

OPEN

Highways and Transport Committee

25 January 2024

Lead Local Flood Authority 2023-24 Mid-Year Review

Report of: Tom Moody, Director of Highways and Transport

Report Reference No: HTC/08/23-24

Ward(s) Affected: All Wards

Purpose of Report

- 1 This report gives an update on activity in relation to Cheshire East Council's (CEC's) role as Lead Local Flood Authority for Quarter 1 and 2 (mid-year) 2023-24.

Executive Summary

- 2 Since 2010 CEC has been a Lead Local Flood Authority (LLFA) having powers and statutory duties to manage and co-ordinate local flood risk management activities.
- 3 Local flood risk means flooding from surface water (overland runoff), groundwater and smaller watercourses (known as Ordinary Watercourses).
- 4 The report details activity undertaken in Quarter 1 and 2 2023/24 relating to its specific statutory duties and other permissive powers including:
 - Preparing and maintaining a Local Flood Risk Management Strategy;
 - Investigating internal / business flooding;
 - Reporting on significant flood events;
 - Providing consent on activities on ordinary watercourses;
 - Providing planning advice as a statutory consultee (flooding, drainage and Sustainable Urban Drainage Systems (SuDS));
 - Maintaining a register of assets;

- Carrying out physical works to manage local flood risks in Cheshire East;
- Co-ordinating activity with other local bodies and communities through public consultation, scrutiny and delivery planning; and
- Co-operating with other Risk Management Authorities to improve effectiveness, delivery and efficiencies.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Note the update on activity in relation to the Council's role as Lead Local Flood Authority undertaken in Quarter 1 and 2 (mid-year) 2022/23.

Background

- 5 Following severe flooding during the summer of 2007, the government commissioned an independent review (the 'Pitt Review') which in 2008 recommended that local authorities should lead on the management of local flood risk, working in partnership with other organisations. Two key pieces of legislation have brought this forward; the Flood Risk Regulations (2009) which transposed the EU Floods Directive into UK Law and the Flood and Water Management Act (2010).
- 6 In Cheshire East, there are 2,204 residential properties at risk from surface water flooding (from a 1 in 100 year event) and 2,885 from Fluvial Risk (Flood Zone 2 and 3).
- 7 Surface water flooding is known as Pluvial flooding and this occurs, for example, when rainwater does not drain away through the normal drainage system, or soaks into the ground, but lies on or flows over the ground instead. This type of flooding can be difficult to predict and pinpoint, much more so than river or coastal flooding.
- 8 Fluvial flooding is river flooding that occurs when a river or stream cannot cope with the water draining into it from the surrounding land – for example, when heavy rain falls on ground that is already waterlogged. CEC is responsible for Ordinary Watercourses and the Environment Agency is responsible for Main Rivers, details available at [Statutory Main River Map \(arcgis.com\)](http://arcgis.com)
- 9 CEC is a key party in the Regional Flood and Coastal Committee (RFCC). Since 2010 CEC has been a Lead Local Flood Authority (LLFA) having powers and statutory duties to manage and co-ordinate local flood risk management activities. CEC does this by working together with other Risk Management Authorities including the

Environment Agency, who manage flooding from generally main rivers, reservoirs, estuaries and the sea, the Canal and River Trust, infrastructure / utility providers, such as United Utilities and National Highways, and businesses, householders and community groups, including Town and Parish Councils.

- 10 Local flood risk means flooding from surface water (overland runoff), groundwater and smaller watercourses (known as Ordinary Watercourses). The Environment Agency is responsible for managing flood risk in relation to “statutory main rivers” – Examples in Cheshire East include The River Bollin, Fowle Brook.

