

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Environmental Services Portfolio Holder  
**AUTHOR/S:** Executive Director (Operational Services)

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### **THE FLOOD AND WATER MANAGEMENT ACT 2010 AND THE FLOOD RISK REGULATIONS 2009**

#### **Purpose**

1. To report to the Portfolio Holder on the implications of the Flood and Water Management Act 2010 and the Flood Risk Regulations 2009 that resulted from the Pitt report on flooding in 2007 and EU Directive 2007/60/EC.

#### **Recommendations**

2. That the Portfolio Holder notes the implications of the new legislation and the actions of the County Council and District Council Officers as recommended by the Pitt report 2008.

#### **Background**

##### **Flood and Water Management Act**

3. Following the serious flooding in 2007 across the UK, Sir Michael Pitt was asked to carry out a review of flood risk management and to make recommendations on possible changes to national legislation. The review was completed and a series of recommendations presented to the government. The recommendations that were accepted by the Government were developed into the Flood and Water Management Act 2010 and this received Royal Assent on 8 April 2010. Ministerial commencement orders are required before the Act can be implemented. On 1 October 2010 the first commencement order came into force implementing a number of provisions including definitions, the activation of statutory instrument making powers, explicit powers for Internal Drainage Boards (IDB's) to operate through consortia and provisions that require the Environment Agency and local authorities to develop strategies for risk management.
4. The majority of the Act is expected to be 'commenced' from April 2011. Those parts of the Act that require more organisational change (e.g. SuDS approval and adoption body or SAB) will be commenced at a later date. However, the County Council has already anticipated its duties under the proposed flood risk management strategy (see briefing note attached) and has commissioned consultants to produce a phase 1 Surface Water Management Plan. Completion of the phase 1 plan is expected in June 2011.

##### **Flood Risk Regulations**

5. EU Directive 2007/60/EU came into force on 26 November 2007. This directive requires member states to assess whether all watercourses and coastlines are at risk from flooding, to map the flood extent and assess the number of people at risk in these areas, and to take adequate measures to reduce the flood risk.
6. The Flood Risk Regulations were originally part of the Draft Flood and Water Management Bill. However, due to delays with the passage of the Bill it was

necessary to introduce separate Regulations in order to comply with the EU requirements and the Regulations were laid before Parliament, enshrined in domestic legislation and became law on 10 December 2009.

### Responses to New Legislation

7. During 2009, the County Council established the Cambridgeshire Flood Risk Management Partnership (CFRMP) in order to prepare for its new duties under the forthcoming legislation. The partnership is composed of various 'risk management authorities' that operate within Cambridgeshire (see attached briefing note) and meet regularly to ensure compliance with the new legislation.

### Considerations

8. A major aspect of the Act and the Regulations is to place direct responsibility and accountability for all sources of flooding on upper tier local authorities. Although this responsibility excludes flooding from the sea, main rivers and reservoirs, the Act imposes stringent new duties on the County Council. At District Council level, SCDC will be duty bound to cooperate with both the EA and the County to help resolve all flooding problems.
9. Briefing notes on both the Flood and Water Management Act 2010 and the Flood Risk Regulations 2009 are enclosed as an appendix to this report.
10. The following sets out the County Council's key reports and associated dates:
  - Surface Water Management Plan (phase 1) – End June 2011
  - Preliminary Flood Risk Assessment – 31 June 2011
  - Flood Hazard Maps and Flood Risk maps – 22 December 2013
  - Flood Risk Management Plans – 22 December 2015

### Implications

11. It has been possible to co-operate with the County Council using existing resources up to now. However, the future role and approach of the County Council has yet to emerge on some important aspects of the legislation. In particular, the commencement of the section of the Act relating to SuDS (and how the new SuDS approval and adoption Body will operate in practice) will have implications for this Council.
12. Additionally, the EA is likely to experience organisational change in the near future and its role offering advice on flood risk associated with individual planning applications may no longer apply. This will place greater responsibility on both the County Council and the local planning authority.

13. Financial	There may be future increases in expenditure as a result of the changes outlined above. However, the extent of any increase is not clear and is not possible to assess at this point in time.
Legal	The primary legal duty under the new legislation relates to co-operation with the County and the EA
Staffing	None
Risk Management	Financial as above
Equality and Diversity	None
Equality Impact	No

Assessment completed	No change to current policy
Climate Change	None

### **Effect on Strategic Aims**

14. The impact of the new legislation will be to ensure local people are consulted on flood risk policy for the District. It will also ensure South Cambridgeshire is a safer place to live due to enhanced flood risk management.

### **Conclusions / Summary**

15. The new legislation provides for a more co-ordinated approach to flood risk management at both the national and local level. All sources of flooding will need to be identified for the future with a suitable organisation being responsible for investigations with a view to providing solutions.

