

Flood and Water Management Act 2010
Report by Head of Development Management

Summary: The Flood and Water Management Act 2010 sets a number of statutory duties and responsibilities for Norfolk and Suffolk County Councils as Lead Local Flood Authorities under the legislation, which are summarised in this report.

Recommendation: That the report be noted.

1 Introduction

- 1.1 Following the extensive flooding in 2007 which affected 57,000 properties nationally, the Government commissioned a review into the causes of the flooding and the responses to it.
- 1.2 The Pitt Review concluded that the majority of the properties which flooded were flooded from local sources (ie this was a local problem), that no one organisation had responsibility for local flood risk management and that there was no obligation on local bodies to co-operate and share information.
- 1.3 The Pitt Review made 92 recommendations and these were taken forward in the Flood and Water Management Act 2010.
- 1.4 Around the same time, the European Floods Directive was transposed into UK law through the Flood Risk Regulations 2009. This requires Member States to prepare a Preliminary Flood Risk Assessment (PFRA) on a national scale and then to use this evidence base to identify areas of significant flood risk (Flood Risk Areas). Flood hazard maps and flood risk maps must then be prepared for these areas to further investigate the risk of flooding. Finally, flood risk management plans must be developed for these areas with the objective of reducing the probability and/or consequences of flooding. These require the Environment Agency to assess, map and plan for flood risk from the sea, main rivers and large raised reservoirs and Lead Local Flood Authorities, for all other sources of flooding including where the two interact.

2 The Flood and Water Management Act 2010

- 2.1 The Flood and Water Management Act 2010 (FWMA) sets new statutory responsibilities for managing flood risk and gives local authorities the lead responsibility for local flood risk management through the creation of Lead Local Flood Authorities (LLFA) at the Unitary or County Council level. Currently, District Councils and Internal Drainage Boards (IDBs) are responsible for ordinary water courses and ensuring riparian owners maintain

them, whilst discharge consents are issued by the Environment Agency or IDB. These functions will pass to the LLFA, who will have the responsibility to bring together the relevant bodies, who will have a duty to cooperate, to develop local strategies for managing local flood risk.

- 2.2 One of the key roles for the LLFA is the development of a local flood risk management strategy for its area. This will draw on the work done by the Environment Agency and the LLFA under the requirements of the Flood Risk Regulations 2009, as set out above, but will develop it at a local level. Section 9 of the FWMA sets out the minimum statutory requirements for the strategy.
- 2.3 The LLFA is also required to develop and maintain an asset register for flood risk management and drainage assets. This will require the protection of assets which help manage flood risk and the Environment Agency, local authorities and IDBs will be able to ensure that private assets which help manage the risks of floods cannot be altered without consent. This might be as simple an asset as, for example, a garden wall that is helping protect an area where inserting a gate could increase the risk of flooding.
- 2.4 The LLFA is also required to develop partnerships to share information and develop co-operation with key partners. This is particularly important in respect of the strategic work involved in the development of the local flood risk management strategy for its area.
- 2.5 The LLFA is also required to investigate flood events to establish who is responsible.
- 2.6 One of the key provisions of the Act is the new duty it creates whereby any construction that has drainage implications requires approval for that drainage system. This approval will be in addition to any approval required under the planning regime, or the Building Regulations process and because it applies to any development with drainage implications it will apply to development which does not require any other consent. The responsibility for the establishment of the SuDS (Sustainable Urban Drainage) Approval Bodies (SAB) is conferred on the LLFA and, furthermore, it requires that drainage systems, if constructed as approved and consistent with national standards, should be adopted by the SAB where they serve more than one property. Adoption would give the adopting authority the duty to maintain the drainage system and the FWMA states that construction work cannot commence where the drainage system has not been approved by the SAB. The FWMA also removes the automatic right to connect to the surface water sewer network, so such a connection will require the agreement of Anglian Water as well as SuDS approval from the SAB and drainage systems for all new developments will need to be in line with new National Standards to help manage and reduce the flow of surface water into the sewerage system. In Norfolk it is estimated that this could mean the SAB receiving between 2,000 and 10,000 applications for approval per year.
- 2.7 In terms of responsibilities for other works, powers to carry out environmental works will fall to the Environment Agency, local authorities and internal

drainage boards who will be able to manage water levels to deliver leisure, habitat and other environmental benefits.

