

REPORT TO CABINET

Title: **FLOODS & WATER MANAGEMENT BILL AND FLOOD MONITORING**

Date: **23 July 2009**

Members Reporting: **Councillors C Rayner & A Knight**

Contact Officers: **David Perkins, Head of Operations**
Tel: 01628 686860

Tim Slaney, Head of Planning & Development
Tel: 01628 685712

Wards Affected: **All**

1. SUMMARY

1.1 This report includes:

- An overview of the implications of the draft Floods and Water Management Bill.
- The Council's response to the consultation of the draft Bill including concerns regarding the lack of additional funding for the new proposed statutory duties.
- The Council's proposals to develop a Local Flood Forum in conjunction with the Environment Agency that will report to Cabinet every six months.
- The actions taken in regard to flooding since the last Flood Monitoring Report at November 2008 Cabinet.

2. RECOMMENDATIONS:

i) That approval is given to submit the response to the consultation as shown in Appendix B and C that the Council broadly welcomes the proposals contained in the draft Bill, however the Council is appalled that this additional duty is largely unfunded.

ii) That approval is given to progress the setting up of a multi agency Officer Flood Working Group.

iii) That approval is given for Flood Risk Management to be included within the remit of the Sustainable Environment Ambition Group of the Community Partnership.

iv) The Lead Member for Highways & Streetcare and the Director of Environment will meet with Officers and external partners on all flood related matters.

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| What will be different for residents as a result of this decision? |
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Residents will be made aware of the Council's position regarding the draft Floods & Water Management Bill and actions taken by the Council on all aspects of flooding and the benefit of these actions.

3. SUPPORTING INFORMATION

3.1 Background

Draft Flooding and Water Management Bill

- 3.1.1 A draft Floods and Water Management Bill designed to update and simplify legislation was published in late April 2009. The Bill will be included in the Queen's speech in November. Defra's consultation on the draft Bill ends on 24th July 2009. A holding letter has been sent to Defra to inform them that this Council will formally respond following consideration of this report by Cabinet.
- 3.1.2 The Council has a history of responding to flooding incidents and implementing a range of measures to address the cause of flooding. As an example over £500,000 has been invested in flood alleviation measures e.g Clare Road following the July 2007 floods. Of the 24 recommendations contained in the Pitt Report relating directly to local authorities, the Council has already implemented or is in the process of developing 19 of these recommendations. The remaining 5 are longer term projects and are contained within the draft Bill.
- 3.1.3 The draft Bill contains proposals to implement a number of the key recommendations made in Sir Michael Pitt's independent review into the Summer 2007 floods. These include giving local authorities a leadership role in local flood risk management, encompassing all sources of flooding. It also proposes the introduction of a risk-based approach to reservoir safety to replace the current system where regulation depends on size rather than the risk posed to surrounding communities, and setting out detailed responsibilities on surface water. In addition to provisions on flooding, the draft Bill includes measures to improve conservation of water resources in times of drought and to improve the regulation of the water industry.
- 3.1.4 The Bill would create a new class of "Lead Local Flood Authority" which would apply to the Council as a Unitary Authority. This new requirement would include:
- to develop, maintain and apply a strategy for local flood risk management, which will include risks from surface runoff, groundwater and ordinary watercourses;
 - to promote partnerships with local planning authorities to produce Strategic Flood Risk Assessments;
 - to fulfil the requirements of the EU Floods Directive in relation to these sources of flood risk;

- to investigate flooding incidents to understand the cause and ensure that appropriate bodies play their role in effective management of the flooding and recovery;
- to establish and maintain a register of structures which may affect a flood risk with a record of information about each of the structures, including details of ownership and state of repair.

3.1.5 The Bill will make local authorities responsible for local flood risk assessment, mapping and planning in relation to ordinary watercourses, surface run-off and groundwater. Local authorities will also lead the production of surface water management plans. Local authorities will be required to map flood risk management assets and who owns them. In addition they will have additional responsibilities on drainage and reservoir flooding.

3.1.6 In addition to the specific functions listed above the draft Bill will give Local Authorities responsibilities to:

- deliver improved security, service and sustainability for people and their communities;
- make clear who is responsible for managing all sources of flood risk;
- protect essential water supplies by enabling water companies to control more non-essential uses of water during droughts;
- modernise the law for managing the safety of reservoirs;
- encourage more sustainable forms of drainage in new developments; and make it easier to resolve misconnections to sewers;
- Prioritise local investment;
- Enforce and consent works relating to Ordinary Watercourses;

A more detailed analysis and the implications of the draft Bill on the Council are contained in Appendix A.

