

Report to	<b>Scrutiny Committee for Economy, Transport and Environment</b>
Date	<b>19 June 2012</b>
Report By	<b>Director of Economy, Transport and Environment</b>
Title of Report	<b>Delivering the Lead Local Flood Authority Role</b>
Purpose of Report	<b>To inform Scrutiny Committee of the progress made to date on implementing the Flood and Water Management Act (2010); and To consider the objectives underpinning the (statutory) Local Flood Risk Management Strategy for the County and proposals for a stakeholder event on 4 July.</b>

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**RECOMMENDATIONS: Scrutiny Committee is recommended to:**

- (1) Comment on and note (a) the progress made in meeting the requirements of the Flood and Water Management Act and amendments to the Land Drainage Act, and (b) the preparation of a local flood risk management strategy and the supporting stakeholder event to be held on 4 July; and**
  - (2) Support the way forward in delivering this new service.**
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## **1. Financial Appraisal**

1.1 The Government is committed to funding the net new burdens arising from the Flood and Water Management Act (FWMA) and has allocated £325,000 per annum to the County Council to deliver its role as a Lead Local Flood Authority. The actual cost is likely to be somewhat higher once full responsibilities are assumed and this has been increased to provide a total of around £400,000 through the department's Medium Term Finance Plan.

## **2. Background**

2.1 The FWMA and the Flood Risk Regulations (2009) introduced a new role requiring upper tier authorities to manage localised flood risk (i.e. surface water, ground water and "ordinary" water course flooding). As a Lead Local Flood Authority (LLFA), we have a strategic role in improving data and information on localised flooding and its causes and developing, applying and maintaining a Local Flood Risk Management Strategy and (implicitly) coordinating all those with a role in risk management. An outline of these roles is at Annex 1 to this report.

2.2 Scrutiny Committee has considered reports on the Preliminary Flood Risk Assessment (PFRA) for the County at its September 2010 and June 2011 meetings. The PFRA was submitted in accordance with the Flood Risk Regulations by the set deadline.

2.3 A strategic officer group, the East Sussex Flood Partnership, meets quarterly and seeks to integrate the activities of the Risk Management Authorities (RMA) (ESCC, the Districts and Boroughs, Southern Water, the Internal Drainage Boards, and the Environment Agency (EA)). The South Downs National Park Authority is represented although it is not an RMA.

## **3. Key Issues**

3.1 The FWMA has been commenced in a phased manner, and those duties and powers now in place are primarily technical in nature, for example, the duty on all RMAs to share information or to develop an asset register of significant flood risk management assets. However, there are three areas of work which Scrutiny Committee should be aware of.

3.2 **The transfer of land drainage powers** from the Environment Agency to ESCC took place in April 2012. The County Council now has powers to regulate works affecting ordinary water courses (those not adopted by the Environment Agency), take enforcement action where unauthorised work has taken place, and to compel landowners to ensure that their watercourses are free flowing and do not present a flood risk elsewhere.

3.3 Although Defra gave only four months notice of its intent to commence this transfer we have recruited a Land Drainage Officer to meet the demands of this new responsibility.

3.4 It is anticipated (but not confirmed) that the County Council will become a **Drainage Approval Body** in April 2013. The FWMA will require all development with drainage implications (to be defined by the Minister) to receive drainage approval before it can proceed. Defra has indicated that this will be phased in and will only apply to developments of 10 or more dwellings and other development with a footprint of 100 sqm or more.

3.5 Any approved drainage system will be adopted and maintained by the approving body, (i.e. ESCC). How this will be funded remains to be identified by Defra.

3.6 Officers are developing the project plan for identifying the resources needed to meet this requirement and we are working with our SE7 colleagues to develop a common understanding and approach to delivering this new requirement.

3.7 The FWMA requires that each LLFA develops a **Local Flood Risk Management Strategy** (LFRMS) for its area. Amongst the many requirements, the LFRMS must describe the actions (including the costs, benefits, delivery body and timing of delivery) necessary to deliver the strategy's objectives.

3.8 However, at an early stage, it was decided that the Strategy would present an integrated picture of flood and coastal erosion risk in the county. Rather than replicating the many Catchment Flood Management Plans produced by the EA and the Shoreline Management Plans developed by the maritime districts the LFRMS would summarise the key risks and offer signposts to the relevant documents.

