

Cabinet report

Report of head of economy, leisure and property

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To accept agency powers from Oxfordshire County Council for work under the Flood and Water Management Act 2010

Recommendation

Each cabinet recommends to its full council to accept agency and all other necessary powers from Oxfordshire County Council to carry out work under the Flood and Water Management Act 2010 and to authorise the head of legal and democratic services to complete the appropriate agreements.

Purpose of report

1. The purpose of this report is to secure each cabinet's support for accepting agency and any other powers from Oxfordshire County Council to carry out work under the Flood and Water Management Act 2010, and to recommend this course of action to its full council, so that the head of legal and democratic services can complete the appropriate agreements.

Strategic objectives

2. The councils have over 40 years experience in dealing with flooding events, their investigation and enforcement. Continuing this responsibility will help meet the councils' strategic objective of effective management of our resources, as our staff and contractors have built up detailed local knowledge of the drainage systems in the area and have undertaken improvements to these over the years, which have considerably lessened flood risk in many communities.

Background

3. Following the 2007 floods and the recommendations from Sir Michael Pitt's report, the government introduced new legislation in the form of the Flood and Water Management Act 2010 (FWMA). This Act provides for better, more comprehensive management of flood risk for people, homes, and businesses, helps safeguard community groups from unaffordable rises in surface-water drainage charges, and protects water supplies to the consumer. This Act is also central to reducing the flood risk associated with extreme weather. It is important to recognise that many of the authorities who now have new duties and powers under the Act were already managing flood risk.
4. Prior to the 2010 Act, district councils had powers under section 25 of the Land Drainage Act 1991 that allowed them to investigate the causes of flooding and to serve notice to require works for maintaining the flow in ordinary watercourses. On 6 April 2012, these powers transferred to Oxfordshire County Council as the lead local flood authority (LLFA). Similarly, the Environment Agency had powers for consenting works on ordinary watercourses previously and these also transferred to the LLFA.

Matters for consideration

5. Previously officers and councillors have agreed that the district councils are in the best position to carry out flood work under the FWMA. Officers have built up lots of experience over the past few years from designing and building land drainage schemes, giving advice on land drainage problems and dealing with the aftermath of extreme rainfall events. In addition, officers have established good relations with residents, community groups, and parish councils that lead on local flooding issues in their area.
6. In February 2012, the LLFA presented an overview of the FWMA and confirmed that they were looking to the districts to take on this role under an agency agreement. There was a general consensus that the following three powers should be delegated to the city and district councils by a formal agency agreement:
 - consenting – giving formal agreement for structures (like pipes or bridges) to be put in watercourses
 - enforcement – using legal powers to make sure riparian landowners carry out their duties to maintain water flows
 - investigation of flooding events – considering causes of flooding to property and making recommendations to reduce flood risk

Whilst these councils are familiar with the enforcement and investigation roles, the consenting role would be a new function for the councils.

7. Officers recommend each cabinet to recommend to its full council that it accepts agency and all other necessary powers from Oxfordshire County Council to carry out work under the Flood and Water Management Act 2010 and authorises the head of legal and democratic services to complete the appropriate agreements. The agency agreement will make sure that all relevant costs are paid for by the LLFA and that there will be no costs to the councils themselves.

Financial implications

8. Applications for consent are subject to a statutory charge of £50 and a decision is required to be determined within two months from the date of application. The LLFA

has agreed in principle that it will meet all further reasonable costs involved in the consent process and the agency agreement will ensure that the councils incur no costs themselves.