3.1.7 Defra's current assessment of costs and benefits suggest that existing local authority baselines taken together with the savings on offer provides the funding required to cover all new burdens implied by the draft Bill. Paragraph 436 of the consultation explanatory notes issued by Defra states "From 2011-12 the savings that local authorities will realise from better flood risk management together will off-set the majority of the public expenditure required". However, Local Authorities including the Local Government Association and professional bodies are sceptical about this assumption. They are concerned that Local Authorities will be faced with a large increase in responsibilities as detailed in this report, without the appropriate levels of funding and resources.

- 3.1.8 The consultation document provides an indication of some of the financial implications of the draft Bill likely to fall on local authorities. Paragraph 153 states that the average cost of developing a Surface Water Managements Plan is £100,000. Paragraph 153 also states that local authorities will invest £100,000 a year on mitigation measures addressing surface run off and groundwater flooding.
- 3.1.9 This Council supports the aims and objectives of the draft Bill and clarification of responsibilities. However, the Council has serious reservations and concerns that the new responsibilities it will be required to undertake can be performed without adequate and significant additional funding. This will form the basis of the Council's consultation submission. The draft formal response from the Lead Member for Highways & Streetcare is shown in Appendix B. In addition the Council intends to respond to the 188 specific questions required by Defra where appropriate. A copy of the Council's response to these questions is available in the Members Room for inspection.
- 3.1.10 In anticipation preparation of the requirement to develop strategic partnerships, the Environment Agency (EA) published a consultation document proposing a new Lower Thames Flood Forum involving nine Local Authority areas. Only the Royal Borough and one other local authority responded, both agreeing to these proposals. As a result the EA have decided not to pursue the proposal.
- 3.1.11 However, as part of the requirement to be a "Lead Local Flood Authority" and to carry out its obligations, the Council proposes that a multi agency Officer Flood Working Group is created. This will include representation from the EA and Thames Water and will progress actions resulting from the draft Bill.
- 3.1.12 The Community Partnership provides an ideal forum to facilitate a partnership approach to addressing Flood Risk Management. A number of the key partner agencies are already engaged within the Sustainable Environment Ambition Group.
- 3.1.13 Initial discussions between the Council and the EA, suggested that local authorities should initially concentrate on the preparation of Surface Water Mapping and Flood Plans. Nationally, five local authorities have been chosen to develop such plans and report back to the EA as to their suitability. These trial formats will then be developed to format a template to be used by all local authorities. This work is currently in progress and the implications in both time and cost of preparing these plans are not yet known.

Flood Monitoring

- 3.1.14 In November 2007, the Strategic Flood Risk Assessment (SFRA) for the Royal Borough was approved by Cabinet for development control purposes, and to inform the Local Development Framework. The SFRA brings together recommendations for drainage, emergency planning and development control and sets out recommendations for the development of policy within the Local Development Framework.
- 3.1.15 During 2008, the SFRA has been subject to a comprehensive review to take account of the revised PPS25 Practice Guide (June 2008); the publication of the Pitt Review (June 2008); the release of updated flood zones for the River Thames (Environment

Agency) and surface water flooding experience in the Borough. The review has also incorporated further detailed flood modeling work. It was published on the Council's website in May 2009. The detailed nature of this review has prompted the EA to indicate that it does not consider that the document needs further reviewing during 2009.

- 3.1.16 Officers have also been recently involved with progress of the Lower Thames Strategy and attended a stakeholder event in May 2009. (This Strategy was launched in response to the flooding of January 2003 and has examined the flood risks in Reach 3 (Datchet to Walton Bridge).)
- 3.1.17 Continued liaison with Thames Water has resulted in there being further investigation into the causes of flooding at Wootton Way, Maidenhead and Basford Way Windsor. The results of these investigations have not yet been completed. Thames Water is due to publish specific proposals for each local authority area as part of their Five Year Plan. As a result Thames Water have been asked to attend the Planning & Environment Overview & Scrutiny Panel on 6th July 2009 to discuss these proposals.
- 3.1.18 The Community Flood Plan template and guidance have been published on the Council's website. All Parish Councils have been invited to attend workshops being held to help develop these plans and raise awareness and preparedness for the local community and to encourage local resilience in the event of flooding. The Community Flood Plan complies with recommendations contained in the Pitt Report.
- 3.1.19 The Thames Valley Local Resilience Forum have completed their Strategic Flood Plan and a link to this document will be put on the Council's own website. This plan covers the arrangements in response to a major flooding incident across the Thames Valley.
- 3.1.20 The EA have recently undertaken a consultation survey relating to their Flood Warning signage and information boards. The Council ensured that all Flood Wardens were given the opportunity to submit their thoughts and ideas, as they are key people in updating and disseminating this information in their local communities.
- 3.1.21 The Council's Capital Programme has seen the completion of the Clare Road and Pines Vets (phase one) flood alleviation schemes in Maidenhead. Phase two will start and be completed in the financial year 09/10 and will see the protection extended to the properties in the Wavell Road area in Maidenhead. Works have also been completed at Horton Road Datchet.
- 3.1.22 The EA have recently published a National Assessment of Flood Risk entitled "Flooding in England". The Borough is shown as being in the top ten local authorities at risk of flooding. This analysis is based upon flooding occurring on a ratio of 1:75 years, 1:200 years and 1:000 years. These figures are based on extreme flooding events and show the worst-case scenario and in context relate to flooding of the magnitude of the 1947 flood. The analysis is based on properties within the EA's Flood Risk Maps.

4. OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

| | Option | Comments | Financial Implications |
|----|---|---|--|
| 1. | Do nothing | Failure to comply with the proposed statutory obligations of the Flood & Water Management Bill. | Revenue: None Capital: None |
| 2. | Approve the recommendations contained in this report. | This would enable a range of measures to be progressed to implement the proposed draft Bill however the issue of funding has yet to be addressed by central government. | Revenue: Additional Staffing £75Kpa Capital: Estimated to be in the region of £150K pa. |

4.2 Risk assessment

4.2.1 When the draft Bill is implemented, the Council will be obliged to carry out further statutory functions in relation to flooding. This additional duty will place financial burdens upon the Council. Without any additional Government funding it is likely that the Council will be unable to fulfil these new statutory obligations.

5. CONSULTATIONS CARRIED OUT

5.1 The Environment Agency and Thames Water have been consulted on the Flood Forum Proposals. The Lead Member for Highways & Streetcare has been in correspondence with local residents and groups.

5.2 As Parish Councils have a key role in flooding issues, all Parish Councils have been asked by the Lead Member to submit comments on the draft Bill for consideration in the Council's formal response.

5.3 Details of the draft Bill and consultation have been posted on the Council's website for residents to provide feedback to the Council.

6. COMMENTS FROM OVERVIEW AND SCRUTINY PANEL

7. IMPLICATIONS

7.1.1 The following implications have been addressed where indicated below.

| Financial | Legal | Human Rights Act | Planning | Sustainable Development | Diversity & Equality |
|-----------|-------|------------------|----------|-------------------------|----------------------|
| ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

Background Papers:

Draft Floods & Water Management Bill

APPENDIX A

Implications of the draft Floods and Water Management Bill for the Royal Borough of Windsor and Maidenhead.

The consultation paper seeks responses to a number of questions relating to the split of duties, roles and responsibilities between County and District Councils. This is however of little consequence to a Unitary Authority and the Council will be given a considerable number of additional duties, roles and responsibilities.

The Council will also become a “competent authority” for the purposes of the EU Floods Directive 2007.

Part 1 of the draft Bill deals with the management of flood risk and coastal erosion risk in England and gives Unitary Authorities responsibility for supervising the management of flood risk relating to surface runoff, groundwater and ordinary watercourses. The responsibility for surface runoff and groundwater flooding is new, and previously it was unclear which authority had responsibility for tackling flooding of this nature.

The Council will become a “Lead Local Flood Authority” and will have a duty to

- Develop, maintain and apply a strategy for local flood risk management in its area (this strategy must be consistent with the national flood and coastal erosion risk management strategy and guidance that will be developed and issued by the Environment Agency).
- Publish a summary of its local flood risk management strategy.
- Act in a manner that is consistent with the national flood and coastal erosion risk management strategy and the local flood risk management strategy
- Co-operate with other relevant authorities which are exercising flood risk management functions
- Investigate flooding incidents in its area in order to identify which relevant authorities have flood risk management functions relating to the flood and whether the relevant authorities have or propose to respond to the flood.
- Produce and make available for inspection a register and record of information about structures and features which may affect flood risk in its area.
- Prepare a Preliminary Assessment Report relating to previous flooding events from ordinary watercourses, surface runoff and groundwater. This report must be submitted to the Environment Agency by 22nd June 2011, and must include detailed information about the consequences of the previous floods and an assessment of the potential harmful consequences of future floods in the area.
- Review the Preliminary Assessment Report at prescribed intervals (basically not exceeding 6 years)

- Prepare a “Flood Hazard Map” identifying areas at significant risk of flooding from surface runoff, groundwater and ordinary watercourses.
- Prepare a “Flood Risk Map” indicating the number of people likely to be affected, the type of commercial activity likely to be affected, any industrial activities in the area that may increase the risk of pollution during a flood event, any areas of water subject to specified measures or protection for the purpose of maintaining water quality and an assessment of the potentially harmful consequences of the identified flood risk.
- Submit the Flood Hazard Map and the Flood Risk Map to the Environment Agency by 22nd June 2013.
- Review the Flood Hazard Map and the Flood Risk Map at prescribed interval (basically not exceeding 6 years).
- Prepare a flood risk management plan for each area identified as being at significant risk of flooding setting out how the identified flood risk will be managed. This plan must be submitted to the Environment Agency by 22nd June 2015 and must be reviewed at prescribed intervals (basically not exceeding 6 years).

