OFFICER REPORT TO CABINET

The Surrey County Council Response to the DEFRA Consultation on the Draft Flood and Water Management Bill
14 July 2009

**KEY ISSUE/DECISION:**

To endorse the draft Surrey County Council (SCC) response to the Department for Food and Rural Affairs (DEFRA) Consultation on the draft Flood and Water Management Bill.

**BUSINESS CASE:**

1. The report is a draft SCC response to the DEFRA consultation on the draft Flood and Water Management Bill. The issue is one of national importance and has real significance to Surrey.

2. The roles and responsibilities proposed for County Councils in the draft Bill will have significant resource implications for SCC. The proposals, if enacted, will also change existing relationships between SCC and districts and boroughs, as well as between other key players. Greater clarity is needed from DEFRA around what being a 'lead local authority' means in practice, and what new roles/ responsibilities are proposed for two tier areas and how these vary from current arrangements.

3. At present, savings that exist appear to be made in districts and boroughs and costs incurred in counties. Although clearly costs can be saved through better management of flood risk, there is a substantial net cost to SCC arising from the proposals.

4. The SCC Pitt Review Monitoring Task Group’s (a joint Safer & Stronger Communities, Transportation and Environment & Economy Select Committees Member Task Group) review of SCC’s implementation of the recommendations contained in Sir Michael Pitt’s report, *Learning the Lessons from the 2007 Floods*, set out 13 recommendations for taking implementation forward. The spirit of some of these recommendations is reflected in the draft Bill, although the draft Bill covers wider water management.

**What are the pros and cons?**

5. As the ‘lead local authority’, SCC would be expected to convene and coordinate all relevant parties to deliver the joined up management of local flood risk in Surrey. This is an approach more commonly used in mainland Europe, e.g. in the Netherlands. SCC already places a strong emphasis on partnership in the county, thus the proposal to place the ‘local leadership role’ at County Council level is sensible.
6. SCC already leads a Local Resilience Forum, which has a Flooding Task Group. However, partnership working is critical to the success of the Forum. This underlines a need for the proposed duty to cooperate and provide information to include district and borough authorities, utility companies and private landowners. SCC cannot be expected to cover all issues, from strategy down to local dialogue with affected communities. Where SCC takes the lead, adequate resources must be provided to ensure capacity, including in technical areas where County Councils have not previously led on. A separate issue is that whilst the draft Bill advocates County Council leadership on wider sustainable water management, which for Surrey could include drought, there is no detail on what this role would mean in practice.

**Financial and value for money implications**

7. Fundamentally, the new arrangements should seek to make better use of current resources/ enhance existing roles, rather than place new responsibilities on County Councils without the associated funding.

8. While better risk management means there will be cost savings to different parties, government expects County Councils to bear a significant new cost burden. While government asserts that there are no new net burdens implied by the draft Bill, it assumes that counties can reallocate resources into strategic flood risk management. This is not realistic.

9. County Councils do not have the skills sets available to deliver currently. Some exist already within districts and boroughs. SCC does not have the flexibility to free up resources, for example to recruit and train staff to provide this role or provide resources to undertake the range of work, including drafting of the range of documents implied.

10. Government is making only £15 million available over two years to around 50 local authorities to lead flood management locally and develop surface water management plans. Even if SCC successfully applied to this fund, it would not be sufficient for setting up a strategic flood risk partnership and analysing and improving the condition of the county's water assets.

11. The legislative financial and value for money implications are set out in the table below:

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<th>Legislative implication</th>
<th>Financial/ value for money implications</th>
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<td>Under the proposed 'local leadership role' SCC would have to ensure all parties are engaged in developing a strategy for local flood risk management, building on the role in Local Area Agreements. It would allow counties to develop centres for engineering and flood risk expertise alongside their existing highways functions. It would require preparing an asset register and strategy for local risk management, and plans and work programmes for implementation. Although elements of planning and implementation could be delegated to district and borough authorities, County Councils would retain ultimate responsibility for them</td>
<td>• The cost of producing flood risk assessments and action plans (e.g. Surface Water Management Plans (SWMP) and Strategic Flood Risk Assessments (SFRA)) for Surrey. This will most likely involve the commissioning of external consultants. • The initial DEFRA pilots on Surface Water Management Plans suggest that any project will be expensive in computing/ consultancy time, given detailed modelling that will be necessary to identify potential risk areas • If accepted, the cost of establishing a county-wide flood and water management board to coordinate activity • Investment in training, and capacity to undertake technical analysis of condition</td>
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of water assets in the county and draft the range of strategies and plans required
- Resources for delivery once SCC had compiled a water asset register and analysed its condition, since poor condition of assets could not be ignored
- Capacity to work with reservoir site owners and look at community impacts. It is not clear if the funding arrangements will be the same for reservoirs as per charging back for this work with owners of large petroleum sites under the new legislation. It is estimated that two full-time equivalents would be needed by SCC over 2 years to deliver this on the 8 large reservoirs across council departments (mainly in emergency planning plus drawing on Highways officer time as required). If changes were identified, training would be required and public consultation sessions needed to explain risk and the measures put in place

