

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member – Environment and Transport
<b>Date:</b>	27 July 2011
<b>Title:</b>	Flood and Water Management Act 2010: Investigations Protocol
<b>Reference:</b>	3012
<b>Report From:</b>	Director of Economy, Transport and Environment

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### 1. Executive Summary

1.1. The purpose of this report is to seek approval for a set of guidelines to help determine when the County Council will carry out investigations of flood events under Section 19 of the Flood and Water Management Act 2010.

1.2. This paper seeks to:

- outline the County Council's new statutory duty to investigate under the Flood and Water Management Act; and
- set out the case for establishing guidelines to help determine when investigations should be carried out.

### 2. Contextual information

2.1. Under the Flood and Water Management Act the County Council acquires the status of Lead Local Flood Authority (LLFA). Section 19(1) of the Act states that:

*On becoming aware of a flood in its area, a lead local flood authority must, to the extent that it considers it necessary or appropriate, investigate –*

- a. which risk management authorities have relevant flood risk management functions, and*
- b. whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood.*

- 2.2. When an authority has carried out such an investigation, it is required to publish the results and notify the relevant risk management authority or authorities.
- 2.3. In Hampshire the relevant risk management authorities are: the County Council, the district councils, the Environment Agency and the water companies.
- 2.4. This is a new duty for the County Council. It is not a requirement to investigate flooding events (e.g. by evaluating the consequences, the emergency response and so forth) as these kinds of enquiry are usually undertaken by other agencies. Rather, this duty is to establish the relevant flood risk management functions in relation to the event and report on how they have been met and will be in the future. It is down to the County Council's own discretion to decide when it should investigate and in what way. This paper addresses the means by which the Council will settle the first matter: when to investigate.
- 2.5. This duty was enabled on 6 April 2011. It is therefore urgent that a protocol is put in place to ensure that if the Hampshire area is flooded in the near future, the Council can make a reasonable and informed decision as to whether to trigger an investigation. This will have an impact upon the County Council's key flood risk management partners and their advice and views on a set of guidelines will be important to achieving an adequate and lasting system to decide when to investigate and how. However, given the urgency, it is proposed that an initial set of guidelines be put forward for approval in the short term ahead of consultation and any amendments subsequently considered.

### **3. The Purpose of the Guidelines**

- 3.1. The County Council is required to investigate flooding events "to the extent that it considers it necessary or appropriate". This could range from a comprehensive investigation, through a light touch enquiry, to no investigation at all. It is down to the County Council to determine when and how it will react. This is potentially also open to challenge, which may be a factor if liability is an issue in any case.
- 3.2. As the Council's new status as Lead Local Flood Authority becomes more generally known, it is expected that many floods will be reported to the authority, or will otherwise come to its attention. These will vary widely in:
  - severity;
  - consequences; and
  - curiosity (i.e. regardless of the event's magnitude, where it is of interest or concern from a hydrographic perspective and has implications for future flood risk management in Hampshire).

3.3. The Council will in all likelihood carry out investigations when:

- the cause of the flood is unknown but it is a cause for concern;
- the scale of the flood, its frequency and/or its consequences demand more information on its causes (despite the existence of a basic understanding prior to investigation); and
- there is uncertainty about which flood risk management authorities had responsibility, what the risk management authorities have done to manage the risk, or what they are intending to do.

3.4. The second point, in particular, requires a set of guidelines and criteria to guide the consideration of whether to instigate an investigation.

Circumstances will always vary and it is not possible to state in advance and for certain when it will and will not be appropriate to investigate. However, it is important that the Council adopts a consistent approach. Members of the public who have suffered flood damage (or their insurance companies) may contest a Council decision not to investigate, and a set of guidelines is important to help manage expectations and ensure an equitable approach. The Council may then rely on the guidelines to justify decisions on whether or not to investigate.

3.5. The attached appendix contains the draft guidance. It outlines the criteria to be considered and gives some direction as to how these should be applied. The guidance has been written to reflect the fact that all flooding events vary, and it is therefore important to consider the criteria together. Thus, while an event that results in a high incidence of property flooding will probably warrant an investigation, so too might an event with a low incidence of property flooding if there have also been a variety of other negative consequences.

3.6. Often, such investigations will reflect the severity of the event more than uncertainty about its causes or the division of responsibility for its occurrence. Although the Council may have a strong understanding of the origins of an event, the more severe its impacts, the more important it is to ensure that its causes, the responsibility for managing those causes, and future flood risk management activity are all fully understood and accounted for.

