

WIRRAL COUNCIL

CABINET – 21 JULY 2011

SUBJECT:	<i>WIRRAL FLOOD & WATER MANAGEMENT</i>
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES / STRATEGIC CHANGE PROGRAMME
RESPONSIBLE PORTFOLIO HOLDER:	<i>COUNCILLOR HARRY SMITH STREETSCENE AND TRANSPORT SERVICES</i>
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

- 1.1 The Flood & Water Management Act 2010 and the Flood Risk Regulations 2009 established Wirral Council as a Lead Local Flood Authority (LLFA). LLFAs are required to lead the strategic management of local flood risk (arising from surface water, groundwater and ordinary watercourses in addition to tidal flooding and coastal erosion) within their district boundaries.
- 1.2 Wirral is at risk of local flooding, with a substantial number of domestic properties identified as at risk from potential future flooding. The responsibilities attached to the LLFA role, place substantial new burdens on Wirral Council in managing these flood risks. A report to Cabinet on 17 March 2011 (minute 354 refers) provided an introduction to these new responsibilities and detailed initial work on their implementation.
- 1.3 This report details progress to date and includes information on Wirral's Preliminary Flood Risk Assessment (PFRA), the new LLFA responsibilities and duties; and the funding proposals surrounded these new responsibilities and duties.

2.0 RECOMMENDATIONS

- 2.1 Cabinet are requested to approve the proposals to meet the Council's responsibilities as the LLFA under the Flood & Water Management Act 2010 and the Flood Risk Regulations 2009, in particular to endorse the acceptance of the PFRA as a Flood Risk Management policy document and to task the Sustainable Communities Overview & Scrutiny Committee with responsibility for overseeing the Council's implementation of the new burdens.
- 2.2 Cabinet is also requested to acknowledge the proposals to utilise the financial allocation made to Wirral Council to undertake the new responsibilities under the Flood & Water Management Act 2010 and the Flood Risk Regulations 2009

through the creation of a new position within the Drainage Team, subject to usual Council procedures.

3.0 INTRODUCTION

- 3.1 The Flood and Water Management Act 2010 has and will continue to place additional duties and responsibilities on each LLFA. These new duties and responsibilities are detailed in **Appendix 1**.
- 3.2 The Flood Risk Regulations 2009 implemented the requirements of the European Floods Directive, which requires a six year cycle of flood risk planning based on a four stage process of:
 - i Undertaking a Preliminary Flood Risk Assessment (PFRA).
 - ii Identifying flood risk areas.
 - iii Preparing flood hazard and risk maps.
 - iv Preparing flood risk management plans.
- 3.3 LLFAs are responsible for carrying out the PFRA process and were required to produce an approved and scrutinised report and accompanying data to the EA by the 22nd June 2011. The Environment Agency (EA) has a duty to review, collate and publish the required reports by the 22nd December 2011. In order to ensure compliance with this mandatory schedule Cabinet (17 March 2011, minute 354) approved the delegation of the scrutiny of the PFRA to the Elected Members of the Wirral Flood & Water Management Partnership.
- 3.4 The additional duties and responsibilities are, in general, being funded through financial grants, initially through Defra, with an allocation of £20,000, which was received in October 2010 to begin the work on the PFRA.
- 3.5 In addition to this initial grant, Defra have indicated that nationally some £36million has been allocated to fund the significant new burdens that have been placed on LLFAs. Wirral Council have been notified that it will receive £122,800 in 2011/12 and a subsequent £167,900 annually in years 2012/13, 2013/14 and 2014/15.
- 3.5 These costs have been calculated based on a model of the significance of the risk to the LLFA and the level of resource required to address that risk.

4.0 THE FLOOD RISK REGULATIONS 2009 – PFRA PROGRESS

- 4.1 Under the Flood Risk Regulations 2009, the PFRA process represents the first stage in delivering local flood risk management and action plans; and Wirral Council as an LLFA was required to produce a PFRA in accordance with guidance supplied by the EA on behalf of the UK Government. The PFRA was a high level screening exercise that involved the collection of information on past (historic) and future (potential) floods, assembling it into preliminary assessment report, and using it to agree local surface water flooding information and identify Flood Risk Areas (areas where the risk of flooding is significant i.e. more than 30,000 properties at risk).

