

**DRAFT FLOOD AND WATER MANAGEMENT BILL, DEPARTMENT FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS (DEFRA), APRIL 2009**

To: Cabinet

Date: 7 July 2009

From: Executive Director: Environment Services

Electoral Division(s): All

Forward Plan Ref: N/A

Key Decision: No

Purpose: To consider Defra's Draft Flood and Water Management Bill and to provide comments to inform the County Council's response to the consultation

Recommendation: Cabinet is recommended to:

- i) Consider the key points raised in Sections 3 to 6.
- ii) Consider the suggested response to Defra set out in italics in Sections 3 to 6
- iii) Delegate authority to the Lead Member for Economy and the Environment to agree the final consultation response on behalf of the County Council, based on the contents of this report and in consultation with the Executive Director: Environment Services.

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1.0 INTRODUCTION

- 1.1 The Department for Environment, Food and Rural Affairs (Defra) is consulting on a draft Flood and Water Management Bill. The consultation was launched on 21 April and will close on 24 July 2009. The consultation documents can be viewed at:

<http://www.defra.gov.uk/environment/water/flooding/flow/index.htm>

Alternatively paper copies can be made available.

- 1.2 Due to the timescales for consultation it has been necessary to take a report first to Cabinet on 7 July, followed by Growth and Environment Policy Development Group on 15 July. Following consideration at these meetings, it is suggested that the Lead Member for Growth and Infrastructure agrees the final response in consultation with the Executive Director, Environment Services for submission to Defra by 24 July.

2.0 BACKGROUND

- 2.1 The draft Flood and Water Management Bill follows from events such as the droughts in South East England in 2004 to 2006 and the nationwide floods of summer 2007. The 2007 floods led to Sir Michael Pitt's report *Learning Lessons from the 2007 Floods* (June 2008) and the Bill incorporates many of Pitt's recommendations.
- 2.2 The Bill sets out a comprehensive package of measures to tackle flooding and promote better water management and covers the activities of a broad range of organisations, including the Environment Agency, local authorities, water companies and Internal Drainage Boards. The consultation paper explains the policy background and gives the proposed legislative provisions of the Bill. An Annex sets out 163 consultation questions relating to proposals for England.
- 2.3 Given the size and complexity of the Bill, this report focuses on the main issues for the County Council and answers key questions for the authority. Proposed responses are set out in italics in sections 3 to 6 below. The main sections are:
- Section 3 – flood management issues covered by the Bill.
 - Section 4 – flood management issues for further discussion.

For information, this report also summarises:

- Section 5 – water management issues covered by the Bill.
- Section 6 – water management issues for further discussion.

3.0 FLOOD AND COASTAL EROSION RISK MANAGEMENT – ISSUES COVERED BY BILL PROVISIONS

New approaches to flood and coastal erosion risk management

- 3.1 The consultation argues that current legislation covering flood and coastal erosion is dated, in that it deals only with flooding from main rivers and the sea and was largely drawn up before the consequences of climate change began to be recognised. The Government

argues that a broader approach is needed, recognising that flooding can be caused by a complex interaction of a range of sources. The new approach should also recognise that flood and coastal erosion can never be absolutely prevented or predicted and that, in some circumstances, it may be beneficial for flood risk or environmental reasons to allow some areas to flood. The Bill therefore introduces new powers to allow responsible bodies, including local authorities, to undertake a wider range of flood and coastal risk management measures in the future, such as to allow flooding to achieve environmental benefits.

Proposed County Council response:

The County Council welcomes the broad approach set out in the Bill. The move from flood protection to flood risk management is supported, as is the comprehensive approach to flooding - taking in flooding from all rivers, the sea, groundwater, surface water and sewers - that the Bill promotes.

The powers for lead local authorities to undertake environmental works – maintaining or restoring natural processes or changing water levels – for local flood risk management are also supported. This will allow increased occasional flooding for environmental enhancements in certain areas. This more flexible approach would allow benefits for biodiversity and amenity and help with achieving Biodiversity Action Plan targets, such as the creation of wet grassland.

However, the success of this approach will depend to a large measure on public understanding and support, as traditional ideas about flood defence will be challenged and landowners affected. There needs to be a wide debate about the Bill's objectives to ensure that lead organisations can gather support for the new roles they are to undertake.

It would be helpful if connections were made in the legislation or accompanying guidance to the UK's climate change predictions, to provide more certainty for lead organisations in the timescales they will be planning for. Flood risk management needs to consider these longer-term trends as well as more immediate issues.

Future roles and responsibilities

- 3.2 The Government argues that currently flood risk management is a complex area and the responsibilities of different bodies are unclear. Generally, Defra has policy responsibility for flood and coastal erosion risk management, while delivery is the responsibility of a range of operating authorities, although no organisation currently has responsibility for flooding from surface run-off or groundwater. The Government therefore proposes changes that are designed to clarify responsibilities, make use of existing expertise, provide flexibility and promote more effective local partnerships.
- 3.3 These proposed responsibilities are set out in the consultation paper in Figure 1 (page 28) and at Appendix 1 to this report. The draft Bill proposes an increased role for County Councils and unitary authorities and 13 responsibilities are listed:

Roles of county / unitary authorities

Local leadership role

- Setting local strategy for local flood risk management.
- Leadership and accountability for ensuring effective management of local flood risk from ordinary watercourses, surface run-off and groundwater.
- Production of local flood risk assessments, maps and plans including an asset register.
- Improved drainage and flood risk management expertise.
- Co-ordinate Surface Water Management Plan production.
- Drainage from non-Highways Agency roads.
- Prioritising local investment.
- Consenting and enforcement powers for certain works affecting ordinary watercourses.
- Promoting partnerships with local planning authorities to produce Strategic Flood Risk Assessments.

Delivery / executive role

- Powers to do works for surface run-off and groundwater flood risk.
- Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies.
- Local Flood Risk Management decision-making integrated into local asset management and investment programmes.
- Category 1 responder under the Civil Contingencies Act including local delivery of flood warnings.

