

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

5 NOVEMBER 2009

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Corporate Management & Finance – Lead Cabinet Member – Councillor Terry Laing

PITT REVIEW AND THE DRAFT FLOOD AND WATER MANAGEMENT BILL

1. Summary

The draft Bill is the UK government response to the Pitt Review “Learning Lessons from the 2007 floods” published in December 2008, and “Future Water” which is the government’s water strategy for England published in February 2008.

This report sets out the key issues that are emerging from the draft Flood and Water Management Bill which is the government response to the Pitt Review into the summer floods in 2007.

The local authority is to be given the role of providing leadership particularly in respect of developing a strategy for local flood risk from ordinary water courses, surface run-off and groundwater.

There will be a requirement upon developers to include sustainable drainage schemes and it also proposes to remove the automatic right to connect surface water run off to public sewers.

The draft Bill is designed to help us manage and respond to severe weather events such as floods and drought which are set to become more frequent as a result of climate change.

The challenge that this presents will be in the form of resources to deliver these proposals and the skills and expertise that will be required within the council or its partner organisations.

2. Recommendations

It is recommended:

1. Members note the response to the draft Flood and Water Management Bill and the implications that this proposed legislation has for the authority.
2. Members note the impact upon resources that the proposed legislation may have and the implications will be highlighted in the service planning and budget setting process.

3. Reasons for the Recommendations/Decision(s)

1. The response to the draft Bill expressed concerns over the resources need to meet our obligations as well as highlighting the lack of skills within local authorities to deal with these issues since the majority of drainage engineering staff were absorbed into the water authorities over ten years ago when the agency agreement was ended.
2. Flood risk management is to become a key issue for local authorities following the floods of 2007, the Pitt Review and the draft legislation that is set to implement the recommendations of that review.
3. As yet the full resource implications are unknown but there are going to be resources needed to develop a surface water management plan, to adopt and maintain sustainable urban drainage systems and to up skill staff within the organisation.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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PITT REVIEW AND THE DRAFT FLOOD AND WATER MANAGEMENT BILL

SUMMARY

This report sets out the key issues that are emerging from the draft Flood and Water Management Bill which is the government response to the Pitt Review into the summer floods in 2007.

RECOMMENDATIONS

It is recommended that:

1. Members note the response to the draft Flood and Water Management Bill and the implications that this proposed legislation has for the authority.
2. Members note the impact upon resources that the proposed legislation may have and the implications will be highlighted in the service planning and budget setting process.

DETAIL

Background

1. At the cabinet meeting on 5th March members considered a report on the Pitt Review into the summer 2007 floods and it was recommended that a further report be produced when the draft legislation that would implement the recommendations from the Pitt review was published.
2. The draft Bill which was published in April 2009 and is the UK government response to the Pitt Review "Learning Lessons from the 2007 floods" published in December 2008, and "Future Water" which is the government's water strategy for England published in February 2008.
3. The consultation period lasted until 24th July 2009 and a response to the questions raised as well as a key issues summary paper was sent to DEFRA within this timescale, copy attached at **Appendix 1**.
4. The draft Bill is intended to provide a more comprehensive and risk based regime for managing the risk of flood and coastal erosion, and which embraces all sources of flooding. The bill is designed to help us manage and respond to severe weather events such as floods and drought which are set to become more frequent as a result of climate change.

5. There are 3 main themes within the draft Bill which are summarised as follows:-

- Greater security for people and property from the risk of flooding and coastal erosion by creating clear responsibilities for managing that risk. It will improve Leadership on flood risk, and enable better planning for, prediction and warning of floods.
- Provide better service for people through new ways of delivering major infrastructure projects.
- Greater sustainability by helping people and communities to adapt to the increasing likelihood of severe weather events due to climate change. It will also encourage sustainable drainage systems in new developments.

6. There are several reasons why the new Legislation is needed:-

- The current flood and coastal erosion risk management as well as reservoir safety Legislation is outmoded and has its roots in the 1930's;
- The Pitt review identified gaps in the way that risk is managed;
- The need to adapt to climate change with the changing patterns of rainfall as flood flows in rivers plus increased risk from surface run-off;
- EU Flood Directive and the need to fulfil those requirements.

