CHESHIRE EAST COUNCIL

REPORT TO: SUSTAINABLE COMMUNITIES SCRUTINY COMMITTEE

| Date of Meeting: | 1 September 2011 |
|-------------------|---|
| Joint Report of: | Lead Emergency Planning Officer for Cheshire East |
| - | Council |
| Subject/Title: | Flood and Water Management Act 2010; the European |
| - | Union Flood Directive 2009 and Associated Regulations / |
| | Issues |
| Portfolio Holder: | Councillor Rachel Bailey |

1.0 Report Summary

- 1.1 The purpose of the report is to update the Committee on the responsibilities and requirements for Cheshire East Council under the Flood and Water Management Act 2010 and the European Floods Directive 2009 and the progress that has been made so far.
- 1.2 The Council has formed a Flood and Water Management Task Group which includes representatives from the Environment Agency (EA) and United Utilities in order to co-ordinate its approach. The Sustainable Communities Scrutiny Committee is responsible for scrutiny of flooding issues and has received reports in September 2010 and June 2011 in this respect.

2.0 Decisions Requested

2.1 The Committee is asked to receive the report and note the current position of Cheshire East Council in relation to the requirements / expectations as outlined in paragraph 10.0 of the report.

3.0 Reasons for Recommendation

3.1 Under the Flood and Water Management Act 2010; the European Union Flood Directive 2009 together with associated Regulations; Cheshire East Council is statutorily required as the Lead Local Flood Authority (LLFA) to meet certain requirements in relation to Flood and Water Management. Under the Regulations and the expectations of the Pitt Review it is intended that the Council's scrutiny procedure should review work by public sector bodies and essential service providers in order to manage flood risk. Also, that there should be an annual summary of the actions taken locally to manage flood risk in order to meet the regulations and to implement the appropriate recommendations of the Pitt Review. The report will need to be made public and be available for review by Government Offices and the EA.

4.0 Wards Affected

4.1 Potentially all Wards may be affected.

5.0 Local Ward Members

5.1 All Ward Members.

6.0 Policy Implications including - Climate change - Health

6.1 Climate change could well potentially lead to greater flooding problems in the future. Climate change projection work will play an important part in helping us to understand the likelihood of future flooding, particularly in relation to development plans. Work in relation to Flood and Water Management should mitigate and lessen this risk and also reduce any associated potential heath problems to the community at risk.

7.0 Financial Implications (Authorised by the Borough Treasurer)

7.1 Please see paragraph 11.0 below.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 The requirements of the Flood and Water Management Act 2010, the European Flood Directive 2009 together with associated Regulations are all outlined in the body of the report.

9.0 Risk Management

9.1 Flooding and its associated issues is one of the major risks to the Cheshire East community. Work in relation to Flood and Water Management will mitigate against and lessen this risk.

10.0 Background and Options

10.1 Sir Michael Pitt's review of the flooding in 2007 stated that "the role of local authorities should be enhanced so that they take on responsibility for leading the co-ordination of flood risk management in their areas". The Flood and Water Management Act 2010 provides for this through the new role of the LLFA for the Council. As set out in the Government's response to Sir Michael's Review, the Act defines the LLFA for an area as the unitary authority or the county council. This avoids any delay or confusion about who is responsible, but in no way prevents partnership arrangements to make full use of all capabilities and experience locally. The Act enables LLFA's to delegate flood functions to another risk management authority by agreement. The Act itself deals with national domestic regulations. However, the European Union Flood Directive deals with European Union Regulations. Both the Act and the Directive mirror one another by making LLFA's responsible for managing local flood risk, but the timing of each is different, with the Act probably not coming

into force in its entirety until 1 October 2012, whilst the European Union regulations are now in force and set a challenging timetable for delivery. However, the work required by these latter regulations will form the building blocks of the local flood risk management strategies required under the Act.

10.2 Local Partnerships

10.2.1 Sir Michael Pitt's Review recommended that the LLFA should bring together all relevant bodies to help manage local flood risk. The important roles played by district councils, internal drainage boards, highway authorities and water companies are also recognised in the Act and these bodies, together with the EA, are identified as risk management authorities. The Act enables effective partnerships to be formed between the LLFA and the other relevant authorities who retain their existing powers (with some enhancement), but it does not say what any local arrangements should look like. It requires the relevant authorities to co-operate with each other in exercising functions under the Act and they can delegate to each other. It also empowers a LLFA or the EA to require information from others needed for their flood and coastal erosion risk management functions.