These responsibilities are dealt with in more detail in the sections that follow, but initial comments are given below.

Proposed County Council response:

The County Council broadly welcomes the leadership role for county and unitary authorities set out in the Bill. Flood risk management needs to be delivered in a co-ordinated way across a wide geographical area, and these authorities would be well placed to undertake this. To ensure broad support for the measures, there also needs to be transparency and democratic accountability, and again local authorities would be best placed to ensure this.

However, the County Council has serious concerns about the financial implications of the Bill. There is a lack of clarity about sources of funding for the new duties that strategic authorities would be undertaking. Discussing the funding of SUDS maintenance, the consultation paper states that: “Local authority funds released by the transfer of private sewers, together with savings from better local flood risk management, are expected to more than cover the additional activities that local authorities will be required to perform in this and other areas covered by the Bill and the Government’s response to Sir Michael Pitt’s Review” (paragraph 213). The County Council questions this assumption: many district authorities have no local drains and there is often little funding available for this function.

Insufficient work has been undertaken by any of the organisations involved in flood risk management to be certain of the costs involved and any assumptions must be treated with caution. Such a fundamental change in the approach to flooding suggested by the Pitt Review and promoted in the Bill is not self-financing and is likely to involve higher costs from the outset. Over time the Bill could lead to significant cost avoidance - through reduced costs of disruption and clear up for householders and businesses, reduced insurance premiums and less demand on the emergency services - but these benefits are likely to be spread widely while initial costs will largely be borne by lead organisations, such as county and unitary authorities.

Lead local authorities will be taking on significant new areas of work, including the need to expand or create new teams, set up and administer strategic partnerships and undertake skills and training to fulfil their responsibilities. The skills base in many of the lead organisations is limited and it will be a significant challenge to build up– the skills base in the engineering sector is already very limited and is decreasing over time.

There is a need for clarity on the financial implications of the Bill based on a realistic assessment of available funding and the new resources that would be required.

Environment Agency

- 3.4 The Environment Agency (EA) was established in 1996 and is responsible for a range of activities, although it is required to arrange for all of its flood defence functions to be carried out by Regional Flood Defence Committees (RFDCs). Although it is the lead organisation for tackling flooding from the sea, the management of coastal erosion remains the responsibility of local authorities. (RFDCs are considered in paragraphs 3.19 to 3.21 below).
- 3.5 The Bill proposes changes that would give the Environment Agency a strategic role, with responsibilities for producing a national strategy for tackling flooding from all sources as well as coastal erosion and flood risk from reservoirs. The Government envisages the Environment Agency developing as a centre of expertise for research, modelling, flood warning and risk assessment to support local authorities and others in their roles. Local leadership would be given by county / unitary authorities. Other responsible bodies would have to act in a way that would be consistent with the national strategy, and the Environment Agency would have some enforcement powers to act in exceptional circumstances where local authorities were not complying with the requirements of the EU Floods Directive. The Bill also gives the Environment Agency powers to undertake coastal erosion works.

Proposed County Council response:

The national leadership role set out for the Environment Agency is welcomed. As outlined elsewhere in this response, there will be a need for lead local authorities and others to develop new skills and it is likely that the Environment Agency will have significant demand on its resources in providing this supporting role for local authorities.

Main river mapping

- 3.6 For flood risk management purposes, rivers in England and Wales are classified as either:

- **Main rivers and Critical Ordinary Watercourses** – which are designated on maps and are the responsibility of the Environment Agency.
- **Ordinary watercourses** – all other watercourses, which are the responsibility of local authorities or Internal Drainage Boards

3.7 Where there is a need to change the designation of a river, there are currently complicated arrangements of referral to Defra Ministers. The Bill proposes simplifying these arrangements to delegate more authority to the Environment Agency, with appeal to Ministers if a dispute cannot be resolved.

Proposed County Council response:

The County Council supports simplified arrangement for altering the designation of rivers. However, changes in these designations have important management and cost implications for the organisations involved and it is important that relevant partners and stakeholders are involved in the decision making and that any changes are reflected in organisations' funding allocations.

The Environment Agency's duty to maintain an electronic version of the main river map is supported. However, a wider range of information on flood and water management needs to be readily available – it would be helpful if one web-based source of information could be set up, dealing with main rivers, critical ordinary watercourses, ordinary watercourses and other flood and water management assets, for use by the general public and responsible organisations.

Local flood risk management

3.8 Currently there are no mechanisms to enable an integrated approach to planning and managing the environmental impacts of flood risk, with responsibilities split between a number of different bodies, including:

- **Environment Agency** – responsible for managing flood risks from main rivers and the sea.
- **District and unitary authorities** – powers to manage flood risk from ordinary watercourses (where no Internal Drainage Board exists) and sea flooding (in partnership with the Environment Agency).
- **Internal Drainage Boards (IDBs)** – responsible for ordinary watercourses in their areas, land drainage and water level management.
- **Water companies** – responsible for providing and maintaining the public sewer system.
- **Highways Agency** – responsible for drainage from trunk roads and motorways.
- **County and unitary authorities** – responsible for drainage from the local road network.
- **Planning responsibilities** – regional and local authorities also have responsibilities for planning for flood risk. This is through the preparation of Regional Flood Risk Assessments, Strategic Flood Risk Assessments and through decisions on planning applications.

These bodies may plan their activities to different timescales and have different priorities and there is no obligation for them to co-operate or share information.

