

Flood and Water Management Bill Team
Department for Environment, Food and Rural
Affairs
Area2C, Ergon House
London SW1P 2AL

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Dear Sirs

Flood and Water Management Bill

I am sending this officer level response on behalf of Tonbridge and Malling Borough Council but I would be grateful for your forbearance for several days more to enable me to provide a Member endorsed response. The deadline misses the committee cycle by just a few days so I hope you can take on board any additional comments my Members might wish to make if I can send them to you by the end of July.

Structured Questions

Your structured consultation comprises some 188 questions many of which are not directly relevant to the work of a Borough Council in a two tier shire area such as Kent. Consequently, I have been selective in the questions answered in the attached annex but I have retained the original numbering in your consultation paper to assist you in compiling the responses.

Context

It would be useful if I could set a context for the answers in the annex. It appears to me that the most important provision in the draft Bill for local flood risk management is the creation of a Lead Local Flood Authority (LLFA), in this area, Kent County Council (KCC), which will have responsibility for all aspects of local flood risk management. This seems to be appropriate bearing in mind the strategic, coordinating role required, the capacity and resources that will be needed and the cross border issues concerning river catchment and coastal belts.

Once it accepted that the point of responsibility for local flood risk management rests with the County Council, it is essential that the legislative framework provides it with the powers to match that responsibility if it is to honour its obligations and duties contained in the Bill.

To do so, it needs to have staff expertise and financial resources to match the breadth and ambition of the new obligations and responsibilities. It also needs direct support and cooperation from other relevant bodies such as the districts, the Internal Drainage Boards (IDBs) and Water Companies. The fundamental test of how good the Bill is rests on the extent to which it is able to properly equip all of these parties in legal and resource terms to carry out their respective roles.

The Pitt Review recognised that County Councils were not currently able to take on this lead role, either in terms of capacity or capability. It simply does not have the staff in place at the moment to perform this lead local flood risk role. Mitigation of flood risk at the operational level requires people in the field carrying out routine tasks at a detailed level that have a direct impact in alleviating the risk of flooding. It needs regular inspection, patrolling and responsiveness to local service requests. My understanding of what the Pitt Review intended was that capability and capacity to deal with local flood risk management in County Councils would be built up partly through extending and expanding the core of existing in-house highway drainage teams and partly through engaging consultants. This would be supplemented by mobilising the assistance of District Councils and IDBs which currently retain a body of useful expertise in their role as local land drainage operating authorities, all working in partnership to achieve the same aims.

Financial Considerations

It would be perverse and difficult to understand if a County Council did not seek to work in partnership with District Councils and IDBs because the new responsibilities are quite onerous and it seems only natural that it would wish to avail itself of all the assistance that it could muster. This is especially the case when it comes to identifying where the new role is to be financed from. The Consultation Document asserts that the funds released by the transfer of private sewers together with the savings from better local flood risk management are expected to more than cover the cost of the new obligations.

County Councils, when responding to the consultation, will be able to comment on whether this expectation is at all realistic. If it is not, County Councils will be placed in a position of unfairly but unavoidably not being able to honour the new responsibilities in the Bill.

This is all the more important as a new burden is being adopted at a time of significant financial constraint. I believe it absolutely critical that the new responsibilities are properly and adequately funded and that this is not left up to chance or aspirational estimation of the financial impacts. As it stands, I have serious concerns about how well the financial elements of the draft Bill stand up to scrutiny and the comment at page 52 paragraph 437 which says “we are confident that no unfunded new burden will be placed on council tax” may not be realised in practice.

This is all the more relevant when considering the focus on producing new strategies and plans such as the Surface Water Management Plans. The recent pilots for these suggest that a single plan requires an investment of the order of £50,000. If several of such plans are required within a single County Council area, this could be a not inconsequential sum to be added to the other costs that will have to be met.

There is also the financial obligation for the County Council arising from the new role as a Sustainable Urban Drainage Adoption Authority (SAB). The

emphasis on sustainable drainage systems is welcome but again there will be an inevitable cost associated with this new role that appears to have been lightly dealt with as part of the impact analysis.

There is a clear expectation in the Pitt Review and the Government response embodied in the draft Bill that there will be direct involvement by District Councils in two tiers areas to partner with the county councils in dealing with local flood risk management. From the point of view of supplementing the work of the Lead Authority with local knowledge and expertise, this has to be the right way forward because the district tier is skilled in carrying out such work at the most local level. Nevertheless, this will come at a cost that is not recognised or acknowledged in the draft Bill. More critically, the scope for involvement in promoting schemes and for investment in community advocacy is becoming ever more constrained as a result of shrinking grant settlements and falling income streams. The situation is really quite concerning and if, the Government has expectations of the district tier stepping in to pick up some of the Lead Authority's load, which most District Councils would be undoubtedly willing to do if they had the right financial resources, then the funding situation really needs to be openly and constructively addressed. As it is, the budgets are under extreme pressure and there is little scope at a District/Borough Council level to reallocate from elsewhere to fill the gap.

Water Companies

The Bill provides for duties on Water Companies to cooperate with the LLFA and to share information with it. Such cooperation is absolutely essential to address the risks of surface water flooding because, in many cases, it is the limited capacity of the existing surface water sewer system that is the cause of flooding. Rainfall events are predicted to become more intense in the future so the capacity of the system is a critical factor. Part of the solution could be to increase the capacity and this will require involvement and investment by the private water companies.