| The right to connect developments to sewers would become contingent on developers building in sustainable urban drainage systems (SUDS) to required standards. SCC would be responsible for approving SUDS in new schemes, and adopting and maintaining them when they affect more than one property, even when on private land | • There would be additional costs of a new role of SCC as a SUDS approval body (SAB) in assessing and inspecting the drainage elements of new development
• SCC would be responsible for maintaining SUDS. This would be a significant additional maintenance burden
• The draft Bill does not explain if SUDS would need to be retrofitted to existing developments, which make the most significant contribution to surface-water runoff
• The draft Bill does not say whether this could include maintaining existing features like ponds on village greens |

**Equalities implications**

12. Vulnerable people are the least likely to be able to take positive measures to protect themselves or to recover quickly from flooding.

13. Communication of flood risk warnings, where to go for advice and steps to take before, during and after flooding events need to be clear, understood and acted upon by all concerned. This may mean tailored local approaches building on work done by the Environment Agency and boroughs/districts to date. Individuals and families have responsibilities to protect themselves and their possessions from flooding.

**Risk management implications**

14. The Surrey Local Resilience Forum (SLRF) structure includes a dedicated flooding group. However, whilst flooding is recognised as an important risk to
the county, it is one of 62 risks that SCC is planning for. Risk of drought is also high across the South East and SCC is planning to draft a drought plan.

15. A new responsibility on reservoirs could be seen as a reasonable risk within the county that SCC should plan for. However, the level of risk is an issue: Surrey has 43 reservoirs (SCC is site owner for one of the smaller reservoirs) of which 8 are major reservoirs. Key reservoirs are situated in places with a raised level of risk, such as proximity to major centres of population and Heathrow Airport. SCC has a community risk register that includes the risk of flooding, but has not identified the reservoirs as a high risk in the way that the proposed legislation seems to.

16. Parts of the county, for example Runnymede District Council’s area, are at particular risk of flooding. SCC properties that are at risk of flooding have been identified. As well as schools, this includes the Network Information Management Centre and County Hall, which each have a one in 100 years (1%) flood risk. The Environment Agency classifies this as a high risk.

Implications for the Council’s priorities or Community Strategy/ Local Area Agreement targets

17. The flooding and water management implications for SCC priorities include helping to keep Surrey’s economy successful, by ensuring business continuity in times of flood and drought. There are also implications for improving Surrey’s roads, since flooding has a considerable adverse effect on road condition both during and after flood events.

18. With regard to the refreshed draft Sustainable Community Strategy 2008-2011, priorities and targets could be adversely affected. And if Surrey is ‘lead local authority’ on flooding there could be significant adverse effects on public confidence after incidences of flooding if there are problems for example through lack of completion by partners or lack of adequate resourcing. Relevant priorities and targets are:

SCS Priority G: help people achieve more sustainable lifestyles.
Relevant LAA targets under this priority include:
NI 186 Reducing per capita CO₂ emissions.

SCS Priority H: Create better, more sustainable developments that deliver more social environmental and economic benefits. Relevant LAA targets under this priority include:
NI154 Net additional homes provided
NI 155 Affordable homes
NI169 Non-principal roads where maintenance should be considered.

SCS Priority I: Improve public confidence in the ability of public services to keep Surrey safe, prepare for emergencies and reduce crime and anti-social behaviour.

Conversely, by implementing recommendations of the SCC Pitt Review Monitoring Task Group, which advocated supporting the development of a community volunteer accreditation scheme, there could be a positive effect on:

SCS Priority J: Encourage and facilitate active citizenship to strengthen communities.
Relevant LAA targets under this priority include:
NI4 % of people who feel they can influence decisions in their locality
NI5 % Overall/ general satisfaction with local area
NI7 Environment for a thriving third sector.