- 3.9 To tackle this lack of integration the Bill proposes that a local leadership role be given to county and unitary authorities. These lead authorities will:
- Establish partnerships of relevant bodies to manage flood risk in their areas.
 - Develop and publish a strategy for local flood risk management and help in its implementation by:
 - Producing flood risk assessments and flood risk action plans (e.g. Surface Water Management Plans), consistent with the national strategy.
 - Producing local flood risk management work programmes, including for their own works and those of other bodies.
 - Creating a register of assets that contribute to flood risk or could be used to alleviate it.
 - Investigating local flooding incidents and identifying the source of the problem.
- 3.10 It is envisaged that county and unitary authorities will develop as centres of engineering and flood risk expertise and provide support to other bodies in their partnerships. There will be a duty on district authorities, IDBs and others to act in a manner that is consistent with the local strategy. Elements of the strategy could be delegated to other authorities if necessary, but ultimate responsibility would remain with the county / unitary authority.
- 3.11 Scrutiny of the strategy would be carried out by the relevant scrutiny committee of the lead local authority and it is suggested that bodies in the partnership could be required to co-operate with the committee. The consultation also makes the proposal that the lead authority could be required to produce an annual report on progress in implementing the strategy, with this being assessed by the scrutiny committee.

Proposed County Council response:

The County Council welcomes the local leadership role for strategic authorities set out in the Bill, subject to the reservations about the provision of sufficient and transparent resources outlined elsewhere in this response.

Flood and water management needs to be planned strategically with organisations working together to common aims and timescales. Despite the rationalisation of responsibilities put forward in the Bill, there will still be some division of local management functions between the Environment Agency, strategic and district authorities and Internal Drainage Boards. It is therefore essential that all organisations have a duty to co-operate in the preparation of local flood risk management plans as well as in their implementation.

Duty to co-operate and share information

- 3.12 There is currently no requirement for organisations involved in flood and coastal erosion risk management to share information. Given the new co-ordinating role proposed for the Environment Agency and county / unitary authorities, the Bill includes a duty on all relevant authorities to provide what information or assistance is necessary for these bodies to fulfil their functions. It is also proposed that the Environment Agency should have the power to set and oversee standards for information to ensure consistency.

Proposed County Council response:

The duty to co-operate and share information is supported. Currently some flood risk assessment work has been hindered by a lack of willingness from some undertakers to share information that is seen as commercially sensitive. This duty will ensure that flood risk management can be properly planned on the best available information.

The success of the proposed measures will rely heavily on close communication between all the organisations involved in water management. It will take time to develop and establish efficient working. The sharing of information and expertise will be key to developing these close working relationships.

Sustainable Drainage Systems

- 3.13 Conventional drainage systems are designed to take away surface water quickly and discharge it into watercourses and sewers. During intense and prolonged rainfall, pipes and sewers can become overwhelmed by run-off resulting in river flooding or the flooding of properties with sewerage. With more hard-surfacing and greater intensities of rainfall these incidents are expected to increase, along with the resultant pollution.
- 3.14 Sustainable drainage systems (SUDS) are designed to alleviate these problems by mimicking natural drainage systems, using more permeable surfacing materials (such as permeable paving or green roofs), drainage channels, swales, detention basins, ponds and wetlands. These systems manage water close to its source, reduce the volume flowing into sewers and watercourses, help to break down pollutants and also provide habitats and green spaces. However, currently SUDS are rarely used. This is due to factors such as the current right to connect surface water drainage to the drainage system – which is an easy and well-understood option for developers - and the absence of a clear process for the adoption and maintenance of SUDS.
- 3.15 The Bill promotes the use of SUDS in new developments through four main proposals:
- (1) **National standards** - The Government will publish national standards for the design and operation of SUDS. These will need to reflect the different scales of development and different ground and physical conditions of development sites. These standards will provide the basis for approval, adoption and connection to the public sewer – if development proposals do not meet the standards, there would be no automatic right to connect.
 - (2) **Approval process** – The Bill proposes that developers will need approval of SUDS from a SUDS approving body (SAB) before development can begin. It is proposed that county and unitary authorities will undertake this role. Approval will form the basis of adoption and there will be no right to make a new connection to the surface water sewer without this approval. The SAB will inspect the construction of the scheme and issue a certificate when it is satisfactorily completed.
 - (3) **Adoption and maintenance** – The Bill proposes that most surface water drainage systems accompanying new developments should be adopted and maintained by the SAB – the county or unitary authority. This would encompass schemes on public or private land that affect the drainage of more than one property. Where a scheme is completely within the curtilage of and will only serve a single property, then it would

remain the responsibility of the property owner. Developers would be required to submit a financial bond with the approval authority before work begins, which would be released on satisfactory completion of the scheme. This would provide an incentive for the developer to complete the scheme to the required standard and also act as insurance in the event that the developer became bankrupt.

- (4) **Connection to a public sewer** – Discussion prompted by the Pitt Review highlighted that the automatic right to connect to a public sewer was one of the main reasons why there had been such a slow uptake of SUDS. The Bill therefore proposes to remove this right. Developers will be required to investigate SUDS and put forward a scheme in line with the national standards for approval. On more constrained sites, where there is less room to implement SUDS, there may still be measures that developers can take to reduce run-off. Developers will be required to implement these measures and reduce run-off as much as possible before approval is given for connection to the public sewer system. Having completed the works to the satisfaction of the approving body, the developer would then present the certificate of approval to the water or sewerage company, allowing connection to be made. This proposal would also apply to a Highways Authority wishing to drain a new road to a combined or surface water sewer. (It should be noted that this applies only to surface water drainage - the right to connect foul drainage to the public sewer system would remain.)

3.16 These proposals raise a number of issues for all involved in the development process. The Bill would effectively introduce another consent regime that would run alongside planning permission and building control approval. For county / unitary authorities:

- There would need to be pre-application discussions for large schemes with district councils and developers to agree what form of SUDS would be appropriate.
- There would need to be a decision-making process established to assess the scheme and determine whether or not it met the national standards. This process would have to run in parallel with the planning process of the district council.
- If work began before an approval was issued there would need to be a process of enforcement.
- If a scheme was refused, the county / unitary council may need to defend its decision - it is not clear from the consultation whether an appeal process is envisaged.
- If approved, the scheme would need to be inspected to ensure that it met the standards, before the certificate of completion was issued.
- There would need to be funding in place to allow for maintenance of the scheme. Maintenance may also require access over private land and the authority may need powers to enable this.

These issues have not been dealt with in the Bill, but the consultation paper asks respondents for their views on how they might be tackled in future legislation or guidance.