Lead Local Flood Authority Statutory Responsibilities

- 11 As a Lead Local Flood Authority, CEC continues to deliver its statutory duties and obligations under the Flood and Water Management Act 2010. The following paragraphs detail this against CEC’s statutory duties as LLFA.
- 12 **Preparing and Maintaining a Local Flood Risk Management Strategy** - Section 9 of the Flood and Water Management Act requires CEC to create and maintain a local flood risk management strategy. CEC’s original strategy was formally adopted and published in 2017 and this will be subjected to a thorough review this year and brought to a future committee in 2024/25.
- 13 **Investigating internal / business flooding** – The LLFA has a duty to record and investigate flooding events where people or property, businesses or critical infrastructure were involved.
- 14 In Quarter 1 and 2 there were 49 new and ongoing investigations, with 6 properties confirmed to have internal property level funding.
- 15 Where there are a number of flooding incidents to investigate, these are prioritised within the available resource, taking into account where the potential risk to the community as a whole is highest.
- 16 **Reporting on significant flood events** - Where the impact of flooding is significant, a formal flood investigation is carried out known as a Section 19 investigation. “Significant” for Cheshire East means:
- (a) five or more properties suffering significant internal flooding in an urban area; or
 - (b) two or more properties in a rural area in any one catchment.

To date, four bespoke Section 19 reports have produced. Two have been published (denoted by an * below) and two are completing final review before publication.

These are:

- Poynton 2016 *;
- Poynton Brook, River Dean, River Bollin, Harrop Brook and tributary of Todd Brook 2019 *;
- Weaver Catchment Flooding 2019 (linked to flooding 25 to 26 October 2019); and
- Storm Christoph 2021 (linked to flooding 20-21 January 2021).

17 The reports for Weaver Catchment and Storm Christoph are currently being reviewed for final approval. All reports once approved can be viewed at <https://www.cheshireeast.gov.uk/planning/flooding/floods-and-flood-risk/flood-investigations.aspx>.

18 **Providing consent on activities on ordinary watercourses** – The law governing land drainage consent is the Land Drainage Act 1991 and an ordinary watercourse is any water channel that is not a main river, even a small stream or ditch, and consent covers all of the following:

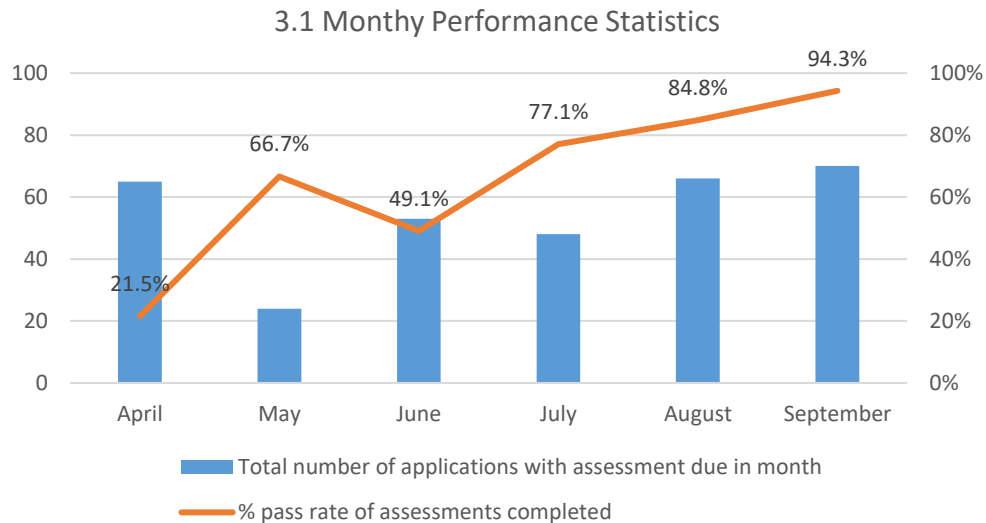
- any development within eight metres of a watercourse;
- work on structures and features on or next to the watercourse;
- work on the watercourse itself; and / or
- diversions to the watercourse.

19 It is important to note that:

- you must get consent for both permanent and temporary work / structures;
- where work to create a permanent structure involves temporary work, for example, a water diversion, you'll need a separate consent for the temporary work;
- you must apply for consent for each separate piece of work or structure;
- land drainage consent is separate from any planning permission you might need; and
- you might need consent even just for repairs or maintenance work.

20 At the mid-year point, 13 consents have been issued. Our processes are being updated and streamlined to be more efficient and cost effective this will include online applications and payment systems.