Future Water

7. In February 2008 the government published "Future Water" which is a strategy for water management and a vision for the water sector for 2030 which includes:-

- Sustainable delivery of secure water supplies;
- An improved and protected water environment;
- Fair and affordable water charges;
- Reduced greenhouse gas emissions from the water industry;
- More sustainable and effective management of surface water.

8. Measures that have been included in the draft Bill from the "Future Water" strategy are:-

- Giving surface Water Management Plans (SWMPs) a stronger role in co-ordinating investment planning;
- SWMPs will fulfil the role of flood risk management plans under the EU Floods Directive and will be seen as a tool for local flood risk management;
- Ending the ability to automatically connect surface water drains and sewers to the public sewerage system;
- Encouraging take up of Sustainable Drainage Systems (SUDS);
- Giving the Environment Agency a strategic overview of all forms of flooding and coastal erosion risk management.

The EU Floods Directive

9. The Directive requires member states to develop and update a series of tools for managing flood risk, in particular:-

- Preliminary flood risk assessments;
- Flood risk and flood hazard maps;
- Flood risk management plans;
- Co-ordination of flood risk management at a strategic level;
- Improved public participation in flood risk management.

10. The draft Bill will help to deliver on the requirements of the EU Directive, if it receives assent.

Key Issues for the Authority

Local Leadership

11. The draft legislation clearly sets out a local leadership role for local authorities including:-
 - Setting a Local Strategy for local flood risk;
 - Leadership and accountability for ensuring effective management of local flood risk from ordinary watercourses, surface run-off and groundwater;
 - Production of local flood risk assessments, maps and plans, including an asset register;
 - Improved drainage and flood risk management expertise;
 - Co-ordinate Surface Water Management Plan production;
 - Prioritising local investment;
 - Consenting and enforcement powers for certain works affecting ordinary watercourses;
 - Promoting partnerships with local planning authorities to produce strategic Flood Risk Assessments.

Sustainable Drainage Systems

12. The Bill requires developers to include sustainable drainage, where practicable, in new developments, built to standards which reduce flood damage and improve water quality. It also will remove the right to connect surface water run off to public sewers.
13. The responsibility for approving sustainable drainage systems and to adopt and maintain them will fall to local authorities. As yet we have limited experience with SuDs in that we have one at the new development at Hardwick.

Surface Water Management Plans (SWMPs)

14. To date there have been six pilot SWMPs funded by the government and produced by consultants for Gloucestershire, Hull, Leeds, Richmond, Warrington and Thatcham. From this work a technical guidance document was produced which local authorities are expected to follow in developing their SWMPs.
15. There are four phases to SWMPs:
 - *Preparation* – building partnerships, sharing data, identifying areas that need more investigation, select a suitable approach to the next step;
 - *Risk Assessment* – developing and understanding of the surface water flood mechanism, identify critical drainage areas, mapping and communicating risk
 - *Options Identification and Appraisal* – clarify responsibilities, prioritise investment, identify where small measures can solve wider problems, cost / benefit of preferred options;
 - *Implementation and Review* – recommendations on investments, feed into emergency planning and community risk register.
16. Experience in the pilot SWMPs has shown that this process does vary in terms of complexity and detail depending on the information available and the level of risk. Typically it has taken between nine to twelve months to develop a SWMP with appropriate resources within the consultancy company assigned to the task.

Implications for the Authority

Skills Gap

17. The end of the agency agreement and the transfer of the drainage engineering team to the water authority around ten years ago has left all local authorities with a skills gap in this area. This has been recognised within both the Pitt Review and the draft Bill.
18. In the short term we will need to consider external consultancy support or secondment opportunities. For the longer term we will look to up-skilling existing staff as well as looking to both the apprenticeship route and graduates.