3.17 The consultation also raises the issue of private SUDS wholly serving and within the curtilage of a private development. If these systems were subsequently altered or were not adequately maintained, this could lead to increased run off and local flooding to neighbouring properties. The consultation paper asks how these features could be protected. Two proposals are put forward, that local authorities:

- Use Article 4 Directions (under the Town and Country Planning General Permitted Development Order).
- Designate them as “third party assets” under a new system proposed in the Bill (discussed in paragraphs 3.27 to 3.29 below).

3.18 It is suggested that local authority performance on SUDS is measured through the Local Government Performance Framework, in particular Indicator 188 (Planning to Adapt to Climate Change) and 189 (Flood and Coastal Erosion Risk Management).

Proposed County Council response:

The County Council broadly supports the positive approach to SUDS set out in the Bill. It can be noted that the County Council was the lead body in the development of the exemplar SUDs system at Lamb Drove, Cambourne.

Again, as raised elsewhere in this response, there are resource implications for county and unitary authorities in the suggested approach. The requirement to approve and maintain SUDS would place significant additional burdens on county and unitary authorities. A sustainable financing mechanism needs to be developed for the implementation and maintenance of SUDS, that distributes funding and responsibilities equitably. For example, it is not clear from the consultation if owners of properties draining to SUDS would have to pay a charge for this – if funded from general taxation this could create inequalities with the majority of property owners who would continue to pay for drainage to the sewer system. The demands of having to manage public and private drainage systems will also place additional pressures on the limited skills base of organisations.

It is also not clear from the consultation what liabilities these requirements would place on county and unitary authorities in the event of a sustainable drainage system failing and properties flooding, and whether they would be liable to claims. At present these authorities have a clear demarcation of liabilities as they are only responsible for highway run-off – extending this to cover a wide range of public and private drainage systems could place significant additional demands on their resources and on officer time.

There needs to be a clear definition of SUDS that would exclude source control measures within private land parcels (for example, green roofs). The definition also needs to take account of systems that could involve a mixture of conventional and sustainable measures – it would be unmanageable to have different funding and maintenance arrangements for different elements of the same system.

The setting of national standards will be very important to the success of this approach and must be subject to full consultation and the appropriate technical inputs. Standards need to be sufficiently flexible to allow for local circumstances, such as different types and sizes of development, different topographies and ground conditions. Specifying performance outcomes rather than technical solutions would be preferable. This would allow sufficient flexibility to accommodate new approaches as they are developed but would require monitoring to ensure that the targets outcomes are met.

The relationship between the SUDS permitting regime and the planning decision process needs careful thought. These could be to different timescales, and, in two-tier areas, will be

the responsibilities of different authorities. These approval processes will also need to be closely tied in to the highways process and any other consents – such as Listed Building Consent – that may be needed. There need to be clear procedures put in place to avoid delay and confusion. It is also unclear from the consultation whether an appeals process is envisaged where a SUDS proposal has been refused. In addition responsibilities will need to be established for major projects where the Infrastructure Planning Commission will be the determining body.

Regional Flood Defence Committees

- 3.19 Regional Flood Defence Committees (RFDCs) are committees of the Environment Agency through which it is required to discharge all of its flood risk management activities. Most of their funding comes from Defra for regional work, although significant sums are raised through a levy on Local Authorities and in some low-lying areas through the General Drainage Charge. The Environment Agency's role through RFDCs is to approve and allocate funding to projects undertaken by local authorities and Internal Drainage Boards on behalf of Defra. RFDCs are also able to raise money to fund locally important works that are not included in the Environment Agency's national funding programme. Cambridgeshire County Council is represented on both the Anglian RFDC (central) and RFDC (northern).
- 3.20 The consultation highlights that RFDCs predate the creation of the Environment Agency as a national body co-ordinating flood risk management and, it is argued, RFDCs blur responsibility and potentially create conflict when it comes to allocating funding and achieving results. Changes are therefore proposed to replace RFDCs with new Regional Flood and Coastal Committees (RFCCs). The new committees will:
- Cover coastal erosion (not currently covered by RFDCs).
 - Retain a local authority majority to ensure effective democratic input and public scrutiny.
 - Have an advisory role, rather than an executive function, to guide the Environment Agency on investment decisions and priorities.
 - Retain powers to set local levies and decide where local funding should be spent.
 - Consider and comment on the local flood risk management work of county / unitary authorities.
- 3.21 RFCCs will allow local knowledge to inform the Environment Agency's national priorities, but the final decisions on spending for national priorities will be taken by the Environment Agency, which is responsible to Defra for its funding.

Proposed County Council response:

The proposed role for the new Regional Flood and Coastal Committees is supported. While strategic authorities will take on a local leadership role, there needs to continue to be a mechanism to ensure consistency of approach across broader river catchments that may encompass the areas of several strategic authorities.

As outlined elsewhere in this response, strategic authorities' new flood and water management responsibilities need to be adequately funded. Currently local levies make up a small part of the total national funding for flood and water management and cannot be relied on to fund more strategic work or the increased responsibilities of lead organisations proposed in the Bill.

It should be noted that the majority of local authority flood risk funding from the RSG is passed to the Environment Agency through the local levy, and that failure to fund local authorities to deliver the recommendations of the Pitt Review will see the funding retained by Strategic Authorities which will result in impacts on funding to the Environment Agency, and delivery of main river schemes.

