

Title of Report:	Flood and Water Management Act 2010
Report to be considered by:	Executive
Date of Meeting:	31 March 2011
Forward Plan Ref:	N/a

Purpose of Report: To consider the implications of the Flood and Water Management Act 2010 for West Berkshire Council.

Recommended Action: For the Executive to:

1. Note the implications of the new legislation and accordingly approve the restructuring of the Projects Team to establish a small Drainage Team to undertake the duties of the Flood and Water Management Act and to manage the Council's existing drainage/flood prevention duties under the Highways and Land Drainage Acts.
2. Support the proposal for the creation of the following two new full time posts:
3.
 - a) A Senior Technician at a cost of £30k per annum (including overheads) to be appointed at the beginning of 2011/12 financial year on a two year fixed term contract;
 - b) A Project Engineer at a cost of £40k per annum (including overheads) to be appointed at the beginning of the 2012/13 financial year on a one year fixed term contract.
4. Approve the use of Defra grant funding to cover the cost of these posts and to provide revenue budgets to undertake the duties under the Act as detailed in Para 6.6, Table 1 of this report.

Reason for decision to be taken: To enable the Council to take on board the new duties under the Flood and Water Management Act 2010.

Other options considered: None

Key background documentation: Flood and Water Management Act 2010
 The Pitt Review
 EU Floods Directive/The Flood Risk Regulations 2009
 Reservoir Act 1975.
 Report to Management Board 10 March 2011
 Report to Management Board 17 June 2010

The proposals will also help achieve the following Council Plan Themes:

- CPT1 - Better Roads and Transport**
- CPT2 - Thriving Town Centres**
- CPT4 - High Quality Planning**
- CPT6 - Vibrant Villages**
- CPT7 - Safer and Stronger Communities**
- CPT8 - A Healthier Life**
- CPT10 - Promoting Independence**
- CPT11 - Protecting Vulnerable People**
- CPT12 - Including Everyone**

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:

Reducing the risk of flooding across the District.

Portfolio Member Details

Name & Telephone No.:	Councillor David Betts - Tel (0118) 942 2485
E-mail Address:	dbetts@westberks.gov.uk
Date Portfolio Member agreed report:	01 February 2011

Contact Officer Details

Name:	Jon Winstanley
Job Title:	Projects Manager
Tel. No.:	01635 519087
E-mail Address:	jwinstanley@westberks.gov.uk

Implications

Policy:	None
Financial:	There are likely to be significant financial implications which can be funded through Defra grant as detailed in the report.
Personnel:	The recommendations within this report involve the recruitment of two additional full time posts to assist in the management of the Council's duties under the flood and water management act.
Legal/Procurement:	The Flood and Water Management Act places a statutory duty on West Berkshire Council as the Lead Local Flood Authority to comply with the Act to manage flood risk in West Berkshire.
Property:	None
Risk Management:	The actions of the legislation should result in the reduction of risk to local communities and the Council.
Equalities Impact Assessment:	None

Is this item subject to call-in?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
<p>If not subject to call-in please put a cross in the appropriate box:</p> <p>The item is due to be referred to Council for final approval <input type="checkbox"/></p> <p>Delays in implementation could have serious financial implications for the Council <input type="checkbox"/></p> <p>Delays in implementation could compromise the Council's position <input type="checkbox"/></p> <p>Considered or reviewed by Overview and Scrutiny Commission or associated Task Groups within preceding six months <input type="checkbox"/></p> <p>Item is Urgent Key Decision <input type="checkbox"/></p>		

Executive Summary

1. Introduction

1.1 Following the flooding of 2007 and the subsequent Pitt Review a number of pieces of legislation and guidance have been developed by the European Union and Defra in relation to monitoring, preventing and managing any future flood events. These include:

- (1) The Flood Risk Regulations 2009 from the EU Floods Directive,
- (2) The Reservoir Act 1975 amendments and
- (3) The Flood and Water Management Act 2010 (FWM)

The overarching aim of all these changes is to improve the management of local flood risk.

1.2 This report has been prepared in order to provide a position statement on where the Council is with its new legal responsibilities along with the resource implications and potential sources of funding to cover these duties.