- 21 **Providing planning advice as a statutory consultee (flooding, drainage and SuDS)** – The LLFA Team assess flood risk across the borough as part of our duty to take flood risk into account in the planning and development process. For reports and other documents, see [strategic flood risk assessment](#). For details about the requirements for sustainable drainage in new planning applications, see [surface water management and new developments](#).
- 22 At the mid-year point, 331 comments were made by the CEC as LLFA on planning consultations received by CEC. There were challenges with resources within the team to respond to planning consultations within the statutory timeframe in 2022/23, which was impacting on decision making on applications.
- 23 In response to these challenges the LLFA have been working with the Local Planning Authority this financial year to prioritise current workloads and to reduce / remove the consultee backlog. Measures are now in place to respond to any outstanding applications and to deal with new applications received. This has included successfully addressing resourcing within the team, including obtaining additional temporary resource, as well as improvements to processes to filtering and managing the requests received. This is supported by ongoing workshops and drop-in sessions with planning officers to further improve the processes and engagement with the flood team around providing responses as statutory consultee.
- 24 A new performance indicator has been established and implemented for 2023/24. This measures on a monthly basis the length of time for planning application responses. The statutory duty is to provide a response to the Local Planning Authority within 21 calendar days of receiving the consultation. Updates to performance will be reported through the mid-year and end of year reports to Highways and Transport Committee.
- 25 The LLFA has made good progress in addressing the challenge that existed in 2022/23 and this can be seen through the performance against the new performance indicator. In April, the pass rate of assessments completed was 21%; this had risen to 94.3% by the mid-year point in September.



26

27 **Maintaining a register of assets** – these are physical features that have a significant effect on flood risk across the Borough. They can include bridges, culverts, historic structures, retaining walls and other drainage structures. A publicly available version is being developed throughout 2023/24 and this will include details of the inspection regime in place which covers all Critical Assets across the Borough. Utilising our powers to designate specific features as flood risk management assets gives a degree of protection from damage and removal. Critical Assets are those physical features that, if they were to flood, present a significant risk to life, property or infrastructure.

28 **Carrying out physical works to manage local flood risks in Cheshire East** – The capital budget for drainage in 2023/24 has been split into two distinct allocations so that there are specific allocations for dealing with (i) flood risk issues and (ii) highway drainage. This is helping to improve delivery of capital projects by having clearer lines of accountability for delivery and prioritisation of funding. The following schemes are programmed for delivery in 2023/24 to mitigate flood risk issues:

- Nantwich Road, Bunbury - root cut, cleanse and line a section of ordinary watercourse along the highway to re-instate the full capacity, to alleviate property and highway flooding.
- Moss Lane, Styal – Investigate, trace and cleanse the full route of the culverted watercourse to outfall. Possible repair or replacement of any damaged / collapsed / undersized sections. Where possible to reinstate flow and prevent flooding of properties and the highway.

- London Road, Calveley – extensive drainage works within highway and third-party land comprising investigation, design and delivery to alleviate ongoing flooding issues within the area.
- 29 CEC contributes to the national Flood and Coastal Erosion Risk Management (FCERM) programmes of work for worthwhile projects wherever it is considered it can attract DEFRA Flood Defence Grant in Aid (FDGiA) and Local Levy funding. Due to the nature of flooding and surface water flood risk across Cheshire, many projects can be difficult to justify and require robust business cases to demonstrate value for money.
- 30 CEC currently has indicative allocations for Poynton Brook and its tributaries. The LLFA team are in further discussion with the Environment Agency concerning eligibility for grant in aid and developing a funding application for works already completed in this area. These work programmes are kept under review via the Cheshire and Mid-Mersey Flood Partnership, to ensure local priorities based on risk is refreshed annually. CEC is looking to submit funding applications (where appropriate) facilitated by the resolution of resource challenges faced in 2022/23.
- 31 The LLFA team has recently successfully applied and secured the maximum £20k in Quick Win bids from the Local Levy. This will provide flood resilience measures this financial year to two separate households with elderly and vulnerable residents.
- 32 The LLFA team has also submitted two initial bids for Natural Flood Management funding for Lindow Community School, Wilmslow and Weston Skatepark, Macclesfield. It will be developing these collaboratively with support from internal and external stakeholders.
- 33 In addition to the statutory duties detailed above, CEC has permissive powers to:
- Enforce the Land Drainage Act 1991 where applicable;
 - Designate Features; and
 - Make byelaws.
- 34 To mid-year, no formal / legal action has been issued to enforce the Land Drainage Act 1991, but various investigations are ongoing and eight formal letters were issued under the Act.
- 35 **Co-ordinating activity with other local bodies and communities through public consultation, scrutiny and delivery planning -** During flooding, service responses are provided by CEC both as Lead Local Flood Authority and Highways Authority. The response is

delivered by Cheshire East Highways, who under the Highway Service Contract provide a 24/7, 365-day-a-year.

