



CABINET – 22 OCTOBER 2024

LEICESTERSHIRE COUNTY COUNCIL **LEAD LOCAL FLOOD AUTHORITY PROTOCOL**

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

PART A

Purpose of the Report

1. The purpose of this report is to clarify the role of the County Council as the Lead Local Flood Authority (LLFA) in light of apparent inaccurate communication and misrepresentation of its responsibilities by some district councils during flooding events that occurred in the County in September and October 2024.
2. The report sets out the work that has been undertaken to emphasise roles and responsibilities with respect to flooding, most notably through the publication of the Council's updated Local Flood Risk Management Strategy (LLFRMS), which was published in February 2024. However, it highlights that work is still to be done to better inform the district councils on this and as such there is a need for a protocol for working with the district councils on the management of local flood risk.

Recommendations

3. It is recommended that the Cabinet authorises the Director of Environment and Transport, following consultation with the Cabinet Lead Member, to develop a protocol for how the Lead Local Flood Authority (LLFA) will engage with the district councils on the management of local flood risk, going forward.

Reasons for Recommendation

4. The development of a transparent protocol will help ensure that the district councils are clear on the role of the LLFA and will set out how both can collaboratively work together on managing local flood risk across the County.
5. Such protocol and collaboration will help to build on the County Council's updated LLFRMS educational 'Be Flood Ready: Aware, Prepared and Engaged' public messaging and demonstrate a consistent and united approach to flood risk management to the public.

Timetable for Decisions (including Scrutiny)

6. Subject to the Cabinet's approval, the Director of Environment and Transport will begin the process of drafting a protocol for consultation and agreement with the district councils.

Policy Framework and Previous Decisions

7. On 16 January 2020, following significant flooding events in October and November 2019, the Environment and Transport Overview and Scrutiny Committee set up a Flooding Scrutiny Review Panel. The Review Panel considered the role of the Council as the LLFA, and the roles of other flood Risk Management Authorities such as Water Companies, the district councils, and the Environment Agency.
8. The Review Panel reported to the Environment and Transport Overview and Scrutiny Committee on 14 January 2021.
9. On 5 February 2021, the Cabinet noted the final report of the Flooding Scrutiny Review Panel and approved its recommendations. The first recommendation was for a refresh of the LLFRMS.
10. On 26 May 2023, the Cabinet approved the draft refreshed LLFRMS and associated documents for public consultation.
11. The updated LLFRMS supports work towards achieving the outcomes in the County Council's Strategic Plan 2022-2026, notably those relating to the need to protect and enhance the environment and to ensure that communities are resilient in the face of emergencies.
12. On 24 November 2023, the Cabinet approved the updated LLFRMS and associated documents for adoption and publication. The final updated documents were published in February 2024.

Resource Implications

13. The development of a protocol will be undertaken through existing resources.
14. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

15. None.

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PART B

Background

16. The recently published LLFRMS sets out:
 - (a) Refreshed principles, objectives and an action plan to become more closely aligned to the Council's Strategic Plan 2022-2026, and the National Flood and Coastal Erosion Risk Management Strategy.
 - (b) The engagement and partnership approach required to manage flood risk, including the role of communities, individuals and key stakeholders.
 - (c) The roles, responsibilities and partnerships, including the Council's role as the LLFA.
 - (d) New and updated LLFA policies which better explain how the LLFA does and will continue to perform key responsibilities.
 - (e) An updated assessment of local flood risk to support the risk-based approach principle.
17. The LLFRMS was developed following extensive consultation with the public and stakeholders including the district councils and elected County and district members.
18. The LLFA is driving forward its 'Be Flood Ready: Aware, Prepared and Engaged' strategy messaging and is in the process of enhancing its public facing website to help educate the public and key parties on flood matters, roles and responsibilities and to help to manage expectations on the LLFA's remit. This is in response to the continuing threat of climate change and the increasing risk of flooding across Leicestershire. It is not possible for all responsible agencies to be there to help respond to all flooding incidents immediately on the onset of flooding (particularly due to the increase in risk but also due to the unpredictable nature of some flood events, such as flash flooding in summer 2024). It is therefore important that everyone is encouraged to consider being flood ready.
19. In January 2024, Storm Henk caused serious flooding throughout Leicestershire with over 400 properties flooded internally. This was one of the worst flooding events experienced in Leicestershire. More serious and extreme weather conditions are becoming more frequent.
20. Recent events during September and October 2024 have further put flooding in the spotlight.
21. In the midst of this, despite the publishing of the LLFRMS and engagement work, the LLFA has been undertaking, there still appears to be a misconception about the role of the LLFA and its responsibilities.
22. While the LLFA works closely with district councils and has a healthy working relationship with them, during the most recent flooding events there appears to have been some occurrences of inaccurate reporting and miscommunication on

the LLFA's role by some district councils' representatives, which is misleading and confusing to the public.

