

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

29 July 2009

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 FLOOD AND WATER MANAGEMENT BILL – CONSULTATION RESPONSE

Summary

The Board is invited to consider the officer level response recently sent to DEFRA on the Flood and Water Management Bill and to endorse it, subject to any supplementary comments it wishes to add.

1.1 Context

- 1.1.1 At the May meeting of the Board, I reported on the recent release of the documentation for the Draft Flood and Water Management Bill. It is worth a brief recapitulation to describe the context of these documents.
- 1.1.2 Two years ago, one of the most serious peace-time civil emergencies in British history occurred when vast areas of the West Midlands and in the north east around Hull and Yorkshire were inundated. Nearly 50,000 houses and 7,000 businesses were flooded after nearly four times the average rainfall fell in a short period.
- 1.1.3 An electrical switching station at Walham and Mythe Water Treatment Works were critically threatened, illustrating how vulnerable some of our infrastructure can be in such extreme events.
- 1.1.4 The Government commissioned Sir Michael Pitt to investigate the flooding and he published his report, "Learning the Lessons from the 2007 Floods" in June last year. This report, known for short as the "Pitt Review", made 92 recommendations across a whole range of matters related to forecasting, land drainage, flood risk management, partnership working, flood resilience, emergency response and recovery.
- 1.1.5 In December 2008, the Government produced its response to the Pitt Review in which it endorsed, subject to some caveats, all of the 92 recommendations and it signalled that it would embark immediately in preparing the necessary primary legislation to give effect to the Review.

1.2 The Draft Flood and Water Management Bill

- 1.2.1 It produced its draft Flood and Water Management Bill at the end of April together with a consultation package describing the contents and intentions of the draft Bill. It can be read at www.official-documents.gov.uk/document/cm75/7582/7582.pdf on the DEFRA website and a copy has been deposited in the Member library.
- 1.2.2 The documents were open for comment during a public consultation period that ended on 24 July. At the last meeting, I commented on the unfortunate sequencing of the response date with the date of the Board's next meeting and suggested that an officer level response be offered within the consultation period, qualified by a commitment to follow up as soon as possible thereafter with any additional comments the Board would wish to add.

1.3 Officer level response

- 1.3.1 The response sent to DEFRA is contained in **Annex 1** and it comprises two parts, a covering letter in which the points requiring particular emphasis are drawn out and a schedule containing the answers to some 163 questions posed in the consultation document.
- 1.3.2 Many of the questions are not particularly pertinent to the role of a Borough Council in a shire area and relate to the many additional items the Government has sought to include as part of the Bill. The covering letter seeks to emphasise those items directly related to local flood risk management that are of interest or concern to the Borough Council.
- 1.3.3 A central feature of the new arrangements that the Bill creates is the concept of a Lead Local Flood Authority (LLFA), namely the County Council in two tier shire areas. This places a new set of duties to undertake local flood risk management on an organisation with little past history or operational experience in such matters and limited current capability or capacity to undertake such a role at this moment beyond routine dealings with highway drainage.
- 1.3.4 Both the Pitt Review, and now the Government in this draft legislation, propose new arrangements that are innovative and challenging. They have clearly shied away from solutions centred on the bodies with current experience, local knowledge and operational involvement in land drainage and emergency response; that is, the District Councils and the Internal Drainage Boards.
- 1.3.5 This prompts a question whether the response to the consultation should challenge this central and fundamental element of the draft Bill and make the case for the new role to be focused at the local level of District and IDB rather than at the County Council level. The answer to that question is partly pragmatic in that the role for the County Council is so closely and tightly bound into the whole edifice created first by Pitt, and now in the draft legislation, that it is extremely unlikely that it could be significantly altered at this stage.