- 2.8 Finally, Section 27 requires certain flood and coastal erosion risk management authorities to aim to make a contribution towards the achievement of sustainable development when exercising their flood and coastal erosion risk management functions. It also requires the Secretary of State to issue guidance on how those authorities are to discharge this duty and explain the meaning of sustainable development in this context. In October 2011 DEFRA published "Guidance for risk management authorities on sustainable development in relation to their flood and coastal erosion risk management functions" setting out how local authorities and other bodies could contribute to the management and reduction of flood risk. The authorities to which this guidance applies include the Lead Local Flood Authorities (LLFA), District Councils and IDBs.

3 Implementation of FWMA locally

- 3.1 The FWMA has designated Norfolk and Suffolk County Councils as LLFA and these therefore have the responsibility for many of the requirements of the FWMA. In addition there are designated Risk Management Authorities (RMA), which are bodies with a statutory role in managing flood risk and these comprise the LLFA, the District Council, IDBs, the Environment Agency, the highway authority and the water companies. The Broads Authority is not an RMA.
- 3.2 In Norfolk, the LLFA has commenced preparation of the Local Flood Risk Management Strategy (LFRMS) and has set out the following requirements of that Strategy, that it will:
- assess local flood risk across Norfolk;
 - set objectives for managing local flood risk;
 - detail how and when the measures are expected to be implemented including their costs, benefits and sources of funding;
 - identify the role and functions of Risk Management Authorities in Norfolk; and
 - identify how the strategy contributes to wider environmental objectives

The Strategy will be the subject of formal Environmental Assessments to consider its impact on wild birds, Natura 2000 and Ramsar site and Water Framework Directive environmental objectives.

- 3.3 Some of the preliminary work for the Strategy was undertaken as part of the PFRA process. This used a range of data sources, including previous history of flood risk and presented the information on a map layer to show Future Flood Risk and identified a locally agreed priority list of settlements and infrastructure that informed the Local Flood Risk Management Strategy. This showed the top thirty nine settlements in Norfolk grouped into four priority bands, based primarily on the potential numbers of people at risk from flooding. Priority will be given to Band 1 and 2 settlements, whilst preliminary

studies will be carried out on settlements in bands 3 and 4 to determine their suitability for further work. The only settlements in the Broads which are identified are Ormesby St Margaret and Ludham, both of which are listed in priority band 4. Neither Ormesby St Margaret nor Ludham are likely to be a priority.

- 3.4 The settlements and locations identified through the PFRA process will require detailed studies to enhance the understanding of potential flood risk and the nature of the consequences of future flooding. Both the Pitt Review and Planning Policy Statement 25 (PPS25) recommended the use of Surface Water Management Plans to gain this understanding and lead to work to mitigate flood risk and protect properties and structures.
- 3.5 The draft LFRMS is likely to be considered by the Cabinet of Norfolk County Council, as LLFA, in spring 2013, and will be the subject of consultation with RMAs later in the spring and with the public after this. It is intended to adopt the final LFRMS in February 2014.
- 3.6 In Suffolk, a Preliminary Flood Risk Assessment was completed in June 2011, however due to inadequacies in the collection of data only a small number of locations were identified as having 'significant harmful consequences' and none of these were in the Broads. A draft Local Flood Risk Management Strategy was published for consultation in February 2012 and adopted in December 2012.
- 3.7 Pursuant to the responsibility to bring together the relevant bodies to develop local strategies for managing local flood risk, Norfolk's LLFA set up the Norfolk Water Management Partnership in 2009. This is an officer-level group and comprises the LLFA, the RMA and the Broads Authority. Meeting quarterly, its primary function is to share information and best practice, however it also provides members for the sub-groups, of which there are currently 4 of which 3 are considering Surface Water Management Plans in priority areas (Norwich, Kings Lynn settlements and Great Yarmouth and Borough) and one is looking at environmental protection.
- 3.8 Norfolk County Council as LLFA is also looking to set up a Strategic Forum to enable partners to understand the issues involved in the requirements and duties of the FWMA, make decisions on behalf of their organisations and support the delivery of these strategic and statutory responsibilities. It is proposed that the Strategic Forum should be at Member or equivalent level and the initial meeting was held in December 2012. The Broads Authority, which has no statutory role but is included as a Navigation Authority and in recognition of its planning function, is represented by Dr Murray Gray.
- 3.9 In Suffolk an officer-level Flood Risk Management Partnership group has been set up. This meets quarterly and, as for Norfolk, its primary function is to share information and best practice. There has been limited Broads Authority involvement in this group to date, but it is proposed to increase participation although it is recognised that there will be only a limited number of sites in the Broads in Suffolk which will be affected.