23. There are also some misconceptions from some district councils that the LLFA's statutory role in respect of responding to major planning applications (10 dwellings or more) should extend to commenting and advising on minor planning matters. This often causes some frustration when the LLFA is unable to go beyond its statutory remit and support the district councils on minor planning matters.
24. Conversely, there have been some instances where the LLFA's statutory responses and advice to district councils on major planning applications have not been fully captured or included and occurrences where the LLFA has not been reconsulted by district councils on revisions of major planning applications. This can have negative consequences and a heightened risk of flooding for communities in future years. It can also have impacts on resources of the LLFA in the form of complaints from members of the public and also result in increased enquiries in the future (i.e. when issues arise in future years).
25. It is therefore clear that more work needs to be done building on the LLFRMS to educate and provide clarity on the role of the County Council as the LLFA with respect to flood risk management. It is also clear that a protocol is required to be developed for how the Council works with the district councils in its capacity as the LLFA and most notably as statutory consultee to the planning process.

The Role of the LLFA

26. In accordance with the Flood and Water Management Act (FWMA, 2010), the County Council as the LLFA is responsible for coordinating the management of local flood risk.
27. Local flood risk is defined by the FWMA as flood risk from surface water, ordinary watercourses and groundwater sources.
28. The LLFA's role also includes an expectation of managing co-operation between the Risk Management Authorities in the County, as listed in paragraph 7 of this report. Risk Management Authorities and their statutory duties are defined in the Flood and Water Management Act 2010.
29. The below outlines the key functions of the LLFA:
 - (a) Lead in managing local flood risk, including chairing Leicestershire's Flood Risk Management Board.
 - (b) Prepare and maintain a Local Flood Risk Management Strategy.
 - (c) Maintain a register of assets that have a significant impact on local flood risk.

- (d) Investigate significant local flooding incidents, identify responsible bodies and publish the results of such investigations. These are known as Section 19 investigations.
 - (e) Issuing consents for altering, removing or replacing certain structures or features on ordinary watercourses as Lead Consenting Body under the Land Drainage Act 1991.
 - (f) Undertake a statutory consultee role providing technical advice on surface water drainage to local planning authorities for major developments (10 dwellings or more).
 - (g) Co-operate with all other Risk Management Authorities to help coordinate local flood risk management.
 - (h) Play a lead role in emergency planning and recovery after a flood event. Local authorities are 'category one responders' under the Civil Contingencies Act and must have plans to respond to emergencies, and control or reduce the impact of an emergency.
30. In addition to the above, the LLFA also undertakes a range of non-statutory roles where resources allow including but not limited to:
- (a) Encouraging local communities to participate in local flood risk management through a variety of community level schemes, such as local Flood Wardens.
 - (b) Bidding for funding and delivering a programme of local flood risk management schemes with the aims of reducing flood risk to residential and commercial properties, whilst delivering other benefits such as environmental, social and health improvements.
 - (c) Providing guidance on all local flood risk matters for all planning applications, including minor planning applications.
31. Whilst the LLFA will endeavour to do everything it can to support communities in the management of flood risk, it should be emphasised that the LLFA is not responsible for resolving, nor does it required by law to resolve, all flooding matters. The LLFA also does not have a specific budget for doing so.
32. Everyone has a responsibility for managing flood risk and there are different responsible bodies identified for different flood risks; for example, the Environment Agency is responsible for managing the risk of flooding from main rivers and reservoirs and coordinating strategic flood risk.

District Councils' Roles

33. The role of the district councils as a Risk Management Authorities for local flood risk is as follows:
- (a) Work in partnership with LLFAs and other Risk Management Authorities to ensure risks are managed effectively, including in relation to developments in their area and also in some areas performing cleansing functions of drainage assets (gullies etc).

- (b) Play a key role in emergency planning and recovery after a flood event in their area.
- (c) Carry out flood risk management activities on minor watercourses with their permissive regulatory powers.

