

**SUSTAINABLE DRAINAGE ROLES AND RESPONSIBILITIES**

*To:* **Economy and Environment Committee**

*Meeting Date:* **26<sup>th</sup> May 2015**

*From:* **Executive Director, Economy, Transport and Environment**

*Electoral division(s):* **All**

*Forward Plan ref:* **Not applicable**      *Key decision:* **No**

*Purpose:* **To update members on the new roles and responsibilities in relation to Sustainable Drainage Systems and provide details on the confirmed changes to the planning regime and statutory consultee role on surface water.**

**To give an overview of the risks and challenges and the proposed way forward for Cambridgeshire County Council as Lead Local Flood Authority with the new legislative responsibilities.**

*Recommendation:* **Committee is asked to**

- a) note the change in approach by Central Government and the resulting increased risks and responsibilities for the Council;**
- b) approve exploring possible opportunities which would enable the City and District Councils to support the County Council in its new role to provide technical advice on surface water and sustainable drainage proposals for new developments;**
- c) approve the allocation of existing grants to fund one additional post for three years as set out in paragraphs 2.4 to 2.6; and**
- d) support the ongoing work of the Local Government Association to lobby Government to ensure this important work is properly resourced.**

<b><i>Officer contact:</i></b>	
Name	Sass Pledger
Post:	Business Manager – Floods and Water
Email:	<a href="mailto:sass.pledger@cambridgeshire.gov.uk">sass.pledger@cambridgeshire.gov.uk</a>
Tel:	01223 699976

## **1. BACKGROUND**

- 1.1 The wide scale flooding experienced during 2007 precipitated the publication of the Pitt Review which contained 92 recommendations for Government to consider. The key recommendation in the Pitt Review with respect to surface water management is Recommendation 8, which states “The operation and effectiveness of Planning Policy Statement 25 (PPS25) and the Environment Agency’s powers to challenge development should be kept under review and strengthened if and when necessary”. PPS25 detailed the importance of taking surface water management into account when assessing flood risk and planning new development; and how the planning system can encourage the use of Sustainable Drainage Systems (SuDS) and the development of surface water plans.
- 1.2 The Pitt Review recommendations were transposed in to UK law in the form of the ‘Flood and Water Management Act (2010)’. As a consequence the County Council became a Lead Local Flood Authority (LLFA) with powers and statutory duties to manage and coordinate local flood risk management activities.
- 1.3 Under Schedule 3 of the Flood and Water Management Act (2010), and as a LLFA, the County Council had been expecting to become a SuDS Approving Body (SAB) and would have been responsible for approving, adopting and maintaining SuDS on new developments. As a SAB the council would have been able to charge for the services it provided. The purpose of SuDS is to mimic natural drainage, significantly reduce surface water runoff and improve water quality. Implementation of Schedule 3 will now not be taken forward.
- 1.4 A number of consultations were launched by Government last year setting out an alternative approach to implementing sustainable drainage. In December 2014 the Government announced that SuDS would be dealt with under existing planning application processes. From the 6<sup>th</sup> April 2015 Local Planning Authorities (LPAs) will consider the appropriateness of SuDS as part of that process. There will no longer be a separate approval process or statutory adoption body for SuDS.
- 1.5 At the time Government also communicated that the LLFA with its role in managing flood risk from surface water would be best placed to provide technical advice to LPAs in relation to surface water flood risk and SuDS, on proposed developments, as a statutory consultee.
- 1.6 Following this, on the 24th March 2015, the Government laid a Statutory Instrument making the LLFA a statutory consultee by adding the consultation requirement to Schedule 5 of the Town and Country Planning (Development Management Procedure) Order 2015. This came into effect on the 15<sup>th</sup> April 2015.
- 1.7 The LLFA is now a statutory consultee for all major developments which includes all minerals and waste workings; residential developments of 10 properties or 0.5 hectares or more; any site with building(s) of 1000 square metres or more; and any other development of 1 hectare or more. As a statutory consultee, with the exception of pre application discussions, the County Council is not able to charge for the advice it provides.

