

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

6th OCTOBER 2011

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Environment – Lead Cabinet Member – Councillor David Rose

FLOOD AND WATER MANAGEMENT ACT 2010 - UPDATE

1. Summary

This report follows previous reports considered by Cabinet on Flood Risk Management.

The Flood and Water Management Act received Royal Assent on 8th April 2010. Local Authorities became Lead Local Flood Authorities (LLFA's) and subject to new statutory duties and powers under the Act. This report is an update to previous Flood Risk Management reports on the Preliminary Flood Risk Assessment (14th July 2011) and the Pitt Review (5th November 2009).

The first phase of implementation of the Act began in autumn 2010 with the commencement of sections including definitions, statutory instrument making powers and provisions requiring LLFA's to develop strategies for local flood risk management. A second phase of implementation was carried out in April 2011, this included commencing most of the new responsibilities for LLFA's including powers to request information, duties to investigate flooding incidents and to maintain a register of flood risk management structures or features.

On 19th July 2011 the new national strategy for Flood and Coastal Erosion Risk Management in England took effect with more important LLFA responsibilities under the Flood and Water Management Act being introduced as a direct result of the strategy.

There are further sections of the Act which will have a significant effect on the Authority still to take effect and updates on the timescales for this are awaited from Defra.

2. Recommendations

It is recommended:

1. Cabinet note the new duties and responsibilities on Stockton Borough Council under the Flood and Water Management Act 2010.
2. Cabinet approve the delegation of the new duties and powers of the Council, as Lead Local Flood Authority, under the Flood and Water Management Act 2010 to

the Head of Technical Services, to carry out all duties, functions and powers as deemed appropriate.

3. Reasons for the Recommendations/Decision(s)

1. Stockton Borough Council is required to discharge the statutory duties under the Flood and Water Management Act 2010.
2. The Head of Technical Services is responsible for ensuring that the statutory duties are discharged on a day to day basis.

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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FLOOD AND WATER MANAGEMENT ACT 2010 - UPDATE

SUMMARY

The Flood and Water Management Act received Royal Assent on 8th April 2010. Local Authorities became Lead Local Flood Authorities (LLFA's) and subject to new statutory duties and powers under the Act. This report is an update to previous Flood Risk Management reports on the Preliminary Flood Risk Assessment (14th July 2011) and the Pitt Review (5th November 2009).

The first phase of implementation of the Act began in autumn 2010 with the commencement of sections including definitions, statutory instrument making powers and provisions requiring LLFA's to develop strategies for local flood risk management. A second phase of implementation was carried out in April 2011, this included commencing most of the new responsibilities for LLFA's including powers to request information, duties to investigate flooding incidents and to maintain a register of flood risk management structures or features.

On 19th July 2011 the new national strategy for Flood and Coastal Erosion Risk Management in England took effect with more important LLFA responsibilities under the Flood and Water Management Act being introduced as a direct result of the strategy.

There are further sections of the Act which will have a significant effect on the Authority still to take effect and updates on the timescales for this are awaited from Defra.

A summary table of the status of commencement of the Act is included in **Appendix A**.

RECOMMENDATIONS

It is recommended that:

1. Cabinet note the new duties and responsibilities on Stockton Borough Council under the Flood and Water Management Act 2010.
2. Cabinet approve the delegation of the new duties and powers of the Council, as Lead Local Flood Authority, under the Flood and Water Management Act 2010 to the Head of Technical Services, to carry out all duties, functions and powers as deemed appropriate.

DETAIL

Background

1. On the 8th April 2010 the Flood and Water Management Bill received Royal Assent and became UK law, as part of this legislation Local Authorities were designated as a Lead

Local Flood Authorities and became responsible for local flood risk management. LLFA's are required to take on a number of new statutory duties and responsibilities.

2. The first phase of implementation of the Act began in autumn 2010 with the commencement of sections including definitions, statutory instrument making powers and provisions requiring LLFA's to develop strategies for local flood risk management.