EU Floods Directive

- 3.22 The EU Floods Directive aims to reduce and manage the risk that floods pose to people's well being, the environment, cultural heritage and the economy. The Directive came into force in November 2007 and Member States have two years in which to transpose its provisions into domestic legislation.
- 3.23 The Directive requires states to:
- Gather evidence on flood risk through Preliminary Flood Risk Assessments - by end of 2011.
 - Map the risk through Flood Hazard Maps and Flood Risk Maps - by end of 2013.
 - Produce plans to manage the risk to high risk settlements through Flood Risk Management Plans - by end of 2015.
- 3.24 The Flood and Water Management Bill would transpose the requirements of the Directive into law in England and Wales. The Bill proposes that the Environment Agency and county / unitary authorities would be the competent authorities for implementing the Directive:
- The Environment Agency will lead on co-ordinating maps and plans and making them available to the Commission.
 - County / unitary authorities will be responsible for local flood risk assessment, mapping and planning.
- 3.25 The Directive's requirements largely reflect existing practice in England and Wales, such as the Environment Agency's flood risk mapping, Catchment Flood Management Plans and Shoreline Management Plans, as well as the work of local authorities and others on Flood Risk Assessments. However additional work would be required, as set out below:
- (1) **Preliminary Flood Risk Assessments** – In England and Wales much of this assessment work has already been done through the preparation of Strategic Flood Risk Assessments. The Bill proposes that county / unitary authorities would be responsible for this work. However, earlier documents may now be due for updating and there would need to be close integration with the preparation of Local Development Documents by the Local Planning Authorities.

- (2) **Flood Hazard Maps and Flood Risk Maps** – Flood Hazard Maps are intended to show areas of flood extent and provide information on depth and velocity of flow. Flood Risk Maps would show potential adverse consequences to people, the environment, cultural heritage and the economy. Local authorities could fulfil the Directive's requirements by extending the coverage of Strategic Flood Risk Assessments to look at the impacts of flooding on the environment and cultural heritage.
- (3) **Flood Risk Management Plans** – Flood Risk Management Plans are intended to draw together evidence from the assessment and mapping to assess what measures should be introduced to manage and reduce flood risk. In England and Wales a range of plans are already prepared, or are in preparation, which could fulfil this requirement including:
- Catchment Flood Management Plans.
 - Shoreline Management Plans.
 - Surface Water Management Plans.
 - Reservoir Flood Plans.

The Bill suggests that the Environment Agency should co-ordinate this activity to ensure that that Directive's requirements are met. In their lead roles, county and unitary authorities will be required to develop strategies for local flood risk management, building on Flood Risk Management Plans, and all relevant organisations will be required to act in accordance with the local authorities' strategies.

Proposed County Council response:

The County Council generally welcomes the leadership role for strategic authorities suggested in this part of the Bill. These authorities are best placed to ensure consistency of approach across a wide geographical area.

However, while many of the Directive's requirements are already met by existing practice, more work will still be needed. Existing flood risk assessments would have to be revisited and work on Surface Water Management Plans is still at a very early stage. There would need to be close integration between flood assessment and mapping by the strategic authorities with the preparation of Local Development Documents by the Local Planning Authorities. Lead authorities need to be adequately resourced to ensure that they can fulfil the requirements of the Directive.

Water Framework Directive

- 3.26 The Environment Agency currently has responsibility to exercise its flood risk management functions so as to secure the requirements of the Water Framework Directive. However, at present this duty does not apply to other bodies concerned with flood and coastal erosion. The Bill therefore proposes that this requirement be widened to all relevant authorities in the exercise of their functions.

Proposed County Council response:

The County Council agrees that there should be a duty applying to all flood and coastal erosion risk management authorities that they act in accordance with the Water Framework Directive.

Third party assets

- 3.27 Currently around 60% of the assets that help to manage the risk of flood or coastal erosion – such as railway embankments, boundary and garden walls - are not maintained or managed by the Environment Agency. In most cases these assets are maintained to an acceptable standard. However, owners can alter or remove these assets without approval. It is relatively rare that this causes problems, but occasionally the removal or alteration of third party assets has had devastating effects (the consultation cites flooding at Northampton in 1998 and at Mythlomroyd in 2000).
- 3.28 The Bill therefore proposes that the Environment Agency, local authorities and Internal Drainage Boards be given powers to formally designate assets owned by third parties that are integral to flood and coastal erosion risk management. Third parties could not then remove, alter or damage these assets without prior consent. It is proposed that the designation would be similar in principle to the Listed Buildings classification used by English Heritage.
- 3.29 Structures would be identified by the Environment Agency, local authorities or Internal Drainage Board, which would then inform the owner in writing of its intention to designate the asset. There would then be a period during which people could make representations. After considering these representations the relevant body would be able to confirm the designation by issuing a notice and registering a Local Land Charge. If work was undertaken on the asset without consent an enforcement notice could be issued and failure to comply with the notice would be an offence. There would be an appeals process and designations that were no longer appropriate could be removed.

Proposed County Council response:

The County Council supports the suggested approach to the protection of third party assets. For consistency this mechanism could also be used to protect private SUDS from damage or redevelopment.

Consideration should be given to establishing arrangements for deemed consent, so that minor works, unrelated to an asset's flood management function, would not have to be referred to the designating authority.

There will need to be clarity about where responsibility for designation lies in two-tier local authority areas. It is important that there is consistency in decision making and close working between the different organisations, so that the strategic aims of the Environment Agency or the local objectives of the county / unitary authority or IDB aren't undermined by inappropriate decisions on third party assets made by another designating organisation.

Consenting and enforcement

- 3.30 Flood risk management authorities need to regulate the activities of others that might have an impact on flood risk. This involves granting consent to carry out works as well as enforcement to correct unauthorised development.
- 3.31 Currently Internal Drainage Boards are responsible for these regulatory activities within their areas and the Environment Agency is responsible for areas outside IDB control. The Bill proposes that with the Environment Agency's new focus on broader issues, responsibility for regulating the ordinary watercourse network should transfer to the relevant county / unitary authority. Unlike the current situation, where works are either approved or refused, it is proposed that authorities would be able to impose reasonable conditions on an approval.

Proposed County Council response:

Given the new local leadership role proposed for county and unitary authorities, it is appropriate that these authorities are also able to regulate work on ordinary watercourses. However, as outlined elsewhere in this response, this role needs to be supported by adequate skills training and resources.

4.0 FLOOD AND COASTAL EROSION RISK MANAGEMENT - POLICY ISSUES NOT COVERED BY DRAFT BILL PROVISIONS

- 4.1 Although not included in the draft Bill, the consultation paper also raises further questions for consideration, particularly around funding and the role of Internal Drainage Boards.

