

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Cabinet
Date:	29 November 2010
Title:	Flood and Water Management Act 2010
Reference:	2280
Report From:	Director of Environment

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1. Executive Summary

1.1. The purpose of this paper is to provide information on the Flood and Water Management Act and its implications for the County Council. It seeks approval for a number of proposed actions intended to frame and further the Council's response to the Act, ensuring it is prepared for the enablement of the various new burdens.

1.2. The paper seeks to:

- provide the context for the Act and its links to other legislation affecting the County Council;
- outline the main requirements placed upon the County Council and consider their implications;
- provide information on proposed funding for the new burdens; and
- set out the future direction and proposed first steps.

2. Contextual information

2.1. Severe flooding in recent years, both in the United Kingdom and on mainland Europe, has prompted political action at a variety of levels. The result has been a confused context in which several different but linked policy drivers are impacting the work of local government. Although the workstreams are different and aligned to varying timescales, the result should eventually be a coherent set of measures taken by local authorities to manage flood risk.

2.2. Chronologically, the Surface Water Management Plans (SWMPs) were the first elements of this work to be commenced, with funding received from the Department for the Environment, Food and Rural Affairs (Defra) in April of this year with the plans being developed from then on. Since then, the Flood Risk Regulations 2009 have come into force, and the Council has accordingly

begun work on the Preliminary Flood Risk Assessment (PFRA) required by these. Finally, the first phase of enablement for the Flood and Water Management Act 2010 began on 1 October this year. This obliged the Council to begin preparatory work for the new Local Flood Risk Management Strategy. The next phase of enablement is expected in April 2011, but it is unclear how much of the remainder of the Act will come into force at this juncture.

3. Surface Water Management Plans

- 3.1. One of the key recommendations of the Pitt Review was that SWMPs should provide the basis for managing local flood risk. Defra defines surface water management planning as a process through which key local partners with responsibility for surface water and drainage work together to understand the causes of surface water flooding, and agree the most cost-effective way of managing flood risk. SWMPs ultimately outline a preferred management strategy for a given area as well as who will do what to better manage identified risks.
- 3.2. In Hampshire there are currently four SWMPs underway: Basingstoke and Deane, Rushmoor, the chalk catchment (which, generally speaking, covers central Hampshire) and Eastleigh. SWMP Project Groups have been set up, led by Hampshire County Council in partnership with relevant Districts, the water company and Environment Agency (EA) colleagues.

4. Flood Risk Regulations 2009

- 4.1. The EC Floods Directive of 2007 makes a number of demands of member states, chiefly associated with assessing and preparing for flood risk. For local government, the following duties are outlined:
 - (i) Preliminary Flood Risk Assessments (PFRAs), which will allow the identification of areas of potentially significant risk (deadline of June 2011);
 - (ii) Maps showing the impact and extent of possible future significant flood events (deadline of June 2013); and
 - (iii) Flood risk management plans, identifying how significant flood risks are to be mitigated (deadline of June 2015).
- 4.2. The deadline for the first of these requirements is pressing, and while it was originally intended that the Floods Directive should be transposed into UK law via the Floods and Water Management Act, it has been necessary to enact the Flood Risk Regulations (December 2009) to ensure that the requirements of the Directive are met in a timely manner.

- 4.3. Work is progressing well on the Hampshire PFRA. However, it cannot be finalised until the EA publishes its maps on default flood risk. These are expected in November, and an early draft of the Hampshire Assessment is hoped for in December, leaving six months to refine it ahead of the June 2011 deadline. This should allow time for input from the Hampshire County Council Environment and Transportation Select Committee before sign off by Cabinet, and such a process is recommended in the guidance issued by the Government and the EA.

5. The Flood and Water Management Act 2010

Lead Local Flood Authority

- 5.1. The Pitt review stated that “the role of local authorities should be enhanced so that they take on responsibility for leading the coordination of flood risk management in their areas”. The Flood and Water Management Act provides for this through the new role of Lead Local Flood Authority (LLFA), ascribed to County and Unitary Authorities. The Act does not set out what local arrangements should look like, but it does require relevant authorities to cooperate with each other in exercising their functions.

