

Highways & Transport Committee Report

Date of Meeting:	26 January 2023
Report Title:	It's Not Just Water – Officer Recommendations
Report of:	Jayne Traverse, Executive Director of Place
Report Reference No:	HT67/22-23
Ward(s) Affected:	All

1. Purpose of Report

- 1.1. This report seeks to provide a response to the report of the former Environment and Regeneration Overview and Scrutiny (EROSC) Committee's Working Group – "It's Not Just Water".

2. Executive Summary

- 2.1. The Working Group of the former EROSC comprised of six Committee Members and one co-opted Member began a Task and Finish piece of work at the beginning of 2021 to investigate the manageable causes and impacts of severe flooding across Cheshire East including flood risk management, recovery, and the reduction of future risk.
- 2.2. The findings and final report of the Working Group titled "It's Not Just Water" together with its supporting appendices were presented to the Highways and Transport Committee on 22nd September 2022.
- 2.3. The Committee resolved to receive a further report from officers in response to the Working Group's findings.
- 2.4. It is acknowledged and recognised that the review undertaken by the Working Group was comprehensive and included a set of recommendations that if fully implemented would further enable the Council to support residents already living in and tackling flood prone areas within Cheshire East, and contribute to reducing any future risk in other areas.
- 2.5. The response to the Working Group recommendations have been prioritised to implement those that have no financial impact on the current budgets.

- 2.6. This report has been prepared within the context of the serious financial challenges being experienced by the Council due to national economic circumstances which are raising prices and local higher demand for services which are also increasingly complex.

A report was noted at the Corporate Policy Committee on 1st December 2022. This provided a financial review update for 2022/23 and stated that that national increasing inflation which was 0.4% in February 2021 is now 11.1% and is having a significant impact on the cost of Council services as well as on the cost of living for local residents. The findings of this local financial review present an urgent need to mitigate the ongoing financial pressures in both the current and future financial years.

3. Recommendations

- 3.1. That the Highways and Transport Committee:

- 3.1.1. Approve Officer Recommendation Responses 1 and 2 contained in section 5 of this report in order that they can be implemented operationally, the officer recommendations are:

Officer Recommendation 1 Response – Governance and Democracy

That the oversight of the LLFA statutory function is retained with the Highways and Transport Committee in line with the current Constitution.

Officer Recommendation 2 Response – Delivery of the LLFA Function

To retain the current outsourced arrangement for the Flood Risk Management / LLFA delivery function.

Create a standalone LLFA delivery team initially from existing staff resource within the Cheshire East Highways (Ringway Jacobs) organisational structure which for all operational and decision making matters relating to flood risk management reports directly to the Council's Head of Highways.

Implement a succinct set of key performance indicators (KPIs) specifically for the delivery of the LLFA function picking up on the key aspects of the Working Groups concerns

Flood Risk Management / LLFA specific Key Performance Indicators to be reported to the Highways and Transport Committee as part of the bi-annual reports on the performance of the Highways and Infrastructure division.

- 3.1.2. Approve Officer Responses 3, 4 and 5 to not implement the Working Group Recommendations 3, 4 and 5 detailed in section 5 of this report at the current time given the costs are not within the current Medium Term Financial Strategy (MTFS).

3.2. **Reasons for Recommendations**

- 3.3. This report is part of the Council's commitment to being open and transparent.
- 3.4. To ensure that the recommendations brought forward by the Working Group are considered in full and a clear plan is set out to address them, wherever practicable within current budgets.
- 3.5. The Council is meeting its statutory duties in relation to its responsibility as Lead Local Flood Authority (LLFA). However, it is continuing to see increased demand in relation to planning application and there are opportunities for capital bids to secure funding for projects to mitigate flood risk to properties across the Borough. This additional resource creates a budget pressure not contained with the MTFS.
- 3.6. The oversight of the delivery of the LLFA has been delegated by Cheshire East Council to the Highways and Transport Committee. **Cheshire East Council is unable to delegate the statutory responsibility of the Lead Local Flood Authority to any other third party.**

