# Supplementary Committee Agenda

SCRUTINY

Epping Forest District Council

## Overview and Scrutiny Committee
## Thursday, 8th October, 2009

**Place:** Council Chamber, Civic Offices, High Street, Epping

**Time:** 7.30 pm

**Committee Secretary:** Simon Hill, Senior Democratic Services Officer, The Office of the Chief Executive
email: shill@eppingforestdc.gov.uk Tel: 01992 564249

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**9. INTERIM REPORT FROM THE PITT REVIEW ON FLOODING TASK AND FINISH PANEL (Pages 3 - 36)**

To receive an interim report from the Pitt Review on Flooding Task and Finish Panel seeking appropriate funding provision in next years Budget.

Report attached.

**10.a Housing Subsidy Report** (Pages 37 - 48)

To consider the attached report.

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# *Report to Overview and Scrutiny Committee*

## *Date of meeting: 8 October 2009*

**Subject: Interim report of Pitt Review Task and Finish Panel**

**Officer contact for further information: Kim Durrani**
**Susan Stranders**

**Committee Secretary: Adrian Hendry**

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**Recommendations/Decisions Required:**

**(1) That the out of hours land drainage standby service be continued on an ongoing basis at an estimated cost of £10,100 per annum and that this be recommended to the Cabinet accordingly;**

**(2) That Cabinet be requested to consider the allocation of financial resources in the 2010/11 budget to enable the assessment of compliance with the requirements of the Pitt Review and the anticipated enactment of the Flood and Water Management Bill**

**Report:**

Out of hours flooding response

1. The out of hours land drainage standby service provides a rapid local response to flooding incidents by ensuring the availability of trained drainage engineers outside of normal working hours, including weekends and public holidays. The Council has provided this service for a number of years, however during the period from April 2006 until October 2008 the costs were charged to the Environment Agency under a contractual arrangement. This funding arrangement ceased when the Council failed to win a management contract with the Environment Agency and since October 2008 the service has been funded through a DDF revenue allocation which ceases in March 2010. Given the on-going risks of flooding within the district, and the expectation of affected residents that the Council will be able to assist, it is recommended that the out of hours service now be provided on an ongoing basis and that Cabinet be requested, as part of the 2010/11 budget considerations to make a CSB allocation.

The Pitt Review

2. The Pitt Review was published in 2008 by Sir Michael Pitt who was tasked by the Government to look into events leading up to, during and following the wide spread flooding in the Summer of 2007.

3. The report analyses in detail the role of various public and private bodies responsible for dealing with flooding and makes wide ranging recommendations for improvements in the way flooding is managed in England and Wales. Government responded to the Pitt Review by publishing new draft legislation, the Flood and Water Management Bill. The Bill seeks to address the issues raised in the Pitt Review as well as other European Directives and Legislation.

5. This Committee agreed to the formation of a Task and Finish Panel to review the impact of Pitt Review on the Council. The Panel has met on two occasions and, as well as considering the Pitt Review, has formulated the Council's response to the consultation on the proposed legislation (copy of the response is attached).

6. The proposed legislation will make wide ranging changes in the way flooding is managed. Local authorities will be given the lead role in management of flood risk. However, because the lead authority in Essex will be the County Council the full impact for this Council will not be clear until the Bill is presented before the Parliament (anticipated in the first session of Parliament after the next General Election). Given this uncertainty it is suggested that Cabinet be requested to make financial provisional as part of the 2010/11 budget process to enable a detailed review of the Bill once passed into law . This would enable the Council to seek external support in respect of potential additional surveys and feasibility studies of flood assets in the District.

Resource implications**:**

7. The out of hours land drainage standby service could be provided on an ongoing basis by reallocation of £10,100 budgeted for Quality Assurance (ISO 9001) for the Land Drainage team. Following the last organisational restructure the land drainage section was unable to retain the ISO 9001 accreditation and is awaiting recertification due to it being merged into the new larger engineering, water and drainage team. Although it is possible to seek ISO 9001 accreditation for the new larger team, the budget of £10,100 would be insufficient to achieve this and it is therefore considered more effective to apply that budget to the maintenance of the standby service.

8. Although the financial impact for the Council will not be clear until the Bill is passed by Parliament, it is suggested that Cabinet be requested to allocate the projected DDF underspend of £35,000 in flood alleviation schemes budget for 2010/11 towards investigating the requirements of compliance with the Pitt Review and the new Bill.

**Reason for decision:**
Discontinuation of a front line service of responding to residents requests for assistance and advice during flooding emergencies will cause reputational issues for the Council.

It will be necessary to carry out an assessment of the requirements for the Council to achieve compliance with the new legislation. The provision of DDF allocation in 2010/11 will ensure that the necessary surveys and feasibility work is carried out.