2. Implications

2.1 Whilst the FWM Act 2010 and the Flood Risk Regulations 2009 and the amendments to other existing legislation are welcome in relation to tidying up a number of varying strands for flood prevention, the implications are significant for the Council.

2.2 Additional funding required to cover costs including additional staff resources to carry out the minimum duties required under the Act are estimated to be £127k in the 2011/12 financial year with an annual revenue cost of £186k from 2012/13 onwards. Defra grant funding of £127k has been received for 2011/12 financial year and it is understood this will rise to £186k in 2012/13 (annually) to cover the duties under the Act.

3. Recommendations

3.1 In order to manage the implications of the above legislation, the Executive are asked to:

- (1) Note the implications of the new legislation and accordingly approve the restructuring of the Projects Team within the Highways and Transport Service to establish a small Drainage Team to undertake the duties of the Flood and Water Management Act and manage the Council's existing drainage/flood prevention duties under the Highways and Land Drainage Acts.
- (2) Support the proposal for the creation of the following two new full time posts:
 - (a) A Senior Technician at a cost of £30k per annum (including overheads) to be appointed at the beginning of the 2011/12 financial year on a two year fixed term contract;

- (b) A Project Engineer at a cost of £40k per annum (including overheads) to be appointed at the beginning of the 2012/13 financial year on a one year fixed term contract.
- (3) Approve the use of Defra grant funding to provide Revenue budgets to cover the cost of these posts and to provide revenue budgets to undertake the duties under the Act as detailed in Para 6.6, Table 1 of the report.

Executive Report

1. Introduction

1.1 Following the flooding of 2007 and the subsequent Pitt Review of the events a number of pieces of legislation and guidance have been developed by Defra. This has included:

- (1) The Flood Risk Regulations 2009 from the EU Floods Directive,
- (2) The Reservoir Act 1975 amendments and
- (3) The Flood and Water Management Act 2010

The overarching aim of all these changes is to improve the management of local flood risk.

1.2 This report has been prepared in order to provide a position statement on where the Council is with its new legal responsibilities along with the resource implications and potential sources of funding to cover these duties.

2. The Flood Risk Regulations 2009

2.1 These regulations came into force on the 10 December 2009 and are arranged into 3 parts; preparing a flood assessment report, preparing a flood hazard map and preparing a flood risk management plan.

2.2 The specific timelines associated with these activities and a progress report is detailed in Appendix A.

3. The Reservoir Act 1975 (as amended)

3.1 The Flood and Water Management Act 2010 will introduce a requirement for Local Authorities to prepare off-site plans for reservoir emergencies where the reservoir is bunded and over 10,000m³; can pose a risk to human life if an uncontrolled release of water takes place and are therefore deemed to be 'high risk'. West Berkshire has two such reservoirs in the area which are classified as Category A reservoirs. Both are privately owned.

3.2 At the moment the timings for completion of plans and the implications with respect to cost are not known (an assumption has been made that reservoir risk management plans for two reservoirs will cost approx £5k). It is also not known if this is to be recovered in full or in part from the owners and will involve Civil Contingencies.

4. Flood and Water Management Act 2010

4.1 The Act received Royal Assent on 8 April 2010. However due to the parliamentary timetable some of the requirements for Local Authorities are now reliant on relevant Regulations to provide further details including timescales. In the majority of cases these timescales are still unclear; however the action plan in Appendix A gives the latest known timescales for duties that will be taken on by West Berkshire Council as the Lead Local Flood Authority.

- 4.2 The Flood and Water Management Act 2010 aims to provide better, more comprehensive management of flood risk for people, homes and businesses. The Act gives the Environment Agency (EA) the strategic responsibility for supervising the management of flood and coastal erosion risk in England whilst placing the local leadership role with the local authorities. This role includes ensuring that flood risk from all sources, including main watercourses, ordinary watercourses, surface water runoff and ground water is suitably managed.
- 4.3 Partnership Working is key to complying with the Act. Although WBC will be taking the role of Lead Local Flood Authority (LLFA), the Act aims to see local authorities working together with the Environment Agency, water companies and others. The Act also aims to promote an integrated approach to planning and managing the environmental impact of all forms of flood risk.
- 4.4 The action plan in Appendix A gives an overview of the new duties for LLFA's along with the resource/cost implications and progress to date. An overview is also given below.

