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To: Floods and Water Resources Committee

Subject: Floods and Water Management Act

Classification: Unrestricted

Summary:

The Floods and Water Management Act 2010 and the Flood Risk Regulations 2009 create Lead Local Flood Authorities at Unitary or County Council level. Lead Local Flood Authorities are required to lead the strategic management of local flood risk (arising from surface water, groundwater and ordinary watercourses) and to approve and adopt Sustainable Drainage Systems.

Kent county is at significant risk of local flooding and these new powers place a substantial burden on KCC to manage these risks.

1. Introduction

The Flood and Water Management Act (the Act) received Royal Assent on 8 April 2010. The Act is intended to provide more comprehensive management of flood risk for people, homes and businesses. It will also help tackle longstanding issues in the water industry.

The flood risk management aspects of the Act are in response to the Pitt Review of the 2007 floods. The Act promotes cooperation and information sharing and creates clearer roles and responsibilities for flood risk management. This includes the creation of Lead Local Flood Authorities at unitary or county council level to lead on local flood risk.

The Flood Risk Regulations (the Regulations) transpose the EU Floods Directive into UK Law. They require Lead Local Flood Authorities to prepare maps of flood risk and hazard and produce mitigation strategies for areas identified at significant risk from local flood risk. There are three phases to the Regulations, the first is a screening exercise to identify areas at risk.

An outline of the new flood risk management responsibilities for KCC arising from the Act and Regulations are outlined below.

2. Overview of the Act and Regulations

2.1 Lead Local Flood Authority

The Act defines the Lead Local Flood Authority (LLFA) as the unitary authority or county council. Kent County Council is the LLFA for Kent, Medway Council is the LLFA for Medway. LLFAs are responsible for local flood risks, defined as flood risk from surface water, groundwater and ordinary watercourses¹.

2.2 Development of local partnerships

¹ Ordinary watercourses include all remaining watercourses that are not main rivers, including tributaries, streams, ditches, drains, cut, dyke, sluice and non-public sewers.

The Act enables the development of local partnerships to be formed between the LLFA and Risk Management Authorities (RMAs), defined as the Environment Agency, district councils, internal drainage boards, highways authorities and water companies. The Act does not stipulate the form these arrangements should take, it is for KCC to develop a suitable partnership format.

The Act requires the relevant authorities to co-operate with each other and also empowers the LLFA (or the Environment Agency) to acquire information from others that may be needed for their flood and coastal erosion risk management functions.

2.3 Flood risk management strategy

The Environment Agency will be required to develop a national strategy for the management of coastal erosion and all sources of flood risk for England.

The Act also requires the LLFA to develop, maintain, apply and monitor a strategy for local flood risk management. The LLFA will be responsible for ensuring the local strategy is put in place but it will be developed in agreement with relevant local partners. The Act sets out the minimum that a local strategy must contain:

- The risk management authorities in the relevant area.
- The flood and coastal erosion risk management functions that may be exercised by those authorities in relation to the area.
- The objectives for managing local flood risk and the measures proposed to achieve those objectives.
- How and when the measures are expected to be implemented.
- The costs and benefits of those measures, and how they are to be paid for.
- The assessment of local flood risk for the purpose of the strategy.
- How and when the strategy is to be reviewed.
- How the strategy contributes to the achievement of wider environmental objectives.

The strategy must be consistent with the national flood and coastal erosion risk management strategy for England and the LLFA must consult with the RMAs that may be affected by the strategy and the public.

The local strategy will be the key means to harness all flood risk management powers and create coherent policy for the RMAs in Kent, delivering much needed strategic and coordinated planning in surface water management across the county.

2.4 Duty to investigate and to maintain a register

The LLFA will be required to investigate flooding incidents (where other flood risk management authorities do not respond) to identify which authorities have responsibility to deal with the flood and whether each of them intends to respond. They will also be required to maintain a register of structures or features which they consider to have a significant effect on flood risk in their area, at a minimum recording ownership and state of repair.