- 36 In the first six months of the year there were no named storms that have had a significant impact on the borough. However, there was a weather event 10/11th June which caused flooding to six properties.
- 37 **Co-operating with other Risk Management Authorities to improve effectiveness, delivery and efficiencies** - To tackle flood risk in an integrated way across the region, CEC is a member of the Cheshire Mid-Mersey Partnership, which is one of five in the north west of England.
- 38 The Partnerships are in regular contact to actively deliver the duties set out by the Flood and Water Management Act 2010, which is overseen by the North West Regional Flood and Coastal Committee (NW RFCC) which meets quarterly with Member and officer attendance.
- 39 Members of the flood team also attend operational and strategic level meetings with United Utilities which are held quarterly.

Sustainable Drainage System

- 40 CEC is committed to ensuring that new developments adopt sustainable approaches to surface water management. The flood risk team has contributed to new guidance, produced by CEC in its role as Lead Local Flood Authority and Local Planning Authority - the Sustainable Drainage Systems Supplemental Planning Document (SuDS SPD). Its principal purpose is to provide guidance on how planning approval applications can comply with policy requirements set out in the National Planning Policy Framework and the Cheshire East Local Plan.
- 41 A SuDS works with the landscape of its site, using a system of components to deliver more natural water management. This provides reduced surface water run-off quantity and increased surface water run-off quality. Alongside these primary water-management benefits, a sustainable drainage system can provide multiple secondary environmental and social benefits which lead to a higher quality development. The SPD being adopted is a tool to help planning approval applicants achieve SuDS by advising on the levels of best practice expected. Where schemes ignore opportunities to positively work with water on site, planning permission may be refused.
- 42 Internal consultation of the SuDS SPD completed in May 2023 and this will then follow with consultation through the Local Plan Consultees, including the LLFA, for formal adoption later in 2023/24.

- 43 In addition to the above, it has been announced nationally that the UK government will implement Schedule 3 of the Flood and Water Management Act 2010 that will mandate sustainable drainage (SuDS) in new developments in England from 2024. Key features of the proposed changes include:
- SuDS will have to be incorporated into new developments in England;
 - Applications for the approval of SuDS on new developments that meet the criteria will have to be made to a SuDS Approving Body, or “SAB”, which will sit within CEC;
 - SAB approval will be separate from the Local Planning Authority approval;
 - SAB approval could be subject to conditions and may require a non-performance bond;
 - Construction works covering an area of under 100 sqm or single properties will be exempt. Nationally Significant Infrastructure Projects will also be exempt. These types of projects include delivery of major new road, rail and utility infrastructure that has regional or national importance. For example, Vyrnwy Aqueduct Modernisation Programme supplying water from Wales to Liverpool via Cheshire.
 - Applications for approval could be made to the SAB directly or through CEC combined with the planning application. A fee will be payable and there will be rights of appeal against refusal.
- 44 The impact of implementing Schedule 3 has been assessed and the implications considered by the LLFA team drawing on experience and reports on the introduction of Schedule 3 in Wales in 2019. As a result, a High Level Business Case (HLBC) has been developed and submitted by the Highways Service for consideration as part of the corporate Medium-Term Financial Strategy (MTFS) process. The HLBC sets out the need to build and equip the LLFA team to deliver the new statutory functions placed upon CEC
- 45 The implementation of Schedule 3 impacts CEC more widely than just within Highways and the LLFA team and it is important for other service areas to understand and prepare for the new duties and work together to best address the changes. As part of this the LLFA have developed a Powerpoint presentation on Schedule 3 and are organising meetings to present this to services, management teams, ward members and this Committee.

Consultation and Engagement

- 46 This report is a mid-year review of the activity of CEC in discharging its duties as Lead Local Flood Authority in 2023/24 and a full year report

will follow with the Committee's work programme. No consultation has taken place specifically on this report; consultation takes place as part of the individual schemes that are reported upon here.