- 3.10 The Section 21 duty on the LLFA to maintain a register of structures or features which are likely to have a significant effect on flood risk in its area comes in to force in April 2012. This register will include information about each of those structures or features, including information about ownership, condition and maintenance. The main duties of this will fall on the LLFA, but information may be sought from other bodies, in order to inform the register. It should be noted that SUDS are included as relevant assets and that the definition of a designated structure or feature can be wide ranging – it can cover garden walls at the river's edge, or woodland which has absorption capacity. The relevant structures will be identified by the RMAs which are the designating authorities (the Broads Authority is not a designating authority) and it is likely that this will be done through an asset register process rather than a proactive survey. The RMAs may want to identify and designate 3rd party assets where these will offer a benefit to flood risk management and may be under threat and this might include, for example, garden walls at the river's edge.
- 3.11 One of the key issues in the FWMA is the establishment of the SABs. The responsibility for this will lie with the LLFA, however Norfolk County Council is exploring options for delivery including potential delegation of the functions of SAB. A report was considered by the Cabinet of Norfolk County Council, as LLFA, in September 2012 with a recommendation that the SAB process be dovetailed with the planning process at the Norfolk LPAs, with the work undertaken by outposted County Council staff. This approach was agreed by the LLFA and will be the subject of an officer-level group to work up the details of this.
- 3.12 In Suffolk, the Flood Risk Management Partnership is considering how the SAB will function, but has not formed a preliminary view.
- 3.13 It is unclear at this stage precisely how the SAB duties will be phased in, although of course this has implications for the structure of service to be developed to meet the requirements of SuDS approval, plus subsequent adoption and maintenance. Schedule 3 of the FWMA allows for combined applications covering planning permission and drainage consent to be made and if this approach is taken these would be submitted to the LPA, who would forward the SUDS element to the LLFA who would do their own consultation and approval, which would then be sent back to the LPA.. Alternatively, drainage consent can be applied for on a freestanding basis. The process for handling these applications will need to be agreed. It is likely that Standing Advice will be issued and the requirements will be introduced initially on a threshold basis. The commencement date for SAB has been delayed, initially from autumn 2011 to April 2012 and is now unlikely to come into effect until April 2014. It is noted that the administration of SAB is likely to be challenging, particularly given that the consenting regime as proposed will cover types of development which have hitherto been unregulated.

4 Conclusion

- 4.1 The FWMA 2010 is a complex piece of legislation that seeks to improve the overall management and responsibility for water and flooding. The duties which it creates are complex and involve a range of stakeholders and organisations.
- 4.2 The Broads Authority has no statutory role in this, although clearly as a wetland area covering a substantial tract of east Norfolk and north Suffolk, flooding is a major issue for the Broads. The inclusion in the Norfolk Water Management Partnership group and Strategic Forum is welcomed.
- 4.3 Potentially the requirements of the legislation will generate additional work for the Broads Authority, particularly the planning team, and it will be necessary to be mindful of the resources required when considering the commitment needed. Members will be updated in due course regarding the development of the Strategic Forum and the SAB process.

5 Recommendation

- 5.1 That the report is noted.

Background papers: None

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Appendices: None