- 1.8 LPAs are therefore consulting the LLFA for technical advice in relation to surface water and SuDS on development proposals. The Environment Agency (EA) which previously provided advice in relation to surface water on proposed developments will no longer do so.
- 1.9 It is important to note that Cambridgeshire is one of the largest and fastest growing counties in the country with an estimated 50% of the land at risk of flooding. The County has suffered from surface water flooding, most recently in August 2014, when several roads and an estimated 300 properties flooded.
- 1.10 In Cambridgeshire, the Environment Agency estimates that there are 23,100 homes vulnerable to surface water flooding in a 1:200 year event. (0.5% chance of occurring in any given year).

## **2. MAIN ISSUES**

- 2.1 Plans for the LLFA to become a statutory consultee were not communicated by Government until March 2015 giving the County Council a very short window to prepare for these changes. Previously LLFAs had been assured that they would be given 6 months' notice before commencement - this has not been the case. Officers, however, in anticipation of a change in direction, had put plans and processes in place to help with the transition.
- 2.2 The estimated annual number of major planning application consultations is around 300 (based on historic planning application numbers). In order to respond with an appropriate level of detail to all major applications approximately four to five full time employees (FTE) may be required, based on EA experience.
- 2.3 Additionally the March 2015 update to National Planning Practice Guidance recommends LPAs seek advice from the LLFA for other smaller development proposals outside of the statutory role. This is recommended where there are known flood risk issues and that a risk based approach for providing advice is developed. This has not currently been factored into staff requirements.
- 2.4 DEFRA issued grant funding of £81,604 as a one off for the financial year 2015/16 to cover the new SuDS statutory consultee responsibilities. No further details have been confirmed on what funding will be provided for future financial years, however, it has been indicated that it will be significantly lower; in the region of £13,000pa. It therefore appears the Government has greatly underestimated the ongoing resources required to undertake this role.
- 2.5 In 2014 DEFRA gave LLFAs an initial seed fund grant, and this added to the £81,604 for 2015/16 totals £142,668 of grant funding available to fund all SuDS duties. Based on this figure it is not possible to recruit and retain the number of FTEs with the appropriate skills to undertake this new role in the way the EA did, or to meet LPAs' expectations of us. Currently there is only one, grant funded, permanent staff member in post with extra support in the form of a graduate trainee.
- 2.6 The County Council can fund one additional full-time post for three years, which would mean 2-3 full-time staff working on the statutory consultee role. This will have implications within the County, as the Council will not be able to review and advise on all applications. The majority of LPAs within the County

do not have any internal flood risk or drainage resource they can use and the EA will no longer provide its input in this area.

- 2.7 As the liability for inappropriate surface water consideration for a new development lies with the LPA, it may be appropriate to seek support from the City and District Councils to help County Council officers to undertake the new statutory role. The views of Committee are sought on this. This may be a most cost effective route for the LPAs as the alternative would be for them to source their own internal expertise to assess technical surface water and SuDs proposals. We would need to consider and manage any risk to the County Council in taking this approach.
- 2.8 Some LLFAs are looking to make up the shortfall using their own Council budgets. However, given the current economic situation that the Council faces this option is not feasible. Instead, it is proposed that the Council takes a risk based approach to its new statutory consultee role based on the available resources.
- 2.9 Responses to planning applications below 5 hectares will be assessed on a risk based approach and therefore comments may be generic in nature unless resources allow a more detailed assessment and response. Current risks which will be considered include, if the development was located in an area of flood risk from surface water flooding and records of historic flooding. This method is particularly important in the short term with currently only 2 officers in post. A formal briefing note to LPAs and Chief Planning Officers including a recent workshop targeted at LPAs have informed them of this.
- 2.10 The County Council would, therefore, not review or provide bespoke advice for all major planning applications. This approach could be reviewed to ensure that it was appropriate, or should additional budget become available.
- 2.11 This approach has risks. It is likely that on some development proposals there will be no suitable assessment on the appropriateness of a proposal in relation to surface water flood risk or SuDS, this area is technical in nature and therefore it may be unlikely that many District Council planning officers will be able to identify where problems exist.
- 2.12 This approach could result in an increase in surface water flood risk. Additionally it may have wider financial implications for the LLFA given the Council's responsibilities to investigate and manage surface water flooding in the County. The high growth pressures in the County may mean there are long lasting impacts as a result. However the Council is under a statutory obligation to respond to applications and given the resource issues it is considered that there is no alternative to this approach.