Local Flood Risk Management Strategy

- 5.2. The Act requires the EA to develop, maintain and apply National Flood and Coastal Erosion Risk Management Strategies. Similarly, the LLFA is required to develop a local flood risk management strategy for its area. The two documents are to inform one another. While the Act lists elements that need to be included in these strategies, it is unclear precisely what they are to involve. However, the SWMP and PFRA processes are envisaged as building blocks in the development of the local strategy. The Local Government Association (LGA) is planning to release best practice guidance before the end of the calendar year.
- 5.3. To date, this is the only major burden for LLFAs under the Act to have been enabled. As of 1 October, LLFAs are legally obliged to commence work on the strategies. Defra currently views progress on the PFRAs as preparatory work for the strategy, so for the time being Hampshire is fulfilling the requirements of the Act. There is no absolute deadline for the strategy, but it is generally expected that drafting should have begun by around April 2011, and that LLFAs should aim to be finalising their documents after submission of the PFRA in June of that year.

Investigating Flood Events and Maintaining a Register and Record of Features Affecting Flood Risk

5.4. Under the Act, Hampshire County Council as Lead Local Flood Authority must:

- (i) investigate flooding incidents in its area (where appropriate or necessary) to identify which authorities have relevant flood risk management functions and what they have done or intend to do. The LLFA will then be required to publish the results of any investigation, and notify any relevant risk management authorities; and
- (ii) maintain a register of structures or features which it considers to have a significant effect on flood risk in its area, at a minimum recording ownership and state of repair. The register must be available for inspection (including by the public) and the Secretary of State will be able to make regulations about the content of the register and records.

Designation of Third Party Assets

5.5. As a Flood Risk Management Authority, under the Act the County Council also becomes a “Designation Authority” along with the districts and the EA. This requires the Council to designate third party structures and features that affect flood risk. Once designated, features have to be added to the register detailed above, and the feature becomes a land charge. Third parties will need to apply to the Council for permission to alter a designated feature. The Council will also have the power to issue enforcement notices to oblige third parties to repair designated features. A third party may appeal against a designation notice, refusal of consent, conditions placed on a consent or an enforcement notice. There are potentially very significant costs, officer hours, and legal implications for the County Council arising from this responsibility.

Sustainable Drainage Systems

5.6. The Act makes provisions to increase the use of sustainable drains, or SuDS as they have become known. These systems attempt to manage rainfall in new developments in a way that replicates natural drainage and can include:

- (i) filter strips and swales;
- (ii) filter drains and permeable surfaces;
- (iii) infiltration devices; and
- (iv) basins and ponds.

- 5.7. The Act incentivises developers to use these types of drainage and establishes a SuDS Approving Body (the “SAB”) at county or unitary local authority level. Hampshire County Council would be the local SAB for the county. The Council would have responsibility for the approval of proposed drainage systems in new developments and redevelopments, subject to exemptions and thresholds. Applications for drainage approval will be required for all structures including anything that will affect the ability of land to absorb rainwater. Approval must be given before the developer can commence construction.
- 5.8. In order to be approved, the proposed drainage system would have to meet new national standards for sustainable drainage. The Secretary of State will set fees for the determination of applications (in the same way fees apply to planning applications). Where planning permission is required, applications for drainage approval and planning permission can be lodged jointly with the planning authority, but the SAB will determine the drainage application. Regulations will set a timeframe for the decision so as not to hold up the planning process. However, numbers of drainage applications are likely to be higher than planning applications as there will be many cases where drainage approval is required but planning permission is not (for example a patio, driveway or other surface). Where an application does not require planning permission the drainage application will be submitted directly to the SAB.
- 5.9. The SAB would also be responsible for adopting and maintaining SuDS which serve more than one property, where they have been approved. Highways authorities will be responsible for maintaining SuDS in public roads to national standards. When approving an application, the applicant can be required to deposit a non-performance bond as a condition of granting approval. However no charge can be made to the developer for future maintenance of the drainage system, even though the SAB will be expected to adopt and therefore maintain it into the future.

