

EXECUTIVE

Flood and Water Management Act 2010 and Implications for Local Service Delivery

11 October 2010

Report of the Strategic Director Planning Housing and Economy

PURPOSE OF REPORT

To consider arrangements being put in place locally to implement the Flood and Water Management Act 2010 and to facilitate essential, consequential, decisions about Council services and staffing (land drainage element of the engineering function).

This report is public

Recommendations

The Executive is recommended to:

- (1) Note the implications of the Flood and Water Management Act as set out in the report.
- (2) Inform the County Council as Lead Local Flood Authority (LLFA) that, for the reasons set out in the report, it is unable to take up their offer of a formal, but unfunded, agency agreement that would allow Cherwell District Council (CDC) to operate on behalf of the LLFA in Cherwell.
- (3) Additionally inform the County Council that CDC will not be in a position to maintain its existing in house land drainage staff expertise and information systems under the terms of the new arrangements and that the district councils "duty to co operate with the LLFA" included in the Act will implemented solely through:
 - Local Planning Authority (LPA) consultation on planning policy and development control
 - Provision of any local information or knowledge currently collated or coming to hand in the future
 - Potentially, consideration of making an offer of capital funding contributions towards flood defence works required for the District (these to be planned, designed and implemented by the LLFA and the bodies responsible for main rivers)

All other work on land drainage and flooding will cease.

- (4) Instruct the Strategic Director (Planning Housing and Economy) to report to Personnel Committee on, and implement, the necessary staffing changes arising from these decisions on the FWMA and also from earlier changes to the workload of Cherwell's engineering service (as noted in the report).
- (5) Initiate work with the County Council to provide public and partner information to explain the rearrangement of functions, and new local responsibilities and contacts under the FWMA.

Executive Summary

Flood and Water Management Act

- 1.1 New statutory arrangements for the local authority role in managing flood risk and responding to flooding problems and issues are included in the Flood and Water Management Act 2010 (FWMA). It is expected the relevant provisions of the Act will be fully enacted from 1 April 2011. The County Council will become the LLFA for Cherwell and will receive additional financial resources in its Government grant settlement to perform this function. District Councils will no longer have an independent statutory role in this field of activity. They will still have a duty to co operate with the LLFA (e.g. in respect of planning powers or provision of local information), and, potentially some concurrent powers to take action to enforce riparian (watercourse) owner responsibilities or implement land drainage works that fit with the policies and priorities of the LLFA.

Current CDC Services

- 1.3 Until the advent of the Act district councils have been the lead statutory authority for land drainage matters for all minor water courses. This role often overlapped with the Highway Authority responsibility (County) for highway drainage. Generally district councils ability to participate in flood management and defence work has been patchy and the Act seeks to clarify and centralise responsibilities with the aim of more concerted effort on the part of local authorities working with the other agencies responsible (at present this is the Environment Agency and in some areas Internal Drainage Boards) and landowners with riparian (watercourse) responsibilities.
- 1.4 CDC has been active in its former land drainage role. It has maintained a strong engineering team with extensive local knowledge and expertise. It has worked closely with the Environment Agency and landowners to identify flooding problems and find practical solutions. There has been a capital investment programme (small scheme fund and a major contribution to the Banbury Flood Alleviation Scheme). It has also worked through the Council's planning role to achieve good outcomes in new development. There has been a practical emergency response contribution through expert liaison with local residents, businesses and the emergency services / Environment Agency. This has included a limited sand bagging service for property owners and occupiers operated through a contract with Sanctuary Housing.
- 1.5 The Cherwell approach was however founded on an engineering service built around a Highway Authority agency for Section 38 highway adoption works on new development and a sizeable CDC capital programme requiring engineering consultancy (e.g. street improvements and parking schemes). This provided significant income and allowed a six strong engineering team to

provide a range of services. The scale of service was sufficient to sustain a range of professional skills and allow work priorities to be matched to the current need including land drainage. In April 2010 the Highways Agency was withdrawn by the County Council. The Council's capital programme has also reduced significantly (engineering schemes in particular). Service planning and budget decisions for the current financial year took account of the FWMA proposal to remove the land drainage function and related funding, but allowed for the maintenance of a residual engineering team of three staff. The purpose of this was to complete outstanding capital programme items (including a number of land drainage schemes) and also allow time to consider if there would be a way of retaining existing staff expertise under the new LLFA arrangements. However, from April 2011 the residual service is unfunded.