10.3 Flood risk management strategies

- 10.3.1 The EA is required to develop a national strategy for the management of coastal erosion and all sources of flood risk for England. The Act also requires a LLFA to develop, maintain, apply and monitor a strategy for local flood risk management in its area.
- 10.3.2 Following publication of the national strategy, the Local Government Group's guidance on local strategies will be revised and issued in autumn 2011. The LLFA will be responsible for ensuring that a local strategy is put in place but the local partners can agree how to develop it in the way that suits them best. The Act sets out the minimum that a local strategy must contain, and the LLFA is required to consult on the strategy with risk management authorities and the public. Local flood risk includes surface runoff, groundwater, and ordinary watercourses (including lakes and ponds). Guidance may, amongst other things, set out in more detail how the national strategy and local strategies should interact and how local strategies will need to consider the full range of measures consistent with a risk management approach in developing their local flood risk strategy. Resilience and other approaches which minimise the impact of flooding are expected to be a key aspect of the proposed measures.

10.4 Duty to act consistently with local and national strategies

10.4.1 The Act will require local flood risk management strategies to be consistent with the national strategy. The local strategies will build on information such as national risk assessments and will use consistent risk based approaches across different local authority areas and catchments. The local strategy will not be secondary to the national strategy; rather it will have distinct objectives to manage local flood risks important to local communities.

10.5 <u>Key LLFA Duties / responsibilities together with implementation</u> <u>dates are shown in the table below:</u>

| DUTY / RESPONSIBILITY | EFFECTIVE DATE | SUMMARY OF DUTY |
|---|--|--|
| Local Flood Risk Management Strategy | Initially due to be effective from October 2010 (but initial work deferred until Summer/Autumn 2011 pending publication of National Strategy ; published guidance and the need to have first prepared the Preliminary Flood Risk Assessment (PFRA)) | Identify roles and functions of flood risk management authorities Measures to be implemented to manage risk Cost and benefits of the measures Impacts of climate change |
| Investigation of Flood Incidents | Commenced April 2011 Effective December 2011 | Investigation of flood incidents from local sources to determine whenever management authorities have performed their relevant function. Publication of findings |
| Produce Asset Register | Commenced April 2011 Effective December 2011 | Create and publish a register of assets with a flood risk management function. Determine ownership and state of repair of identified assets |
| Duty to Co-operate and Power to Request Information | Commenced April 2011 | Set-up partnership working arrangements. Provide information to EA if requested Issue enforcement notices and pursue civil sanctions if request for information are ignored |
| Consenting for Ordinary Watercourses | Expected to commence October 2011 | Approval of works affecting Ordinary Watercourses Enforcement actions against unapproved works |
| Power to Designate Third Party Assets | Expected April 2012 | Designation of assets with a flood management function to prevent alteration or removal by the owner or others. |
| Create a SuDS Approval Board (SAB) | Expected October 2012 | Assess, consult and approve drainage plans for new developments |
| Adoption of SuDS | Consultation in Autumn 2011 Expected implementation October 2012 | Adopt and maintain SuDS approved by the SAB to national standard |
| Reservoirs | Expected 2012 | Designate high risk reservoirs Preparation of a flood plan by the owner to give information on the area |

10.6 Duty to investigate Flood Incidents and to maintain an Assets Register

- 10.6.1 To ensure greater co-ordination of information and avoid situations where bodies do not accept responsibility, the LLFA will:
 - investigate flooding incidents in its area (where appropriate or necessary) to identify which authorities have relevant flood risk management functions and what they have done or intend to do. The LLFA will then be required to publish the results of any investigation, and notify any relevant authorities. Cheshire East Council is currently is making contact with other Flood Authorities (housing associations, United Utilities, other local authorities) and the Council will be in a position to do this by December 2011.
 - maintain a register of structures or features which they consider have a significant effect on flood risk in their area, at a minimum recording ownership and state of repair. The register must be available for inspection and the Secretary of State will be able to make regulations about the content of the register and records. An on going: structure list has been obtained and currently being arranged in parish order. This will then form part of the Council's Surface Water Management Plan (SWMP) in order that the Council can identify areas that are a potential risk. A register will be in position by December 2011.