- 4.2 Whilst no significant historic local flooding or significant future local flooding risk (more than 30,000 properties affected) were identified as part of the PFRA process, Wirral has adopted the Flood Map for Surface Water (FMfSW) for its locally agreed surface water risk. The local flooding that has occurred together with the identified future flood risk from the surface water flood risk maps will form the basis of the Wirral Flood Risk Management Strategy and be supported by the PFRA report. The PFRA was submitted to the EA prior to the 22 June 2011 deadline and a copy is stored in the Members Library for information.
- 4.3 As no significant local Flood Risk Areas were identified within the Wirral, there will be no requirement to prepare flood hazard and risk maps or specific flood risk management plans. However, in accordance with the requirements of the Flood Risk Regulations 2009, the PFRA will be reviewed in 6 years (2017).

5.0 THE FLOOD & WATER MANAGEMENT ACT 2010 – PROGRESS

- 5.1 The first parts of the Flood & Water Management Act commenced on 1 October 2010. These included new definitions of flooding, the requirement to develop national and local flood risk management strategies within a reasonable timeframe, to co-operate and share information, establish Scrutiny Committee and amendments to Building Regulations in relation to flood resilience.
- 5.2 The previous report in March 2011 identified how Wirral Council would meet its initial responsibilities as an LLFA which included the earlier appointment of a drainage specialist to head up the Drainage Function within Technical Services, the restructuring of the existing Wirral Flood Group to create the Wirral Flood & Water Management Partnership together with its Operational Sub Group with the aim of improving the existing working relationships with all its flood risk management partners; and finally the programme for the production of its PFRA.
- 5.3 In April 2011, further parts of the Act commenced, these included a duty for the LLFA to investigate flooding incidents in its area and identify responsibilities, a duty to maintain a register of structures or features which may have an effect on flood risk and a responsibility to contribute towards sustainable development when exercising its duties. It has also been suggested by the EA that LLFAs must be able to show that progress is being made on the local strategy for flood risk management.
- 5.4 The development of the local flood risk management strategy must be consistent with the National Strategy, guidance on which is still awaited. However, the Merseyside Authorities have held a number of workshops to agree the general contents of the local strategy together with an implementation programme. Additionally, it was agreed that a working group would be set up within each Authority, with members from those disciplines that had a flood risk interest. It has been agreed that in the Wirral, this will be based around the Operational Flood Group with other co-opted participants as deemed necessary. Regular specific reports will be presented to Sustainable Communities Overview & Scrutiny Committee on progress in the development of the Strategy.

- 5.5 As part of the post EVR/VS re-organising of Technical Services the opportunity to review the level of resource needed to meet the additional responsibilities and duties as an LLFA has been taken. This is considered an appropriate time, firstly following the additional specific funding provision, secondly, the need to build up the drainage expertise for the future and finally, the timely and successful completion of the academic qualifications stage by a career graded trainee technician, who has indicated a preference for and been temporarily assigned to the Drainage Team. The creation of an additional permanent post within the Drainage Team will substantially increase its ability to meet the new responsibilities and duties brought about by the new legislation and enable the drainage knowledge and expertise that sits with the existing team members to be shared.
- 5.6 The responsibility to investigate flooding incidents will be onerous and it is unlikely that following extreme storm events, even with an additional resource, that it will be possible to investigate all reported flooding without prioritising incidents by the location and degree of flooding. A policy to process and prioritise flooding incidents will therefore be developed for approval by Members.
- 5.7 The duty to establish and maintain a register of assets that may have an effect on flood risk is prescriptive, as is the need to record information about each feature including ownership and state of repair; and for the register to be available for inspection at all reasonable times. This includes inspection by the public but does not include the recorded information. However, what assets the LLFAs specifically record is not, the Act specifically states that the assets recorded are those that in the opinion of the LLFA, are likely to have a significant effect on flood risk in its area. Neither Defra or the EA have to date offered guidance on what nationally maybe considered significant, this is considered a response to the need for the locality of the flood risk to take precedent. However, they have developed examples of templates for what a register of assets might look like but again their use is not prescriptive.
- 5.8 The expectation is that LLFAs will have their registers and records in place, and will have started populating them by December 2011. It was intended to link the Wirral register with the Highway Asset Management Plan but as this has not progressed as originally planned due to funding issues; it is now proposed to utilise the example templates as a guide and produce a database based around the Microsoft Office Software suite of programmes, which should be compatible with any future asset management programme.
- 5.9 LLFAs will be required to approve and adopt Sustainable Urban Drainage Systems (SUDS). This will require the establishment of a SUDS Approving Body (SAB) and at present it is likely that this will be based around the existing Planning Committee. Specific government guidance on SUDS and SAB is still awaited but is likely to be out for consultation towards the end of 2011.
- 5.10 A copy of the updated Wirral Flood & Water Management Partnership action plan is attached as **Appendix 2**. This Action Plan captures the key flood risk activities that will be undertaken by or on behalf of the Partnership over the coming 12 months.