Service Changes

- 1.6 As the Lead Local Flood Authority the County Council has now outlined its proposals for undertaking the new role. It is seeking co operation with districts by offering individual districts formal local agency agreements. These agreements would allow districts to act on behalf of the LLFA and provide an enhanced service in their area but are unfunded. The proposals were developed in consultation with district officers and presented to a joint member meeting on 2 August 2010 (attended for CDC by councillors Reynolds and Gibbard – as there is an overlapping portfolio responsibility).
- 1.7 From Cherwell's point of view it is difficult to see how a local agency would be workable without significant additional expenditure. This is because:
- Accepting a formal agency agreement will transfer duties to the district council
 - There is no associated funding and notionally an element of existing district funding is likely to be transferred to the LLFA as part of future grant settlements
 - Taking on the function will create public expectations directed to the most local council, and this will deflect an element of responsibility from the LLFA
 - To perform LLFA duties – even at a minimal level – some in house expertise and activity will be essential, but with a very limited range of capital funding available and little other engineering work it will be difficult for a small district to sustain the expertise to required to perform adequately

For these reasons it is not considered, advisable, practical or affordable for Cherwell to take an agency. In officer discussion during 2009 Cherwell suggested an alternative co operative arrangement whereby the LLFA would work with some or all the districts to create a jointly governed shared service. This would have required district contributions, but would have allowed a resilient staffing and contracting framework to be created. There was no support for this proposition. It should be noted that Oxford City retain a major Highway Authority agency and will certainly be able to sustain an agency by building drainage engineering expertise on that base. Other districts would seem to face a similar situation to CDC, albeit some are considering funding an agency for the time being.

- 1.8 There are some inevitable service and staffing implications of this position. It is now clear that the Council must make a final decision on the future of its residual engineering service. Initial 2011/12 budget planning has assumed that the whole service will cease at 31 March 2011. Three posts are affected by these changes. There may be requirement to effect a TUPE (transfer of undertakings protection of employment) transfer of one post to the County Council and this will be determined by a detailed analysis of current duties. There will therefore be two to three posts at risk of redundancy.

Background Information

- 2.1 More detail about the FWMA are set out at Appendix 1
- 2.2 Full details of the County Council's proposals for undertaking its LLFA role are not yet known. However the general approach, including the offer to district councils of a formal, but unfunded, agency agreement to undertake LLFA role in the districts are set out in their paper to the joint Member meeting at Appendix 2.
- 2.3 CDC's suggestion for a local response to the FWMA, including the idea of creating a shared service with top up funding from the district councils is at Appendix 3

3 Key Issues for Consideration/Reasons for Decision and Options

- 3.1 A decision is required on how to respond to the county council's proposal for co operation with Districts on the FWMA.
- 3.2 The following options have been identified. The approach in the recommendations is believed to be the best way forward. The reasons are given in the main body of the report.

Option 1 To decline the County Council's Agency offer and direct all future service requests to the LLFA

Option 2 To make 2011/2 budget provision for an Agency (growth item).

4 Consultations

- 4.1 The issues involved in the FWMA changes were subject to extensive informal and formal consultation with interested parties (Pitt Review – see Appendix 1).
- 4.2 The County Council's proposals have been subject to officer and member level consultation through an informal officer working group and Joint Member meeting. The Environment Agency have also been consulted. To date it has not been possible to make partners and the wider public aware of changes. This will be necessary once future functional responsibilities are agreed.

5 Implications

HR: The changes impact on three posts. These posts will no longer exist and the post holders are at risk of compulsory redundancy; although transfer, voluntary redundancy and redeployment options will be thoroughly explored.

Redundancies will inevitably lead to costs which will be quantified in a report to the December Personnel Committee.

Consultation will commence with the three employees at the earliest opportunity – to involve unison and HR (and to include OCC HR and management involvement if transfer options exist and once OCC representatives have been identified).

Financial: Taking on an unfunded agency would require reconsideration of service plans and staffing structures. Direct staff costs are likely to be in the region of £150 000. To provide an effective service some capital works would be necessary (up to perhaps £50 000 per annum).

Comments checked by Eric Meadows, Service Accountant 01295 221552.