Role and governance of Internal Drainage Boards

- 4.2 Internal Drainage Boards (IDBs) are independent statutory bodies responsible for land drainage in areas of special drainage need. They have powers to undertake works to secure drainage and water management, including flood defence works on ordinary watercourses. IDBs principally cover lowland England; there are some 160 nationally, with 57 within Cambridgeshire (covering almost 40% of the County).
- 4.3 The Government has recently sought to reform IDBs to improve public accountability and to encourage more joint working across water catchments.
- 4.4 The Bill:
- Gives IDBs additional powers to undertake work on surface water and groundwater at the request of the county / unitary authority and on main river and sea flooding and coastal erosion at the request of the Environment Agency.
 - Allows IDBs to continue to manage water levels and flood risk within their areas provided this is consistent with the local strategy set out by the county / unitary authority.
 - Requires them to co-operate and share information with the Environment Agency and local authorities.
- 4.5 The consultation paper raises other issues concerning the role of IDBs:

- **Supervisory and regulatory roles** – Given the new leadership role proposed for county and unitary authorities, the consultation asks whether it is appropriate for IDBs to retain their role giving advice, mediating, responding to consultations and planning applications and consenting to works on ordinary watercourses.
- **Freedom to form consortia and private companies** – The consultation asks whether IDBs should have greater freedom to provide management services and participate in limited companies.
- **Boundary alteration and amalgamation** – Suggestions are made to streamline the process for altering the areas that IDBs are responsible for, where this is necessary for effective flood risk management.
- **Supervision of IDBs** – Currently the Environment Agency is responsible for supervising IDBs. As the Bill proposes that county and unitary authorities will in future be responsible for local flood risk management, the consultation suggests that this supervisory role will sit more appropriately with the relevant county / unitary authority.
- **Membership of IDBs** – The consultation suggests that currently local landowners have disproportionate influence on IDBs, despite the levies provided by local authorities. It is proposed that membership be reviewed to more fairly reflect the contributions provided.
- **Amalgamation of IDBs** – Despite the Government's wish to amalgamate IDBs to reflect river catchment areas, little progress has been made. It is suggested that the Secretary of State should have powers to set the appropriate shape, size and structure of IDBs in the future, in consultation with stakeholders.

Changes to funding structure

- 4.6 The national process of funding flood and water management is complex. (The main responsible bodies and funding streams are outlined in the consultation paper in Figure 2, page 78). The main source of funding for flood and coastal erosion risk management is grant-in-aid from Defra to the Environment Agency. Other sources of funding include Revenue Support Grant to local authorities (Defra currently pays £324M to local authorities) and drainage charges and rates paid by the agricultural sector to the Environment Agency and IDBs. Currently Cambridgeshire County Council pays a levy of over £300k a year to the Environment Agency, and has two member seats on the Anglian RFDC(C) and one on Anglian RFDC(N) which agrees the level of the levy.
- 4.7 The consultation paper proposes that the power to raise agricultural charges and rates be transferred to county and unitary authorities, given their suggested role in local flood risk management and their democratic accountability. Co-ordination would be achieved through the local Flood Risk Management Plan prepared by the county / unitary authority with funding being allocated according to the priorities identified in the plan. The county / unitary could then fund works undertaken by district authorities and IDBs, provided that the works supported the strategy set out in the plan.

Transferring powers to levy General Drainage Charges and Agricultural Drainage Rates to strategic authorities are welcomed and would help in some measure fulfil the new duties that would be required by the Bill.

- 4.8 The consultation also asks what contributions could be sought from developers for additional pressures that their developments put on flood management infrastructure.

Reducing property owners' and occupiers' impact on local flood risk

- 4.9 The consultation asks what can be done to increase riparian owners' awareness of their responsibilities for the management of watercourses that their land abuts. Proposals are also made to allow the Agricultural Land Tribunal to use mediation in settling disputes between landowners where lack of proper land management has led to flooding.
- 4.10 A variety of measures are also suggested to reduce the flooding created by local run-off. It is suggested that a new statutory nuisance be created for surface run-off, administered either by the Agricultural Land Tribunal or by district or county / unitary authorities. It is also proposed that Run-Off Reduction Zones be created, which would give local authorities the power to designate areas in which there could be restrictions on land management practices which increase flooding to neighbouring properties.

Proposed County Council response

Given the new local leadership role proposed for county and unitary authorities, it is appropriate that they would be able to draw on the knowledge and skills developed by Internal Drainage Boards to achieve local objectives. A rationalisation of IDBs would make the co-ordination and functioning of local partnerships easier. If the requirements of the Water Framework Directive were widened to include all flood risk management organisations, then this would ensure that all partners took account of environmental as well as water management objectives. Proposals to streamline arrangements for making boundary alterations and amalgamations where these are in the interests of local flood risk management are welcomed.

Proposals to reform the membership of RFDCs are also supported and in two-tier areas membership needs to include both county and district councils.

Transferring powers to levy General Drainage Charges and Agricultural Drainage Rates to strategic authorities are welcomed and would help in some measure fulfil the new duties that would be required by the Bill. Currently for Cambridgeshire:

There needs to be a simple way of transferring funding to the different organisations in the system so that funding properly reflects responsibilities. In addition, it should be highlighted that in the absence of additional funding for Local Authorities to implement their new duties, there is a risk that they will reduce their levies to the Environment Agency resulting in less funding for Flood Risk Management on Main Rivers.

For developers in the current climate, additional demands for s106 contributions are likely to render many developments uneconomic.

The ability to designate Run-Off Reduction Zones is welcomed. If a comprehensive approach to flood management is to be promoted as the Bill intends, then there need to be mechanisms to control flooding from all sources. The proposal to create a statutory nuisance for run-off is also supported. However, if this duty is to sit with County Councils then sufficient resources and training will be needed, as this responsibility currently lies with District Councils.