The Act also provides powers to designate structures and features that affect flooding or coastal erosion. Once designated, the owner must seek consent from the LLFA to alter, remove or replace.

2.5 Additional powers

LLFAs will take over the Environment Agency's role in deciding whether to permit works by third parties that may affect water flows on ordinary watercourses outside of Internal

Drainage Districts². LLFAs will also be required to ensure that all works by watercourses they are responsible for have the appropriate consent and that consented works are constructed according to the agreed design.

The Act also provides the LLFA with powers to do works themselves to manage flood risk from surface runoff and groundwater and to undertake maintenance. All works must be consistent with the local flood risk management strategy for the area.

2.6 Sustainable drainage systems (SUDS)

The Act places a duty on LLFA to approve, adopt and maintain Sustainable Drainage Systems³ (SUDS). The LLFA is required to establish a SUDS Approval Board to approve all developments that have drainage implications. If the drainage is sustainable, serves more than one property and is approved, the SUDS Approval Board must adopt it.

The approval process will run parallel with any planning application that may also be required for the development and development may not commence without drainage approval from the SUDS Approval Board.

2.7 Flood Risk Regulations

The Regulations require LLFAs to identify areas of significant risk from local flooding, to prepare maps of risk and hazard for these areas and to prepare a strategy for mitigating the risks in these areas. There are three key dates for delivery of each phase:

- Preliminary Flood Risk Assessment (PFRA) – June 2011
- Risk and hazard maps – June 2013
- Strategy – June 2015

LLFA outputs from these stages are reported to the Environment Agency, who add their reports for fluvial and coastal flooding and report to the EU. As this is tied to EU legislation, once areas are defined we are obliged to complete the subsequent stages for these identified areas.

2.8 Review and Scrutiny

LLFAs have a responsibility to review and scrutinise the exercise of flood and coastal risk management functions undertaken by all RMAs in Kent to ensure that they are undertaking their responsibilities and acting in accordance with the local strategy.

3. Implications for Kent County Council

3.1 Scale of issues

Kent county has the highest risk from surface water flooding of all LLFAs in England. The latest available estimates put the number of homes at risk at approximately 64,000 ahead of Hampshire county, with approximately 61,000. This figure excludes commercial premises, roads and other infrastructure and flooding from groundwater and ordinary watercourses.

Additionally, over the past three years there has been an average of approximately 4,500 minor and major planning applications in Kent. Once the Act is fully commenced these would all be subject to drainage approval by the SUDS Approval Board, as well as a number of permitted developments (for instance patios).

3.2 Resources required

² An area of special drainage need managed by an Internal Drainage Board.

³ Management practices and flow controls designed to drain surface water in a fashion more similar to natural runoff processes than conventional piped techniques

The task for KCC as the LLFA to undertake these new roles is substantial and as they are new functions there is limited existing expertise within the Council currently. KCC will need to acquire staff with experience in drainage engineering in order to fulfil its land drainage and SUDS responsibilities. Junior engineers and technicians will be required to help prepare maps and strategies for mitigation plans and measures. Mapping technology and resources will be required to manage these plans and the register of assets.

A key function will be the coordination of our new roles with all partners. Our responsibilities have implications for spatial planning, development control, highway maintenance and other RMA's functions. KCC now has a role to coordinate these functions to ensure that the local strategy is acceptable to all partners and is implemented coherently throughout the county.

Work is required to understand how best to provide these new responsibilities and how they will coordinate with the existing functions that they impact upon. Similarly, other RMAs have resources that could be used to meet our resource gaps. Work is required to establish appropriate protocols and the cost/benefit of the alternative means of delivering these functions, potentially in partnership with RMAs.

3.3 Member engagement

Many other RMAs are concerned about the implications for them of these new powers and their members have expressed an interest in wider engagement on these issues. A forum for members of other RMAs to keep abreast of our work in this area would be expedient.