Legal: There are routine legal implications arising from decision. These are in respect of staffing consequences or entering into a formal agency agreement.

Comments checked by Nigel Bell, Solicitor 01295 221687

Risk Management: Not taking up the agency offer will inevitably mean that service in this field will be reduced. There will therefore follow a reputational risk to the Council. However if the Council did decide to take the responsibility of an agency there are more serious risks that it would not be in a position to satisfy the expectations of service levels arising.

Comments checked by Rosemary Watts, Risk

Management & Insurance Officer 01295 221566.

Efficiency Savings None arising from this report.

Comments checked by Eric Meadows, Service Accountant 01295 221552.

Wards Affected

All.

Corporate Plan Themes

A Cleaner, Greener Cherwell and A Safe and Healthy Cherwell.

Executive Portfolio

Councillor George Reynolds
Portfolio Holder for Community, Health and Environment

Councillor Michael Gibbard
Portfolio Holder for Planning and Housing

Appendix No	Title
Appendix 1	Background information on FWMA
Appendix 2	Oxfordshire County Council options paper on local arrangements for FWMA
Appendix 3	CDC Paper on potential for shared service arrangements to respond to FWMA
Background Papers	
Flood and Water Management Act 2010 and associated guidance	
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Appendix 1

BACKGROUND INFORMATION ON FLOOD AND WATER MANAGEMENT ACT 2010

1.0 Background

1.1 The Flood and Water Management Act (FWMA) has come about following the Government's acceptance of all 92 recommendations of the Pitt Review into the widespread flooding of 2007. The purpose of the Act is to set a national framework for the planning and delivery of land drainage and flood risk reduction services.

1.2 Most notably for Local Authorities the Act has established the concept of a Lead Local Flood Authority (LLFA) for each area. In two tier areas this is the County Council whilst in single tier areas it is the Unitary Authority.

1.3 The FWMA places certain strategic duties on the LLFA, mainly concerned with reporting information to the Environment Agency and with developing local strategies in liaison with the Agency for local flood risk reduction. The powers of District Councils to undertake and enforce maintenance on ordinary watercourses have not changed, although these powers can, with the agreement of both parties, be transferred by the District Council to the LLFA through a simple agency.

1.4 Implicit in the FWMA is the ability for District Councils to continue to be involved in local land drainage services through agencies or similar arrangements with their LLFA's. This will be entirely dependent on what arrangements can be agreed at local level.

1.5 All organisations involved in land drainage now also have a duty to cooperate and share information with each other. However, this also will be dependent on local protocols and capabilities as the Act is not explicit on how this should be done.

2.0 Funding

2.1 The Government has said they are committed to funding the LLFA role. Subject to any adjustments made as a result of their Autumn spending review, £22 million has been allocated towards funding the role of LLFA's in England in 2011/12 increasing to £36 million in 2013/14 and thereafter as added duties are applied.

2.2 Defra is currently consulting on how this funding should be distributed to the 149 County and Unitary LLFA's in England. The three models on which they are consulting all allocate funding according to where the properties at risk are, each model containing differing fixed and varying elements. Oxfordshire are ranked 27 of the 149 Authorities with Lincolnshire being at the top of the list. If one of the above models is adopted and if the promised funding is not reduced Oxfordshire County Council will be set to receive between £170k and £250k in 2011/12, rising to between £340k and £420 in 2013/14 and thereafter.

2.3 No District Council will be directly awarded any of this funding and it is clear from discussions with Oxfordshire County Council that they do not intend to trickle any of it down.

3.0 Impact on Related Services

3.1 If Cherwell do not keep its expertise in land drainage there would be no one left to organise the effective distribution of sandbags during emergency events. It is therefore unlikely that this service could be sustained. The County Council has said that this is not a service that they will be able to continue to provide either.

- 3.2** A further element of the FWMA relates to the regulatory service to provide assistance and advice and, if needed, take enforcement action where private foul drainage is causing an environmental nuisance. In Cherwell this is currently delivered from the back of its land drainage service and accounts for approximately 30% of a full time equivalent but with marked peaks and troughs of workload.
- 3.3** Central Government has signalled its intention to transfer the vast majority of private drainage to the responsibility of the relevant Water Company (in Cherwell this is mainly Thames Water) sometime during 2011. Current indications from Defra are that this is unlikely to be before October. A strategy needs to be formed on how to deal with this both in the short term until the transfer actually takes place, and in the long term when there will still be a small residual responsibility on the part of the Council.

