

Executive

Pitt Review into 2007 Summer Floods – Further implications following the Government’s Response to the Report Recommendations

7 SEPTEMBER 2009

Report of Head of Building Control and Engineering Services

PURPOSE OF REPORT

All the recommendations of the Pitt Report into the Summer 2007 floods were accepted by the Government in late 2008. Following that in April 2009 the draft Flood and Water Management Bill was published and consulted upon. The Bill seeks to rearrange the various ways in which existing land drainage and flood risk management powers and responsibilities are organised, and proposes some new duties for those involved. If enacted the Bill would have significant implications for the way these services are delivered locally. The purpose of this Report is to appraise Members of those implications and to recommend an approach that supports the promotion of high quality land drainage services in Cherwell District in the future.

This report is a public report

Recommendations

The Executive is recommended to:

- (1) Support the ways in which the Flood and Water Management Bill seeks to place greater accountability on the Public Sector for flood risk management.
- (2) Note that it is likely that the lead statutory role in land drainage and flood risk management will rest in future with Oxfordshire County Council.
- (3) Recognise that it follows from (2) above that in future it will only be possible to provide land drainage and flood risk management services at District level through agencies or operational protocols to the Lead Local Flood Authority which is proposed to be the County Council.
- (4) Pursue partnership discussions about how District Councils in Oxfordshire might work with the County Council to provide high quality land drainage and flood risk management services in the future.

Executive Summary

Introduction

- 1.1 I reported to the Executive on 3 November 2008 with a summary of the Pitt Review Final Recommendations and intimated that the Government was set on using those as a basis for fundamental changes in the way land drainage and flood risk management is organised and delivered in England and Wales. There has followed a draft Flood and Water Management Bill which sets out the Government's proposals.

Proposals

- 1.2 Cherwell has historically been very active and taken the local lead in providing land drainage services. The Government's proposals, if enacted, would see Oxfordshire County Council becoming the 'Lead Local Flood Authority'. Cherwell would become accountable to the County Council as part of a more structured land drainage hierarchy. Effectively, Cherwell could only remain active in respect of land drainage within a formal structure governed by the County Council.

Conclusions

- 1.3 The Government's proposals should in general be welcomed as they will provide a more joined up land drainage and flood risk management service through all the public and private sector organisations involved. They will also significantly increase accountability and close the gaps that currently exist between the remits of the various service providers.

Background Information

2 General Overview of the Draft Legislation

- 2.1 The draft legislation has been consulted on publicly. The general practitioner view of the draft is that it contains sound principles. It is very largely welcomed and indeed overdue. Where professional opinions differ are around a few items of detail and in particular where the division occurs between the potential roles of County and District Authorities in two tier areas.
- 2.2 In interim responses the Government (through Defra) have said that they would expect any local issues to be resolved at a local level having full regard to the strategic objectives of the Bill. We should assume that the Bill will be enacted very largely as drafted.
- 2.3 As far as Cherwell is concerned the key points in the draft Bill are as follows:
 - i) The roles of all organisations expected to contribute to flood risk management are identified.
 - ii) The tier of Local Government expected to take the lead in the reduction and management of local flood risk has been identified with the introduction of the concept of a Lead Local Flood Authority

(LLFA). This is proposed to be at County level in two tier areas.

- iii) All new Sustainable Drainage Systems (SUDs) are to become adoptable by a “SUDs Adopting Authority” or SAB. In two tier areas the SAB is proposed to be the County Council.
- iv) The role of District Authorities changes to one that is sub-ordinate to the LLFA. However, District Authorities can continue to take a role in supporting the LLFA where they agree agencies and other local protocols.
- v) There will be a duty to co-operate and share information on all organisations (both public and private sector) having an interest in land drainage infrastructure.

2.4 The overriding purpose of the legislation is that all elements of land drainage infrastructure are overseen either by the Environment Agency or by the Local Lead Flood Authority with no gap between them. The Environment Agency will continue to have a strategic overview of all elements and be operationally responsible for the “main river” network. The LLFA will be tasked to ensure that flood risk from all sources other than “main rivers” is effectively managed.

2.5 There is no doubt that the new duties to be placed on the County Council as LLFA will be onerous. The LLFA will have to quickly acquire the resource and expertise needed to fulfil this role, it having been stated by Central Government that there will be no new money found for the task. A group of officers from the Oxfordshire Districts and the County Council is currently meeting to prepare for the new roles each will play.

2.6 The issue has also been considered informally by County and District Leaders and Chief Executives in Oxfordshire. There is a consensus that efforts should be made to co-operate to make best use of the existing resources and skills. However, the overall resource implications have not yet been considered in any detail.