**Options considered and rejected:**
Discontinuation of the out of hours land drainage standby service is not an option especially when the service can be funded from within available resources.

To not respond to the Pitt Review and/or any new legislation regarding the management of flooding is not an option, any new legislative requirements will have to be complied with.

**Consultation undertaken:**
Informal contacts have been established with the Environment Agency and Essex County Council. Further detailed meeting will be held in the coming months.

Personnel:
The out of hours land drainage standby will be supported from within the existing staffing resources.

Land:
The operation and management of flood alleviation schemes built on Council land.

Community Plan/BVPP reference:

Relevant statutory powers:
Use of well being powers to deal with flooding issues on land in Council's ownership. Land Drainage Act 1991

Background papers:
Papers to Cabinet on DDF allocation for continuation of the out of hours land drainage standby Service.

Environmental/Human Rights Act/Crime and Disorder Act Implications:
Rapid response to flooding incidents on Council land and flood alleviation scheme owned by it will assist with reducing the environmental damage of flooding and ensure the Council's assets are kept in good repair.

Key Decision reference: (if required) This is a key decision as the risk of flowing impacts more than one ward of the District.

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Date: 24 July 2009.

Our Ref: DESS/JDG/smf

Your Ref:

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

John Gilbert
(01992) 564062
*email: jgilbert@eppingforestdc.gov.uk*

Dear Sir

**Draft Flood and Water Management Bill**
**Response from Epping Forest District Council**

Epping Forest District Council (EFDC) welcomes the draft Bill in that it seeks to cover all forms of flooding and shift the emphasis from building defences to managing risk. It also seeks to transpose new legal obligations such as those arising from the EU Floods Directive and a range of outstanding commitments to legislate arising from water policy statements.

Epping Forest District has over 1000km of Ordinary Water Courses and suffers from incidences of both fluvial and pluvial flooding. Two major river systems; the River Lee and River Roding, form part of the district's catchment. We are a district authority which has a wide range of experience dealing with flood risk management.

The Council's Overview and Scrutiny Committee has recommended:

1) That the local knowledge and expertise that exists within the Council be used to make a comprehensive response to the consultation and where possible and feasible seek the best outcome for the residents of the District; and

2) That the newly formed Pitt Review Task and Finish Panel will look into the impact of this Bill on the Council.

The Council has responded to the draft Bill by following the list of questions at Annex B. It was considered that some questions would be best answered by those with direct experience or knowledge of the issues relating to the question and a comment to that effect has been made.

Some of the subject matters covered in the draft Bill will not have a direct impact on this Council but there are a number of proposals within the Bill which will have a significant impact on the way the Council provides its front line flood risk management services.

One of the major areas of concern for EFDC is the interpretation that a Tier 1 authority is the Local Authority (LA) in a two tier Local Government structure, which in our case would be Essex County Council. In order to deliver effective front line defences for the residents of this district, given the nature of flood risk issues and on-going commitment to flood risk management, we believe that EFDC should be the LA under the new Bill, with adequate funding provisions being made available for all additional duties arising from the Bill.

The Council has concerns that if the responsibility for all matters relating to flooding rest with the Tier 1 authority this could detrimentally impact on the level and effectiveness of flood risk management services currently provided, for example the response to a local flooding emergency may not be as rapid as that of a Tier 2 or alternatively may not be as cost effective. What may be a high priority at district level may not be given the same status on a county wide basis. . For example, earlier on this year a potential flooding incident was averted in Loughton, a residential/shopping area in the south of the district. It was known through local knowledge that the blockage of a particular storm grill would have resulted in a significant flooding incident and resources were swiftly deployed and the storm grill cleared. An agent dealing with flooding at a strategic level would not have the local knowledge to understand the criticality with regard to the impact the flooding would have caused and indeed agents acting on behalf of the Environment Agency were unable to attend site in time.

We recognise that in the vast majority of cases the Bill, if implemented along the lines of the draft and if adequate funding provisions are made, will result in an improvement in the way flood risk is currently managed. However, where best practice exists, either in a Tier 1 or Tier 2 authority, there is a real risk that deterioration in services and flood defence could potentially occur. To avoid this we would like to see a provision for exceptions in the definition of the LA, i.e. where Tier 2 authorities are able, competent and resourced, that they can be the LA under the Act. If this is not considered practicable then strong legally binding frameworks and agreements are needed.

The Bill refers to the formation of local partnering arrangements but it is not clear how these will be formed and what sanctions will be available if relevant organisations do not co-operate.

The costs and resource implications of taking on these new flood risk management responsibilities will be significant. The Summary Impact Assessment supporting the draft Bill makes a number of conclusions about the cost benefit to local authorities. This Council has concerns that the cost benefit to local authorities when compared with the real costs of taking on the new responsibilities, in the short term and certainly in the longer term, may not be realistic.