10.7 <u>Ensuring progress</u>

10.7.1 To avoid administrative burdens, the Act does not require routine reporting on performance, but allows information to be requested where necessary. LLFA's can bring matters to the Government's attention and if a risk management authority fails to exercise a flood or coastal erosion risk management function, the Secretary of State can direct another authority to carry out that function. In addition, the Act will enable overview and scrutiny committees in lead local flood authorities to hold all the risk management authorities to account. In this way, the public can be actively involved in ensuring authorities perform.

10.8 <u>Works powers</u>

10.8.1 LLFAs have powers to undertake works to manage flood risk from surface runoff and groundwater, consistent with the local flood risk management strategy for the area. Powers to undertake works on ordinary watercourses remain with the LLFA but they must be consistent with the local flood risk management strategy for the area. This will form part of the Council's local strategy.

10.9 Designation of third party assets

10.9.1 The Act provides LLFA's, district councils, internal drainage boards and the EA with powers to designate structures and features that affect flooding or coastal

erosion. The powers are intended to overcome the risk of a person damaging or removing a structure or feature that is on private land and which is relied upon for flood or coastal erosion risk management. Once a feature is designated, the owner must seek consent from the authority to alter, remove, or replace it. If someone does make a change to a designated feature, then the authority may issue an "enforcement notice" which will set out any steps that must be taken to restore a feature. An individual may appeal against a designation notice, refusal of consent, conditions placed on a consent or an enforcement notice. The Council is currently awaiting EA training and guidance on how this duty will be applied in practice.

- 10.10 Sustainable Drainage Systems (SuDS)
- 10.10.1 The Act establishes a SuDS Approving Body (the "SAB") at LLFA level. The SAB will have responsibility for the approval of proposed drainage systems in new developments and redevelopments, subject to exemptions and thresholds. Approval must be given before the developer can commence construction. In order to be approved, the proposed drainage system would have to meet new national standards for sustainable drainage. Where planning permission is required applications for drainage approval and planning permission can be lodged jointly with the planning authority but the SAB will determine the drainage application. Regulations will set a timeframe for the decision so as not to hold up the planning process. The timeframe is expected to be 7 weeks.
- 10.10.2 The SAB would also be responsible for adopting and maintaining SuDS which serve more than one property, where they have been approved. Highways Authorities will be responsible for maintain SuDS in public roads, to National Standards. Sustainable drainage systems on private property, whether they are private or adopted, must be designated by the SAB under Schedule 1 to the Act as features that affect flooding risk.
- 10.10.3 The SAB will be required to place all approved sustainable drainage systems on the register of structures and features (as a separate category). The National Standards will set out the criteria by which the form of drainage appropriate to any particular site or development can be determined, as well as requirements for the design, construction, operation and maintenance of SuDS. Local authorities are represented on the Project Advisory Board for the development of these National Standards.
- 10.10.4 The Act, in response to Sir Michael Pitt's Review, also makes the right to connect surface water drainage from new development to the public sewerage system conditional on the surface water drainage system being approved by the Approving Body. The Council will be looking to include any technical help within the new highways contract.

10.11 Other powers

10.11.1 Local authorities will be able to use all their normal powers (in planning, regeneration, local investment, highways and to provide information and guidance) to support their new roles under the Act. They will take over the EA's

role in deciding whether to allow works by third parties that may affect water flows to take place. They will also continue to be members of Regional Flood and Coastal Committees. These Committees will decide on the local levy raised and how this is spent and will be consulted on all relevant EA proposals.