3.9 ESCC is committed to publishing its draft strategy for public consultation by end of 2012, with a view to adopting it in the summer of 2013. A Flood Risk Management Officer has been recruited to develop the strategy and to assist the Flood Risk Management Team Manager in coordinating its implementation.

3.10 A key theme of the strategy is partnership working. Delivery of effective flood risk management will be hindered without the active support and engagement of the RMAs and the wider community. For example we are about to embark on a number of local schemes to alleviate flood risk. These schemes receive majority funding from the Local Levy (administered by the Environment Agency) with contributions from local partnerships of the relevant RMAs. Without these local partnerships the schemes could not go ahead.

3.11 Thus far the nature of surface water flood risk in the county has been analysed and objectives developed. The draft objectives of the strategy are set out at Annex 2 to this report.

3.12 As part of the development of our strategy a stakeholder event is being held on 4 July at the East Sussex National Golf Centre (Uckfield). Participants will include statutory bodies such as the Environment Agency; the business community; local flood groups and members and officers from the District and Boroughs. The purpose of this event is to share our work to date and have discussions on the creation of an action plan.

#### **4. Conclusion and Reason for Recommendation**

4.1 The Flood and Water Management Act (2010) has not been commenced in its entirety and a substantial new duty (drainage approval) has yet to come into effect. Nonetheless, officers are progressing the implementation of the Act, ensuring that the County Council meets its new duties and is secure in exercising its powers.

4.2 This report outlines key areas of work facing the Flood risk Management Team, and members are invited to support the approach taken in delivering this new and significant service.

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## **Annex 1 Roles and Responsibilities of the Risk Management Authorities/Key Partners**

All Risk Management Authorities (RMAs) should cooperate in the exercise of their flood and coastal erosion risk management functions. Each RMA has its own distinctive roles and responsibilities.

### **1. East Sussex County Council**

East Sussex County Council is the LLFA for East Sussex and has a strategic role in overseeing the management of local flood risk associated with surface water runoff, ordinary watercourses (such as streams and ditches) and groundwater.

It is also under an obligation to ensure that the relevant duties of the Flood and Water Management Act are discharged, this includes (subject to commencement):

- Meeting the requirements of the Flood Risk Regulations,
- Developing and applying a Local Flood Risk Management Strategy
- Reporting on local flood incidents where appropriate
- Maintaining a register of assets likely to have a significant effect on flood risk
- The regulation of SuDS applications via the Drainage Approval Body (anticipated April 2013)

Under the amended Land Drainage Act (1991) the County Council has powers of consenting and enforcement in respect of minor watercourses (since the 6 April 2012). The County Council must ensure that any works upon or adjacent to minor watercourses (be they temporary or permanent) do not effect chemical or ecological status. A Water Framework Directive Assessment must be conducted where deemed necessary to circumvent negative impacts.

The County Council has a significant drainage role in the exercise of its duties as a Highway Authority. Under the Highways Act (1980), the County Council is under a duty to ensure that highway drainage systems are clear and that blockages on the highway are cleared where reasonably practicable.

ESCC plays a leading role in emergency planning under the Civil Contingencies Act. When a serious or wide-spread flooding incident occurs in Sussex, ESCC's Emergency Planning Team together with other emergency responders from the Sussex Resilience Forum (SRF) undertake a range of actions to support affected communities and help limit the impacts of the flood. In order to do this effectively and in a co-ordinated way the team produces and contributes to multi-agency plans for responding to flooding events, including the SRF Multi-Agency Flood Plan covering all locations in Sussex, and site-specific plans for Uckfield, Lewes, Seaford and Newhaven, Bulverhythe, Rye Bay, Pevensey Bay, Normans Bay and Eastbourne.

### **2. Borough and District Councils**

Borough and District Councils are community leaders and possess a detailed understanding of the nature of flood risk that communities face in their jurisdiction. They are also identified as having responsibilities under the following:

- The Flood and Water Management Act (2010);
- The Land Drainage Act (1991);
- The Planning Acts ;
- Coast Protection Act (1949); and
- The Civil Contingencies Act (2004).

#### **i. Responsibilities under the Flood and Water Management Act**

The Act gives District and Borough Councils powers to designate structures and features that affect flooding or coastal erosion. They also have a duty to act consistently with the local and national flood risk strategy.

Under planning legislation, Borough and District Councils operate their development planning

## **Annex 1 Roles and Responsibilities of the Risk Management Authorities/Key Partners**

and control functions, having due regard to the National Planning Policy Framework and accompanying technical guidance. As well as the statutory powers mentioned above, some Boroughs/Districts have kept records of flood events and carried out both maintenance and new works within their district. However, it is recognised that the extent of these activities varies considerably between Councils, due to the variance of technical resource and capacity.