The consultation document makes an assumption that the costs of any new responsibilities arising from the Bill will be covered by the future savings achieved by the transfer of private sector drainage from local authorities to utility undertakers and better local flood risk management. We disagree with these assumptions especially in a district which has already undertaken significant investment in flood risk management.

Flood defence in EFDC has always been allocated a high priority. The Council would seek reassurance that the Bill does not result in a diminished level of service for residents of the District and will be pleased to work with Defra and other relevant organisations in developing the Bill, or in providing further details to support our response.

In the meantime if any further clarification is required please contact Susan Stranders (Drainage Manager) on 01992 564197 or sstranders@eppingforestdc.gov.uk

Yours faithfully

J D Gilbert
Director of Environment & Street Scene

*c.c.* *Q Durrani*
*S Stranders*

# Draft Flood and Water Management Bill April 2009

## Response from Epping Forest District Council

### 1.10 Style and accessibility of draft legislation

1. How far, in general, would you say that the draft legislation is written in a reasonably clear style that is likely to be understood by readers?

Answer: Written in a clear style which was understandable.

2. In general, do you think the individual clauses are too long, too short or about the right length? How far is their overall order in the draft legislation reasonably logical and easy to follow?

Answer: i) About the right length.
ii) The order appears reasonably logical and relatively easy to follow. However, the Bill seeks to address a number of subject matters, although interrelated, which overall makes it a little difficult to digest.

3. In general, do you think the individual sentences in the draft are too long, too short or about the right length and is their structure too complex, too simple or about right?

Answer: i). About the right length.
ii). Overall about right.

4. Please give examples of anything in the style of the draft legislation that you particularly liked or disliked. Please also give your reasons.

Answer: No comment.

5. Please give examples of provisions that you thought helpfully simple or well expressed or ones that could be made simpler or otherwise improved. Please also give your reasons.

Answer: No comment.

6. Are there any drafting techniques (such as cross-references to other provisions of the draft legislation) that you would like to see used more or less?

Answer: Overall it is considered that the cross-references are very useful and at the right level, particularly if you are not familiar with all the associated subject matters and associated legislation.

7. Please suggest any improvements to the way in which legislation is drafted that you think would make it easier to understand and apply.

Answer: No comment.

### 2.1 New approaches to Flood and Coastal Erosion Risk Management

8. Are you content with the definitions of “risk” and “risk management” in the draft Bill?

Answer: Yes.

9. Are you content that the draft Bill should enable a wider range of approaches to managing flood and coastal erosion risk than is currently allowed under existing legislation, such as resilience, and that it should be sufficiently flexible to accommodate new approaches which may be developed in future?

Answer: Yes.
Yes, although it is important to recognise that there will always be the need to change to accommodate different ways of doing things once the legislation has been put into practice. Particularly as there are so many different parties working across the broad spectrum with regard to resilience.

10. Does the approach in the draft Bill to flood and coastal erosion risk management adequately cover adaptation?

Answer: The draft Bill does not explicitly make any provision to adapt to climate change. The approach is adequate as it provides scope to manage the risks. The Climate Change Act 2008 should be used to address the full range of climate change risks as any further consideration in the draft Bill will make the legislation too unwieldy and detract from the main purpose of the Bill.

11. Does the proposed approach to flood and erosion risk management:

• facilitate and encourage authorities to make effective links between land management and flooding and erosion?
• enable and encourage authorities to play an appropriate role in the delivery of wider multiple objective projects through the use of their flood and erosion management functions, including projects that are specifically required to achieve environmental, cultural and social outcomes?

Answer: i). Yes. The Bill is proposing a lead role for the Environment Agency (EA) and Tier 1 Local Authorities, this will require the creation of strong frameworks and Local Agreements if Tier 2 authorities, who have land use management control, are to be engaged to fully realise the benefits.
ii). Yes, although it is considered that some confusion may result in the various roles and responsibilities with regard to the multiple objective projects. It will be essential that preferred outcomes and priorities are agreed and defined between the multi disciplinary bodies.

12. Are there any approaches to flood and coastal erosion risk management that should be adopted but which the draft Bill would not allow?

Answer: As a district authority which has a wide range of experience dealing with flood risk management we believe it is absolutely fundamental to ensure that the roles and responsibilities of existing delivery organisations, including Tier 2, are retained wherever possible to ensure the continued engagement of local knowledge and expertise. This includes the ability to respond quickly to incidents, monitor flood risk management assets on a risk basis and to provide the public with the best possible service through local delivery. We would like to see a provision for exceptions in the definition of the Local Authority (LA) i.e. where Tier 2 authorities are able, competent, experienced and resourced that they can be the LA under the Act. If this is not considered practicable then strong legally binding frameworks and agreements are needed.