Regional Committees

- 5.10. The County Council is currently represented on three Regional Flood Defence Committees reflecting the three EA regions that traverse the county: Southern, Thames and Wessex. The EA is empowered to levy the County Council through these committees. Under the Act, the committees will become “Regional Flood and Coastal Committees”. These will approve future levies and their expenditure, and contribute to the development of the EA’s Strategy. The size of the levy is likely to grow reflecting the EA’s enhanced coastal responsibilities. The purpose of these committees is therefore likely to become more executive in nature.

6. Finance

- 6.1. Defra envisages local authorities across the country making significant savings which can be used to finance the new duties. As a result of its decision to transfer responsibility for maintaining private sewers to the Water Companies, Defra estimates that local authorities will save up to £50 million per year on no longer repairing private sewers neglected by their owners. Defra therefore anticipates a £50 million saving to local authorities as a result of the transfer. The LGA has advised the County Council that Defra's present intention is to deduct £50 million nationally from the Formula Grant of all authorities, lower and upper tier, to reflect this. Assuming the CSR does not result in this money's being set aside for other purposes, £36 million of the fund will then be redistributed to principal authorities to help them carry out their roles under the Flood and Water Management Act as LLFAs. In reality many authorities assert they spend next to nothing on private sewer maintenance, Hampshire County Council included.
- 6.2. A recent Defra consultation on funding proposes three mechanisms for distributing the £36 million among LLFAs. Hampshire is rated as a high-risk flood area and so will receive one of the highest levels of funding. In the most favourable scenario the County Council will receive an £888,000 share of the £36 million; under the least favourable distribution scenario the share will be £594,000. However, as stated, this is subject to working through the details of the CSR decisions and, subject to how the funding is actually paid across, there may be nothing at all. A final concern relating to this fund is that Defra has stated its intention to fund each LLFA at only 65% of its assessed annual share of the national fund in the first year, rising to 85% in the second year, and 100% only by the third year. This ignores the fact that start-up costs are likely to be high and to require the funding to be front-loaded. It is likely that some existing staff resources, working on related areas, will need to be redeployed onto new duties under this Act to ensure that the Council meets its statutory obligations.
- 6.3. The above gives some idea of the funding available to deliver the Act, though much of it is still uncertain as the precise requirements are yet to be finalised and published, and the timetable for enactment is also not yet finalised. The cost of administering the approvals and subsequent maintenance of SuDS is likely to be high, but there are also other significant anticipated costs associated with the other new duties. For instance, the register, designation and investigation duties will require new computer systems. Other authorities are considering options, and Hampshire County Council is currently investigating the costs and benefits. The possibility of agency agreements with District Councils is also an option for aspects of the SAB role.
- 6.4. Legal costs may also be high, particularly in relation to the designation of third party features. The County Council is likely to have to defend some of its designations against challenge from the owners, who are also entitled to challenge the Council's refusal of permission to adjust the feature in question,

as well as any enforcement notice it serves upon the owner to oblige him/her to maintain the feature.

6.5. As referenced above, one certain cost to be met will be that of the EA Levy. Last year, the County Council was levied a total of £559,000 by the Agency through the three regional committees it sits on. This is expected to rise significantly, but so far there is no concrete proposal to reflect this in Formula Grant. The Regional Flood and Coastal Committee will not only consent to the size of the Levy and its expenditure, but will also have input into the EA's strategy. It is therefore suggested that the County Council ensures that it is fully and appropriately represented on these new committees.

