Preliminary Flood Risk Assessment, which was undertaken to fulfil the requirements of the Flood Risk Regulations 2009.

6. Consultation and engagement

- 6.1 It is intended that following consideration by Cabinet the draft strategy will be subject to a six-week period of public consultation (14 April – 16 May). This time frame is in line with similar consultations undertaken by other

Lead Local Flood Authorities. This also reflects the guidance within the Medway Statement of Community Involvement (SCI).

6.2 Copies of the strategy will be made available to view at the Planning Reception at Gun Wharf. The strategy will be made available to view and download from the Council's website and social media will be utilised. A presentation will be prepared for interested groups and direct emails will be sent to:

- Risk Management Authorities.
- Parish Councils.
- Key Stakeholders.

6.3 The Southern Regional Flood and Coastal and Coastal Committee will also be updated although there is no need to formally consult at this time because the strategy does not currently include any plans for structural measures requiring funding.

6.4 The Regeneration, Community and Culture Overview and Scrutiny Committee will consider the draft strategy on (26 June 2014). It is intended that the strategy, together with the outcome of the consultation process will then be submitted to Cabinet on (15 July 2014).

7. Risk Management

7.1 The risks exposed by a failure to comply with parts of the legislation are great. Whilst the FWMA 2010 enables LLFAs to delegate *some* flood or coastal erosion risk management functions to other risk management authorities, there is an expectation that LLFAs will gradually increase expertise and capacity in this field.

7.2 Consultation with Risk Management Authorities and the public needs to be undertaken to satisfy Section 9 (6) of the FWMA.

8. Financial and legal implications

8.1 Funding to carry out the day-to-day flood risk management functions in Medway are primarily from a non-ring fenced grant from DEFRA. Actions arising from the strategy will be resourced from this.

8.2 The legal implications are set out throughout the report.

9. Recommendations for Cabinet

9.1 The Cabinet is asked to recommend to the Leader to agree the necessary executive delegations to officers as set out in 2.3 of the report.

- 9.2 That Cabinet note and comment on the draft Local Flood Risk Management Strategy and agree that it proceeds to formal public consultation.
- 9.3 That Cabinet authorise the Director for Regeneration, Community and Culture, in consultation with the Leader and Portfolio Holder for Front Line Services, to approve any minor corrections and factual amendments to the draft to improve its clarity and consistency prior to the consultation launch.

10. Recommendations for the Leader of the Council

- 10.1 The Leader is asked to agree the necessary executive delegations to officers as set out in section 2.3 of the report

11. Suggested Reason for Decisions

- 11.1 The Flood Risk Regulations 2009 and the Flood and Water Management Act (FWMA) 2010 have established Medway Council as a Lead Local Flood Authority and sets out a number of roles and responsibilities in relation to the management of local flood risk. These recommendations respond to the duties imposed on the Council.
- 11.2 The LFRMS provides the framework from which to ensure compliance with the legislation and considers how this can be delivered and inform decision making to address flood risk issues through several services.

Appendices:

Appendix 1:
Medway Draft Local Flood Risk Management Strategy Main Report and Technical Appendices.

Appendix 2:
Strategic Environmental Assessment (SEA) Screening Report

Background Papers:

Report to Council *Report on Overview and Scrutiny Activities* 3 March 2011
<http://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=7118>

Report to Regeneration, Community and Culture Overview and Scrutiny Committee *Flood and Water Management Act 2010 and Flood Risk Regulations 2009* 10 February 2011
<http://democracy.medway.gov.uk/mgconvert2pdf.aspx?id=6975>

Lead Officer Contact:

Priscilla Mumby

Flood Risk Management Officer

Gun Wharf

01634 331 420

priscilla.mumby@medway.gov.uk