13. Should all operating authorities be required to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management?

Answer: Yes.

**2.2 Future roles and responsibilities**

14. Are the component parts of the EA strategic overview clear and correct and do they achieve the objectives?

Answer: The component parts as listed in Figure 1 are clear and appear, in theory, to be able to achieve the four objectives as set out on page 27.
However, as a district authority which has a wide range of experience dealing with flood risk management we believe it is absolutely fundamental to ensure that the roles and responsibilities of existing delivery organisations, including Tier 2 are retained wherever possible to ensure the continued engagement of local knowledge and expertise, in particular with regard to providing rapid response and other local flood defence services.
The Council accepts that the leadership role and accountability for ensuring effective management of local flood risk from ordinary watercourses and surface water should fall within the LA remit (including Tier 2). We very strongly oppose the proposal that the leadership and accountability role for groundwater should fall within the LA remit. Given the topography and geological nature of our district we have a number of areas that suffer from elevated ground water tables. These can be very complex problems which in some cases cannot be resolved or may be resolved through a range of mitigating measures. LAs do not have the expertise to deal with the wider ranging problems associated with ground water and do not have the financial resources to install and maintain the relevant systems/assets. In addition we strongly believe it will create a high level of customer expectations which LAs will not be able to meet without additional funding and resources. This Council is of the opinion that groundwater should be dealt with at a national level and hence fall under the remit of the EA, where the expertise currently lies and is likely to remain for the foreseeable future.

15. If not, what further changes should be made?

Answer: Increase local accountability.

16. Do you have any comments on the proposal that the EA issues a National Strategy for FCERM with which all operating authorities will be required to act consistently when delivering their FCERM functions?

Answer: We support the proposal.

17. Do you have any comments on the proposal that other bodies would have to have regard to the EA's National Strategy and guidance? Do you consider that any other bodies should be added to the list in clause 23? In particular, how should the sewerage industry be brought into the new framework?

Answer: No, No, No comment but consider it appropriate to bring the sewerage industry into the framework with separate legislation to avoid over complication.

18. Do you think that the EA should be required to consult as part of preparing or publishing its strategy?

Answer: Yes.

19. Should the EA have a regulatory role in relation to coastal erosion risk management, in particular for consenting and enforcement as set out in paragraphs 103-105? What alternative arrangements might be preferable?

Answer: Epping Forest District Council is located in a semi rural environment and therefore does not feel qualified to offer comment on this question which relates to coastal erosion risk.

20. Should the Secretary of State have the power to direct the EA to undertake local flood risk management work in default of local authorities, and recover reasonable costs?

Answer: Yes, however the manner in which the default power is exercised needs to be specified and reasonable. We would anticipate that a defaulting LA will be given every reasonable opportunity to carry out the works.

21. Should the EA be able to undertake coastal erosion risk management works concurrently with local authorities where appropriate to support the delivery of the strategic overview role?

Answer: Epping Forest District Council is located in a semi rural environment and therefore does not feel qualified to offer comment on this question which relates to coastal erosion risk.

22. The EA is drawing up a coastal map showing which operating authority will exercise FCERM powers on each length of coast. Should the EA maintain this and should the procedure for amending the map be the same as for main river maps, or should it be a non-statutory process?

Answer: Yes, we believe the EA should maintain the maps and to ensure the work is carried out the process should be a statutory function.

**2.3 Main River Mapping**

23. Do you have any comments on the proposed changes to main river maps as set out above?

Answer: No, the proposals appear to streamline the process.

**2.5 Local Flood Risk Management**

24. The Government's response to Sir Michael Pitt's Review accepted that county and unitary local authorities should have the 'local leadership' role described above. Does the draft Bill implement this effectively and support the development of effective local flood management partnerships?

Answer: It is agreed that an enhanced role for LAs, by leading new local partnerships and responsibility for SUDS, is pivotal to the success of flood risk management. The draft Bill supports the development of effective local flood risk management partnerships but it is not clear whether it provides a sufficient framework to enable this local leadership to be effective. The Bill should be more explicit in

setting out legislative solutions particularly with regard to effective information sharing.
As a district authority that has a wide range of experience dealing with flood risk management we are of the strong opinion that there should be clear guidance for making partnerships where Tier 2 LAs are able, competent and have the necessary experience.

25. Do you have any comments on the proposal that the county and unitary local authorities will develop a strategy for local flood risk management and that district local authorities and IDBs would be required to act in a manner which is consistent with that strategy in delivering their FCERM functions?

Answer: Yes, provided district local authorities and IDBs have contributed to and have been consulted in developing the strategy. Additionally any subsequent funding requirements are made available to Tier 2 LAs.