5.0 WATER – ISSUES COVERED BY DRAFT BILL PROVISIONS

5.1 The previous sections have highlighted flooding issues of particular relevance to the County Council. The Bill also covers a wide range of water management issues, including:

- **Reservoir safety** - Proposals to introduce a more risk-based approach to reservoir safety.
- **Hosepipe bans** – A proposal to widen the types of uses that could be controlled in times of water shortage, including for example, filling private swimming pools or cleaning patios.
- **Environmental permitting programme** – Allowing licensing for water abstraction to be included in the system of environmental licensing.
- **Power of entry** – Extending the Environment Agency's powers of entry to allow it to undertake, where necessary, works for measuring and monitoring water resources, in addition to its current powers relating to pollution control.
- **Charging agreements** – Extending the charging regime to other forms of irrigation in addition to spray irrigators, and allowing more variable charges, relating to the amount of water used.
- **Water administration regime** – Changing the water administration regime to allow rescue packages for failing water companies and to create greater flexibility for the transfer of the business and assets of a failed company to a new owner.
- **Drinking Water Inspectorate Recovery of Charges** – Enabling the Drinking Water Inspectorate to charge water undertakers and suppliers for its regulatory function.
- **Introduction of a mandatory built standard for sewers** – Introducing minimum design and construction standards on developers for new sewers and drains connecting to the public sewer system.
- **Misconnections** – Simplifying the procedures to correct misconnections to the foul and surface water drainage system so that water companies can take action themselves, rather than having to refer the problem to the local authority.
- **Delivery of large infrastructure projects in the water sector** – Giving greater freedom to water companies to create project-based companies to deliver large scale infrastructure projects that would serve the areas of a number of undertakers.
- **Complaint handling powers** – Focussing the role of Ofwat on regulatory disputes and allowing the Consumer Council for Water to concentrate on customer complaints.

Proposed County Council response

The County Council welcomes the broad approach to water management proposed in the consultation.

With regard to water conservation, this could be strengthened by making more explicit connections with the proposals for flood risk management in the earlier part of the Bill. SUDS can play a role in both preventing floods and water management through recycling water collected from roofs and hard surfaces to reuse for non-drinking purposes. If the national standards to be developed for SUDS include specific measures for water recycling as well as flood risk management, then this could further reinforce the proposals for water management set out in the second part of the Bill.

With regard to complaint handling powers, it is considered that there should be a process for handling disputes where the estimated costs of diverting the infrastructure network effectively prevent development of a sustainable site. Developers may find themselves having to absorb the costs of diverting part of the water infrastructure network in addition to upgrading facilities for their own developments and the wider area. There needs to be a fair and transparent way of ascribing costs to the different organisations involved in the development process and the wider community. .

6.0 WATER MANAGEMENT – POLICY ISSUES NOT COVERED BY DRAFT BILL PROVISIONS

6.1 In addition to the water management matters discussed above, the consultation also raises further issues that could form part of future legislation. These include:

- **Time limiting of abstraction licences** – Defra will shortly consult on a separate proposal to allow the Environment Agency to impose time limits on all licences for water abstraction so that they could be periodically reviewed.
- **Water efficiency** – The Government is awaiting the recommendations of the Walker *Review of Household Charging and Metering for Water and Sewerage Services* before considering whether to create an enabling power to allow the Secretary of State to impose water efficiency targets on the water industry.
- **Hydromorphology powers** – Changes to the physical characteristics of water bodies, such as channel straightening or the construction of artificial banks, can damage ecology and water quality. These changes have not historically been regulated. Improvements to correct past damage are currently undertaken as opportunities arise – the consultation asks whether the Environment Agency should be given the power to enter land and carry out hydromorphological works where they would be necessary to achieve the objectives of the Water Framework Directive and could not be secured through other means.
- **Cave Review of Competition and Innovation in Water Markets** – Professor Martin Cave is leading an independent review of competition and innovation in water markets. Publication of the final report is imminent and may lead to further consultation and additions to the Bill.
- **Walker Review of Charging and Metering for Water and Sewerage Services** – The final report is expected in the summer and may require further legislation.

Proposed County Council response

The County Council welcomes the broad approach to water conservation suggested in the consultation.

Regarding proposals to allow the Environment Agency to make hydromorphological changes to improve water quality, it is not clear in the consultation how these interventions would be prioritised. Given that the Bill proposes a general duty on other organisations, not just the Environment Agency, to act in accordance with the requirements of the Water Framework Directive, there may be a need for the Environment Agency to use its powers on behalf of other organisations, such as county and unitary authorities, which have been given a local leadership role. It is therefore suggested that there should be a clear mechanism set up to decide what interventions are necessary and to collectively agree these between the local partners involved in flood and water management. At present, the

consultation suggests that other partners would only be notified along with landowners when a decision had already been made to carry out the works.

7.0 CONCLUSIONS

- 7.1 It is considered that the Bill is generally to be welcomed and is a good attempt to simplify arrangements, assign clear responsibility and leadership and promote more environmentally responsible forms of flood management. The comprehensive nature of the Bill, linking flooding to the wider area of water management, can also be supported. However, as raised throughout this report, there are serious concerns about funding and the assumptions made about the additional costs the Bill would place on local authorities – particularly county and unitary authorities which are to be given the new lead role.

8.0 IMPLICATIONS

RESOURCES AND PERFORMANCE

Finance

- 8.1 Financial implications will depend on the final form of legislation adopted by Government. Final implications are potentially **very significant** when the proposed Bill is enacted, especially as the resourcing of new duties has not been clarified. While the consultation states that the changes brought about by the Bill will be self-financing, as highlighted in the report, most of the benefits are likely to result from cost avoidance and will be shared by a wide range of individuals and organisations. These issues are raised in the proposed responses set out in the report (see the response below paras. 3.3, 3.7, 3.18, 3.21, 3.25, 3.31, 4.10 and 7.1). Work has now started and will inform the resources that will need to be allocated in future in the Integrated Planning Process.

Property and facilities management

- 8.2 Property and facilities management implications will depend on the final form of legislation adopted by Government. Final implications are potentially **very significant**, as the Council would become responsible for the management and maintenance of flood management and sustainable drainage systems throughout the County.