3.0 Implications for Cherwell

3.1 Potentially, Cherwell has a part to play in the new set-up but it is important also for the Council to consider the likely role of the County Council and the new arrangements they establish. In reality, at least in the short to medium term whilst the County establishes a structure for their role, they will be heavily reliant upon local District expertise to deal with ongoing flood risk and to provide the local knowledge they will need in developing the Surface Water Management and other action plans they will statutorily have to prepare

3.2 Cherwell’s reasonable response to the legislation should be to adopt a proactive supporting role for the greater good of the service which may in time diminish as the County Councils becomes more confident in their role and competent to discharge all their new duties. This would exceed the basic statutory requirement of a District Council “co-operating and sharing information” with the LLFA but would make better use of the resource and knowledge that will remain available.

3.3 It is, however, very important to note that Cherwell’s ability to assist will be compromised by the County Council’s recent decision to withdraw the existing

Highways Adoption agency from 1 April 2010. This agency has been the basis of Cherwell's engineering service and as well as generating substantial income it has provided a centre of gravity for engineering skills. The withdrawal of the agency raises issues that will be considered in detail as part of the 2010/2011 budget process and an associated fundamental review of the engineering service.

- 3.4 Central Government/Defra have not been specific about when the Bill in its final form is likely to be enacted. Within the consultation references are made to transferring responsibility for private sewers to Statutory Sewerage Undertakers which would release funding streams for the new land drainage obligations. Defra has publicly stated their intention to effect this transfer on 1 April 2011 and therefore that would appear to be the latest time when the provisions of the new Flood and Water Act could take place. That said, Defra are sending out messages that the Government may fast-track this legislation to an earlier implementation.

4.0 Consultation Response to Draft Legislation

- 4.1 Although Authorities and organisations have been at liberty to respond to the consultation individually Cherwell has collaborated with the County Council and all its District counterparts to submit a joint response. This reflects the countywide desire to jointly meet the challenges ahead.
- 4.2 The gist of the consultation response has been that that all the Oxfordshire Authorities support the principles of the draft legislation and will work together to jointly provide the future service to the greatest benefit of the Oxfordshire public.

Key Issues for Consideration/Reasons for Decision and Options

- 5.1 The key issue for Cherwell is to acknowledge that there will be a shift in land drainage and flood risk management responsibilities. Whereas currently these lie principally at a District level it is proposed that the County Council will assume a lead role and co-ordinate activities and operations through a strategic central resource.
- 5.2 In the light of this shift Cherwell needs to decide how much it can do to support the County Council in its new role as LLFA. Given the new framework it could downgrade its support to a level of do-minimum discharging no more than its basic statutory duties. Alternatively, it could offer a more active role and possibly additional funding support. These choices will need to be considered further through the 2010/2011 budget process.

Implications

Financial: There is a cost in the Council's maintaining its current level of land drainage expertise and resource. Currently 0.5 FTE's are deployed on land drainage/flood risk management. This is the minimum level of resource that would continue to be required.

The inclusion of the service within an overall engineering function has allowed flexible use of staff and peak demand responses. This flexibility will not be readily available in future due to the County Council withdrawing the Highways Adoption agency on 1 April 2010. (see para 3.3 above).

Following my Report of 3 November 2008, the Council set aside £131,063 in the land drainage reserve fund it established from the Defra grant which the Council received in recognition of its responses to the 2007 floods. This is currently being put to good use and with careful spending and significant joint funding of schemes with Partner Organisations it will be possible to eke this out over a period of three or four years.
Comments checked by Eric Meadows, Senior Accountant Planning, Housing and Economy) 01295 221552

Legal:

In addition to the necessary land exchange, it will be necessary to amend the car park orders regulating the public car parking.

Comments checked by Liz Howlett, Head of Legal and Democratic Services, 01295 221686

Risk Management:

The recommendations of this Report are consistent with the Council's aims of reducing risk in all service areas across the Council.

Comments checked by Rosemary Watts, Risk Management and Insurance Officer, 01295 221566.

Wards Affected

All Wards

Corporate Plan Themes

A Safer Healthy Cherwell

Executive Portfolio

Councillor George Reynolds
Portfolio Holder for Environment, Recreation and Health

Document Information

Appendix No	Title
None	
Background Papers	
Draft Flood and Water Management Bill, April 2009 available on deposit in Members Room or on www.defra.gov.uk/corporate/consult/flood-water-bill/index.htm	

Oxfordshire Authorities response to consultation on Draft Flood and Water Management Bill, available on deposit in the Members Room.

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