26. Do you have any comments on the proposal that other bodies would have to have regard to the local flood risk management strategy and guidance? Do you consider that any other bodies should be added to the list?

Answer: It is agreed that other bodies should have regard to local flood risk management strategy and guidance. Large land owners and any other 'relevant parties' who may be contributing to flood risk should be added to the list .

27. Do you think that the county and unitary local authorities should be required to consult the public as part of preparing or publishing their strategy?

Answer: Yes, but channelled through larger bodies such as Parish Councils, Environmental Groups and available to the public on line. Large land owners and other selected stakeholders should be part of the direct consultation process.
In our experience, with regard to this particular type of consultation i.e. preparing and publishing a strategy, the wider public tend to concentrate on issues that affect them individually. As the strategy needs to be overarching and considered on an area basis individual comments from members of the public may not prove to be beneficial. A cost benefit analysis may need to be considered.

28. Further to its duty to investigate flooding incidents, should the county or unitary local authority have powers to carry out works of an emergency nature? If so, what powers would be needed?

Answer: Yes, but there should be clear guidance for making partnerships where Tier 2 LAs are able, competent and have the necessary experience.

Powers would include:

i) Emergency powers of entry (land and property);
ii) Ability to carry out the works reasonably required to mitigate the immediate danger/effect;
iii) To serve notice if necessary where further works are required in addition to any works carried out in ii);
iv) Ability to re charge for both emergency works and any works carried out in works carried out in default of a notice, subject to the nature of the emergency/works.

29. Do you think that the EA and county and unitary local authorities should be able to gather information from private landowners and individuals about flood drainage assets related to their respective responsibilities? What if any sanction is needed to ensure information is provided?

Answer: Whilst in theory this is a good proposal we believe it may be too ambitious and unenforceable. It will require survey and investigation e.g. will a home owner be expected to provide details on size and capacity of drainage culverts? For larger land owners and individuals who own significant flood assets then we agree that information should be able to be gathered from private owners. Sanctions should be in line with other legislation when information is required, by notice, and that information is not submitted.

30. Should county and unitary local authorities be legally required to produce annual reports on the way that they are managing local flood risk? Should this requirement be annual?

Answer: It is considered that the relevant LA should legally be required to produce a report but it must be recognised that this will be a further resource. Clear definition is needed to avoid tick box exercise. It is considered that the requirement to produce an annual report may be over burdensome.
In our experience of implementing the requirements of other legislation, targets will not be met and matters such as producing regular reports will not be achieved if sufficient resources are not allocated to meet demands of the new legislation. Tier 2 authorities should feed into the Tier 1 authorities reports.

31. Should the EA provide support and advice to the local overview and scrutiny functions as part of the exercise of its strategic overview role?

Answer: Yes but it is unclear what the role of overview and scrutiny will be.

32. Should the list of bodies required to cooperate with overview and scrutiny committees be extended to encompass all relevant authorities and as a result pick up IDBs and water companies?

Answer: Yes.

33. Should Regional Flood and Coastal Committees (or another body) be involved in peer reviewing any annual reports produced by local authorities?

Answer: Yes, as stated above it is considered that annual reports may be over burdensome. Who will be responsible for the costs involved in peer reviewing the reports produced by the LAs?

34. Should district local authorities and IDBs continue to manage flood risk from ordinary watercourses, taking account of Local and National Strategies?

Answer: Yes.

35. Should county and unitary local authorities have powers, concurrent with district local authorities and IDBs, to manage flood risk from ordinary watercourses in their areas? Or should they remain able to act only in default?

Answer: No, concurrent powers would lead to confusion. It is considered that county and unitary local authorities should only be able to act in default with regard to managing flood risk from ordinary watercourses.

We support the draft Bill with regard to the provision of powers for all relevant organisations to undertake flood and coastal erosion risk management functions at the request of another, and on terms (including payment) which may be agreed between them. It enables authority A to make an arrangement with authority B to perform a function on behalf of authority A even though authority B might not ordinarily have the powers to do so.

However, even though we support the proposed flexibility of the provisions of the draft Bill there is some confusion in understanding the roles and responsibilities between all the different authorities. Currently officers are unable to advise Members and senior officers of the actual impact the bill will have in terms of roles, responsibilities and resources.

36. Should any sea flooding works that a local authority wants to undertake require the consent of the EA?

Answer: Yes.

37. Should all relevant organisations have the power to undertake any flood and coastal erosion risk management at the request of another body?

Answer: Yes, subject to local agreements or partnerships being established.

38. Should the functions of consenting, and the production and coordination of the strategy (for both EA and county and unitary local authorities) remain as ones which cannot be carried out by another authority?