There is also potential impact on other national indicators that SCC is measured on. These include NI 188 Adapting to climate change and NI 189 Flood and coastal erosion risk management.

However, if constructed properly, the Bill could help/enhance the delivery of the above priorities.

**Other implications**

19. No other implications have currently been identified.

**Section 151 Officer commentary**

20. The potential financial implications of DEFRA’s proposals are sketched out in the report, though precise costs are not identifiable at this stage. The actual costs will depend on the outcome of consultation and the County Council’s success in bidding for a share of the Government’s £15M fund. At this stage, the s151 Officer confirms that all material, financial risks have been considered in the report.

**RECOMMENDATIONS:**

1. That the Cabinet endorses the key points of the draft response to the DEFRA consultation on the draft Flood and Water Management Bill, set out at Annex 1. The full response will also cover the technical/practical detail.

2. That, in due course, the Environment and Infrastructure Directorate submits a bid for a share of the government’s £15 million fund for local authorities to lead flood management locally and develop surface water management plans. A Ministerial announcement on guidance for applicants and a timescale for application was expected in June.

3. That the Environment and Infrastructure Directorate initiates plans on a contingent basis for the implementation of the draft Bill and commences discussions with districts and boroughs about a possible Flood Board and how collective resources can be best deployed in line with the recommendation made by the SCC Pitt Review Monitoring Task Group.

4. That the Cabinet delegates final approval of the Surrey County Council response to the Lead Manager for Environment and Economy in consultation with the Cabinet Member for the Environment, following consultation on the draft response with the relevant Select Committees.

5. That Surrey County Council works actively with the Local Government Association in bringing to government SCC views on the draft Flood and Water Management Bill.

**REASONS FOR RECOMMENDATIONS:**

Principally, these are to:

- ensure that SCC’s views are made known to government
- seek greater clarity around the change in responsibilities for County Councils and districts and boroughs
- consider and plan for the significant resource implications arising from the draft Bill.
WHAT HAPPENS NEXT:

- The SCC response will be submitted to DEFRA by the consultation deadline of 24 July.
- It is planned to introduce a final Bill in November, to go through Parliament in spring 2010. It is not certain, at this stage, whether the final Bill will include all the elements in the draft Bill, or if it will need to be divided into two parts to get through Parliament before the next election.

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Informed:
Consultation will take place with the Transport Select Committee on 8 July and the Environment and Economy on 9 July. The Safer and Stronger Communities Select Committee has been informed; its meeting schedule has not permitted more direct consultation. These select committees include members of the SCC Pitt Review Monitoring Task Group, which no longer continues to meet. The Committees’ comments will inform the draft SCC consultation response.

Annex 1

Key Points of the draft Surrey County Council Response

Surrey County Council (SCC) has serious concerns with the draft Flood and Water Management Bill, in particular with those parts of the Bill that lack clarity around the roles and responsibilities being proposed for local authorities. This suggests that the implications of the measures proposed have not been fully thought through. However, we approve of the attention being given to the issue of surface water drainage and the spirit of the draft Bill to reduce the impact of water entering drains and watercourses from built developments.

- Clarity is needed on how the various proposed new roles reflect existing roles and responsibilities in two tier areas; and what is implied by local leadership in the context of wider sustainable water management and mitigation and adaptation to climate change

- SCC should be given the powers required to enforce such a local leadership role, to ensure it is effective. Partnership working, which implies sharing of resources, is a pre-requisite

- Fundamentally, the new arrangements should seek to make better use of current resources/ enhance existing arrangements, rather than place new responsibilities on County Councils without the associated funding. The draft Bill as it stands appears to make a significant (financial) resource demand on SCC. This is not recognised in the proposals

- There needs to be robust mechanisms of cost recovery. And County Councils will need to be able to recharge owners for work carried out and have in place a system to ensure certain standards are met

- The role of private landowners needs to be included in the draft Bill

- Government needs to accept there will be a significant skills gap within County Councils in taking on new responsibilities

- The problems of tackling surface water drainage should not be underestimated, particularly against the timescale required to meet the requirements of the EU Floods Directive

- The overemphasis on soft engineering solutions in sustainable urban drainage systems (SUDS) is impractical given the space required to accommodate them

- There needs to be explicit mention of how related policy documents and legislation fit together, to ensure a holistic, joined up approach to flood and water management.