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To: Environment, Highways & Waste Policy Overview & Scrutiny 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. This paper provides an introduction to these new responsibilities and details initial work on their implementation at KCC.

1. Introduction

1.1 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.

1.2 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.

1.3 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.

1.4 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 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 As Lead Local Flood Authority, Kent County Council will be required to:

- Develop local partnerships.
- Develop, maintain, apply and monitor a Flood risk management strategy for Kent.
- Investigate and maintain a flood register.
- Assume additional permitting powers.
- Approve, adopt and maintain Sustainable Drainage Systems² (SUDS).
- Meet the requirement of the Flood Risk Regulations (2009) and identify and map areas of significant local flood risk and prepare a strategy for mitigation of this risk.
- Review and scrutinise the exercise of flood and coastal risk management functions in Kent.

2.3 Further details of these LLFA responsibilities are provided in Appendix 1.

3. Implications for Kent County Council

3.1 Kent 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, with approximately 61,000. This figure excludes commercial premises, roads and other infrastructure and flooding from groundwater and ordinary watercourses. The management of this flood risk now sits with KCC.

3.2 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).

3.3 The task for KCC, as the LLFA, in undertaking these new roles is substantial and as they are new functions there is limited existing expertise within the Council. 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.

3.4 A key function will be the coordination of these 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

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

² Management practices and flow controls designed to drain surface water in a fashion more similar to natural runoff processes than conventional piped techniques.

coordinate these functions to ensure that the local strategy is acceptable to all partners and is implemented coherently throughout the county.

4. Progress

4.1 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).

4.2 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 2 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.

4.3 Below is a summary of the key activities that will be undertaken over the next twelve months:

- 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 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

5.1 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.

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

5.3 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

1. POSC to receive subsequent report once capacity assessment is complete and the allocation of funding for flood management in Kent is confirmed by central government.
2. POSC to advise if they wish to receive further reports on the implementation of these responsibilities (and which functions if relevant).

7. 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 COUNTY COUNCIL LEAD LOCAL FLOOD AUTHORITY RESPONSIBILITIES

1. Development of local partnerships

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. Flood risk management strategy

The Act 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 (to be developed by the Environment Agency) 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 harnessing all flood risk management powers and creating coherent policy for the RMAs in Kent, delivering much needed strategic and coordinated planning in surface water management across the county.

3. 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.

4. 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 Districts³. 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.

5. Sustainable drainage systems (SUDS)

The Act places a duty on LLFA to approve, adopt and maintain Sustainable Drainage Systems⁴ (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.

6. 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 will 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.

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

⁴ Management practices and flow controls designed to drain surface water in a fashion more similar to natural runoff processes than conventional piped techniques.

KENT FLOOD PARTNERSHIP PARTNERS

Ashford Borough Council
Canterbury City Council
Dartford Borough Council
Dover District Council
Environment Agency
Gravesham Borough Council
KCC Emergency Planning
Kent County Council
Kent Highways Services
Maidstone Borough Council
Medway Council
Medway IDB
River Stour IDB
Romney Marshes IDB
Sevenoaks District Council
Sevenoaks District Council
Shepway District Council
Southern Water
Swale Borough Council
Thames Water
Thanet District Council
Tonbridge & Malling Borough Council
Tunbridge Wells District Council

KENT FLOOD PARTNERSHIP TERMS OF REFERENCE

Objectives

1. This Partnership has been developed to provide the Kent response to the Floods and Water Management Act, the Flood Risk Regulations and ensure that flood risk management strategy development and delivery in Kent is coordinated and integrated.
2. The Partnership's primary purpose, therefore, is to ensure that effective flood risk management and resilience is built into service delivery in a manner which delivers better protection from flood risk for the County's communities and key infrastructure.
3. The Partnership's key activities will involve providing a single voice on Kent's flood risk management matters at a local, regional and national level; providing the key point of contact for local authority scrutiny; and providing strategic oversight of all flood risk and drainage matters in the County.

Aims

1. Funding and skills – to identify new funding opportunities, more cost effective methods of joint working and ensure that the core skills, competencies and resources are safeguarded;

2. Cooperation – to share data, skills and best practice within and without Kent to ensure that flood risk management delivery is feasible, proportionate and sustainable;
3. Lobbying – to provide a unified voice on flood risk and drainage matters on national policy and funding matters;
4. Awareness – to ensure that the general public is aware of the flood risk responsibilities and that partner organisations are familiar with their respective roles, responsibilities and duties and that work programmes are aligned accordingly;
5. Oversight – to receive reports on and provide a strategic input and direction to the development of plans, policies and programmes of works developed to manage flood risk in the County;
6. Conflict Resolution – addressing specific issues affecting delivery or collaborative working as and when they arise;
7. Reporting - to assist in the reporting of flood risk management activity and programmes to respective Partners' Oversight and Scrutiny committees (or equivalent);
8. Delivery – to establish working groups as appropriate to deliver flood risk management measures and provide advice to Local Planning Authorities, developers and other bodies as needed. As a body representing all Risk Management Authorities (RMAs) in the area, the Partnership will identify strategic priorities and risks and opportunities for funding;
9. Communication – to promote activities engaging and educating the public on flood risk issues, including the responsibilities of landowners and tenants in flood risk management.

Membership, frequency of meetings and review

The Partnership's members will be drawn from the RMAs in Kent and neighbouring areas and be of appropriate seniority to represent the RMA on such matters (for Local Authorities this will be Assistant Director level or higher). Meetings should take place between every 4 – 6 months. These Terms of reference and the composition of the partnership will be subject to periodic review, as the partnership deems appropriate.