**Background Papers:** the following background papers were used in the preparation of this report:

The Flood and Water Management Act 2010; The Flood Risk regulations 2009

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## Appendix

### Flood and Water Management Act 2010

#### Briefing Note

1. The Act is divided into three parts and contains five schedules
  - Part 1 - Flood and Coastal Erosion risk management
  - Part 2 - Miscellaneous
  - Part 3 - General
  - Schedule 1 - Risk Management: Designation of features
  - Schedule 2 - Risk Management: Amendment of Other Acts
  - Schedule 3 - Sustainable Drainage
  - Schedule 4 - Reservoirs
  - Schedule 5 – Special Administration
- 2.0 Flood and Coastal erosion risk management
  - 2.1 The lead responsibility for flood risk management within the SCDC area now rests with the County Council. Under the provisions of the Act the County may delegate the duty to the District (or other relevant risk management authority) on terms that may be agreed between County and District. It is not possible, however, for the County to delegate its duty to produce a local flood risk management strategy.
  - 2.2 There is a duty under the Act to co-operate and work in partnership with the lead authority and this has been achieved within Cambridgeshire by the formation of the Cambridgeshire Flood Risk Management Partnership (CFRMP). The Partnership is headed by the County and includes all Districts, the Environment Agency (EA), Anglian Water, Cambridgeshire Horizons, and the local Internal Drainage Boards (IDB's).
- 3.0 Flood Risk Management Strategies
  - 3.1 The EA is required (and is currently consulting on) a national strategy for the management of flood risk. This national strategy must be approved by the Secretary of State and laid before Parliament. Additionally, the lead local authority is required to develop, maintain and monitor a local flood risk management strategy.
  - 3.2 The local strategy must follow the national strategy and specify the following:

Local risk management authorities and their functions; Flood risk management objectives and measures to achieve these; How these measures will be implemented, their cost and method of funding; A local flood risk assessment; Review date for the strategy and how the strategy will contribute to the wider environment. The County Council will be required to consult with all affected local risk management authorities.
- 4.0 Duty to act consistently with local and regional strategies
  - 4.1 The District Council and all risk management authorities other than the water and sewerage undertakers, must act in a manner consistent with local and national strategies when exercising its risk management functions. These include:

- Planning, erecting, maintaining, altering or removing buildings or other structures (including flood defence structures)
- Maintaining or restoring natural processes
- Reducing or increasing water levels
- Carrying out works that affect a watercourse
- Using statutory powers to permit, require, restrict or prevent activities
- Arranging financial or other support for action on flood risk
- Making arrangements for forecasting and warnings
- Preparing, gathering and disseminating maps, plans, surveys and other information
- Providing education and giving guidance

## 5.0 Duty to Investigate

5.1 A lead local flood authority, on becoming aware of a flood in its area, must, to the extent that it considers necessary, investigate which risk management authorities have relevant risk management functions and whether these functions have been exercised. The results of its investigations must then be published.

## 6.0 Duty to maintain a register

6.1 The lead local authority must establish and maintain a register of structures or features that are likely to have a significant affect on flood risk in its area. The register will contain information about each of the features, their ownership and state of repair. SCDC will have a duty to provide information on its system of award drains and associated structures.

## 7.0 Sustainable Development

7.1 Local authorities and IDB's must aim towards the achievement of sustainable development when exercising their flood risk management function. The Minister must issue guidance on how this duty will be discharged including guidance about the meaning of sustainable development.

## 8.0 Incidental Flooding and Powers to Carry Out Works

8.1 Under the terms of the Act, lead local authorities will have direct powers to carry out works in the course of flood risk management. District Councils and IDB's retain their powers to carry out works to ordinary watercourses. All local authorities and IDB's will have powers to carry out works that may cause flooding or an increase in the amount of water below the ground subject to certain conditions that include nature conservation, cultural heritage concerns or people's enjoyment of the environment. For this work to take place, the EA must be consulted and the benefits must outweigh any harmful consequences.

## 9.0 Schedule 1 – Designation of Features

9.1 This schedule allows a local authority to officially designate a structure or natural or man-made feature of the environment for the purpose of flood risk management. The designation offers protection from alteration or removal. The designated features might include flood embankments, culverts, retaining walls and SuDS features. The designation process may involve notices, consents, use of emergency powers, compensation and an appeals procedure.

## 10.0 Schedule 2 – Risk Management: Amendment of Other Acts

10.1 This schedule amends a number of other Acts including the Land Drainage Act 1991, The Water Resources Act 1991 and the Local Government Act 2000. The changes to the above legislation give slightly enhanced powers to District Councils. Lead local authorities are given additional powers and new obligations. Overview and Scrutiny Committees will now be required to review the flood risk management functions of Lead local authorities.

