

Report to the Cabinet

Report reference: C-037-2013/14
Date of meeting: 21 October 2013



**Epping Forest
District Council**

Portfolio: Environment

Subject: The transfer of flood alleviation schemes and associated flood warning systems from the Environment Agency to the Council.

Responsible Officer: Qasim (Kim) Durrani (01992 564055)
Susan Stranders (01992 564197)
Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) To note that the responsibility for management and monitoring of Thornhill (North Weald) and Thornwood Common flood alleviation schemes will transfer from the Environment Agency back to the Council;**
- (2) To agree that the Council should accept ownership of the recently upgraded and enhanced flood warning telemetry systems installed by the Environment Agency at these sites; and**
- (3) That a report be presented at a future Cabinet in respect of the possible transfer of responsibility for additional storm grilles located on main rivers at various locations across the District.**

Executive Summary:

Until November 2011 the Council was responsible for the management and operation of the flood alleviation schemes it built within the district. The Flood and Water Management Act 2010 transferred this responsibility to the Environment Agency (EA) when reservoirs were designated according to the volume of flood water they could store. This change affected smaller reservoirs, such as Thornhill in North Weald and Thornwood Common, and as a result these schemes transferred from the Council to the Environment Agency.

The EA has now concluded that, based on the assessment of risk, the responsibility to monitor and maintain these smaller sites will pass on to the Council.

In addition, the EA has also requested the Council to consider taking over the responsibility for a number of storm grilles within the district. A further report on this will be presented at a future meeting.

Reasons for Proposed Decision:

The EA has concluded that in light of new Defra guidance, responsibility for the two flood alleviations schemes should now revert back to the Council. The EA cannot guarantee regular monitoring of these Council assets or a rapid response in times of flooding emergencies. In order to maximise control and mitigate, as far as is reasonable practical, flood risks within the district, it is suggested that the Council takes back responsibility.

Other Options for Action:

Not to agree to accept the transfer the flood warning telemetry systems, recently enhanced and upgraded by the EA, at no cost to the Council, associated maintenance and monitoring activities at Thornhill and Thornwood Common flood alleviation schemes and leave total control of these assets with the EA.

Report:

1. The Council has 4 flood storage areas (FSAs), 3 with flood warning telemetry systems installed and 1 without. The systems were installed at various times since 1996 and were either fully funded by this Council, jointly funded with the EA or constructed with grant assistance from Central Government. Until November 2011 the Council was responsible for the monitoring and maintenance of all these sites and associated systems.

2. In July 2011, following new Defra guidance on The Flood and Water Act 2010, the EA became the enforcement authority and the 'undertaker' for these sites. Cabinet therefore agreed to the transfer to the EA of the Council's flood telemetry infrastructure associated with these sites. Following the transfer Council, as land owner has remained responsible for maintenance at these two sites, including grass cutting, landscaping matters, structural repairs and aspects of public health and safety.

3. Following a public consultation exercise, Defra is shifting the criteria for designation of reservoirs from the size of flood water storage to a risk based approach. Under this revised guidance, the EA has concluded, that the Thornhill and Thornwood Common flood alleviation schemes no longer fall under the designation of statutory reservoirs and that therefore the responsibility for managing these two sites, which are on Council land, now rests with the Council. **(Recommendation (1))**

4. The EA has also suggested that if the Council becomes responsible again for these sites it would be sensible for it to take back the responsibility for the telemetry systems and associated maintenance, including first line response, from the EA. The telemetry systems at the time of transfer to the EA were dated and in need of a complete overhaul. In the preceding years and being mindful of impending new reservoir legislation, the Council delayed any major expenditure on these systems. The EA, after the transfer of these sites in 2011, carried out major improvement and replacement works to the telemetry systems.

5. As these two sites are now not considered to be statutory reservoirs, the EA is not responsible for their upkeep and maintenance and it does not require the use of telemetry systems. The Council, on the other hand, will need telemetry systems to manage and monitor these sites. By taking over the new systems installed by the EA, the Council will only incur minor costs associated with modifications to allow remote access. Alternatively, the Council will have to install new telemetry systems at a significant cost, while the EA would have to decommission their newly installed telemetry systems **(Recommendation (2))**

6. In addition to the proposed transfer back of assets, the EA has also asked the Council to take back responsibility for storm grilles located across the district. All these grilles are located at critical locations and contribute to management of flood risk. Officers are in discussion with the EA to finalise details of responsibilities to be transferred from the EA and to establish whether there is a financial impact upon the Council. A detailed report will be presented at a future Cabinet once these discussions have been concluded. **(Recommendation (3))**

Resource Implications:

Since the earlier transfer of responsibility for flood defence assets and associated telemetry systems to the EA, the Continuing Service Budget (CSB) has been marginally eroded through the revised budget setting process. In addition, some of the money that would have been spent on these flood risk assets has been spent on other, lower priority flood risk work. Nevertheless, it is considered that the additional work associated with the return of these assets can be undertaken within existing resources, although this may reduce the flexibility to carry out some other flood risk work. It may therefore become necessary in the future to seek additional CSB resources, but every attempt will be made to avoid this.

The EA is not seeking any financial contribution for the expenditure they incurred in updating the telemetry systems. However, in order for Council officers to receive flood warnings from the telemetry system, some modifications are required. These will cost approximately £5,000. There is already a capital allocation for this type of work, which has been rolled forward from previous years and will be used for these installations. If the updated EA telemetry systems are not transferred, the Council will, if it wants to adequately monitor the systems, have to install new telemetry systems at an estimated cost of £30,000.

Legal and Governance Implications:

The Civil Contingencies Act 2004.

Reservoirs Act 1975

The Flood and Water Management Act 2010 and statutory guidance

Land Drainage Act 1991

The Water Act 2003

Where the Council is the riparian owner of FSAs and other flood defence assets, it is responsible for any flooding originating from that asset. If it can be demonstrated that there has been no negligence on the part of the Council and the flood risk assets have been maintained appropriately, then any flooding event will most likely be considered an act of God and the Council would not have any liability. The EA cannot indemnify a riparian owner but it will assist to the best of its ability and resources.

Safer, Cleaner and Greener Implications:

Efficient and effective management of watercourses and a reduction of flood risks is in accordance with the Council's Safer, Cleaner, Greener strategy.

Consultation Undertaken:

None

Background Papers:

Correspondence between the Council and EA.

Cabinet reports:- C-086-2008/2009, C-081-2009/2010, C-10-2011/2012

Impact Assessments:

Risk Management

The impact of the EA not fulfilling its obligations following the transfer of the flood warning systems is itemised in the risk matrix in the Environment and Street Scene Service Plan 2013/14. The risk matrix will have to be amended to reflect either:

- (i) The revised arrangements; or

- (ii) The increased risk of flooding due to the potential negative impact on service delivery afforded by the EA.

The impact of the Council not fulfilling its on-going responsibilities as riparian owner is also itemised in the 2013/14 risk matrix. It is currently considered that there is no need to revise this.

Flooding is listed as a predominant risk in the Council's Risk Register and therefore the Council is under a statutory duty to take reasonable action to eliminate or mitigate the risk having identified it.

Equality and Diversity

A flooding event would affect all members of the community. However, the impact could be higher on elderly and those residents less able to assist themselves.

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A