Reasons for Recommendations

- 47 To provide a mid-year update to Committee on activity relating to CEC's role as Lead Local Flood Authority for 2023/24
- 48 To facilitate monitoring of the activities CEC undertakes to discharge its duties as Lead Local Flood Authority in 2023/24 by means of an annual report to the Highway and Transport Committee.

Other Options Considered

- 49 Not applicable.

Implications and Comments

Monitoring Officer/Legal

- 50 There are no legal implications for the recommendations of this review report.
- 51 Legal advice is sought for specific locations to ensure our approach is consistent and compliant when corresponding on property flooding. To mid-year there have been four such locations across the borough.

Section 151 Officer/Finance

- 52 There are no financial implications arising from the recommendations of this review report.
- 53 This review report considers activity undertaken to the mid-year point for 2023/24 relating to CEC's role as LLFA. The budget for this activity is held within the Highways Service within Highways and Infrastructure.

Policy

- 54 This review report is linked to our aims of:
- Open – An open and enabling organisation;
 - Fair - A Council which empowers and cares about people; and
 - Green - A thriving and sustainable place.

An open and enabling organisation	A council which empowers and cares about people	A thriving and sustainable place
The report is to provide Committee members with an update of activity to mid-year point for 2023/24 relating to CEC's role as Lead Local Flood Authority	The statutory duties placed upon CEC as Lead Local Flood Authority all contribute to mitigating flood risk and the impact on people as a result of flooding	Flood risk mitigation promotes the use of Sustainable Drainage in providing solutions to development and contributes to a thriving and sustainable place to live

Equality, Diversity and Inclusion

- 55 There are no specific equalities implications arising from the recommendations of this review report.

Human Resources

- 56 There are no human resources implications arising from the recommendations of this review report.

Risk Management

- 57 CEC has a statutory duty as LLFA. Failure to fulfil its duties and obligations may result in developments being brought forward that do not consider flood risk fully and result in increased flood risk that could have been mitigated. Repeat events and severe flooding may result from:
- Insufficient investment and failing to carry our works;
 - Failing to maximise investment by co-ordinating with Risk Management Authorities; and
 - Not improving effectiveness, efficiency and delivery.

Rural Communities

- 58 There are no implications for rural communities arising from the recommendations of this review report.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 59 There are no implications for children and young people arising from the recommendations of this review report.

Public Health

- 60 There are no implications for public health arising from the recommendations of this review report.

Climate Change

- 61 The recommendations of this review report have no direct implications for climate change in itself.
- 62 However, it is acknowledged that climate change contributes to extreme weather events such as heatwaves, droughts and floods, making them more intense. These all impact on the issue of flooding and land drainage and the actions of CEC reported on here contribute to its response to the issue of climate change.

Access to Information	
Contact Officer:	Paul Davies, Contract Operations Manager Paul.davies@cheshireeast.gov.uk
Appendices:	None
Background Papers:	<p>Local Flood Risk Management Strategy 2017, available at: https://www.cheshireeast.gov.uk/pdf/highways/flood-risk-strategy/local-flood-risk-management-strategy-2017.pdf</p> <p>Section 19 flood reports available at: https://www.cheshireeast.gov.uk/planning/flooding/floods-and-flood-risk/flood-investigations.aspx.</p> <p>Strategic Flood Risk Assessment available at: https://www.cheshireeast.gov.uk/planning/spatial-planning/research_and_evidence/strategic_flood_risk_a_ssmnt/strategic_flood_risk_assmnt.aspx</p> <p>Sustainable drainage in new planning applications (current) available at: https://www.cheshireeast.gov.uk/planning/flooding/floods-and-flood-risk/surface-water-management.aspx</p> <p>Cheshire Mid-Mersey local authority partnership available at: https://thefloodhub.co.uk/your-local-area/cheshire/</p> <p>The Flood Hub available at: https://thefloodhub.co.uk/</p> <p>It's Not Just Water – Officer Recommendations Report from 26th January 2023 Highways and Transport Committee available at: https://moderngov.cheshireeast.gov.uk/documents/s100799/Report%20-%20Its%20Not%20Just%20Water%20Officer%20Recommends%20Rev%2010.0%2016.12.2022%202.pdf</p>