10.12 <u>Sustainable development duty and environmental works</u>

- 10.12.1 The Council along with highways authorities now has a duty to contribute to sustainable development in discharging their flood and coastal erosion risk management (FCERM) functions. This is similar, to the existing duty that the EA already has. The Act also provides environmental powers for works that (a) have a net beneficial impact, (b) are consistent with the national FCERM Strategy and, (c) are deemed by the relevant authority to be desirable for the natural environment, the historic environment, landscape, or have amenity or leisure benefits.
- 10.13 Building Regulations: Flood Resilience
- 10.13.1 The Council now has the power for to enable building regulations to be made for any type of work in relation to flood resilience and resistance.
- 10.14 Levies
- 10.14.1 The Act will enable the EA to issue levies to the LLFA for an area in accordance with section 74 of the Local Government Finance Act in the same way that they could previously raise levies under Section 133 of the Water Resources Act 1991, which will be repealed.
- 10.15 <u>Reservoir Safety</u>
- 10.15.1 The Cheshire Local Resilience Forum has been tasked to produce the generic off-site plan and this task is being led by the Joint Cheshire Emergency Planning Team. Two multi-agency meetings have taken place to take the work forward and the Joint Emergency Planning Team is currently putting together the first draft of the plan which will be based on the National template. The deadline for the production of the first draft is 26 August 2011. A walkthrough of the draft plan will take place on the 8 September with a tabletop exercise scheduled to take place on the 20 October at Cheshire Police Headquarters.
- 10.15.2 In addition to the requirement of having a generic plan Cheshire East has two reservoirs in the top 100 high priority category, Trentabank and Ridgegate, for which site specific plans are required. The planning for the site specific Trentabank / Ridgegate complex will begin following the issue of the generic plan. The completion for this will be February 2012 and an exercise will take place on 15 March 2012. If an incident were to occur prior to the production of the site specific it would be dealt with through the generic plan,
- 10.15.3 An additional requirement for the site specific reservoirs is the distribution of prior information to the residents who could be affected by a reservoir breach. The content of the letters are still under discussion and the Joint Emergency

Planning Team is working with other North West Authorities and the Environment Agency to ensure a consistent approach is taken. A full consultation process will be undertaken before any information is distributed.

11.0 Funding

- 11.1.1 The Council as LLFA under the Act has been given £124,700 by DEFRA this financial year for the purpose of its delivery and £176,500 for future years.
- 11.1.2 Other new burdens will also be funded in full, such as SuDS adoption.
- 11.1.3 As well as funding the LLFA role, Defra will also make sure that the ongoing costs of SuDS adoption and maintenance result of the new duty, will be funded in full. It says these costs will be near zero in the first year following commencement but will rise as more and more SuDS are built by developers and adopted by authorities. As a result of concerns raised by local authorities, Ministers have committed to publish a clear way forward on long-term funding for SuDS maintenance prior to implementation of this part of the Act. This will take account of circumstances faced by local authorities and developers. Whichever option is adopted, Defra believes that local authorities will be able to promote SuDS implementation in full certainty that there will be no shortfall in funding.
- 11.1.4 The Act will also extend the role of the Regional Flood Defence Committees, to become Regional Flood and Coastal Committees, and as a result allow them to raise funds through the existing 'local levy' for locally important works to manage coastal erosion. The EA and DEFRA will be running work shops in relation to this.

11.2 Co-ordination of Flood Risk Management: Match Funded Post

In the North West in each of the areas of Cumbria; Lancashire; Merseyside; 11.2.1 Cheshire and Greater Manchester the EA was keen to promote an offer of up £30k match funding for an officer in each County who would co-ordinate Flood Risk Management across the area and would also be a tactical leader. In order to assist in meeting the Council's duties and obligations under the new Act and the associated Regulations, the Head of Safer and Stronger Communities agreed to meet a £6,000 allocation in the 2011/12 financial year to be made available for the joint funding of a strategic flood risk management position with Cheshire West and Chester; Halton; Warrington and St Helen's Councils'. In this instance the type of work that had to be undertaken was better suited by St Helens Council working in partnership with the Cheshire authorities rather than Merseyside. Each of the other Councils' also intend to contribute £6,000 apiece in order to obtain match funding of £30,000 from the EA. It is similarly envisaged that an allocation in the 2012/13 financial year will be made for the same purpose and under the same or similar arrangements.