Resources

19. It is difficult to quantify the resource implications at this stage, however, there are clearly going to be resources necessary to deliver on aspects such as the local Surface Water Management Plan (SWMP) and the assessment, adoption and maintenance of SuDs.
20. In August 2009 the government announced that there would be £16m available for local authorities to develop SWMPS with £10m being allocated to the 77 authorities with the most significant risk of flooding affecting households in deprived areas; Stockton was not included in this list. The remaining funds being available in October for other local authorities to bid for, to which Stockton will be bidding.
21. Officers will lobby Government Office North East to ensure that the implications for the Authority are fully understood by the relevant central government departments.
22. Local MPs will be regularly updated to ensure the appropriate resources are passed on.
23. As an indication in terms of the resources involved for developing a SWMP, Middlesbrough Council were awarded £100k from DEFRA and another 16 local authorities were awarded similar amounts or more for the larger authorities.
24. As more guidance for the development of these strategies and the adoption of SuDs becomes available it will be possible then to estimate more accurately the resource implications.

Planning & Regeneration

25. Planning policies will need to connect with and be guided by the aims and objectives of the draft legislation. It is for example becoming clear that SuDs will impact upon the viability and attractiveness of some potential development sites. This will be addressed within the Strategic Flood Risk Assessment currently being undertaken.

Leadership and Liability

26. We have already taken steps to put in place the governance arrangements for flood risk through including this within the Cabinet Member for Resources portfolio. However with leadership comes responsibility and liability. For example as the responsible authority for SuDs we could be liable for any injuries to individuals as well as for pollution incidents.

Action to Date

27. We have not waited for the draft legislation before acting. Stockton has taken the lead role in setting up a Tees Valley Flood Risk group with the other four Authorities, the Environment Agency, Northumbrian Water and Emergency Planning.

28. The role of this group is:

- To develop surface water management plans.
- To develop a methodology for asset management of the drainage systems.

- To develop an approach to the design and adoption of Sustainable Urban Drainage systems.
- To ensure that there is a mechanism in place to communicate with other parties working on flood risk e.g. planning officers developing strategic flood risk management.
- To agree an action plan for the delivery of Catchment Flood Management Plans on cross boundary issues.

29. Bi-monthly briefings with Cabinet Member for Resources have been established.

FINANCIAL IMPLICATIONS

30. These are estimated to be:

- Approximately £100k for the development of a Surface Water Management Plan (SWMP) over the period April 2010 – October 2011; this is based upon the sums being allocated by DEFRA to similar sized local authorities. There will be a bid to DEFRA for funding before the end of the year which if successful may meet this requirement wholly or partially;
- Ongoing resources necessary to deliver the SWMP and to provide the level of expertise to adopt SuDs schemes;
- Maintenance and management of adopted SuDs schemes which is unlikely to materialise to any significant degree until at least 2011 / 12 because of the slow down in development schemes going forward.

LEGAL IMPLICATIONS

31. These are contained within the body of the report.

RISK ASSESSMENT

32. A risk assessment for the delivery of the legislation will be carried out when the Bill is enacted.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

33. Contributes to the adaptation element of the climate change objectives within the strategy.

Economic Regeneration and Transport

34. Contributes to the reduction in risk of flooding which can impact upon the economic stability of the area, it will also safeguard the transport infrastructure.

Safer Communities

35. Reduces the risk of flooding thereby creating a safer environment in which to live and work.

Children and Young People

36. Reducing flood risk can safeguard access to, and risk of damage to our education facilities.

Health and Wellbeing

37. Flooding from surface water has potentially significant health risks as it is usually contaminated water from the sewerage system that is involved. Therefore to reduce the risk of flooding is to reduce the health impacts as well.

Environment and Housing

38. Contributes to the adaptation element of the climate change objectives within the strategy.

EQUALITIES IMPACT ASSESSMENT

39. Not required at this stage.

CONSULTATION INCLUDING WARD/COUNCILLORS

40. Flood risk management is to be the subject of regular briefings with the Cabinet Member for Resources and for Environment.

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Background Papers

Our response to the consultation on the draft Flood and Water Management Bill.

Ward(s) & Ward Councillors

All

Property

Not at this stage.