7. Partnership and Governance: Future Direction

7.1. There are a number of ways in which the Act increases the need for the County Council to work closely with local partners, particularly other statutory Flood Risk Management Authorities (districts and the EA). Three of these reasons are worthy of mention:

- (i) Designation. All Flood Risk Management Authorities are empowered to designate third party features affecting flood risk. It will be necessary to work with the Districts and the EA to ensure against a flurry of uncoordinated activity;
- (ii) Devolution. Under the Act, all Flood Risk Management Authorities are empowered to devolve their duties (though NOT the responsibility for them) to other authorities. Again, close work with partners will need to ensure that this element of the Act is carefully considered and coordinated; and
- (iii) SuDS approval and maintenance. It is critical that early engagement with the Districts occurs to ensure that the planning process and drainage approval processes are properly aligned. This will require close partnership working with the planning authorities. It may also be an option later to devolve the maintenance of certain SuDS to district councils, and a good working relationship with partners will ensure that this remains an option.

7.2. Engagement has already commenced with other Flood Risk Management Authorities at an officer level via two workshops hosted by the County Council. These have established a broad scope for future activity, and detailed work streams are currently being drafted and, it is hoped, responsibilities allocated across the organisations. It is proposed to formalise these arrangements into an inter-authority strategic officers group chaired by the Director of Environment of Hampshire County Council representing the LLFA.

- 7.3. The Group would include representatives from Portsmouth and Southampton City Councils and the Isle of Wight Council to ensure cross border coordination and to maximise collaborative working, although Portsmouth, Southampton and the Island would continue to have their own local groups to oversee their individual activities as LLFAs in their own right. It is also intended that the EA, Police, Fire and Rescue, and representatives of the Water Companies, District Councils, and the HLOWLA Planning Officers Group would be invited, and that the County Council Emergency Planning Officer would additionally be involved to ensure coordination with the Local Resilience Forum work and Emergency Response generally.
- 7.4. To secure engagement across the Hampshire Authorities, it is proposed to put an item on a future Hampshire Senate agenda. In addition, a general workshop/briefing on the Act is planned for both County Council Members and leading Members from the Districts early in 2011.

8. Recommendations

- 8.1. That a County Council-led, inter-authority, strategic coordinating officer group be established to oversee key workstreams arising from the Flood and Water Management Act.
- 8.2. That a report on the Flood and Water Management Act duties be taken to a future meeting of the Hampshire Senate.
- 8.3. That a general workshop/briefing be arranged for County Council Members and leading Members from the Districts early in 2011.
- 8.4. That the Preliminary Flood Risk Assessment be commended for pre-scrutiny to the County Council's Environment and Transportation Select Committee before being formally signed off by the Executive Member for Environment and submitted to the Environment Agency.
- 8.5. That County Council representation be reviewed for the new Regional Flood and Coastal Committees covering the Hampshire area, which will assume a more executive role in 2011.

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

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

Other Significant Links

Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>
The Flood and Water Management Act	2010
The Flood Risk Regulations	2009
The EC Floods Directive	2007

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. While the decision is only a very early step in the process of coordinating comprehensive flood risk management in Hampshire, the activity that will follow will be of great importance to the whole community. The establishment of a partnership group, and the engagement of political representatives from across the county, should help ensure an equitable approach to flood risk management that takes all interests into account.

2. Impact on Crime and Disorder:

- 2.1. Significant flood events can to varying degrees result in the breakdown of law and order. Flood risk management can be critical in foreseeing and preventing such occurrences, and this decision helps foster such preventative measures.

3. Climate Change:

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

Potential Impacts are as follows:

- The eventual work undertaken as a result of this decision should reduce the energy used and carbon emitted in responding to flood events and cleaning/treating water;
- More coordinated activity may result in carbon and energy efficiencies;
- But practical actions taken as a result of the development of flood risk management plans is likely to require energy and carbon emissions. These may be offset by savings outlined above, but this is unclear at present.

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

The actions outlined in this report represent the Council's response to the Flood and Water Management Act, which seeks to promote flood risk management. This flood risk management constitutes both a response to past weather events that may reflect a changing climate, as well as preparation for a long term future of altered weather patterns and their effects upon water systems as a result of climate change.

The flood risk management activity that will arise from this decision will help Hampshire prepare for future threats and harness future opportunities that

follow a changing climate, above all protecting the interests of our communities in this context.