5. Overview of the Council's key responsibilities.

- 5.1 To fulfil the Lead Local Flood Authority (LLFA) role, the Council will be required to publish a strategy for local flood risk management (clause 19). This will comprise a range of documents and working practices as set out below:
- (1) **Preliminary Flood Risk Assessment (PFRA) Report.** Estimated cost of £20k which was funded in 2010 by Defra. This must be completed by June 2011;
 - (2) **Significant Flood Risk Areas.** This element of work follows on from the PFRA and is largely dependent on its results as this will determine the number of Flood Risk Areas requiring action plans.
 - (3) **Duty to investigate Flooding Incidents.** The lead local flood authority has a duty to investigate all incidents of flooding in its area and to identify which authorities have relevant flood risk management functions. They will also be required to publish the results of the investigations.
 - (4) **Asset Register and Duty to Maintain Register.** Maintenance of a register of structures or features which have a significant effect on flood risk, at a minimum recording ownership and state of repair. The register must be available for inspection. The estimated cost of setting up the database and to inspect and maintain assets is £85k which would be undertaken in 2011/12.
 - (5) **Consent and Enforcement for Works on Ordinary Watercourses.** At present any approval for works on ordinary water courses (including piping or diverting ditches etc.) is provided by the Environment Agency. This duty will now be the responsibility of the LLFA.
- 5.2 **Third Party Assets:** the Act requires the Council to identify and designate (and so safeguard) drainage assets that are owned, maintained or operated by third parties that assist in managing flood risk (when the third party assets have been identified

they will need to be formally designated). Once designated it will be an offence to alter or remove the features without the consent of the responsible authority. If the designation is not observed the Council can issue enforcement notices.

It is anticipated that the legal procedure for designating third party assets could be quite involved, as many landowners are likely to resist features on their property being designated. However it is understood that it is not a requirement that the legal designation be undertaken immediately, and as long as the features have been identified for designation within the asset register this will be sufficient to fulfil the LLFA's duties. Legal designation would then follow in future years (2012/13 onwards).

5.3 **Reservoirs:** a designated Reservoir Manager will be required to cover all reservoirs greater than 10,000m³ in West Berkshire. Creating a reservoir plan for the two reservoirs in West Berkshire will cost approximately £5k.

5.4 **Sustainable Drainage Systems (SuDS):** the Act requires developers to include sustainable drainage, where practicable, in all new developments, built to national standards which reduce the risk of flood damage and improve water quality. It also amends S106 of the Water Industry Act 1991 to make the right to connect surface water runoff to public sewers conditional on meeting the new standards.

The Act establishes a SuDS Approving Body (SAB) at county or unitary authority level which has the responsibility for approving sustainable drainage systems (SUDS) in new developments, and adopting and maintaining them where they affect more than one property. Without approval of the SAB, developers will not be allowed to commence construction. Being the approving body raises expertise, resource and procedure implications for the Council.

All SuDS will be designed, constructed and maintained in accordance with the National Standards, which are yet to be issued. It was anticipated the National Guidance would be issued in 2010 for consultation, however it is increasingly likely the guidance will only be issued for consultation in summer 2011 and the expectation is that Local Authorities will be required to have the necessary procedures and SAB in place by April 2012.

It is this part of the Act that could have the most significant implications for Local Authorities as it places drainage design and adoption at the forefront of the planning process. A SuDS approval procedure will have to be established to run along side the planning process and sufficient resources with the appropriate expertise will need to be available to liaise with developers.

It is anticipated that establishing a system for approving and adopting SuDS could be managed using existing staff resources with some additional training (estimated cost £7k). However, from 2012/13 onwards, liaising with developers, checking applications, maintenance of SuDS and administering the process would add an additional resource pressure. Given the current review of planning fees, consideration will be given to supplementing the additional resource pressure through local planning fees.

