

Report to the Cabinet

Meeting to be held on Thursday, 8 February 2024

Report of the Director of Highways and Transport

Part I

Electoral Division affected:
(All Divisions);

Corporate Priorities:
Delivering better services;

Flood Investigation and Ordinary Watercourse Regulation Policies

(Appendices 'A' - 'G' refer)

Contact for further information:

Laura Bigley, Tel: (01772) 539369, Principal Flood Risk Officer,
laura.bigley@lancashire.gov.uk

Brief Summary

This report seeks the approval of the proposed Flood Investigation and Ordinary Watercourse Regulation documents. These documents contain policies which set out how the county council will deliver its duties to regulate ordinary watercourses under the Land Drainage Act 1991, as amended by Schedule 2 of the Flood and Water Management Act 2010, and how floods which the Lead Local Flood Authority is aware of will be investigated under the Flood and Water Management Act 2010.

This is deemed to be a Key Decision and the requirements of Standing Order C19 have been complied with.

Recommendation

Cabinet is asked to approve the proposed Flood Investigation and Ordinary Watercourse Regulation documents containing policies, and that these shall come into effect from 1 March 2024.

Detail

Under the Flood and Water Management Act 2010, Lancashire County Council is designated as a Lead Local Flood Authority. The Flood and Water Management Act 2010 gives Lead Local Flood Authorities a number of duties and powers, including for investigating flood incidents under Section 19 of the Flood and Water



Management Act 2010 and for consenting and enforcement of ordinary watercourses under the Land Drainage Act 1991, as amended by Schedule 2 of the Flood and Water Management Act 2010.

The county council committed to delivering objectives set out in the Lancashire Local Flood Risk Management Strategy 2021 – 2027 which was adopted in November 2021. Objectives 1.2 and 1.3 of the Lancashire Local Flood Risk Management Strategy 2021 – 2027 commits the Lead Local Flood Authority to reviewing the existing 'Ordinary Watercourse Consenting and Enforcement' and 'Flood Investigation' policies, adopted in 2014, by 31 March 2024.

Drivers for reviewing the policies

Since the existing ['Flood Investigation Policy'](#) and ['Ordinary Watercourse Consenting and Enforcement Policy'](#) policy documents were adopted in 2014, they have been applied and tested through undertaking our duties in response to a wide range of flooding events, in processing consent applications for ordinary watercourses and exercising our enforcement powers on ordinary watercourses in accordance with existing policy. In addition to learning from our experience in Lancashire, and from others across the country, new legislation, national strategies and policies, standards and best practice have emerged. All of this is also driving the need to review and refresh our approach in Lancashire.

The county council's aim has been to ensure that the proposed policies remain consistent with latest national approaches, guidance and best practice. For example, the approach taken by consent policies in the Ordinary Watercourse Regulation document is broadly consistent with the [Culvert, Screen and Outfall Manual \(C786F\)](#) published by the Construction Industry Research and Information Association.

Public Consultation

An eight week public consultation was held in summer 2023 to gather feedback from a wide range of stakeholders and the public on consultation draft versions of the documents. Further detail on the public consultation is provided later in this report and the consultation reports analysing and summarising the feedback received can be found in Appendices 'E' and 'F'.

Proposed documents containing policies

The final proposed versions of the 'Flood Investigation' and 'Ordinary Watercourse Regulation' documents set out how Lancashire County Council will undertake its responsibilities in investigating flood incidents the Lead Local Flood Authority is aware of and publish the results in accordance with the duty, and in regulating ordinary watercourses.

The final proposed versions of the documents and policies within have been produced by the Flood Risk Management Team, as the Lead Local Flood Authority, carefully considering its duty under Section 19 of the Flood and Water Management Act 2010 upon becoming aware of a flood, to investigate a flood in its area to the extent that it considers it necessary or appropriate and its granting of consents under Section 23 of the Land Drainage Act 1991 for certain works once a valid application



is received and criteria applied. They have been refined and improved to take account of quantitative and qualitative feedback received from the public consultation.

Guidance Documents

Separate guidance documents have been produced to compliment the policy documents and provide further detail on how the policies are expected to be applied. Draft versions of the guidance documents can be found in Appendices 'C' and 'D'.