### **ii. Responsibilities under the Land Drainage Act**

From the 6 of April 2012, District and Borough Councils have no responsibilities (except where it is a landowner) under the Land Drainage Act. They do however have a number of permissive powers, which they can employ in support of the LLFA. These include:

- Permissive powers to maintain or improve existing works or to construct new works in order to help prevent, mitigate or remedy flood damage;
- Advise the LLFA on land drainage consent applications.

### **iii. Responsibilities as a Planning Authority**

District and Borough Councils' planning function affects Flood Risk Management in three key ways:

- Considering flooding concerns in developing local plans;
- Working with the SuDS Approving Body (anticipated April 2013) in ensuring that planning applications and drainage applications are complementary;
- Considering flood risk assessments submitted in support of applications on which the Environment Agency does not require to be consulted.

### **iv. Responsibilities as a Coastal Erosion Risk Management Authority**

- Planning shoreline management activities with input from the Environment Agency;
- Delivery of coastal erosion risk management activities;
- Working alongside the Environment Agency to develop and maintain coastal flood and erosion risk information;
- Maintain a register of assets and other features that help to manage coastal risks;
- Implement, manage, maintain and monitor shoreline management plans to understand and manage coastal flood and erosion risks;
- Assist communities in planning for the future and taking appropriate steps to adapt to changing flood and coastal erosion risks.

### **v. Responsibilities as an Emergency Planning Authority**

District and Borough Councils are 'Category One' responders to emergencies and members of the East Sussex Resilience Forum. This means that they have duties to:

- undertake risk assessments;
- manage business continuity;
- carry out emergency planning;
- share information and cooperate with other responders and
- warn and advise the public during times of emergency.

Furthermore, in the event of an emergency, district and borough councils have additional roles and responsibilities regarding co-ordinating, supporting and managing emergency support during and after a flooding event.

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### **3. The Environment Agency**

The Environment Agency has a specific role in providing strategic overview on flood risk matters, as well as advice and guidance to LLFAs. It is a non-departmental public body of Defra and is under a duty to prepare the National Flood Risk Management Strategy. The Environment Agency retains responsibility for managing coastal and main river flooding and is the competent body responsible for implementing the Water Framework Directive in England and Wales

The National Strategy identifies the following strategic actions for the Environment Agency:

- Use strategic plans including Catchment Flood Management Plans and Shoreline Management Plans to set the direction for Flood Risk Management;
- Support the creation of Flood Risk Regulations by collating and reviewing the assessments, plans and maps that LLFAs produce;
- Providing the data, information and tools to inform government policy and aid RMAs in delivering their responsibilities;
- Support collaboration, knowledge-building and sharing of good practice including provision of capacity-building schemes such as trainee schemes and officer training;
- Manage the Regional Flood and Coastal Committees and support their decisions in allocating funding for flood defence and flood resilience schemes;
- Report and monitor on flood and coastal erosion risk management and
- Provide grants to RMAs to support the implementation of their incidental flooding or environmental powers.

The Environment Agency maintains a number of Flood and Coastal Risk Management assets (tidal, main river and ordinary watercourse) and acts as the Internal Drainage Board for three Internal Drainage Districts in the County: the Lower Ouse, the Cuckmere and the Pevensy levels.

### **4. Southern Water**

Southern Water supplies freshwater and disposes of waste water (including surface water) in East Sussex. It owns and maintains a range of assets which are essential to effective flood risk management in the county. It is the licensed sewerage undertaker regulated by the Environment Agency and, financially regulated by Ofwat.

### **5. Romney Marsh Area Internal Drainage Board**

The Romney Marsh Area Internal Drainage Board (RMAIDB) is a non-profit making organisation; it is a ratepayer funded Local Authority concerned with matters of land drainage and the maintenance and control of certain watercourses. It is the consenting authority for its area and is responsible for determining applications and enforcement activity under sections 23 and 25 of the Land Drainage Act (1991). The RMAIDB is the amalgamation of the Romney Marsh Levels, the Walland Marsh, the Denge and Southbrooks, as well as the Rother and the Pett Internal Drainage Boards. Its operational area extends as far west as Mayfield and as far east as Dymchurch in Kent. It is a RMA and thus subject to the aforementioned responsibilities detailed within this MoU.