## 11.0 Schedule 3 – Sustainable Drainage Systems (SuDS)

11.1 The Act requires all new developments (subject to exemptions) of two or more properties to include sustainable drainage as part of the proposal. Responsibility for the approval of SuDS systems and their eventual adoption and maintenance will rest with the Lead local authority which will be known as the SuDS approving and maintenance Body (SAB)

11.2 New national standard standards will govern design, construction, operation and maintenance of SuDS and developers will be required to seek approval from the SAB for all new surface water drainage systems.

11.3 As the County Council will be required to assess the SuDS applications and undertake final adoption, it will have three options to consider in order to fulfil the new role:

- (a) Carry out the work in-house
- (b) Delegate to SCDC
- (c) Outsource to another authority/Contractor

11.4 It will be very important for the Local Planning Authority (LPA) to develop a close working relationship with the new SAB. SAB approval and Planning consent will become two distinct functions and it will be very important to avoid conflict due to different priorities. An example of this might be where an increase in SuDS surface features might have an impact on housing density or where the different interpretation of SuDS could impact on amenity or biodiversity. Outline SAB approval will not be possible and this may conflict with outline planning applications.

11.5 The introduction of the SAB may change the role of the EA on planning applications. For the future the EA may only provide strategic flood risk guidance which may result in a greater responsibility falling on the LPA.

12.0 Schedules 3 and 4 relate to matters that do not have a direct impact on local authorities.

## **The Flood Risk Regulations 2009**

### **Briefing Note**

#### **1.0 Introduction**

1.1 The regulations are divided into seven parts as detailed below

## **2.0 Part 1 – General Provisions**

- 2.1 Part 1 outlines the extent and commencement date of the regulations and defines various aspects of flooding and flood risk. It also establishes that the County Council is the lead local authority under the regulations.

## **3.0 Part 2 – Preliminary Flood Risk Assessments**

- 3.1 This part of the regulations imposes duties to prepare Preliminary Flood Risk Assessments on both the Environment Agency (EA) and the Lead local authority (County Council)
- 3.2 The EA has a duty to prepare preliminary assessment maps and reports covering the sea, main rivers and reservoirs. The County Council has a duty to prepare a preliminary assessment report on all other flooding not covered by the EA – including flooding from surface water, ground water and from statutory undertakers (e.g. Anglian Water). The County is expected to produce its preliminary Flood Risk Assessment report to be assessed by the EA by June 2011. The regulations outline details of the content of the above maps and reports.
- 3.3 Both the EA and County Council have a duty to identify significant flood risk areas and guidance on the definition of ‘significant’ is expected from the Minister.

## **4.0 Part 3 – Flood Hazard Maps and Flood Risk Maps**

- 4.1 The EA and County Council must prepare Flood Hazard and Flood Risk maps for the flood risk areas identified in their Flood Risk Assessment reports.
- 4.2 Flood Hazard maps should include the extent (including water level and depth), direction and speed of flow as well as the probability of occurrence.
- 4.3 Flood Risk maps will include the number of people living in an effected area, economic activity in the area, potential for industrial pollution in the event of flooding, the impact on protected areas (as defined by the EA) and areas subject to specific measures or protection in order to maintain water quality. The impact on human health, economic activity, the environment and cultural heritage must also be considered.
- 4.4 The flood hazard and risk maps must be produced before 22 December 2013 and reviewed thereafter approximately every six years.

## **5 Part 4 – Flood Risk Management Plans**

- 5.1 The EA and County Council have a duty to prepare Flood Risk Management Plans where areas of significant flood risk have been identified. These plans must set objectives for the purpose of managing flood risk and the proposed measures for achieving those objectives. The objectives should include the desire to reduce the adverse consequence of flooding and reduce the likelihood of flooding. In particular the plans must include measures relating to the prevention of flooding, the protection of individuals, communities and the environment as well as arrangements for forecasting and warning.

- 5.2 The plan must take regard of the cost and benefits of different methods of managing flood risk, the flood hazard and risk maps, the river basin management plans, the affect of flood plains, the environmental objectives and the likely affect of a flood and of different methods of managing a flood.
- 5.3 The plan must also include a map showing the boundaries of the flood risk areas, a summary of the conclusions from the flood hazard and risk maps, timings and responsibilities for implementing the objectives and subsequent monitoring.
- 5.4 Consultation must be undertaken about the proposed plans with all relevant authorities and the public and the plans must be published by 22 December 2015. The plans must be reviewed approximately every six years.

## **6.0 Part 5 - Exceptions**

- 6.1 The exceptions allow for information to be published earlier.

## **7.0 Part 6 – Co-operation**

- 7.1 The Environment Agency and the lead local authority have a duty to co-operate with each other when exercising any function under these regulations. Additionally, relevant authorities such as District Councils, IDB's, highway authorities and others listed in part 6 must comply with a request from the EA or lead local authority to provide relevant information under the regulations.

## **8.0 Part 7 – Northumbria and Solway Tweed River Basin Districts**

- 8.1 This part of the regulations is a special provision that only applies to the above river basins.