Appendix 2

OXFORDSHIRE STRATEGIC FLOODING GROUP PARTNERSHIP WORKING AND THE ROLE OF THE LEAD LOCAL FLOODING AUTHORITY

Options Paper by Oxfordshire County Council

Introduction

The Flood and Water Management Act has now received Royal Assent and is on schedule to be enacted in April 2011. The Act states that County Councils or Unitary Authorities will become the Lead Local Flooding Authorities (LLFAs) in their given area. The LLFA (Oxfordshire County Council) will be responsible for developing land drainage and flood risk reduction policies for all sources of flooding with the exception of main rivers which will continue to be the responsibility of the Environment Agency.

The Act is not prescriptive in how the responsibilities of the LLFA are to be delivered although partnership working with District Councils is encouraged in order to use the existing Land Drainage knowledge and resources at a local level. However, it is also clear in the Act that the LLFA role cannot be delegated.

In addition no District Council can opt for any arrangement without the approval of the LLFA. Another key point is in relation to funding as the Act states that the LLFA will be fully funded in order to undertake the additional duties. It is not clear where additional funding will be made available, but the implication appears to be that there will be adjustments in the general local authority support grant settlement transferring resources from districts to the county councils to reflect the new lead role on this function.

This paper sets out a range of options for discussion and consideration whilst also being mindful, as a result of previous officer discussions, there are differing aspirations within District Councils.

Options – an overview

As a result of previous meetings and discussions of the Oxfordshire Strategic Flooding Group it is clear that there is a desire, in the main, for the City and District Councils to work with the LLFA in order to meet the statutory obligations of the Flood and Water Management Act. It is also felt at officer level within the County Council there should not be a 'one size fits all' approach and that where possible partnership working is encouraged using existing knowledge and resources.

If the City and District Councils are to engage with the County as LLFA there are a number of arrangements through which this could happen. They could be formal or informal, and they could be on an entirely cost reimbursable basis, or not. If a partnership arrangement were agreed in principle the scope of activities undertaken by City/Districts could range from entirely desktop, limited to providing locally derived regulatory information to the LLFA, to on the other hand a full service encompassing the entire role of the LLFA within the City/District, except actually being the LLFA, that is to say a full agency.

It is therefore evident that the future delivery of land drainage and flood risk reduction services throughout Oxfordshire hinges on the options suggested by the County and then agreed between the County and the respective City/Districts.

Entering into any partnership arrangements, be they a loose Memorandum of Understanding or a fully and legally binding Agency, would be a matter of policy for the County Council's Cabinet and for members within City and District Councils.

Below are two of options which set out ways in which the LLFA may wish to work with the districts (and possibly other partners). Each of the options could be varied with elements taken from each other. Within each option are also a number of issues and risks that need to be considered.

With regard to the funding of the options there are a range of possible scenarios for funding the partners - from full cost reimbursement by the LLFA at one end of the scale, to no cost reimbursement at the other end of the scale. However, envisaged within the Act is a spirit of co operation between partners. Clearly funding needs to be a reflection of the functions which are delegated. Enhanced service provision would be at the discretion of the provider (either district or county).

Options:

1. Centralised Direct LLFA County Service

The County Council as LLFA centralises and directly undertakes the duties currently delivered by District Councils as part of its enhanced role. In doing this it would need to consider the future, and possible transfer of staff and information systems currently deployed by the Districts.

This is the simplest option although it does not pay strong regard to the aspect of partnership working.

Strengths: The transfer of the appropriate staff and information systems will create a robust specialist centre of excellence within the LLFA.

Weaknesses: District influence on how future land drainage services are delivered could be lost

Issues and risks to be considered:

- All funding would fall to the LLFA
- Loss of skills and knowledge at a district level
- Capacity of LLFA to meet the statutory responsibilities
- Possible TUPE implications for LLFA
- Identification of staff resource to transfer to LLFA

2. Agencies with Individual Districts allowing Local Agreements on Resourcing and Top-up Funding by Districts

The LLFA offers individual Agency Agreements to each district to enable flood risk reduction activities to be continued by direct service provision at a district level. (This agreement could be standardised, or might include a menu of responsibilities that could be undertaken by agreement at district level).