The actual cost of the on-going maintenance of SuDS at this time is unknown and is of some concern as they have historically required more maintenance than conventional positive drainage systems. Local Authorities are currently lobbying

Defra to include a mechanism for securing commuted sums as part of S106 agreements to maintain SuDS within the Act. If this is not taken forward by Defra then consideration should be given to altering the Council's Supplementary Planning Guidance to allow for a commuted sum towards the maintenance of SuDS. *(This will need to be reviewed for inclusion within the Community Infrastructure Levy which will replace S106 in 2014).*

6. Resource Implications:

- 6.1 To take on board the new duties it is recommended that a small Drainage Team be established using a combination of new and existing posts within the Projects Team in the Highways and Transport Service. The Projects Team has to date undertaken the Council's duties under the Land Drainage Act and has been responsible for delivering the engineering elements of the Flood Action Plan. In terms of expertise it is felt the Projects Team is best placed to take on the new duties and this new team will provide a central point of contact for all drainage and flood related issues across the District.
- 6.2 To fulfil the duties the new Drainage Team would be managed by a Principal Engineer (existing post) and the team should consist of a Senior Engineer (Existing Post), Project Engineer (New Post) and a Senior Technician (New Post) from 2012/13 onwards when the Authority takes on board its SuDS approval duties. (These new posts can be fully funded from Defra grant as detailed below.)
- 6.3 In addition to the new duties under the Act, the Drainage Team will be responsible for undertaking all the Council's existing duties under the Land Drainage Act and delivering all Highway Drainage and Flood Prevention Capital Projects (Council and EA funded). The Principal Engineer and Senior Engineer in the new Drainage team are those currently involved in undertaking the Council's Land Drainage function and implementing the Flood Action Plan following the 2007 flooding. In that respect many of their duties and responsibilities will not change. In order to manage the team and the new requirements under the Act, some of their existing Capital Project duties and responsibilities would have to be shared around the Projects Team. Resources will need to be closely monitored to ensure that the capital programme can still be effectively managed and delivered.
- 6.4 Defra has stated that it is committed to fully funding the new duties, powers and responsibilities that emanate from the Act. Defra has agreed to provide £21m in 2011/12 rising to £36m per year from 2012/13 onwards to lead local flood authorities as an Area-Based Grant. West Berkshire Council has received £127k grant funding for 2011/12. This will rise to £186k in 2012/13 once the Council has fully taken on board all its duties *(this grant funding has been set at this level annually for the remainder of the Comprehensive Spending Review period).*
- 6.5 It is proposed that the funding for 2011/12 be used to fund a new Senior Technician post (£30k). The new duties covered by the Senior Technician are the duty to investigate all incidents of flooding, setting up and managing a drainage asset register, inspecting and maintaining significant drainage features and the designation of third party assets. In addition to this new post £85k will be needed in 2011/12 to set up and maintain an asset register of

drainage features. £7k is required to provide essential training for existing staff members in the new National Guidelines on the design of SuDS. The remaining £5k will be used to produce reservoir risk management plans. (Total funding for 2011/12 is £127k).

- 6.6 From 2012/13 onwards, in addition to the ongoing cost of £30k for a Senior Technician, it is proposed that the anticipated £186k grant funding be used to fund a Project Engineer post (£40k) to assist in the SuDS adoption and maintenance process along with the development of Surface Water Management Plans for areas with significant local flood risk. It is proposed the remaining £116k is used as revenue funding to enable the Drainage Team to undertake its duties under the Act. The funding profile for the next two years is set out in the table below:

	2011/12	2012/13
Staff resources		
Senior Technician	£30k	£34k**
Project Engineer		£40k
Works/ongoing costs & investigations		
Essential Training	£7k	
Reservoir risk management plans	£5k	
Mapping and setting up a drainage asset register/database.	£85k*	
Producing Surface Water management Plans		£20k
Inspection/Maintenance of drainage assets and updating the asset database.		£56k
Legal and Civil contingencies support		£10k
Contractor support for investigative duties		£26k
Total	£127k	£186k
Available DEFRA Grant Funding	£127k	£186k
*This is inclusive of any legal costs in 2011/12.		
** This figure includes potential redundancy payout.		