6.0 BACKGROUND AND KEY ISSUES

6.1 The Flood and Water Management Act 2010 placed additional burdens on LLFAs, the most recent of these include a duty for the LLFA to investigate flooding incidents in its area and identify responsibilities, a duty to maintain a register of structures or features which may have an effect on flood risk. It also has to progress its local strategy for flood risk management. The LLFA will need to establish policies and protocols in dealing with these new responsibilities and duties which will be directed through the Flood & Water Management Partnership, the Sustainable Communities Overview & Scrutiny Committee and finally to Cabinet for approval.

7.0 RELEVANT RISKS

7.1 Whilst Wirral does not face any large-scale, significant risks (over 30,000 properties affected) according to the Defra definition, it does face a considerable risk of flooding to a substantial number of domestic properties identified as at risk from potential future flooding. Past national floods have demonstrated what a devastating psychological impact flooding can have on affected communities. Wirral continues to proactively manage the risk of flooding and the members of the Flood & Water Management Partnership will continue to work together to reduce the risk of property flooding here on Wirral

8.0 OTHER OPTIONS CONSIDERED

8.1 Not relevant.

9.0 CONSULTATION

9.1 There is no consultation required as a result of this work.

10.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

10.1 Flooding affects all voluntary, community and faith groups whether it be directly with their properties being flooded, or in a responder or recovery capacity.

11.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

11.1 There are no additional financial implications as the Council have been notified that it will receive £122,800 in 2011/12 and a subsequent £167,900 annually in years 2012/13, 2013/14 and 2014/15.

12.0 LEGAL IMPLICATIONS

12.1 There are no legal implications other than the duties imposed under the new legislation.

13.0 EQUALITIES IMPLICATIONS

13.1 There are no implications under this heading.

14.0 CARBON REDUCTION IMPLICATIONS

14.1 There are no specific carbon reduction implications although there are significant links with carbon reduction and sea level rises, increases in extreme weather patterns, etc. As a result the Council's Climate Change Officer is a member of the Wirral Flood and Water Management Partnership.

15.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

15.1 There will be significant planning implications in relation to this new legislation. As a result of which relevant officers from the Forward Planning and the Development Control sections are members of the Flood and Water Management Partnership and will be co-opted on to the Wirral Local Flood Risk Management Strategy Working Group.

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APPENDICES

- Appendix 1 Floods and Water Management Act 2010 – Summary of Local Authority Responsibilities
- Appendix 2 Wirral Flood & Water Management Partnership action plan

REFERENCE MATERIAL

- The Flood & Water Management Act 2010
http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga_20100029_en.pdf
- The Flood & Water Management Act explanatory notes
<http://www.legislation.gov.uk/ukpga/2010/29/notes/contents>
- The Flood Risk Regulations 2009
<http://www.legislation.gov.uk/uksi/2009/3042/contents/made>
- What does the Flood & Water Management Act mean for Local Authorities, Defra.
<http://www.defra.gov.uk/environment/flooding/documents/policy/fwmb/fwma-lafactsheet.pdf>

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	17 March 2011

Appendix 1

SUMMARY OF LOCAL AUTHORITY ISSUES THAT WILL REQUIRE RESOURCE IN FLOODS AND WATER MANAGEMENT ACT 2010

Enacted sections 2010

1. **Local Strategy (9)** Lead Local flood Authority (LLFA) develop maintain, apply and monitor a local strategy for Flood Risk Management (FRM). This must be consistent with the National Strategy.
2. **Co-operate and share information (13)** An authority must co-operate with other authorities in exercising FCERM, this includes sharing data.
3. **LLFA to establish Scrutiny Committee (31) (Schedule 2 Para 54)** Power to LLFA to allow for scrutiny committees in exercising FCERM.
4. **Building regulations: flood resilience (40)** Provides that building regulations can be made for any type of work in relation to flood resilience and resistance.