This option also allows for collaboration between districts.

Strengths: Allows districts to continue working at a local level and could offer scope to tailor to individual responsibilities, skills and resources. Districts willing and able to deliver land drainage services could continue with minimum intervention by the LLFA

Weaknesses: This arrangement may become unsustainable in the medium to long term with pressures on District resources and there will be a considerable variation in local capability and willingness to take on aspects of the function.

An additional layer of resource would be needed at the LLFA to monitor individual agreements

Issues and risks to be considered:

- Funding of responsibilities undertaken at district level – clear division required for what the LLFA fund and what is considered to be enhanced service funded by the district.
- Maintaining the necessary resources and skills at both local and strategic level
- Sustainability of an agreement depending on the duration
- The monitoring and management of agreements by the LLFA
- Potential confusion as to roles and responsibilities between tiers

Conclusions/Next Steps

County Council

- The County must decide quickly what arrangements it would allow between itself and individual Districts. This decision must be Member endorsed. This will be raised with the County's Cabinet Member responsible for flooding at the next briefing session.
- Clarity is required on the funding arrangements. The County needs to decide what services are required to fulfil the role and how much funding it will be able to provide. This may not be clear until Government provides the basis of the calculation for funding allocation.

City/District Councils

- Each District should decide to what extent, if any, they wish to work to deliver land drainage and flood risk reduction services with the County, and to what extent, if at all, they wish to enter into collaborative arrangements with other Districts. Again, these decisions must Member endorsed.
- Following the County's assessment of what service is required to fulfil the statutory role each District should decide what additional resource, either human or financial or both, they wish to put into any arrangements to enhance service.

May 2010

Appendix 3

DISCUSSION PAPER ON THE DELIVERY OF LAND DRAINAGE AND FLOOD RISK REDUCTION SERVICES IN CHERWELL FROM 2010/11 ONWARDS

1.0 Introduction and Purpose of Report

- 1.1 Since the severe flooding in 2007 that affected much of Oxfordshire and many other communities nationally, a group of senior officers representing the Environment Agency, Oxfordshire County Council and all the Oxfordshire District Councils has been meeting on a quarterly basis to review their responses to the event and to plan for responding to future such events. The group adopted the name "Oxfordshire Longer Term Flooding Issues Group" (OLTFIG).
- 1.2 The work of the group mirrored what was happening nationally in the form of the Pitt Review, and agreed a single response on behalf of Oxfordshire when the Review was consulted upon.
- 1.3 In the relatively short time since 2007 the Pitt Review has been published and all its 92 recommendations accepted by Government. These, along with other measures considered to be necessary and relevant, have been transposed into the Flood and Water Management Bill which is currently passing through Parliament.
- 1.4 Concurrently with the passage of this Bill through Parliament the Government has implemented the European Floods Directive through Statutory Instrument SI 3042/2009. There are overlaps between the Floods Directive and what is in the new Bill. In particular, the concept of a Lead Local Flood Authority (LLFA) for each area has been implemented. In Shire Counties such as Oxfordshire this is the County Council.
- 1.5 Because of the significant changes that are already occurring in the delivery of land drainage services, and with a new emphasis on proactive flood risk reduction, Cherwell has undertaken an audit of how it might be able to help deliver these services in the future. It has also given some early thought to the framework within which it might be able to operate under the leadership of the County Council.
- 1.6 The purpose of this paper is to set out the issues and options at hand, and to provide the Group with some initial thoughts on how Cherwell might be able to contribute to Oxfordshire's land drainage service delivery in the future.

2.0 Background

- 2.1 Sir Michael Pitt concluded in his report that the existing land drainage legislation, which is very largely couched in permissive powers, is not fit for the present day purpose. In particular, there are gaps in accountability between the Environment Agency and the current Land Drainage Authorities, which are Districts in Shire Counties such as Oxfordshire. Importantly, also, he recommends there should be a step change of emphasis from reactively addressing land drainage problems to an approach of reducing flood risk through proactive planning and preparation.