3.7. There will also be events that cannot easily be accounted for. It may be worthwhile investigating these events even when their consequences are relatively unremarkable on the grounds that it is important to understand flood patterns across the County, particularly if the event may recur frequently or in greater intensity.

3.8. Investigations may, therefore, be carried out for slightly different purposes while still, nonetheless, being pursued to meet the requirements of the Act. The guidelines have been written to reflect this, and to give flexibility to make decisions in this context: to investigate either –

- because an event has had severe consequences; or

- because it was unexpected, difficult to account for, or because responsibility was difficult to attribute.
- 3.9. This variety of motives might also lead to a varied approach to carrying out the investigation. Some investigations may be straightforward and essentially cost neutral. Others may be much more comprehensive and high profile, possibly involving the engagement of contractors.

#### **4. Reason for Guidelines Approach**

- 4.1. The guidelines represent a “soft” approach to determining whether or not an investigation should be pursued. Although they provide a consistent framework, the decision will require judgement on the part of those who make the decision. An alternative involving thresholds for each of the criteria was also considered, e.g. if an incident results in the flooding of 20 properties then this could automatically trigger an investigation. This was rejected on the grounds that it is too crude and arbitrary. If an event affected 19 properties it would be difficult to justify not investigating simply because a threshold had not been met.
- 4.2. A second alternative considered involved grouping the criteria outlined in the guidelines under a “Matrix” in which each factor would be weighted. This way, flooding events could be evaluated holistically and awarded an overall score. A threshold would be applied in this system too, in this case to the final score. This option was also rejected on the grounds that it is excessively complex and would be difficult for anyone other than the decision maker to understand. Also, it is ultimately still arbitrary in that a numerical threshold has to be applied. Indeed, the weighting system itself would necessarily be arbitrary too.
- 4.3. The guidelines option is subjective, but it was favoured because it:
- allows the decision maker to judge each event on its own merit and in all its complexity;
  - is less arbitrary than a system that employs numerical thresholds and/or weightings; and
  - is relatively straightforward and easy to understand and justify.

#### **5. Future Direction**

- 5.1. As paragraph 3.9 indicates, consideration will need to be given to how investigations are carried out and to what degree. It may be advisable to define different types of investigation which go into varying levels of detail and then provide a template or standing brief for each type. The most exhaustive of these may require some kind of contract framework with an external partner.

- 5.2. The other important consideration is how the County Council becomes aware of flooding events and how it acquires the detailed information that will help it to decide whether or not to investigate – as per the guidelines. Communication with the public and partnership working with other flood risk management authorities (the Environment Agency, districts and the water companies) along with other organisations will be key to this.
- 5.3. Officers are beginning to address these issues. However, in light of the fact that this part of the Act has now been enabled, developing guidelines to determine when investigations should take place has been treated as a first priority. Assuming the guidelines are approved, officers will consult with district colleagues and other partners via the Hampshire Strategic Flood and Water Management Group, and any proposed amendments will be brought to the Executive Member's attention for further approval.
- 5.4. Even after consultation, it should be remembered that this is a new duty and that this process is necessarily experimental. As such, it will be kept under review and amended in light of experience learned from its early application. The overall effectiveness of flood reporting, guidelines and decision making and the actual investigations will all be kept under review. Reports on the efficacy of the system will be provided to the Hampshire Strategic Flood and Water Management Group as well as any other relevant governance body.

## **6. Recommendation**

- 6.1. That the proposed guidelines to determine when the County Council will carry out flood investigations under Section 19 of the Flood and Water Management Act 2010 be approved.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes
Corporate Improvement plan link number (if appropriate):	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u> The Flood and Water Management Act, 2010	<u>Reference</u> 2280	<u>Date</u> 29.12.2010
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u> The Flood and Water Management Act		<u>Date</u> April 2010

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

- 1.1. The guidelines ensure that all the impacts of flooding are taken into consideration when decisions are being made whether or not to investigate. This should help ensure that the variety of ways in which people can be adversely affected by flooding will be taken into consideration. The guidelines will be applied to all flooding incidents across the whole county, ensuring a consistent and equitable approach.

### **2. Impact on Crime and Disorder:**

- 2.1. Flooding incidents can, to varying degrees, result in crime and disorder. Carrying out investigations where appropriate should help manage flood risk and prevent such occurrences.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Carrying out investigations and carrying out flood risk management activities as a result of their findings may result in additional emissions.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Investigating flood events to determine how flood risk management can be carried out better in the future will be essential as climate change increases flood risk in certain areas.