It is intended that the guidance documents will be 'living documents' and subject to officer review triggered by either a regular review cycle and/or review when there is a change triggered at a national level that does not require a policy change. This will allow the county council to quickly adapt by enabling changes to be incorporated into our ways of working without the need for a complete policy review.

Draft versions of the guidance documents have been included in Appendix 'C' and 'D' but are not subject to Cabinet approval.

Implementation Date

It is proposed that, if approved, the new Flood Investigation and Ordinary Watercourse Regulation documents containing policies would come into effect from 1 March 2024 to ensure a smooth transition.

The new documents and policies within will not apply retrospectively.

Monitoring and Review

If there is a need to review the county council's policies as a result of significant national change, such as a legislative change, this will be undertaken, and any revised or new policies brought to Cabinet for consideration and approval.

Appendices

Appendices 'A' – 'G' are attached to this report. For clarification they are summarised below and referenced at relevant points within this report.

Appendix	Title
Appendix 'A'	Flood Investigation document containing policies
Appendix 'B'	Ordinary Watercourse Regulation document containing policies
Appendix 'C'	Flood Investigation DRAFT Guidance
Appendix 'D'	Ordinary Watercourse Regulation DRAFT Guidance
Appendix 'E'	Flood Investigation Consultation Report
Appendix 'F'	Ordinary Watercourse Regulation Consultation Report
Appendix 'G'	Equality Analysis



Consultations

A public consultation on the draft 'Flood Investigation' and 'Ordinary Watercourse Regulation' policy documents ran for eight weeks from Monday 3 July to Sunday 27 August 2023. As well as the public, identified stakeholders were invited to review and comment including:

Internal (Lancashire County Council) consultees – Strategy and Performance, Highway Authority (Operations and Infrastructure), Design and Construction, Asset Management, Estates and Schools, Planning, Climate Change and Environment.

Councillors and Committees – North West and Yorkshire Regional Flood and Coastal Committees, Lancashire Flood and Coastal Erosion Risk Management Partnership, all county councillors and the Lancashire Association of Local Councils.

Other flood risk management authorities in Lancashire – 12 District Councils in Lancashire, Environment Agency, United Utilities, Yorkshire Water, Earby and Salterforth Internal Drainage Board, Blackpool Council, Blackburn with Darwen Council.

Wider stakeholders – Other neighbouring local authorities (via North West Regional Flood and Coastal Committees Secretariat), Canal and Rivers Trust, Electricity North West, Home Builders Federation, Rivers Trusts in Lancashire, Lancashire Wildlife Trust, National Highways, National Trust, Natural England, Network Rail, National Farmers Union, North West and North Wales Coastal Group.

Equality Groups - An email will be sent to equality groups and a poster will be displayed advertising the consultation in all county council libraries.

Consultation materials were hosted on the county council's 'Have Your Say' webpage and feedback gathered via two snap surveys for each policy document. A total of 71 consultation responses were received, with the majority of feedback provided by members of the public. A detailed breakdown of the consultation feedback, how this has been analysed and recommendations for changes to the documents can be found in the consultation reports set out in Appendices 'E' and 'F'.

Implications:

This item has the following implications, as indicated:

Risk management

Financial

The 'Ordinary Watercourse Regulation' and 'Flood Investigation' documents containing policies will be public documents which outline how the county council will undertake its duty and consenting regime. Whilst the county council is already undertaking these, the introduction of the new proposed policies will have an overall neutral effect on financial resources and will be contained within the agreed budget envelope.



Legal

The proposed 'Flood Investigation' and 'Ordinary Watercourse Regulation' documents carefully consider the duty under Section 19 of the Flood and Water Management Act 2010 upon becoming aware of a flood, to investigate a flood in its area to the extent that it considers it necessary or appropriate and the granting of consents under Section 23 of the Land Drainage Act 1991 for certain works once a valid application is received and criteria applied. There is no legal requirement for the county council to produce policies on delivery of this duty and the application of a consenting regime, but doing so provides greater clarity to officers and enables the county council to manage public expectations and accountability. Policy documents are important, and the proposed policies seek to correctly interpret what is required by statute and ensure the authority is acting reasonably at all times.

Equality Analysis

Advice has been sought from the relevant officer about whether an Equality Analysis is required and guidance on the county council's intranet followed. An Equality Analysis has been undertaken and can be found in Appendix 'G'.

List of Background Papers

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A