Part 1 also makes a number of amendments to the Land Drainage Act 1991 which will result in the Council being given a number of new responsibilities and powers. The Council will for instance become responsible for issuing consents for the construction of structures such as mill-dams and weirs on ordinary watercourses, and for the culverting of ordinary watercourses (previously the Environment Agency were responsible for this).

Part 2 gives certain authorities the power to “designate” structures or features that may affect flood risk or coastal erosion and prohibits the alteration or removal of “designated” structures or features without consent.

The Council will be given powers to designate structures or features (a designation is a local land charge) and following any designation made by the Council, the Council will become responsible for issuing consents or carrying out any necessary enforcement action relating to that structure or feature.

Part 3 establishes a new regime for reservoir safety and makes provision about the management of flood risk from reservoirs, in England and Wales. The Reservoirs Act 1975 will cease to have effect in England and Wales.

Under the proposed legislation any raised structure designed or used for collecting and storing water, or raised lakes or other areas capable of storing water which have been created or enlarged by artificial means, that are capable of storing 10,000 cubic meters or more of water above the natural ground level will be classified as a “reservoir” (the current qualifying figure is 25,000 cubic meters or more of water). It is not however anticipated that this change will result in the Council becoming a “Reservoir Manager” and the proposed changes in legislation are therefore unlikely to have a direct affect on the Council.

Part 4 provides a revised special administration regime for Water and Sewerage Undertakers and licensed water suppliers, to be known as the water administration regime, in substitution for the ordinary administration regime in the Insolvency Act 1986.

The regime is designed to ensure that, where a water company “fails” its assets and infrastructure will continue to be used to provide essential water and sewerage services to its customers. This part of the proposed legislation will have no direct affect on the Council.

Part 5 relates to “sustainable drainage”. The draft legislation defines “sustainable drainage” as a means of managing rainwater with the aim of reducing damage from flooding of all kinds, improving water quality, protecting and improving the environment, protecting health and safety and ensuring the stability and durability of drainage systems.

The Secretary of State will publish national standards relating to the implementation of sustainable drainage systems, and how they are to be constructed and operated. The Secretary of State will carry out a further consultation before these standards are published, and Planning Authorities will have to have regard to these standards in preparing local development documents.

Under the proposed legislation the Council will become an “SUDS Approving Body” for drainage systems designed to receive rainwater (the only exceptions being public sewers and natural watercourses).

The Council will have a duty to

- Receive and check applications for any new drainage system designed to receive rainwater (the Council must approve any application that meets the national standards to be published by the Secretary of State and refuse any application that does not meet the standards).
- Consult the Sewerage Undertaker if a connection to the public sewer system is proposed.
- Issue a Certificate of Satisfactory Construction when the drainage system has been completed in accordance with the approved proposals.
- Monitor the operation of the drainage system to check that its operation is in accordance with the approved proposals.
- Adopt and maintain any rainwater drainage system that has been constructed in accordance with, and is operating in accordance with, the approved proposals, and serves more than one property.

The Council may also monitor the construction of the proposed rainwater drainage system, publish a scale of fees that covers the costs of determining the application and monitoring the construction and the operation of the drainage system, and may require the provision of a non-performance bond.

It should be noted that this proposal will mean that the Council will potentially be responsible for the maintenance of rainwater drainage systems located on private land serving private properties.

Part 6 makes a number of amendments to the Water Industry Act 1991 (dealing with, for instance, the introduction of mandatory standards for lateral drain connections, and misconnections to the public sewage system) and allows the Secretary of State to introduce regulations that will allow the Water Services Regulation Authority to regulate the provision of infrastructure by third parties for the eventual use of Water or Sewerage Undertakers.

This part of the proposed legislation will have no direct affect on the Council.

Part 7 makes a number of amendments to the Water Industry Act 1991 (dealing with temporary bans (hose pipe bans) and the waste of abstracted water) and the Water Resources Act 1991 (dealing with, for instance, special charges in respect of irrigation).

This part of the proposed legislation is unlikely to have any significant affect on the Council.

Part 8 provides some further definitions and includes a clause (clause 262) that suggests that funding will be available from Parliament to cover any expenditure incurred as a result of the Bill. The Consultation Paper however would appear to indicate that the Government anticipates the majority of the required funding being achieved by savings made by Local Authorities as a result of better local flood risk management and the transfer of private sewers to the Sewerage Undertaker in April 2011.