4. **Other Options Considered**

- 4.1. For clarity and to aid comparison the Working Group recommendations have been included in this report as *highlighted text below*. For each of these Officer responses are provided and Committee are approvals are being sought that implement the recommended responses. It is also important when considering these recommendations, the implications set out under Section 8 specifically relating to Finance, Legal and Human Resources.
- 4.2. Working Group Recommendation 1 – Governance and Democracy
- *The information they had drawn out through the life of the review was significant and that to ensure transparency, accountability and fully embed any work undertaken as a response to these recommendations, this group (or similar type of sub-committee) should be maintained, and these Members should be consulted with on any matters of flooding across Cheshire East.*
 - *The Environment and Communities Committee would be deemed the most appropriate committee to agree LLFA decisions and documents to enable the Councils duties as a Lead Local Flood Authority (LLFA) which are the responsibility of the Council under the Flood and Water Management Act 2010 (Flood Risk Management) to be discharged without prejudice.*
 - *A review of the Current Councils constitution is undertaken to ensure that the roles and responsibilities of the Lead Local Flood Authority duties are correctly considered and represented to be compliant with legislation and transparent to residents.*

Officer Recommendation 1 Response – Governance and Democracy

4.3. That the oversight of the LLFA statutory function is retained with the Highways and Transport Committee in line with the current Constitution.

4.3.1. The evidence base gathered by the review clearly indicates that the majority of LLFAs are situated within highways and transport areas of other local authorities and align to their democratic reporting lines.

4.3.2. The LLFA delivery function is outsourced under the highways contract with Ringway Jacobs. Having this responsibility split across multiple committees will cause confusion and a potential lack of accountability.

4.3.3. The reactive response to any flooding incidents falling under the jurisdiction of the LLFA are delivered by the outsourced highways contract, any post event reporting of such incidents undertaken would be through Highways and Transport Committee, aligned to the overall Member scrutiny of this arrangement.

4.4. Working Group Recommendation 2 – Delivery of the LLFA Function

- *Cheshire East should no longer continue with the current arrangements in subcontracting the LLFA. Whilst other statutory duties are outsourced by the local authority, the Sub-Committee were unable to find similar arrangements to Cheshire East elsewhere in the northwest and was not convinced the LLFA can appropriately regulate the Highways Authority whilst being governed by it.*
- *The restructuring of the LLFA in-house will draw a distinct difference between the work of the Highways Authority, the Planning Authority and the LLFA. This can be reflected across all communications with residents, including the external website, to avoid confusion and transparently demonstrate how Cheshire East is meeting the statutory requirements of the Flood and Water Management Act 2010. An in-house operation will enable better connectivity within other council departments enabling a more joined up work force, less duplication or error.*
- *Having reviewed the evidence from other similar sized local authorities, the Sub-Committee believe the LLFA should be placed within the remit of the Environment and Neighbourhood Services in line with Planning to draw a distinct difference in work to that of the Highways department and Highways Authority.*

Officer Recommendation 2 Response – Delivery of the LLFA Function

4.5. To retain the current outsourced arrangement for the Flood Risk Management / LLFA delivery function.

4.5.1. The reactive response to any flooding incidents falling under the jurisdiction of the LLFA are delivered by the outsourced highways

contract, any post event reporting of such incidents undertaken would be through Highways and Transport Committee, aligned to the overall Member scrutiny of this arrangement.

4.5.2. As required under the contract, by insourcing the current arrangement for flood risk management, this would be a change of scope. There is a potential one-off compensation payment estimated of circa £250k payable to Ringway Jacobs in this instance. Any such payment is not funded and would create a revenue pressure elsewhere within the highway budget.

4.5.3. Insourcing of the LLFA function would involve the undertaking of a TUPE transfer of the existing Flood Risk / LLFA staff. This will require significant engagement with Cheshire East Highways and is likely to take 3-6 months to complete.

4.6. **Create a standalone LLFA delivery team initially from existing staff resource within the Cheshire East Highways (Ringway Jacobs) organisational structure which for all operational and decision making matters relating to flood risk management reports directly to the Council's Head of Highways.**

4.6.1. To address concerns relating to the third-party line management of the LLFA and any potential conflict of interest in relation to the use of dedicated staffing resource.