4. Progress

The first parts of the Act commenced on 1 October 2010. These include new definitions, the requirement to develop national and local flood risk management strategies and amendments to sewer adoption processes. Currently, Defra anticipate that the remainder of the Act will commence in April 2011. The exception is the SUDS section for which there is no clear timetable for implementation (anticipated no earlier than late 2011).

In May 2010, KCC appointed a Flood Risk Management Officer to coordinate the implementation of the Act and Regulations. Below is a summary of progress that KCC have made to date in implementing the Act and Regulations:

- KCC have established a Floods and Water Resources member's committee to provide a scrutiny role in Kent;
- KCC have convened the Kent Flood Partnership, a partnership chaired jointly by KCC and Medway Council with all RMAs in Kent, and drafted terms of reference (appendix 1 contains a list of partners and draft Partnership TOR);
- KCC have commenced data collection for the PFRA;
- KCC have been liaising with all risk management authorities to explain the implications of the Act and to establish working relationships; and
- KCC have been undertaking a Surface Water Management Plan (SWMP) for Dover.
- Commenced an assessment of KCC's capacity needs for implementing the Act and Regulations responsibilities.

Below is a summary of future progress that will need to be made:

- Provide a forum for the members of other RMAs to engage with our work(eg Districts and IDBs) – to be completed by Spring 2011;
- Review draft PFRA from EA, compare with data gathered and consult with partners on areas of significant risk – to be completed by Spring 2011;
- Continue the Kent Flood Partnership to agree appropriate ways to implement the new responsibilities – this task is ongoing;

- Undertake an assessment of resources with Kent County, including Risk Management Authorities, to understand how we can work together to provide these services the most efficiently – to be completed by Spring 2011;
- Establish a SUDS Approval Board, including agreeing guidance and protocols for the design and construction of SUDS and appropriate mechanisms to provide guidance and approval to all stakeholders – completion of this task is dependant on commencement of these parts of the Act likely to be before the end of 2012; and
- Review Defra guidance as it is published and implement it as appropriate – this task is ongoing.

5. Funding

Funding for the full implementation of the Act is still being determined by Defra. The SUDS functions will be funded separately through application, inspection and adoption fees; the Minister is currently consulting on the mechanisms for funding SUDS and the appropriate fees. The other additional burdens will be met by Defra, funding for which will be announced after the spending review.

To date we have received £100,000 to undertake the Dover SWMP and £30,000 to undertake the PFRA.

We are currently assessing what resources are required to implement the Act and are in communication with Defra and the CLG to ensure that these new burdens are fully met by central government.

6. Recommendations

The committee should consider how members from other bodies might engage with this committee.

The committee to receive subsequent report once capacity assessment is complete and the allocation of funding for flood management in Kent is confirmed by central government.

The committee to approve and recommend the PFRA to cabinet once it has been drafted.

Background documents

The Floods and Water Management Act -

http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga_20100029_en.pdf

The Floods and Water Management Act explanatory notes -

http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpgaen_20100029_en.pdf

The Flood Risk Regulations - <http://www.legislation.gov.uk/uksi/2009/3042/contents/made>

What does the Flood and Water Management Act mean for Local Authorities, Defra -

<http://www.defra.gov.uk/environment/flooding/documents/policy/fwmb/fwma-lafactsheet.pdf>

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Kent Flood Partnership Partners and Terms of Reference

Kent County Council

Medway Council

Environment Agency

Southern Water

Thames Water

Medway IDB

River Stour IDB

Romney Marshes IDB

Ashford Borough Council

Canterbury City Council

Dartford Borough Council

Dover District Council

Gravesham Borough Council

Maidstone Borough Council

Sevenoaks District Council

Sevenoaks District Council

Shepway District Council

Swale Borough Council

Thanet District Council

Tonbridge & Malling Borough Council

Tunbridge Wells District Council

Kent Highways Services

KCC Emergency Planning