- 2.2 The 92 recommendations made by Sir Michael range from procedural and administrative matters to practical actions to increase responsiveness and decrease flood risk.
- 2.3 Along with the Pitt Review the Government has been considering the implications of the European Commission Floods Directive 2007. There resulted the draft Flood and Water Management Bill which was consulted upon during early 2009 and is currently being enacted.
- 2.4 Those parts of the Bill which relate to the Floods Directive require urgent UK legislation and have been transposed into SI 3042/2009 or the Flood Risk Regulations 2009. These were implemented on 10th December 2009. The most important of these is the setting up of the County Council as the Lead Local Flood Authority for Oxfordshire. This squarely puts the future responsibility for delivering land drainage and flood risk reduction throughout Oxfordshire on the County Council, and sets out a timetable for some strategic actions that will be required of it.
- 2.5 Those parts of the Bill which do not warrant such urgent action will wait until the new Act becomes law. However it is understood that Parliament generally supports the Act and therefore what appears in the Bill will very largely pass into legislation. It is therefore appropriate to prepare for the full Act now.

3.0 Implications for Local Authorities of the Flood and Water Management Bill and the Floods Directive

- 3.1 The new legislation seeks to clarify the roles of the Environment Agency and Local Authorities in land drainage and, for the first time, flood risk reduction. It acknowledges that there are many other sources of flooding in addition to watercourses and crucially, it seeks to close the gap in accountability between the Environment Agency and Local Authorities so that all sources of flooding are covered by legislation.
- 3.2 In two tier areas the legislation names the County Council as the 'Lead Local Flood Authority' (LLFA). It acknowledges the historic role of Districts in land drainage and flood defence and openly encourages partnership working between the two tiers in the future. However, the only substantive role that now rests with Districts as a right is permissive and allows them to maintain or enforce maintenance on ordinary (or non critical) watercourses.
- 3.3 In addition, recognising that existing adoption rules have seriously impeded the development of sustainable drainage as a means of mitigating flood risk, the legislation will nominate County Councils as 'SUDs Adopting Bodies'. Again, the legislation recognises that much expertise in sustainable drainage rests with Districts and openly encourages Districts to enter into local arrangements with LLFAs where these would be most effective.

4.0 Particular Implications for Cherwell

- 4.1 Due to the withdrawal of the highway adoption agency on 31.3.10 and its reducing capital programme, Cherwell will not be able to retain its residual Engineering Service in the way that it has for many years. The highway adoption agency provided a base from which other related services could be delivered with appropriate resilience and expertise. The implications of the withdrawal beyond the immediate confines of the agency itself are still being

assessed, in particular to see whether Engineering Services of any nature can be sustained at all in Cherwell.

4.2 Cherwell has historically played an active role in land drainage and provided a consistently higher level of service to its customers than most Authorities nationally. Additionally, it has specifically set aside the £130,000 grant it received from Defra following the 2007 floods to reduce flood risk throughout the District. Cherwell has set out to spend this judiciously over a number of years and to date several communities have benefited from relatively low key and low cost works. The programme can continue for three or four more years at least provided the technical resource is there to prioritise and administer it. When the £130,000 is expended Cherwell may well be minded to find further such funding itself provided the need can be justified and the benefits shown to accrue.

4.3 There are two options available to Cherwell:

- i. to engage with the County as LLFA only at a minimum level leaving them to discharge their statutory functions with no support other than Cherwell's "duty to cooperate". Cherwell is aware that there will be a transfer of some of its Rate Support Grant to the County Council in order to fund its LLFA role.
- ii. to engage more actively with the County and continue its existing policy of reducing flood risk in Cherwell through its own funding streams. This option would require revenue and/or capital investment from Cherwell coupled with appropriate technical expertise to monitor how and where this investment is allocated.

5.0 **Options for Partnership Working with the LLFA**

5.1 Following the 2007 floods Oxfordshire County Council formed the Oxfordshire Longer Term Flood Issues Group (OLTFIG). This is essentially a group comprising senior officers from the County, Districts, Environment Agency and occasionally Thames Water. The purpose of the group, although never recorded in Terms of Reference or the like, was to review the flooding that had taken place and strategically plan responses in preparation for future such events.

5.2 The group quickly became focussed on the impending Flood and Water Management Bill consultation and served to collate Oxfordshire's response to it. It has now transformed into the Oxfordshire Strategic Floods Group (OSFG) with a clear emerging remit or Terms of Reference to prepare strategically for the changes that will soon occur in delivering land drainage and flood risk reduction services.

5.3 Although not yet a formal agenda item, this is clearly the forum at which strategic partnership working should be discussed at officer level.