4.6.2. To ensure that there are clear reporting lines directly back to officers of the Council who hold the responsibility for the discharge of LLFA statutory duties. Ringway Jacobs would continue to undertake general human resources administration duties for these staff. This is set out diagrammatically showing the existing structure within the contract in Appendix A.

4.7. **Implement a succinct set of key performance indicators (KPIs) specifically for the delivery of the LLFA function picking up on the key aspects of the Working Groups concerns, notably;**

4.7.1. Level and success of enforcement relating to flooding issues, both reactive and proactive.

4.7.2. The provision of timely responses to and general support of planning applications, potentially with the ability to offer specific flood risk pre-application advice to ensure better developer led solutions.

4.7.3. The value of external grant funding secured towards delivery of flood risk mitigation schemes.

4.7.4. The amount of additional communication and engagement with communities and a wider variety of stakeholders in relation to promoting the awareness of flood risks and how individuals can "self

help". This would be aligned in part to ongoing initiatives being delivered with the Highways Service.

4.8. Flood Risk Management / LLFA specific Key Performance Indicators to be reported to the Highways and Transport Committee as part of the bi-annual reports on the performance of the Highways and Infrastructure division.

4.8.1. To ensure that the current and future performance of the Flood Risk Management / LLFA delivery is monitored and reported against clear objectives, to ensure transparency.

4.9. Working Group Recommendation 3 – Resources and Resilience

- *The LLFA should be resourced adequately to ensure to ensure it can carry out its statutory and non-statutory duties including supporting towns and villages across the borough to ensure that they understand their roles and responsibilities during a major flooding incident and become more resilient.*
- *The LLFA should ensure that it is adequately resourced to allow collaboration with stakeholders and to develop the necessary business cases to capitalise on existing external funding opportunities.*
- *The LLFA should consider how it's existing and any new staffing resource is prioritised to help support community resilience by becoming the interface between the council and local Flood Action Groups*

Officer Recommendation 3 Response – Resources and Resilience

4.10. To not implement the recommendation at the current time given the costs of additional staff are not contained within the current MTFS. Further detail relating to the proposed number of, key responsibilities and estimated cost of additional staff is contained at Appendix B, this could be implemented in the future subject to approved budget pressures.

4.10.1. The financial impacts associated with any enhanced Flood Risk Management team staffing structure is considered at paragraph 8.2.4 of this report.

4.11. Working Group Recommendation 4 – Funding Opportunities

- *MPs should be lobbied to bring about change to national flood funding, as national funding has been allocated for large fluvial (river) floods and not surface water flooding which is most of the flooding across Cheshire.*
- *Aligned to Recommendation 3 - the LLFA should ensure that it is adequately resourced to allow collaboration with stakeholders in order that robust business cases can be developed to capitalise on existing*

external grant funding opportunities. For example, Flood Defence Grant in Aid (FDGiA) and Local Levy for projects where there is a strong business case.

Officer Recommendation 4 Response – Funding Opportunities

4.12. **To not implement the recommendation at the current time given the costs of additional staff are not contained within the current MTFS.**

4.13. Working Group Recommendation 5 – Planning and Stakeholder Communications

- *Where appropriate, the Local Planning Authority should promote the incorporation of innovative Green Infrastructure into any new development proposals. Consideration should be given to the introduction of policies within any new and emerging planning policy documents.*
- *Cheshire East Council corporately need to do more towards encouraging local people and businesses to make their assets resilient, and any opportunities to underpin flooding content messages generated in partnership should be used on council platforms where appropriate (social media, website, printed communications etc).*

Officer Recommendation 5 Response – Planning and Stakeholder Communications

4.14. **To not implement the recommendation related to stakeholder communications at the current time given the costs of additional staff are not contained within the current MTFS.**

4.15. In relation the Local Planning Authority comments made by the Working Group. The Council has developed a draft Sustainable Urban Drainage Systems (SUDS) supplementary planning document (SPD). SUDS are design and engineering solutions to manage the surface water of a development site. The approach that can be taken to manage such water can vary significantly from multiple small scale, landscape and design led solutions that work with green space and habitats to delay and manage run off, to 'hard' engineering projects that store excess water to release into the mains water system.