Protocol for Working with the District Councils

34. In recognition of the misconceptions highlighted in this report, it is therefore proposed to develop a protocol for how the LLFA will work with the district councils on the management of flood risk. It is intended that the protocol would cover some of the key aspects set out below:
- (a) Ensures that the roles of the County Council as the LLFA and the district councils are clearly defined with regards to local flood risk management.
 - (b) Details the appropriate established local flood risk management meetings/groups in place, e.g. Development Management Forum, Flood Risk Management Board etc. and clearly defines the required district councils' representation at the meetings.
 - (c) Defines the offer of the LLFA's support to the district councils for flood related matters in the event of advice or services being outside of the LLFA's statutory responsibilities, subject to resource availability and agreement.
 - (d) Ensures that the advice of the LLFA with regards to flooding related matters on planning applications is captured and accepted to mitigate any negative consequences for flooding in future years.
 - (e) Incorporates an agreed communications protocol in response to flooding events/emergencies to ensure a clear, accurate and united message is being relayed by the LLFA and the district councils.
35. The protocol will be developed and finalised in consultation with the district councils.

Other relevant flood issues

36. To highlight the complexities around roles and responsibilities in flood risk management, the County Council is not only the LLFA but also the Local Highway Authority, which is a Risk Management Authority in relation to highway assets and has responsibility for managing risk of highway flooding. During extreme weather, the Council receives increased queries in this area particularly around highway gullies. A summary of how this is managed is provided below.
37. All highway gullies are assigned a priority, based on evidence of silt levels collected over a number of previous visits and the priority of Council network hierarchy; this priority determines the frequency at which the gully is emptied or inspected. There are three priorities:
- (a) P1 gullies are emptied on a 10-month frequency,
 - (b) P2 gullies are emptied on a 20-month frequency, and
 - (c) P3 gullies are inspected on a 24-month frequency.

38. The works are carried out by F. M. Conway Ltd on the Council's behalf. If the contractor finds any issues with the gullies whilst emptying, such as a blocked outlet or a broken or jammed lid, it is reported back to the Council and a repair is programmed in.
39. The Council's in-house workforce provides the reactive element of the cleansing process. If a customer reports a blocked gully, and if routine maintenance is not scheduled in the near future, an operational gang will respond to the issue, being able to target the resource to where the need arises.
40. Subject to resource, if gullies require inspecting following a flood event, the Council will arrange additional cleaning of detritus from fluvial flooding that has been washed down the gully.

Equality Implications

41. An Equality and Human Rights Impact Assessment (EHRIA) was completed for the County Council's recently published LLFRMS. The protocol, which is intended to be developed with the district councils, falls in line with the 'Be Flood Ready: Aware, Prepared and Engaged' strategy messaging. Therefore the LLFRMS' EHRIA findings are relevant for this protocol. The EHRIA identified that some groups with protected characteristics are potentially more vulnerable to flood risks (for example elderly, pregnant, or disabled persons). Whilst officers were aware of this when preparing the updated LLFRMS, there were no discernible opportunities to mitigate the risks for these specific groups other than addressing the risks for the communities in which they live.

Human Rights Implications

42. Residents in flood affected areas have the risk of losing their homes and shelter and would be adversely impacted. However, this report is specifically about the protocol between the LLFA and an associated district council. The protocol in itself will not impact residents' human rights and thus a further Equality Impact Assessment, beyond what has already been undertaken for the LLFRMS, is not required.

Environmental and Health Implications

43. There are no environmental or health implications associated with the protocol as this will speed up communication processes in the event of an emergency or a dispute.

Partnership Working and Associated Issues

44. It is a requirement of the LLFA's role that co-operation is promoted between flood risk partners which this protocol will support. Maintaining this principle will be essential for the successful delivery of objectives and measures set out within the LLFRMS.

Background Papers

Current Local Flood Risk Management Strategy and associated documents - <https://bit.ly/41qEdnX>

Report to the Cabinet, 11 September 2015, Approval of current Local Flood Risk Management Strategy - <https://bit.ly/41KjbAN>

Report of the Flooding Scrutiny Review Panel to the Cabinet, 5 February 2021 - <https://bit.ly/3ObNa1v>

Report to the Cabinet, 26 May 2023, Leicestershire Local Flood Risk Management Strategy - Public Consultation - <https://shorturl.at/GLOSV>

Highways and Transport Overview and Scrutiny Committee, 9 November 2023, Leicestershire Local Flood Risk Management Strategy – public consultation outcomes and publication – <https://politics.leics.gov.uk/ieListDocuments.aspx?CId=1293&MId=7176>

Section 9 Flood and Water Management Act 2010, Local flood risk management strategies: England - <https://bit.ly/42TkluY>

River basin management plans: updated 2022 - <https://bit.ly/42Fddm8>

Guidance Flooding and health: executive summary, October 2023, <https://www.gov.uk/government/publications/flooding-and-health-advice-for-frontline-responders/flooding-and-health-executive-summary>

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