Answer: We support the draft Bill in that it provides that works, powers and elements within the EA, or local authority, strategy e.g. producing SWMPs could be delegated under agreement. As a district authority who has significant local accountability and a wide range of experience dealing with flood risk management we believe that the functions of consenting and the production and coordination of the strategy could be done at a local level and therefore that these functions could be carried out by other authorities, provided adequate resources are allocated. However, we accept that taking a national overview other authorities may be inclined to support that these functions remain with the EA, county and unitary local authorities.

39. Are these assumptions reasonable? Is further evidence available to improve the analysis? Are the measures detailed proportionate with the scale of benefits assumed?

Section 153 of the draft Bill states:
*'The impact assessment for local flood risk management assumes that local authorities will develop a suite of measures for managing local flood risk, for example, surface water mapping, appropriate development planning and collating information on flood risk and drainage assets. It assumes that:*

- *The average cost to develop a SWMP is £100,000;*
- *They will invest £100,000 annually in mitigation measures for surface run-off and groundwater which will produce a real benefit for local flood risk;*
- *By taking all the measures proposed including coordinating the flood risk management activities of other bodies (e.g. EA, Water Companies, IDBs) (including SUDS) it will reduce all local flood risk by 40% (over a 43 year period) based on the limited best information available at present'.*

Answer: This Council is not in a position to answer with regard to the impact assessment at a Tier 1 LA level. However, we believe that even at Tier 2 level these assumptions are unreasonable and offer the following comment. The nature of the district will also be a major factor in determining the level of work and hence the costs involved.

a). This Council is in the process of developing the Level 1 Strategic Flood Risk Assessment in house. We are aware that many other LAs have commissioned consultants to do this work. To date, this Council has not considered the resources required to develop a SWMP and therefore is not in a position to offer comments on the cost of one. Although it is considered that the cost of commissioning consultants to do this work will not cost less than £100,000. There may be cost benefits in neighbouring authorities seeking and pooling resources in order to produce SWMPs. In our experience consultants are very costly, invariably require the input from LAs officers (which is often unmeasured) and the essential local knowledge gained through developing the plans rests with consultants rather than with people who are responsible for delivering the work on the ground.

b). Where will the £100,000 come from? £100,000 annual investment in mitigation measures for surface and groundwater may not be sufficient to produce real benefit for local flood risk. It is likely that some mitigation measures will cost in excess of £100,000 and that money will have to be rolled over from one financial year to another in order to fund the more significant projects.

Longer term operation, maintenance and monitoring (OMM) costs need to be considered. Unless OMM costs are budgeted for separately these could have an impact on the assumption that local authorities will invest £100,000 per annum.

It is considered that if a significant flood risk is identified from a groundwater source then the EA should lead on and take responsibility for the design and management of any systems. These can be complex problems and mitigation measures can be costly with significant on going costs. If necessary, once in place it could be managed by the LA as part of a local agreement.

c). This Council has no relevant information available and insufficient knowledge to offer any comment with regard to the assumption that all local flood risk will be reduced by 40% (over a 43 year period) based on the limited best information available.

**2.5 Duty to cooperate and share information**

40. As agreed in the Government response to Sir Michael Pitt's Review, there will be a duty on relevant organisations to cooperate and share information. Do you think the list of relevant authorities to whom this applies is comprehensive?

Answer: Yes.

41. Should the EA and county and unitary local authorities be able to specify the format and standards for information to be shared between organisations?

Answer: Yes.

### 2.6 Sustainable Drainage Systems

42. Do you agree that national design, construction and performance standards for sustainable drainage of new developments and re-developments should be developed and approved by the Secretary of State and Welsh Ministers?

Answer: Yes, but it must include details on maintenance and life cycle costs.

43. Are there particular issues which must be addressed in the standards to make them effective, that have not been mentioned?

Answer: These appear comprehensive.

44. Are there examples where this form of approval, for the surface water drainage system associated with a new development, is not appropriate?

Answer: Yes, when a non standard SUDs solution is proposed for which national guidance does not exist.

45. Does the process for adoption and connection described here provide a clear and workable approach for developers, local authorities and water and sewerage companies? Do you have any suggestions which would make the process simpler, speedier or lower cost?

Answer: It cannot be assessed from the limited details provided in the draft Bill as to whether the process for adoption and connection provides a clear and workable approach for developers, local authorities and water and sewerage companies. The consultation document states that the Government will work closely with developers, local authorities, and the EA to develop an application process that dovetails neatly with the planning and building control processes and any requirements flowing from the Groundwater Directive. This needs to be a very robust and well co-ordinated approach. This is a very important part of the Bill for LAs; Epping Forest District Council would welcome the opportunity to be part of the process in order to ensure a clear, workable and enforceable process is put into place.