- 1.3.6 However, there are also significant practical reasons why this proposed model merits acceptance. County Council areas do not automatically match up with or completely cover river catchments. But they do so more completely than any of the constituent districts and this is an important consideration in strategy development and implementing surface water management plans. Neither District Councils nor IDBs cover a large enough area to ensure comprehensive treatment of flood risk over a sufficient part of a river catchment.
- 1.3.7 In parallel with this is the funding requirement for the new duties and responsibilities. This has the potential to be financially quite onerous despite what the consultation document asserts and the plain fact is that these costs could be absorbed far more readily through the bulk and scale of a County Council than they would be in a more financially constrained and much smaller District Council.
- 1.3.8 For these practical, operational and financial reasons, it is advisable to accept the broad principal of a new flood risk management structure based on a LLFA at County Council level, notwithstanding any reservations about its capacity to work in true partnership. As far as flood risk management is concerned, it is clear that the County Council will inevitably need to work with the Districts and IDBs in Kent, if only through enlightened self-interest, because that is where the current reserves of local knowledge reside.
- 1.3.9 This Borough Council has carried out a residual land drainage function for many years amounting to about a one full time equivalent member of staff and some modest capital and revenue investment to produce a low key but effective land drainage role in those parts of the Borough not within an IDB area. The response to the consultation has been based on a premise that Members would wish to see this scale of involvement continue and that it could form a useful contribution to partnership working with the County Council to achieve wider flood risk management objectives, paying regard to local strategies from the EA and the County Council. Clearly there will need to be a careful watch to ensure that such involvement does not lead to a situation where the commitment over-extends and picks up responsibilities that should rightly be met by the County Council.
- 1.3.10 The financial implications of the proposed arrangements in the Bill have been touched on but these merit further comment. As things stand, there should be no financial obligation on the Borough Council arising from the Bill beyond what is currently provided for in budgets. The real pressure appears to be on County Councils and the concern must be the extent to which KCC can meet these new duties and responsibilities in a situation where the Government asserts that there is no new funding requirement arising from the proposals.
- 1.3.11 It will be for the County Council to assess what the costs of meeting these new challenges might be. It is not an inconsequential matter for this Borough because, if the County Council is unable to meet these costs and carry out the local flood risk management role set out in the documents, it is ultimately the local community that will suffer as a result. This is why the covering letter makes a

point of expressing concern about the financial aspects of the Bill. Coincidentally, recent comments from the Local Government Association express this very same concern and call into question the Government's financial impact assessment of the legislation.

- 1.3.12 The draft Bill moves the operational arrangements for Sustainable Urban Drainage Systems (SUDS) on considerably and in a way that is to be welcomed. The County Council will become a SUDS Adoption Authority and this fits in well with the Managing Development and the Environment DPD which contains a policy supporting and promoting SUDS as part of the Climate Change chapter and also in the light of the water guide on SUDS.

1.4 Conclusion

- 1.4.1 Setting aside the financial concerns, the core of the proposed legislation relevant to flood risk management represents an opportunity for local government to demonstrate that it can work effectively in partnership and with others to address flood risk management. The response to DEFRA has been drafted on that basis and reflects the positive contribution this Council has made in recent years to dealing with such flood problems, for example through the East Peckham dam project and now in the emerging work with the EA and the County Council in Aylesford.
- 1.4.2 The response has been submitted with a request that some additional time is allowed for the Board to add further comment if it wishes.

1.5 Legal Implications

- 1.5.1 As currently drafted, the Bill makes little alteration to the obligations on this Council in carrying out its land drainage operating authority role beyond placing on it a duty to cooperate, which is reasonable, and a duty to have regard to strategies produced by the EA and the LLFA (the County Council) when carrying out land drainage activities.

1.6 Financial and Value for Money Considerations

- 1.6.1 As described in this report.

1.7 Risk Assessment

- 1.7.1 A risk, considered minor in the circumstances is that local flood risk management might not be as productive as it could be if the County Council fails to work effectively in partnership with all the relevant authorities including the Borough Council. A risk considered not so minor is that the financial basis of the government's assessment of the costs is flawed and that local government in general will end up with an additional unfunded obligation to secure effective flood risk management in the face of high public expectation.

1.8 Policy Considerations

- 1.8.1 Community – Reducing flood risk and advocating for appropriate measures is an integral part of the Borough Council's well-being role on behalf of the local community.

1.9 Recommendations

- 1.9.1 That, subject to any additional comments that the Board wish to make, the response **BE ENDORSED**.

The Director of Planning Transport and Leisure confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Michael McCulloch

Nil

Steve Humphrey
Director of Planning Transport and Leisure