9. Under the agency agreement, the council would be able to claim all reasonable costs from the LLFA in order to:
 - i) carry out flooding investigations
 - ii) designate flood structures and give formal consent
 - iii) enforce where necessary.
10. Officers anticipate that the cost of these investigations will vary, so initially we would obtain an agreement from the LLFA to be able to recharge up to a maximum of £400 for each investigation, based on the £50 consent fee and seven hours work at £50 per hour. Any further work would require written agreement from the LLFA to cover the additional costs.
11. Officers estimate that the cost of dealing with each consent would be at least £150, rather than the £50 fee that we would be able to charge. Therefore, the agency agreement would cover any difference in actual cost.
12. Similarly, the cost of carrying out enforcement may be quite simple or take many days. Officers propose that the same principle would apply, so that work up to a value of £400 (eight hours) could be carried out for each enforcement before further agreement is required from the LLFA to cover the cost of any further work.
13. South Oxfordshire District Council has a land drainage budget in 2012/13 of £40,000 to carry out investigations, enforcement and oversee any repair work deemed necessary by its engineering contractors, Monson. Officers estimate that up to £5,000 of this budget could now be saved annually as a result of the proposed agency agreement, which amounts to half of the budget paid to Monson for land drainage work. However, this figure does depend on how many investigations are carried out.
14. Vale of White Horse District Council has an in-house engineer who currently carries out investigations and enforcement. Officers estimate that the Vale Council could receive up to £5,000 a year as a result of the proposed agency agreement, depending on the number of actions carried out on behalf of the LLFA.

Legal implications

15. The relevant order to the FWMA relating to the management of ordinary watercourses (i.e. non-main rivers) and the transfer of the powers to the LLFA came into effect on 6 April 2012.
16. The current public liability insurance for each council would cover claims up to £20 million per incident. This would be sufficient insurance to carry out work involved as part of this agreement. As it is likely that the majority of this work would be carried out by a contractor, overseen by the council's engineers, officers would make sure that any contractors carry similar insurance cover.
17. The councils would be responsible for carrying out the initial enforcement actions, but ultimately it would be the LLFA that would issue any formal enforcement notice.

Risks

18. Previously the councils were responsible for the investigation of flooding events and the enforcement of maintaining flow in ordinary water courses, so the proposed agency agreements would reinstate our pre 6 April 2012 powers and add a new consenting power. In terms of workload, during 2011 when there was only 75 per cent of average rainfall in this area, South investigated six flooding incidents and the Vale investigated seven. Regarding enforcement, on most occasions, officers are able to deal with landowners on an informal basis. As an indication in 2011, South dealt with 11 blockages on ordinary watercourses, which resulted in four letters being sent and no formal enforcement notices. In the same year, the Vale dealt with 11 blocked ordinary watercourses, which resulted in two letters being sent to landowners and no formal enforcement notices. The consenting element is currently carried out by the Environment Agency, who has indicated that, on average, it only deals with a handful of requests for consenting each year.
19. The LLFA is also looking to West Oxfordshire and Oxford City Council to enter into a similar arrangement to carry out works on its behalf. Cherwell District Council has no engineering service and so Oxfordshire County Council will be carrying out the work in Cherwell district. Officers are working with the LLFA to produce common work procedures so that the work on flooding investigations, consent, and enforcement is consistent across the county.

Other implications

20. Flood investigation, enforcement, and consent will form part of the work to be carried out by the engineering contractor at South and the in-house engineer at the Vale.
21. We have given due regard to the public sector equality duties of the Equality Act 2010 and foresee no adverse implications relating to residents sharing a protected characteristic due to the transfer of responsibility from Oxfordshire County Council to the districts. Equality considerations have been included in the specification for the new engineering contract.

Conclusion

22. The councils have been involved in investigating flooding events and carrying out enforcement for many years. The current staff and contractor have built up a lot of experience, having been involved in designing and overseeing many of the flood alleviation schemes, which were funded both internally and from central government. Residents are accustomed to contacting the district councils to report flooding and the councils have led on the formation of local flooding community groups. Therefore, officers consider that taking on the responsibilities from the LLFA by means of an agency agreement is the most logical approach. It will result in a minimal impact in the way we currently provide the service to residents and importantly, it will ensure continuity, in terms of personnel and their knowledge, in the service provided to our residents.

Background papers

None