Care must be taken when SUDs are complex and potentially impact on other people's property or private land. When exercising our powers under the Land Drainage Act 1991 and the Council's Byelaws, problems often arise where developers are given consent to discharge into a watercourse and they do not establish who owns the watercourse in the immediate vicinity and further down stream and do not gain the appropriate permission. This is also very similar, in principle, to the problem of developers and individuals not seeking permission to connect into private surface and foul sewers. With current resources LAs cannot be expected to carry out these elements of the work. There is often little redress the LA can take against the developer and no effective penalty that can be levied against them. There are concerns that similar problems will arise from developers with regard to the installation and adoption of SUDS, particularly if the SUDS impact on third party land.

It is currently unclear as to who the SUDS approving body will be.

46. Are there examples where a communal SUDS should not be adopted by the SAB?

Answer: Where a third party land owner e.g. wildlife trust or other established voluntary body is able and willing to undertake the role.

47. Do you agree with how the envisaged arrangements for replacing the automatic right to connect will work?

Answer: Yes.

48. Can the use of National Standards as a material consideration for the purposes of s115 (4) of the Water Industry Act 1991 provide sufficient legal certainty to prevent inappropriate agreements to drain highways to sewer?

Answer: There are concerns that use of National Standards, as stated above, may not be strong enough to provide the legal certainty required with regard to preventing inappropriate agreements to drain highways to sewers when it can have such a significant impact on the system.

49. What is the appropriate balance to enable good SUDS designs that work with the lie of the land, can discharge to watercourse, and can be accessed for maintenance and inspection, whilst protecting the rights of landowners?

Answer: That a specific power is introduced for the SUDS Approving Body (SAB) which enables them to construct SUDS which cross third party land that mirrors provisions in section 100 of the Highways Act 1980. For larger projects and in cases where it is in the public interest that the SAB compulsorily purchases land or buys an easement using existing powers as referred to in the consultation document. For SABs to work closely with LPAs.

50. How wide should the SABs' ability to delegate be?

Answer: District councils have an interest in SUDS as they are the planning and building control authority, and they manage and maintain much of the fabric of the public realm. It is recognised that county and unitary local authorities may wish to work together where one or other authority is small.

As a district authority that has a wide range of experience dealing with flood risk management we are of the strong opinion that SABs should be able to delegate to Tier 2 LAs who are able, competent and have the necessary experience. LAAs will be required.

51. Are additional enforcement powers needed – in particular, should the SAB have an independent power to enforce the approved SUDS? How would this work?

Answer: Yes.
Yes.
The consultation document states,

*'That construction of the SUDS in accordance with the approved plans is likely to be a condition attached to the planning permission for the development. Any failure to fulfil such a condition would therefore be liable to enforcement action by the local planning authority. Some SUDS fall within the scope of the Building Regulations and, where this is the case, building control enforcement will be possible'.*

Who will inspect the SUDS if it does not fall within the remit of the Building Regulations? In our experience, enforcement through the planning process can be slow, is usually done retrospectively and penalties against the applicant/developer are often not sufficient incentive to 'encourage' compliance.

It is strongly considered that additional enforcement powers are needed by the SAB and should work along the same lines as building control enforcement.

52. Views are welcomed on how best to ensure the maintenance of private SUDS, and ensure that they are not redeveloped.

Answer: It is considered that new obligations could be placed on SUDS owners as part of development control, not to redevelop SUDS or to seek permission before making alterations to that asset. This approach could be attractive for larger features that form part of the local register of flood risk management assets, and would have the advantage of communicating directly with the owner and making clear the types of work that would require permission.

53. Is there any legal impediment to prevent a SAB from adopting existing SUDS?

Answer: No comment.

54. Do you agree that performance management of SUDS maintenance should be included within the local government performance framework, as part of their climate change adaptation function?

Answer: Yes.

**2.7 Regional Flood Defence Committees**

55. Do you agree that Regional Flood Defence Committees should be renamed as Regional Flood and Coastal Committees?

Answer: Yes.

56. Should RFCC status be predominantly advisory rather than executive?

Answer: No, it appears that this contradicts the principle of local accountability as on the one hand the existing levy charge system will generate funds but there will be no local control.

57. Should the focus and roles of RFCCs be as described in above? If not, do you have any other proposals?

Answer: Yes, providing central funding arrangements are made.

58. Do you agree that the membership of RFCCs should be appointed as outlined above in future? If not, do you have any other proposals?

Answer: Yes.

59. Should RFCCs' levy-consenting powers be extended to coastal erosion issues?

Answer: Yes.

60. Are there any other issues that you wish to raise in regard to RFCCs?

Answer: No.

### 2.8 EU Floods Directive

61. Should flooding from sewerage systems caused solely by system failure be excluded from transposition of the Floods Directive? If not, how might such flooding be integrated?