Pitt Review Recommendation 22 is particularly apt in this respect; "As part of forthcoming and subsequent water industry pricing reviews, OFWAT should give appropriate priority to proposals for investment in the existing sewerage network to deal with increasing flood risk".

The Government supported this recommendation in its response last December.

An important question is whether the provisions of the Bill are strong enough to ensure that the level of partnership and cooperation with the water companies is sufficiently robust to allow the County Council to carry out its role properly in managing and resolving local flood risk. The duties are spelled out in the draft Bill but there need to be sufficiently strong sanctions where there is reluctance by water companies to play their part in sharing information and implementing solutions.

Strategies and Plans

The consultation document refers to myriad plans and strategies. Some of these have an associated timetable and some do not. Some, such as Strategic Flood Risk Assessments (SFRA), are already work in progress by the Local Planning Authorities (LPA) in conjunction with the EA. Others are further into the future and stem from the requirements of the Flood Directive.

A central theme of the draft Bill is the need for clarity through a unifying piece of legislation. However, as it stands it appears that there will a lack of clarity about what each organisation is supposed to be producing, and when, and the potential for much effort and expense being devoted to a whole range of strategies and plans, leaving little left over for actually achieving improvements 'on the ground'.

Furthermore, while the outputs required to meet the Flood Directive are time-bound and set out in the draft Bill, there is no similar time-scale for the Environment Agency (EA) and the County Council to produce the respective Section 15 Strategic Flood and Coastal Erosion Risk Management Strategy and Section 19 Local Flood Risk Management Strategy.

It is not clear where Surface Water Management Plans (SWMP) fit into the process and the relationship between these and Strategic Flood Risk Assessments. Are these documents emanating from the LFRMS or are they the product of the obligations arising from S53 and S55 that reflect the Floods Directive?

I firmly believe that if the County Councils are going to be given new responsibilities, they must also be granted the tools to do the job. However, SFRA are primarily elements of the planning process and they should be left with the LPA and EA to create and manage, albeit in conjunction with the LLFA, and be drafted having regard to the national and local Flood Risk Management Strategy. This is all the more so because District/Borough Councils have a clearer focus on local priorities such as spatial planning matters and the regenerational needs of local cetntres.

In general, there needs to be a tightening up of the prescribed timetable and more clarity about what has to be produced but, more fundamentally, there must be some refining of the structure of strategies, plans, assessments and policies to address the potential duplication of effort that appears to be inherent in the current consultation documents.

Bill Programme

The draft Bill purports to be a unifying piece of legislation and it appears substantially to be achieving this as far as the sections dealing with flood risk management are concerned. Much will depend on how well people and organisations manage to work together.

However, it appears that opportunity has been taken to include a miscellany of other pieces of legislation. Normally this would not be a problem but legislative time is running out and there is a risk that the important flood risk management elements of the Bill might be lost because of the weight of dealing with all of these other items that are not strictly relevant such as the Walker Review of Charging and Water Metering and the Cave Review of Competition and Innovation in water markets.

I hope there is an alternative plan to save and promote the core parts of the Bill should it become apparent that there is insufficient time to include all that is flagged up in the consultation document.

Accountability

One of the main aims of the Bill, emanating from the Pitt Review, was to make it clear to the local community who is responsible for managing all sources of flood risk. I agree with this aim and I believe it is significantly important to the local community.

The success of the draft Bill will be determined by how effectively it can achieve this and the extent to which it does so depends on how well the two organisations with the principal role mapped out in the Bill jointly relay their message to the public about who is responsible for what.

Preparing national and local strategies is important but it does not register immediately with the public confronted by a flood. The subtle distinction of whether it is an EA main river flooding problem or a county council surface water flooding problem is lost on the public at such times. Consequently, the EA and the LLFAs need to be fully committed towards working together to inform the public about what each of them are responsible for if this fundamental aim of the Bill is to be achieved.

Conclusions

It is essential that best use is made of existing know-how and capacity at a local level to achieve the flood risk mitigation objectives in the draft Bill. New duties are flagged up for a range of relevant authorities and a principal new obligation in this location as Lead Local Flood Authority will rest with the County Council. However, there is still a strong element of expectation that people and organisations will do the common-sense thing and work together in partnership sharing expertise. It is difficult, if not impossible to legislate for such cooperation because duties and obligations can be complied with while not achieving that extra momentum that comes through sharing and partnership.

As far as this Council is concerned, it has been more than willing to participate and lead such arrangements to achieve successful flood alleviation outcomes,

as illustrated in the recently completed work on the impounding dam at East Peckham. Currently, we are working with the EA and the County Council in the early stages of setting up a partnership on a similar scheme at Aylesford. The aim is to reduce the risk of flooding from one of the river Medway tributaries that overflows regularly and floods the neighbouring houses. These appear to me to reflect the arrangements that the Pitt Review was keen to support.

They are also practical demonstrations that this Council is keen and willing to work with the County Council and all the other relevant organisations, using our powers as a land drainage operating authority, to assist in reducing the risk of local flooding.

I hope that these comments are helpful in your task of refining the draft Bill and I will follow these up very shortly with any further comments my Members may wish to make.

Yours sincerely

Steve Humphrey
Director of Planning, Transport & Leisure