4.16. This SPD provides guidance on the preferred approach for development in Cheshire East and sets out the ways in which development sites are expected to work with water and manage drainage on site. A consultation on the draft SPD was undertaken during August / September 2021. A second round of consultation on the SPD will take place in spring 2023, this can only take place once the Local Plan Strategy and Site Allocations and Development Policies Document (SADPD) has been adopted, due to consideration by the Council in December 2022.

Recommendations Summary

- 4.17. The Committee should note that whilst the five Officer Recommendations listed have been considered in direct response to those set out by the Working Group, they are in many areas intrinsically linked and therefore cannot be considered as standalone. It is not proposed to implement recommendations included in response to additional resource, as set out in Recommendation 3 at this stage, additional resource is required to support the implementation of Recommendations 4 and 5 if they were taken forward in the future.
- 4.18. It is the observation of the officers involved in this process that the key to addressing the majority of the concerns raised by the Working Group can be achieved in two phases. The first is to strengthen the operational management and decision making through the Head of Highways as the lead officer in relation to LLFA for the Council. The second is to secure funding through budget pressures for additional staff resource to enhance the day-to-day delivery of the LLFA function and Council's ability to successfully discharge its statutory obligations as a Lead Local Flood Authority and be successful in securing capital bids for flood mitigation works across the Borough

5. Background

- 5.1. The Lead Local Flood Authority (LLFA) is a statutory function held by the Council who is responsible for managing the local risk of flooding from surface water, ordinary watercourses, and groundwater sources.
- 5.2. Cheshire East Council also holds several statutory roles in relation to flooding these include acting as the highway authority responsible for the roads in the borough, in addition they are a Risk Management Authority ("RMA") who have a key role in the management of flood risk under the Flood and Water Management Act 2010 ("FWMA").
- 5.3. The LLFA is one of a number of statutory bodies which have a responsibility for flood risk management in the Cheshire East borough with the other notable third parties being the Environment Agency and United Utilities.
- 5.4. Currently the day-to-day delivery of the LLFA function is undertaken by Ringway Jacobs via the highways integrated service contract, alongside a host of other services relating to management, maintenance and improvement of the Council's single largest asset, the public highway. The day-to-day delivery of the LLFA role is undertaken by the Flood Risk Management team, with the current 6 FTE roles as shown in Appendix A.
- 5.5. To provide an indication of the scope and volume of work the Flood Risk Management team undertakes the following is an extract from the duties undertaken in 2021/22

Activity	No. in year
Responded to statutory consultations on planning applications	1,027
Land Drainage Consents	48
Flood investigations	93
Enforcement cases	2
Develop Flood Risk Management Plan (Macclesfield)	N/A
Arranged and/or attended inter-agency meetings	9
Attended MP Flood Risk Surgeries	6
Arranged and/or attended community engagement events	13

- 5.6. The highways contract with Ringway Jacobs commenced in 2018 and has a fixed 8-year initial duration followed by further annual performance-based extensions up to a maximum of 15 years. The contract has a series of performance indicators which are reported to Highways and Transport Committee bi-annually.
- 5.7. As with any contract should one party chose to amend the scope of services which have been procured through it the other party is entitled to seek payment for any additional costs or potential loss of profit.
- 5.8. On the 21 September 2020 the Environment & Regeneration Overview & Scrutiny (EROSC) resolved to establish a Task and Finish Committee to undertake an in-depth examination and review of flooding and flood risk management across Cheshire East.
- 5.9. The review involved members to understand, scrutinise and review the impacts of the 2016 and 2019 flooding events that occurred across various areas of Cheshire East (e.g., Poynton, Kettleshulme, Adlington, Prestbury, Nantwich and Bollington).
- 5.10. The review sought to consider the manageable causes and impacts of severe flooding across Cheshire East including flood risk management, recovery and reducing the future risk of flooding.
- 5.11. A summary of the process, engagement undertaken by and conclusions of the Working Group are contained in the report titled “It’s Not Just Water”, which can be found as part of the background papers to this report.