5.4 The role of the LLFA cannot be delegated by the County Council. This is a similar but separate role to the Highway Authority. However, the role can be delivered under agency or equivalent arrangements.

5.5 An immediate issue for the County Council to determine where its function as LLFA should sit and how it should be internally resourced. It is a separate

role to that of Highways Authority which could be discharged through sharing a resource with the Highway Authority and through the Highway Authority commitments. However, LLFA has a much wider remit than highway drainage.

- 5.6 If Cherwell were to engage with the County as LLFA there is a range of arrangements through which this could happen. They could be formal or informal, and they could be on an entirely cost reimbursable basis, or not. If a partnership arrangement were agreed in principle the scope of activities undertaken by Districts could range from entirely desktop, limited to providing locally derived regulatory information to the LLFA, to a full service encompassing the entire role of the LLFA within the District, except actually being the LLFA. That is to say a full agency.
- 5.7 As well as the arrangements, if any, that exist between Districts and the Counties the legislation openly encourages partnerships or similar arrangements between Districts and with other 'relevant' organisations. However, any such framework would fundamentally depend on there being an appropriate arrangement between County and Districts in the first place. It is therefore very evident that the future delivery of land drainage and flood risk reduction services throughout Oxfordshire explicitly hinges on the relationships the County are prepared to agree with Districts. Whilst the Districts can aspire to particular relationships, they are ultimately dependent upon the County in this regard.
- 5.8 Entering into any partnership arrangements, be they a loose Memorandum of Understanding or a fully and legally binding Agency, would be a matter of policy for Cherwell's Executive and the County's Cabinet.

6 Timing Issues

- 6.6 The Flood and Water Management Bill is expected to pass through Parliament during 2010. However, Government also say that the role of the LLFA is to be funded through the transfer of private sewers to Water and Sewerage Companies. This is known not to be achievable until 2011 and therefore the earliest date for the full implementation of the Act is likely to be April 2011.
- 6.7 This transfer of funding will be effected through the removal of that of the Rate Support Grant which funds Districts for their environmental protection role regarding private sewers, to supplementing the Rate Support Grant of LLFAs for their new role.
- 6.8 042/2009 which implemented the EU Floods Directive came into force on 10th December 2009. Some key dates requiring action by the LLFA are contained within the SI. The earliest of these is June 2011. By that time the LLFA will be required to have prepared in draft form preliminary flood risk assessments which themselves will entail several months work. It is clear therefore that the LLFA should already be considering what partnerships need to be in place.

7 Summary

- 7.1 Resulting from the EU Floods Directive SI 3042/2009 has been brought in introducing the concept of the Lead Local Flood Authority which in Oxfordshire is the County Council. The Flood and Water Management Bill will

be enacted over the coming months expanding on the obligations of the LLFA role. The obligations of the LLFA have however already started.

- 7.2 The legislation envisages a role for Districts supporting and partnering the LLFA where this is appropriate and agreed. Cherwell needs to consider whether it wishes to be involved proactively in this way, thereby continuing its historical hands-on role in land drainage and flood risk reduction. Alternatively, it could adopt a do-minimum stance whereby it need only discharge its minimum statutory obligation of cooperation .
- 7.3 If Cherwell decides in favour of a proactive approach it needs to start engaging meaningfully with Oxfordshire County Council so that agreement can be reached on what that role should be and under what terms. Concurrently with this it needs to engage with the other Oxfordshire Districts, so that sharing of resource can be explored and resilience increased.

8.0 **Recommendations and Need for Future Work**

8.1 Cherwell recommends that

- i each District undertakes an audit of the resource and funding it has available for supporting the LLFA, and that this is provided to the LLFA in an agreed data template.
- ii each District registers with the LLFA the range of proposals under which it might in future work with the LLFA
- iii The County concludes its thinking on how it wishes to discharge its role as LLFA and to what extent it wishes to do this engagement of the Districts.
- iv with the likelihood that Districts will not in future be able to deliver effective land drainage and flood risk reduction services without the support of the LLFA or fellow Districts, the County concludes its thinking on what framework it wishes to see and endorse at District level.
- v In the light of the foregoing the County considers its own structure for discharging its new LLFA role.

Tony Brummell
Head of Building control & Engineering services
11/01/2010