Key parts of this first phase are;

- Defining flood, risk, risk management
 - Defining types of flooding
 - Definitions of Lead Local Flood Authority and Risk Management Authorities.
 - Duties for the Environment Agency to develop, maintain, apply and monitor a strategy for flood and coastal erosion risk management in England.
 - Duties for a Lead Local Flood Authority to develop, maintain, apply and monitor a strategy for local flood risk management in its area.
 - Definition of local flood risk.
3. Lead Local Flood Authorities are responsible for local flood risk which is defined as the risk of flooding from surface runoff, groundwater and ordinary watercourses. (not main rivers which remain the responsibility of the Environment Agency)
 4. Relevant Authorities must co-operate with other relevant authorities for the purpose of exercising their flood risk management functions which includes sharing of information. Stockton has already responded to this by the formation of the Tees Valley Flood Risk Group.
 5. The Environment Agency may issue levies to the lead local flood authority for an area in respect of the Agency's flood and coastal erosion risk management functions in that area.
 6. A second phase of implementation was carried out in April 2011, this included commencing most of the new responsibilities for LLFA's including;
 - The power to request information from a person in respect of flood risk management functions
 - Duties to investigate flooding incidents within certain criteria and reporting on the findings of the investigation. The national criteria for a significant flood event are that 30,000 households must be affected. On a local level it was agreed between the Tees Valley Authorities that a more reasonable level locally for formal investigation would be 5 residential properties or 2 businesses with internal flooding or the closure of a major highway for more than 10 hours due flooding.
 - The duty to maintain a register of flood risk management structures or features including ownership and condition information.
 7. The Environment Agency must establish a Regional Flood and Coastal Committee for each region. The committee has powers relating to finance, consultation and consents for the Agency's regional programmes. The Environment Agency has responded to this and the RFCC is now in place, the next meeting is in October 2011.
 8. On 19th July 2011 the new national strategy for Flood and Coastal Erosion Risk Management in England took effect with more important LLFA responsibilities under the Flood and Water Management Act being introduced as a direct result of the strategy.
 9. There are further sections of the Act which will have a significant effect on the Authority, still to take effect and updates on the timescales for this are awaited from Defra. The sections include sustainable development, designation of features which have a purpose in flood risk management, sustainable drainage including approval and adoption by the Authority and

provision of consents and enforcement for works in ordinary watercourses. National guidance is awaited and is expected over the next 12 months.

10. A summary table of the status of commencement of the Act is included in **Appendix A**, the table shows the section of the Act and the current status. The table should be cross-referenced with the Flood and Water Management Act 2010, if full details on the legal implications are required.

The Next Steps

11. Technical Services will carry out the duties and responsibilities of the Flood and Water Management Act for the Authority on a day to day basis, to ensure compliance with legislation.
12. The legislation is still emerging and there are still sections of the Act that have not yet commenced and will have an impact on the Council and day to day operations. We are monitoring developments and will provide further updates when appropriate.
13. The Preliminary Flood Risk Assessment is now complete and will serve as a useful tool in taking forward production of a local flood risk strategy. The local strategy will be produced in line with the national strategy, there is no set deadline under the Act but it is expected that work will be complete within 2 years.
14. A large amount of historic data has been analysed and there are some areas emerging with flood risk issues.

FINANCIAL IMPLICATIONS

15. The Flood Risk Management Service is provided using the new burdens funding made available by the Government in order to discharge the new statutory duties and responsibilities. The additional funding allocated to Stockton is not capital funding but unringfenced revenue funding to the value of £116k in year 1 (2011/12), £138k in years 2 and 3, based on the resource requirements to deliver the requirements of the Act.

LEGAL IMPLICATIONS

16. The Authority must adhere to the statutory duties and responsibilities in respect of the Flood and Water Management Act 2010, as contained in the report.

RISK ASSESSMENT

17. The risk to the Authority of the new legislation is defaulting, should the Authority fail to exercise the flood risk management function or not in accordance with the national strategy for flood and coastal erosion risk management then The Minister may direct another risk management authority to exercise the flood risk management on behalf of the defaulting authority. There are also financial penalties in terms of fines for failure to adhere to some sections of the Act.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

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

Economic Regeneration and Transport

19. 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

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

Children and Young People

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

Health and Wellbeing

22. 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

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

EQUALITIES IMPACT ASSESSMENT

24. Not required at this stage.

CONSULTATION INCLUDING WARD/COUNCILLORS

25. Flood risk management has been the subject of regular briefings with the Cabinet Member for Environment.

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Background Papers

Stockton on Tees Borough Council, Preliminary Flood Risk Assessment (Draft)

Ward(s) & Ward Councillors

All

Property

Not at this stage.