6. Consultation and Engagement

- 6.1. A volume of consultation and engagement was undertaken previously by the Working Group and a detailed summary was included in the report considered at the Highways and Transport Committee meeting on 12th September 2022.

- 6.2. Consultation with Ringways Jacobs has been undertaken since the publication of the Working Group report to ensure that the officer recommendations are deliverable and the evidence to support these is robust.

7. Implications

7.1. Legal

7.1.1. The Council is the LLFA for Cheshire East. An LLFA for an area in England must develop, maintain, apply and monitor a strategy for local flood risk management in its area. Local flood risk means risk from surface runoff, groundwater, and ordinary watercourses.

7.1.2. As a statutory duty the Council cannot delegate the duty to another body, but it may outsource the carrying out of the day-to-day functions of the statutory duty,

7.1.3. The recommendations propose that the current outsourced arrangements and the current committee oversight arrangements remain in place. The proposals maintain the current status quo and should ensure the Council continues to meet its statutory duty under the Flood and Water Management Act 2010

7.1.4. As the Council are ultimately responsible for the fulfilment of the statutory duty they need to be content that any proposals put in place meet all requirements under the Flood and Water Management Act 2010

7.2. Finance

Insourcing

7.2.1. Members should note that any proposal to insource the Flood Risk Management / LLFA function from the Highways Contract would invoke a one-off cost payable by the Council to Ringway Jacobs, principally related to loss of profit brought about by no longer delivering this scope of service for the Council. Clearly this will be robustly challenged by officers managing the contract but is likely to be up to £250k, aligned to inflation over the remaining duration of the contract.

7.2.2. At present this additional cost is not separately funded in the Medium-Term Financial Strategy (MTFS), and in order to stay within approved budget its payment would require lower spending in respect of “on the ground” works for either the Highways or another service area within the Place Directorate.

7.2.3. Hence any proposal for insourcing is not supported by Officers.

Additional Staffing Resource

- 7.2.4. The additional staff needed to implement the recommendations from the Working Group (report recommendation 3) has an annual estimated revenue cost of £70k, see Appendix B.
- 7.2.5. It is recommended not to implement at this time as the funding would have to be found from the current highways revenue budget in order to stay within the approved MTFs.
- 7.2.6. In the longer term, it may be considered that some of this additional annual staffing cost could be offset, once the staff are fully established in post, by securing increased external grant monies and also the ability to offer a specific flood risk pre-application planning advisory service. However, upfront investment would be needed and there is a risk that external grant may not be secured or may be only short term in nature.

7.3. **Policy**

- 7.3.1. There are no additional policy related implications of this report.

7.4. **Equality**

- 7.4.1. There are no equality related implications of this report.

7.5. **Human Resources**

- 7.5.1. The human resource implications of both any proposal to insource staff from a currently contracted out service and also that related to recruitment have been considered under paragraph 5.5 of this report.

7.6. **Risk Management**

- 7.6.1. A summary of the risks associated with legal, financial and human resource implications of a decision to support the Member Working Group recommendations have been set out in the relevant sections of this report.

7.7. **Rural Communities**

- 7.7.1. There are no rural communities related implications of this report.

7.8. **Children and Young People/Cared for Children**

- 7.8.1. There are no related implications of this report.

7.9. **Public Health**

- 7.9.1. There are no public health related implications of this report.

7.10. **Climate Change**

- 7.10.1. Climate change implications and their direct effect on flooding and flood risk management have been considered in detail at section 4 of the Working Group report, which are included as part of the background papers to this report.

Access to Information

Contact Officer:	Mike Barnett Head of Highways michael.barnett@cheshireeast.gov.uk
Appendices:	Appendix A – Flood Risk / LLFA Delivery Team – proposed reporting lines based on existing structure Appendix B – Summary of proposed additional Flood Risk Management team roles
Background Papers:	Highways and Transport Committee report reference HT64/22-23, titled “It’s Not Just Water” plus supporting appendices, dated 22 nd September 2022