

WIRRAL COUNCIL

SUSTAINABLE COMMUNITIES OVERVIEW & SCRUTINY COMMITTEE – 23 NOVEMBER 2011

SUBJECT:	PROGRESS REPORT ON THE IMPLEMENTATION BY WIRRAL OF THE FLOOD RISK REGULATIONS 2009 & THE FLOOD AND WATER ACT 2010
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR HARRY SMITH STREETSCENE AND TRANSPORT SERVICES
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). LLFA's are required to lead the strategic management of local flood risk (arising from surface water, groundwater and ordinary watercourses).
- 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 and will be directed through the Flood & Water Management Partnership, the Sustainable Communities Overview & Scrutiny Committee and finally to Cabinet for approval.

2.0 RECOMMENDATIONS

- 2.1 That the report be noted.
- 2.2 That the report be accepted by the Committee as meeting its responsibilities under the flood legislation to produce an annual report on Flood Risk Management progress.

3.0 PROGRESS REPORT

3.1 THE FLOOD RISK REGULATIONS 2009 – PRELIMINARY FLOOD RISK ASSESSMENT (PFRA)

- 3.1.1 The requirements of the EU Floods Directive (Directive 2007/60/EC, the assessment and management of flood risks across EU Member States) in England and Wales was transposed into domestic law through the Flood Regulations 2009 and the Flood and Water Management Act 2010, placing new flood risk management duties on the Environment Agency (EA) and Lead Local Flood Authorities (LLFAs) and a duty on other relevant organisations to cooperate and share data.

- 3.1.2 The Directive requires Member States to prepare a PFRA showing the impact of historic flooding and the potential impact of a repeat event by 22 December 2011.
- 3.1.3 For the Council, as the LLFA for the Wirral area, the PFRA process involved an assessment of local flood risk, the preparation of a Preliminary Assessment Report and the identification of Flood Risk Areas (where the risk of flooding is significant). The deadline for completion was 22nd June 2011. The Wirral PFRA was submitted prior to this deadline and will be reviewed in 6 years (2017). A copy is stored in the Members Library for information.

3.2 THE FLOOD & WATER MANAGEMENT ACT 2010 – IMPLEMENTATION

- 3.2.1 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**.
- 3.2.2 The additional duties and responsibilities are, in general, being funded through financial grants, initially through DEFRA, with an allocation of £20,000.00, which was received in October 2010 to begin the work on the PFRA. In addition to this initial grant, Defra have made available nationally some £36million to fund the significant new burdens that have been placed on LLFAs. Wirral Council has additionally received £122,800 in 2011/12 and will receive subsequent funding of £167,900 annually in years 2012/13, 2013/14 and 2014/15. (Cabinet minutes 84 and 354 refers).
- 3.2.3 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.
- 3.2.4 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.
- 3.2.5 A report to Cabinet 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.
- 3.2.6 As part of the restructuring of Technical Services following the EVR/VR process 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 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 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. Additionally, this new member of the Drainage Team has been enrolled on an externally funded 2 year part-time Flood & Coastal Risk Management Foundation Degree which will help fast track the skills and knowledge base within the Team.

- 3.2.7 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.
- 3.2.8 The development of the local flood risk management strategy must be consistent with the National Strategy, guidance on which has recently been published. 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. An annual report will be presented to Sustainable Communities Overview & Scrutiny Committee on Flood Management progress in general with other reports related to specific items as deemed necessary, eg, the Local Flood Risk Management Strategy Plan.
- 3.2.9 The responsibility to investigate flooding incidents is considered to be a significant task as evidenced following a recent significant extreme storm event when even with an additional resource, it was not possible to investigate all reported flooding without prioritising incidents by the location and degree of flooding. A policy to process and prioritise flooding incidents is therefore being developed for approval by Members.
- 3.2.10 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.
- 3.2.11 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. The development of the register is progressing and records population will commence as assets are identified.

3.2.12 LLFAs will be required to approve and adopt Sustainable Urban Drainage Systems (SUDS). This will require the establishment of a SUDS Approving Body (SAB). Defra had planned to launch a consultation on the proposed processes and mechanisms for implementation of the policy on Sustainable Drainage Systems on 15 July 2011. The launch of this consultation was delayed while some final questions are considered and resolved internally. This means that any consultation will not be launched until the Autumn 2011. The knock on effect is that the preferred implementation date of April 2012 is unlikely.