11.3 The EU Floods Directive

- 11.3.1 Alongside the new Act, the Flood Risk Regulations 2009 have been made to implement the Floods Directive in England and Wales. These regulations outline the roles and responsibilities of the various authorities consistent with the Flood and Water Management Act and provide for the delivery of the outputs required by the Directive: In essence the regulations require the EA to prepare flood risk assessments, maps and plans for sea, main river and reservoir flood risk and will require lead local flood authorities to do the same for all other forms of flood risk (except sewer flooding that is not caused by rainfall). The EA aims to help integrate roles and responsibilities for managing flood risk via:
 - Preliminary Flood Risk Assessments which will allow the identification of areas of potential significant risk must be prepared by the Council before 22 December 2011 (Completed by Cheshire East Council as required in draft by EA on 22 June 2011 and submitted to the Committee in July 2011))
 - Maps showing the impact and extent of possible future significant flood events must then be prepared for these significant areas by 22 December 2013
 - Flood risk management plans, identifying how significant flood risks are to be mitigated must prepared by 22 December 2015.
- 11.3.2 LLFA's will be asked to submit their work to the EA six months in advance to allow collation and reporting to the Commission for Local Government. Where possible LLFA's will make use of existing work, such as Strategic Flood Risk Assessments and Surface Water Management Plans (SWMP) in fulfilling these requirements.
- 11.3.3 Strategic Flood Risk Assessments were previously carried out by the legacy authorities prior to the formation of Cheshire East Council. They were all carried out by the same consultants using similar methodologies. In addition, the former Cheshire County Council also produced a Strategic Flood Risk Assessment for its Minerals Development Framework in 2007. Much work has already been undertaken in relation to flood risk. Current policy requires local authorities to demonstrate that due regard has been given to the issue of flood risk as part of the planning process.
- 11.3.4 The Act also requires that flood risk is managed in an effective and sustainable manner and where new development is exceptionally necessary in flood risk areas, the policy aim is to make it safe without increasing flood risk elsewhere. Where possible flood risks should be reduced overall. To this end, the key objectives of the Strategic Flood Risk Assessments (SFRA's) to be carried out in Cheshire East are:
 - To investigate and identify the extent and severity of flood risk to the area. This assessment will enable the Council to steer development away from those areas that are at highest risk, ensuring that areas allocated for

development can be developed in a safe, cost effective and sustainable manner

- To supplement current policy guidelines and to provide a straightforward risk-based approach to development control in the local area. This is aimed at both Councils and developers
- Provide strategic flood risk guidance and advice to planners and developers to help them better understand flood risk and planning related issues, both generally and for specific locations across the study area
- To contribute to the Council's Strategic Environmental Assessment which will be used to inform the Council's Sustainability Appraisal, which will aid the selection of suitable land allocations.
- 11.3.5 A SWMP basically is a framework through which key local partners with responsibility for surface water and drainage in their area work together to understand the causes of surface water flooding and agree the most cost effective way of managing surface water flood risk. In this context surface water flooding describes flooding from sewers, drains, small water courses and ditches that occurs during heavy rainfall in urban areas. A SWMP can be used to co-ordinate and strategically plan the drainage provision in new large developments where piecemeal actions are inefficient and do not support consistent ownership and maintenance regimes for sustainable drainage systems (SuDS). Good drainage practice for new developments protects properties within the development and downstream. Furthermore, through new development, there are opportunities to reduce existing surface water flood risk downstream or to create capacity in the drainage system through betterment of existing runoff.
- 11.3.6 The new Act transposes the EU Floods Directive in England and Wales by placing new duties on the local authority by being responsible for managing flood risk. SWMP's are one of the ways that a local authority can fulfil its requirements under the Directive for flood risk management in significant areas of risk. Some common criteria which may identify / trigger the need for a SWMP are:
 - Identification of critical drainage
 - Future urbanisation / development
 - Evidence of surface water flooding history
 - Known degree of drainage system interaction
 - A condition of Growth Point status
- 11.3.7 The Committee at its meeting in July asked for greater focus at future meetings on risk and priorities in Cheshire East with regard to flooding but until work is undertaken on the SWMP we are not in a position to do this at the present time due to a delay in commissioning the work with a consultant as a result of procurement issues. These are being resolved and the information should be available to present to Members at the turn of the year.
- 11.3.8 CFMP documents were launched in 2009 and give an overview of the flood risk across each river catchment and estuary. They recommend ways of managing those risks now and over the next 50 -100 years. CFMPs consider all types of

inland flooding, from rivers, ground water, surface water and tidal flooding. They also take into account the likely impacts of climate change, the effects of how land is managed and how areas could be developed to meet present day needs without compromising the ability of future generations to meet their own needs. CFMPs are used by local authorities, the EA and other partners to agree the most effective way to manage flood risk in the future. The actions for the local authority are principally in terms of development / drainage and resilience of properties in flood areas. Catchment Flood Management Plans are led by the EA and aim to encourage an integrated, sustainable and strategic approach to the management of flood risk in river catchments.