### **6. Upper Medway Internal Drainage Board**

The Upper Medway Internal Drainage Board (UMIDB) is also a RMA and a ratepayer funded Local Authority concerned with matters of land drainage and the maintenance and control of certain watercourses, and exercises section 23 and 25 powers within its district. The UMIDB straddles the borders of East and West Sussex and Kent. Its southern boundary extends in an east west direction encompassing Wych Cross, Rotherfield and Wadhurst.

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### **7. The South Downs National Park Authority**

The South Downs National Park Authority (SDNPA) is the statutory Planning Authority for the National Park area.

As a National Park, the SDNPA has statutory purposes and socio-economic responsibilities as specified in the Environment Act of 1995.

1. To conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
2. To promote opportunities for the understanding and enjoyment of the special qualities of the Park and the public.

Working in partnership with other Local Authorities and organisations, it is also the duty of the Authority to seek to foster the economic and social well-being of the local communities within the National Park.

The role of the SDNPA as a Planning Authority is to control and influence the development of land and buildings within its boundaries that encompasses 14.1% of East Sussex. To do this effectively the SDNPA has to balance the statutory duties and purposes of the National Park, safeguarding the natural environment and existing built heritage, with the needs of individuals, the local population supporting rural communities and local businesses.

Specifically in relation to the ESFP, the SDNPA will:

- Exercise our responsibilities as a Planning Authority to minimise flood risk as outlined in 2.iii of this Annex;
- As a strategic land manager, seek to ensure responsible land management practices are upheld by landowners within the National Park. This will be exercised at a strategic level via the South Downs Land Management Group as well as by day to day liaison between National Park rangers and landowners.
- Advise the Partnership Members in relation to their duties under Section 11A (2) of the National Parks and Access to the Countryside Act (1949) as amended by Section 62(2) of the Environment Act (1995) to have due regard for the potential impacts of decisions and actions on National Park purposes. In this capacity, the SDNPA welcome the opportunity to be consulted upon proposed infrastructure schemes where they can contribute to design that will conserve and enhance the natural beauty, wildlife and cultural heritage of the area.

As the role of the SDNPA evolves they will periodically review their roles and responsibilities to ensure appropriate support to the Partnership aims within their remit and capacity.

## Annex 2 Draft Objectives of the Local Flood Risk Management Strategy

### Guiding Principle

A significant message of the Pitt Review, of the summer 2007 floods, was that a lack of a clear accountability for managing all forms of flood risk had increased the social, economic and environmental cost of flooding. This situation had, in part, arisen from the absence of a coherent legal framework identifying responsibility for managing local flood risk. Pitt recommended that local authorities should play a key role in addressing this and should develop the technical capacity and resources to deliver this role.

The Flood and Water Management Act and the European Floods Directive (2007/60/EC) provided the statutory basis (and central funding) for the County Council's LLFA role. However, there remains a potential administrative barrier between responsibility for local flood risk, the Environment Agency's role in main river and coastal flooding and the role of the districts and boroughs as Coast Protection Authorities.

The Flood and Water Management Act does not make provision for an integrated approach, nor does it place an obligation upon the LLFA to co-ordinate the activities of all public and private organisations with a role in managing flood risk. Nonetheless, it is clear that without co-ordination actions to deal with flooding will not be effective, have the potential for duplication of efforts, not be able to deliver multiple benefits or maximise the benefits from limited funding opportunities.

With these considerations in mind the guiding principle for this strategy is:

***' to work with local authorities, government agencies, communities and businesses across East Sussex to manage risk in order to reduce the social, economic and environmental costs arising from flooding and coastal erosion'***

### Objectives

1. Ensure all stakeholders and Risk Management Authorities are aware of their roles and responsibilities in relation to local flood risk.
2. Establish and maintain effective partnerships with key organisations and local communities to share best practice and improve resilience.
3. Improve the collective understanding of local flood risk and its interactions with other sources of risk.
4. Engage with communities and riparian owners to raise awareness and understanding of local flood risk.
5. Apply a sustainable and catchment based approach to managing local flood risk, seeking to deliver wider environmental and social benefits, climate change mitigation and adaptation and meet national and international environmental duties.
6. To manage existing flood risk and prevent further increases in local flood risk due to development and environmental pressures, and reduce disruption to critical infrastructure.
7. Work with partner organisations, communities and others to secure resources to deliver local flood risk management measures.