3.2.13 A small working group of officers from Drainage and Planning supported by Legal Services has met to discuss the requirements in connection with SUDS and SAB and will be making recommendations once the Consultation process has been completed and detailed guidance is available. In addition the group have discussed the future additional role for LLFAs to consent work on ordinary watercourses which was previously a role undertaken by the EA and will also be making recommendations concerning its implementation.

3.2.14 In order for the Drainage Team to be able to continue to support the Development Control function, the SAB/SUDs process and the additional responsibilities to identify flood risk and possible solution, it will be required to check the hydraulic capacity of the existing drainage systems and any proposed developments/improvements.

3.3 WIRRAL FLOOD & WATER MANAGEMENT PARTNERSHIP

3.3.1 The main purpose of the partnership is to achieve through joint agency working an effective response to flooding and coastal erosion incidents on Wirral; to take such collective measures in order to minimise the potential impact of such incidents; and to seek the implementation of more permanent and sustainable solutions to the mitigation or alleviation of flooding and coastal erosion.

3.3.2 This partnership has been developed to provide the Wirral response to the Flood and Water Management Act, the Flood Risk Regulations and ensure that the strategy development for flood and coastal erosion risk management on Wirral is coordinated and integrated. It is chaired and administered by Wirral MBC as the LLFA. Meetings are held twice a year in April and October to best fit with reporting and budget cycles and seasonal issues (Spring and Winter).

3.3.3 A copy of the updated 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.

3.4 WIRRAL OPERATIONAL FLOOD GROUP

3.4.1 The Operational Flood Group has met on a monthly basis since July 2011 to enable Wirral to progress its local flood risk strategy. Progress has also been made on a number of operational issues between United Utilities and Wirral Council and the Environment Agency have commenced improvements to the Bidston Trash Screen on the River Birket. The group meetings are an opportunity

to share information and knowledge and to discuss issues in an open and constructive environment.

- 3.4.2 The recent significant extreme rainfall at the end of August has led to some lively discussions and identified a number of flood risk locations not previously identified; and in accordance with the requirements of the legislation and under the proposed policy for the investigation of flooding incidents it will be necessary to produce a report detailing the incident and which flood risk management partner has responsibility.

4.0 BACKGROUND AND KEY ISSUES

- 4.1 The Flood and Water Management Act 2010 has placed additional burdens on Wirral as an LLFA and it will need to progress its local strategy for flood risk management and 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.

5.0 RELEVANT RISKS

- 5.1 Wirral faces a significant risk of flooding with 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. The recent unpredicted significant extreme storm event that led to the flooding of a large number of properties shows that these risks need to be identified and tackled.
- 5.2 The reduction of identified flood risk also partly mitigates one of the Council's Corporate risks – "Not having plans in place could compromise delivery of essential services in the event of a major public emergency".

6.0 OTHER OPTIONS CONSIDERED

- 6.1 Not relevant.

7.0 CONSULTATION

- 7.1 There is no consultation required at this time as a result of this work.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

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

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

- 9.1 There are no additional financial implications as the Council has received £122,800 in 2011/12 and will receive £167,900 annually in years 2012/13, 2013/14 and 2014/15.

10.0 LEGAL IMPLICATIONS

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

11.0 EQUALITIES IMPLICATIONS

11.1 There are no Equality implications.

12.0 CARBON REDUCTION IMPLICATIONS

12.1 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 Councils Climate Change Officer is a member of the Wirral Flood and Water Management Partnership.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 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
Sustainable Communities O & S Committee	17 November 2010
Cabinet	17 March 2011
Cabinet	21 July 2011

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 October 2011

Ref No	Action	Target Date	Comments
01	Establish Wirral Local Flood Risk Management Strategy Working Group	July 2011	Established
02	Inaugural meeting of Wirral Local Flood Risk Management Strategy Working Group	July 2011	Ongoing regular meetings
03	Review progress in development of Flood Risk Assets Register	Nov 2011	Committee report Nov 2011, EA review on progress December 2011
04	Develop the Wirral Local Flood Risk Management Strategy	Nov 2011	Committee report on progress Nov 11, EA review on progress December 2011, ongoing development during 2012.
05	Develop process for consenting Ordinary Watercourse works.	Sept 2011	Enactment October 2011, committee report Nov 2011
06	Development of Flood Incident Prioritisation Policy and investigation protocols	Nov 2011	Committee Report Nov 2011
07	Review Flood Incident Prioritisation Policy and investigation protocols by Partnership	Nov 2011	Committee Report Nov 2011
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	Ongoing development during 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	