Table 1

Total annual budget required is £127k in 2011/12 and £186k in 2012/13 which matches the anticipated grant from Defra. Defra has initially committed to providing annual grant funding of £186k for 2013/14 and 2014/15 (the current spending review period), however given the uncertainty of funding from central government it is felt prudent to create any staff posts on a fixed term contract.

7. Progress

- 7.1 The absence of much of the follow-up legislation and codes of practice has meant that Defra's original timescales for implementation have subsequently slipped. However, good progress has been made by WBC in many areas of the Act being led by the Flood Action Group (membership includes WBC Highways, Civil

Contingencies and Planning Officers, Thames Water and the Environment Agency representatives).

- 7.2 Work has started on the Preliminary Flood Risk Assessment with a District wide consultation exercise undertaken during December with all Parish Councils to establish historic and current flood and drainage problems. The PFRA will be the subject of a separate report to the Overview and Scrutiny Management Commission in March before it is submitted to the EA in June 2011. The PFRA will identify those areas of West Berkshire considered to be at significant risk of flooding.
- 7.3 Testing has been carried out on the Councils existing Structures Asset Management Database which has demonstrated that it is suitable to use as an asset management system for drainage structures and features. Using this existing resource represents a significant cost saving to the Council. A considerable volume of background information from existing Highway records and information gathered following the 2007 flood is in existence. However a significant amount of work is required to populate the database and map drainage assets in flood risk areas. This will need to be undertaken in 2011/12 to comply with Defra's timescales for implementation of the Act.
- 7.4 A Surface Water Management Plan has been produced for Thatcham which has been used to inform flood risk and successfully bid for funding to develop flood defence proposals for Thatcham. Further bids will be required to implement the proposals and further Surface Water Management Plans will be required for those areas identified as being at significant risk under the Flood Risk Regulations 2009.
- 7.5 The Action Plan in Appendix A gives an indication of other work needed, along with the latest timescales, to fully comply with the Council's duties under the Act, but given the funding available it is considered all the requirements are achievable over the coming years.

8. Conclusion

- 8.1 Given the lack of any codes of practice and regulations concerning the Act, there is much uncertainty regarding the timescale and detail of scope of some duties, particularly those relating to the adoption and maintenance of SuDS. However officers have embraced the new legislation and significant progress has been made, as detailed in the Action Plan. Highway and Transport officers are in constant contact with the EA, Defra and adjacent Authorities to ensure we are at the forefront of any developments and clarifications.
- 8.2 In recent years West Berkshire Council has been at the forefront of managing flood risk and much good work has been done throughout the District and particularly in relation to the Thatcham Surface Water Management plan. In embracing the duties under the Act WBC will continue to manage flood risk and ensure the impact of events such as 2007 is kept to a minimum.
- 8.3 As detailed in the Action Plan there is a significant amount of work to be undertaken to ensure WBC complies with its duties as the Lead Local Flood Authority, however in approving the recommendations of this report sufficient capacity will be built into the Highways and Transport service to manage the provisions in the Act that affect local authorities.

9. Recommendations

9.1 In order to manage the implications of the above legislation, the Executive are asked to:

- (1) Note the implications of the new legislation and accordingly approve the restructuring of the Projects Team within Highways and Transport, to establish a small Drainage Team to undertake the duties of the Flood and Water Management Act and manage the Council's existing drainage/flood prevention duties under the Highways and Land Drainage Acts.
- (2) Support the proposal for the creation of the following two new full time posts:
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- (3) Approve the use of Defra grant funding to provide Revenue budgets to cover the cost of these posts and to provide revenue budgets to undertake the duties under the Act as detailed in Para 6.6, Table 1 of the report.

Appendices

Appendix A Flood and Water Management Act 2010 Action Plan.

Consultees

Local Stakeholders: Environment Agency

Officers Consulted: Mark Edwards, Gary Lugg, Gary Rayner, Bryan Lyttle, Carolyn Richardson, Stuart Clark, Melvyn May, Andrew Reynolds, Mark Cole, Paul Goddard, David Holling, Joseph Holmes, Melanie Ellis, John Ashworth, Corporate Board

Trade Union: N/A