ICT

- 8.3 Implications will depend on the final form of legislation adopted by Government. There will be **some** implications as electronic mapping and data based systems will need to be enhanced or developed jointly with other bodies and made accessible over the web.

Human resources

- 8.4 Human resource implications will depend on the final form of legislation adopted by Government. There are likely to be **some** implications as in addition to the need to recruit additional staff there will be an extensive need for training and skills enhancement in related technical disciplines.

Performance

- 8.5 Performance implications will depend on the final form of legislation adopted by Government. There are likely to be **some** implications for performance as it is proposed to include assessment of local flood and water management under NI 188 and 189. Also it will be important to ensure that staff and financial resources are not diverted from other key priorities.

Key risks

- 8.6 Key risks will depend on the final form of legislation adopted by Government. There will be **some** implications arising from uncertainty of finance and possible difficulty in recruitment / development of staff resource. The authority may be held accountable for future failure in flood risk infrastructure, including SUDs.

Best Practice

- 8.7 Implications for best practice will depend on the final form of legislation adopted by Government. The draft Bill promotes partnership working to develop best practice, and envisages county and unitary authorities becoming centres of expertise on flood risk and water management (see para. 3.10 above).

STATUTORY DUTIES AND REQUIREMENTS AND PARTNERSHIP WORKING

Statutory duties

- 8.8 The draft Bill sets out the form of legislation that the Government is proposing.

Partnership working

- 8.9 Implications will depend on the final form of legislation adopted by Government. The draft Bill promotes closer partnership working between the Environment Agency, local authorities, land owners, IDBs and other interested parties, with county and unitary authorities taking a lead role at the local level. Work is in hand to establish the Strategic Flood Partnership which will respond to the Environmental Sustainability Partnership of Cambridgeshire Together.

CLIMATE CHANGE

Climate change, greenhouse gas emissions and environment

- 8.10 Implications will depend on the final form of legislation adopted by Government. Flooding is a major source of pollution and in seeking to alleviate this - for example through preventing misconnections to the sewer network - the Bill would have a beneficial effect on the environment. The Bill aims to promote more sustainable forms of drainage, which would have a beneficial effect through the creation of new habitats (see para. 3.14 above). The Bill also promotes more sustainable use of water, which would help communities in times of drought and also reduce the energy needed to treat and distribute this resource (see Section. 5.0 above).

ACCESS AND INCLUSION

- 8.11 Implications will depend on the final form of legislation adopted by Government. Any effects of the legislation are likely to be positive in reducing the impact of flooding on people's access to services and, through the promotion of SUDS, allowing increased access to green spaces.

ENGAGEMENT AND CONSULTATION

- 8.12 This report is a response to the Government's consultation on the draft Bill. Any strategy for local flood risk management would need to be developed with local communities and land owners and would need broad support for it to be successful (see response below para. 3.1 above).

Source Documents	Location
<ul style="list-style-type: none">Draft Flood and Water Management Bill, Defra (April 2009)Learning Lessons from the 2007 Floods, Sir Michael Pitt (June 2008)	Development Strategy, A Wing, Second Floor, Castle Court.

APPENDIX 1: PROPOSED FUTURE ROLES AND RESPONSIBILITIES

FIGURE 1 PROPOSED FUTURE ROLES AND RESPONSIBILITIES FOR FLOOD AND COASTAL EROSION RISK MANAGEMENT IN ENGLAND

<p>Environment Agency</p> <p>Strategic overview role</p> <ul style="list-style-type: none"> • Setting National Strategy for Flood and Coastal Erosion Risk Management. • Support and guidance to LAs, e.g in producing flood risk assessments and plans. • Develop modelling, mapping and warning systems. • National investment in flood and coastal erosion risk management measures. • Report to the Secretary of State on the state of the Nation's flood risk assets. • Powers to instigate works on non-EA assets and channels when directed to do so by the Secretary of State. • Statutory consultee on flood (and possibly in future coastal erosion) planning applications. <p>Delivery/executive role</p> <ul style="list-style-type: none"> • Flood risk management on main rivers and the sea. • Coastal erosion risk management work (concurrently with local authorities). • Flood warnings for all sources of flooding. • Produce and contribute to strategic plans. • Consenting and enforcement powers for sea and main river flooding. • Category 1 responder under the Civil Contingencies Act 2004. 	<p>Local Authorities (LAs)</p> <p>Local leadership role (county councils in two tier areas)</p> <ul style="list-style-type: none"> • Setting Local Strategy for local flood risk management. • Leadership and accountability for ensuring effective management of local flood risk from ordinary watercourses, surface run-off and groundwater. • Production of local flood risk assessments, maps and plans including an asset register. • Improved drainage and flood risk management expertise. • Co-ordinate Surface Water Management Plan production. • Drainage from non-Highways Agency roads • Prioritising local investment. • Consenting and enforcement powers for certain works affecting ordinary watercourses. • Promoting partnerships with local planning authorities to produce Strategic Flood Risk Assessments. <p>Delivery/executive role</p> <ul style="list-style-type: none"> • Powers to do works for surface run-off and groundwater flood risk. • Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies. • LFRM decision-making integrated into local asset management and investment programmes. • Category 1 responder under the Civil Contingencies Act including local delivery of flood warnings.
<p>EA's Regional Flood and Coastal Committees (currently Regional Flood Defence Committees)</p> <ul style="list-style-type: none"> • Advisory/consultative role to EA and LAs on flood and coastal erosion approaches, priorities etc. • Consent to levies for local priority flood and coastal erosion risk management work with executive responsibility for work in this area. 	<p>Internal Drainage Boards, district authorities (in two-tier areas),highways bodies, water companies</p> <p>Executive/Delivery Role</p> <ul style="list-style-type: none"> • Duty to undertake Flood and Coastal Erosion Risk Management functions in accordance with local and national strategies. • We consult in section 3 on IDB structures, powers and levy raising options.