Duties and Powers enacted April 2011

1. **Duty to Investigate (19)** The LLFA must investigate flooding incidents in its area in order to identify what authority has the flood risk management function and to establish if that authority has or intends to respond. The LLFA must publish results of investigations.
2. **Duty to Maintain a Register (21)** A LLFA must establish and maintain a register of structures or features, which may have an effect on flood risk in its area. Records must include information on ownership and condition.
3. **Duty to Contribute to Sustainable Development (27)** LLFA must aim to contribute towards sustainable development whilst exercising FCERM.
4. **Designation of Features (30) (Schedule 1)** Power enabling LLFA to designate a feature that affects flood or coastal erosion risk, this is to prevent future alterations that may increase flood risk.
5. **Amendment of Other Acts (30) (Schedule 2)**
 - a. Para 29; gives the LLFA powers to carry out works on Ordinary Watercourses in line with the local FRM strategy
 - b. Para 31; gives LLFA power to enforce obligations to maintain or repair watercourse or bridge
 - c. Para 32; names the LLFA as the consenting authority for works to Ordinary Watercourses
 - d. Para 33; gives power to LLFA to require works for maintaining flow of watercourse
6. **Sustainable Drainage (32) (schedule 3)** The LLFA will be the Approving Body with the duty to approve rainwater drainage systems before construction and then adopt and maintain the drainage system upon completion. This section of the Act is not likely to be enacted in 2011. The Government intends to consult on issues late 2011. Schedule 3 also removes the right to connect to public sewer in certain cases.
7. **Incidental Flooding or Coastal Erosion (39)** Allows LLFA to carry out works that may increase flooding or coastal erosion if justified.

Duties and Powers to be enacted October 2011 and April 2012

1. **Designation of Features (30) (Schedule 1)** Power enabling LLFA to designate a feature that affects flood or coastal erosion risk, this is to prevent future alterations that may increase flood risk.
2. **Amendments to other Acts (31) (Schedule 2)**
 1. Para 29; gives the LLFA powers to carry out works on Ordinary Watercourses in line with the local FRM strategy
 2. Para 31; gives LLFA power to enforce obligations to maintain or repair watercourse or bridge
 3. Para 32; names the LLFA as the consenting authority for works to Ordinary Watercourses

4. Para 33; gives powers to LLFA to require works for maintaining flow of watercourse

3. Sustainable Drainage (32) (Schedule 3) The LLFA will be the Approving Body with the duty to approve rainwater drainage systems before construction and then adopt and maintain the drainage system upon completion. This section of the Act is not likely to be enacted during 2011 as the Government intends to consult on issues later this year. Schedule 3 also removes the right to connect to a public sewer in certain cases.

4. Incidental Flooding or Coastal Erosion (39) Allows LLFA to carry out works that may increase flooding or coastal erosion if justified.

FLOODS & WATER MANAGEMENT ACT 2010
DUTIES & RESPONSIBILITIES IMPLEMENTATION ACTION PLAN AS AT JULY 2011

Ref No	Action	Target Date	Comments
01	Establish Wirral Local Flood Risk Management Strategy Working Group	July 2011	
02	Inaugural meeting of Wirral Local Flood Risk Management Strategy Working Group	July 2011	
03	Review progress in development of Flood Risk Assets Register	Oct 2011	EA review on progress December 2011
04	Review progress of the Wirral Local Flood Risk Management Strategy	Oct 2011	EA review on progress December 2011
05	Develop process for consenting Ordinary Watercourse works.	Sept 2011	Enactment October 2011
06	Development of Flood Incident Prioritisation Policy and investigation protocols	Sept 2011	
07	Review Flood Incident Prioritisation Policy and investigation protocols by Partnership	Oct 2011	Committee Report
08	Reply to government consultation on SUDS and SAB	2011/12	Consultation expected late 2011
09	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	Late 2012	
10	Respond to new duties and responsibilities as enacted.	On-going	
11	Continue to review Defra guidance as it is published and implement it as appropriate	On-going	