### **Ongoing work**

- 2.13 A Flood and Water pre-application charging schedule has been added to the existing Growth and Economy pre-application charging services; this is due for review in six months after further benchmarking has taken place. It is hoped that funding from pre-application charging will help fund contributions to the resources required by the County Council.

- 2.14 Discussions are also being held with the City and District Councils regarding the use of Planning Performance Agreements (PPAs) to support the funding of posts needed for strategic development proposals. PPAs are agreements, usually between a developer, the County Council and the Local Planning Authority through which the developer agrees to fund dedicated resource (i.e. posts) within the Authorities to make sure consideration of their application is well resourced for timely determination. Developers are not obliged to enter into such agreements with planning authorities, but we are increasingly seeking this way of working to facilitate Cambridgeshire's growth agenda as our revenue funding decreases (along with that of the LPAs). It is hoped that PPAs and similar agreements will provide some income to contribute toward costs on flood risk advice, as well as helping to fund some other resources needed to progress planning applications on major sites.
- 2.15 The County Council will continue to hold quarterly meetings with the LPAs and the EA. They share the County Council's concerns about the lack of resource being made available to support this change, and therefore wish to feedback on a regular basis on how the new arrangements are working.
- 2.16 In the longer term, to enable the County Council to manage its resources efficiently and focus on the highest risk applications the Council will develop and formalise the risk based approach in consultation with LPAs. Additionally as part of this the County Council will develop and share standing advice for major planning applications, as appropriate.
- 2.17 The Local Government Association is continuing to work with the LLFAs to lobby Government to ensure that the new duties placed upon them can be properly resourced, now and in the future. We have been providing input to these discussions and will continue to work through the LGA to seek adequate funding.

### **3. ALIGNMENT WITH CORPORATE PRIORITIES**

#### **3.1 Developing the local economy for the benefit of all**

The following bullet point sets out details of implications identified by officers:

- The advice the County Council provides to LPAs as part of the statutory consultee role supports the development of the local economy through the direction it provides to planning authorities, helping to guide new development, and surface water management in an integrated manner.

#### **3.2 Helping people live healthy and independent lives**

There are no significant implications within this category.

#### **3.3 Supporting and protecting vulnerable people**

The following bullet point sets out details of implications identified by officers:

- The consequences of flood risk impact on everyone, particularly the most vulnerable in society. Inappropriate or poorly designed surface water drainage infrastructure increases flood risk locally. Therefore the LLFAs role within the planning process is crucial to ensure that LPAs receive

advice to enable them to make an informed decision with regard to the suitability of proposed development in relation to surface water flood risk and SuDS.

#### **4. SIGNIFICANT IMPLICATIONS**

##### **4.1 Resource Implications**

The report above sets out details of implications in paragraph 2.2 to 2.6.

##### **4.2 Statutory, Risk and Legal Implications**

The following bullet points set out details of implications identified by officers:

- The LLFA has a statutory duty to provide a substantive response to a consultation however this can include referring the LPA to current standing advice and does not prescribe how detailed or specific advice needs to be.
- Failure to provide a reasonable amount of support on surface water and SuDS proposals in relation to new developments for LPAs would likely severely damage the reputation of the County Council and jeopardise its position as a leading authority in flood and water management.

##### **4.3 Equality and Diversity Implications**

There are no significant implications within this category.

##### **4.4 Engagement and Consultation Implications**

There are no significant implications within this category.

##### **4.5 Localism and Local Member Involvement**

The following bullet point sets out details of implications identified by officers:

- Where standing advice or generic advice is provided by the LLFA in response to a consultation, LPAs may be expected to make decisions at a local level without a full technical understanding of the facts in relation to surface water drainage and SuDS on proposed developments.

##### **4.6 Public Health Implications**

There are no significant implications within this category.

<b>Source Documents</b>	<b>Location</b>
Written Ministerial Statement - Sustainable drainage systems: Written statement - HCWS161	<a href="http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2014-12-18/HCWS161/">http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2014-12-18/HCWS161/</a>
National Planning Policy Guidance	<a href="http://planningguidance.planningportal.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-">http://planningguidance.planningportal.gov.uk/blog/guidance/flood-risk-and-coastal-change/reducing-the-causes-and-impacts-of-flooding/why-are-sustainable-drainage-</a>

	<a href="#">systems-important/</a>
--	------------------------------------