11.3.9 CFMPs are subject to public consultation and take account of wider social, environmental and economic objectives. Agreed actions are those activities identified in the CFMP Action Plan signed off by the EA's Regional Director that are attributed to the relevant local authority. The EA records progress against all actions within CFMPs– these are then attributed to relevant local authorities. Baselines are set at the local authority level on a case by case basis. A plan has been put in place for Cheshire East Council for delivering its actions and was submitted to the EA by its 31 March 2010 deadline (Appendix A attached). The CFMP actions that apply to Cheshire East were compiled from the Weaver-Gowy Catchment Flood Management Plan and the Upper Mersey CFMP.

12.0 Organisational Issues

12.1 Organisational Structure

- 12.1.1 To date only about half the duties under the Act have been commenced, making it difficult to assess the full resource requirements. This means that structures will need to remain flexible and evolve as new duties come on line and partnerships with other organisations develop. These new duties outlined above represent a considerable challenge in terms of skills and resources and capacity to deliver. An effective organisational structure can help to close some of the gaps by enabling the LLFA to pool its resources and expertise across departments and increase its capacity through partnership working with other risk management authorities like United Utilities and the EA. Any organisational structure must be capable of:
 - Providing "a line of sight" from portfolio holder through to operational delivery
 - Enabling a multi functional approach to management and delivery
 - Securing the support of other risk management authorities through local partnerships
- 12.1.2 The structure in Appendix B sets out the recommended principles for establishing an organisational structure which mirrors what is in place at the present time

12.2 Flood Officer

12.4.1 Presently a highways officer has been seconded to act as the Council's Flood Officer until 5 October 2011 when to the new highways contractor, Ringway Jacobs, takes on the highways function. However, given the existing and future duties of the Council as LLFA and the need for flexibility highlighted earlier, it is felt that an in house Flood Officer post is strategically essential. The post will coordinate the authorities role in a professional capacity and to be a direct contact for Members in relation to their concerns. In addition the postholder will ensure the Council can tap into flood grants from a myriad of sources and this in itself should mean that potential returns should considerably exceed any investment in such a role. We are seeking to establish this role through the business planning process. However, support to the Flood Officer is a different matter and is addressed in the paragraph below.

12.5 Support to the Flood Officer

12.5.1 Besides a Flood Officer, the Council will also require support to that post by way of the provision of specialist advice in relation to issues such as hydrology etc and this is being looked at inter-alia by the four Cheshire local authorities together with St Helen's Council who are engaged in a process of seeking to identify and establish common and collaborative working wherever possible. This will facilitate efficient and effective mechanisms to plan for, and deliver flood risk management recognising the need to build capacity to deliver new duties and also that many flood management issues are best addressed at a more strategic scale. However, the Council is in a good position of being able to utilise in the short term its Service Provider, Ringway Jacobs, to undertake such support work and assignments of any specialist nature eg SuDS approval etc and this may appeal to the other 4 authorities concerned. Such an approach should provide economies and efficiency in relation to this issue even should Cheshire East Council solely adopt this approach.

13.0 Overview of Year One and Term One Issues

- 13.1.1 The template referred to in the above paragraph as Appendix A records the progress of the Council in delivering agreed actions to implement long term flood management measures.
- 13.1.2 In relation to the appropriate Pitt Review Recommendations Appendix C shows progress to date.

14.0 Access to Information

14.1.1 The following background papers relating to this report can be inspected by contacting:

| Name: | Martin Grime |
|--------------|---|
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Flood and Water Management Act 2010;

The European Union Flood Directive 2009 and Associated Regulations Cheshire and Mid Mersey Flood Task Group – Suggested Organisational Structure for LLFA's: Jacobs