Answer: Yes, as recommended in the consultation document.

62. Should the EA and county and unitary local authorities assume responsibility for implementing the Floods Directive, with the EA focussing on national mapping and planning and local authorities having specific responsibilities in relation to local flood risk? If not, what other arrangements would you suggest?

Answer: Yes, but there should be clear guidance for making partnerships in relation to local flood risk where Tier 2 LAs are able, competent and have the necessary experience.

63. Should county and unitary local authorities be responsible for delivering PFRAs for local flood risk as described above? If not, who should be responsible?

Answer: Yes, but there should be clear guidance for making partnerships in relation to local flood risk where Tier 2 LAs are able, competent and have the necessary experience.

64. Is this framework a suitable approach for determining 'significant risk' or are there alternative approaches to consider?

Answer: Yes.

65. Should county and unitary local authorities be responsible for determining significant local flood risk (ordinary watercourses, surface water and groundwater)? If not, who should be responsible?

Answer: County, unitary local authorities and Tier 2 LAs who are able, competent, and have the necessary experience should be responsible for determining significant local flood risk for ordinary watercourses and surface water. As stated above, due to the often complex nature of groundwater issues, it is strongly considered that the risk from groundwater when considered significant should fall within the remit of the EA.

66. Should the proposed selection of 'significant risk' areas by local authorities be moderated along the lines of the arrangements set out above?

Answer: Yes.

67. Do you agree with the proposed mapping arrangements set out above? If not, what alternative arrangements do you suggest?

Answer: Yes.

68. Should the EA and local authorities have the discretion to determine whether or not to produce flood maps, as described above? If not, what other arrangement should apply?

Answer: Yes.

69. Should the arrangements for FRMPs be as set out above? If not, what alternative arrangements do you suggest?

Answer: Yes.

70. Do you agree with the co-ordination arrangements set out above? If not, what alternative arrangements do you suggest?

Answer: Yes.

71. Should the first cycle PFRA be brought forward one year, as proposed above, to enable mapping to take up to two years in common with the rest of the mapping and planning cycle?

Answer: Yes.

72. Do you agree with the other proposals set out above for reporting and review? If not, what alternative arrangements do you suggest?

Answer: Yes.

73. Do you agree that the duty to act in accordance with WFD requirements should apply equally to all FCERM authorities?

Answer: Yes.

74. Do you think this approach provides a satisfactory mechanism for ensuring that the relevant bodies deliver the requirements of the WFD?

Answer: Yes, this appears to be a pragmatic approach.

**2.10 Third Party Assets**

75. Should we introduce a system of third party asset identification and designation, as set out above?

Answer: Yes.

76. Is there a case for greater powers on third party assets than we have suggested?

Answer: Yes, an express duty upon an owner to keep their structure in a reasonable state of repair if the structure is considered a `significant' third party asset.

77. Are there assets that are not 'structures or natural/man-made features' that should also be designated?

Answer: Not to our knowledge.

78. Should there be a duty on those responsible for third party assets in England and Wales to maintain them in a good condition?

Answer: Yes, an express duty upon an owner to keep their structure in a reasonable state of repair if the structure is considered a `significant' third party asset.

### 2.11 Consenting and enforcement

79. Should regulation of the ordinary watercourse network (where there are no IDBs) transfer to county and unitary authorities? Or should this role in future sit with the district and unitary authorities?

Answer: As a district authority with Land Drainage Bye Laws in place we currently exercise a consenting role for certain works and work very closely with the EA with regard to other works. It is considered that this role should sit with the district and unitary authorities. We believe this will afford a more efficient and effective build up of local knowledge and provide the public with greater accountability.

80. Should it be possible to make consents subject to reasonable conditions?

Answer: Yes.

### 2.12 Reservoir safety

81. Views are sought on whether the minimum volume figure should be 5,000 or 10,000 cubic metres, or another figure.

Answer: 10,000 cubic metres as recommended by the industry and engineering profession and supported by the EA. However, there may be incidences where smaller reservoirs may pose a significant risk and these need to be considered on a case by case basis.

82. Views are also sought as to whether criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc.

Answer: It is considered inclusion and/or exemption should also be based on other objective criteria.

83. Do you have a view on what information should be requested at the point of registration to enable an effective risk based approach thereafter? How can we design this and the collection process to minimise the burdens imposed by registration?

Answer: The requirements to register as set out in the consultation document appear adequate. Assistance could be given by the EA, or any other relevant body, to assist in the requirements relating to inundation mapping and other forms of mapping or any information they may hold with regard to the details required. As registration is a new process it has to be expected that this could potentially be initially burdensome but once the information is gathered it will not need to be repeated.

84. Do you agree the proposed classification is appropriate and that the EA should have responsibility for classifying all reservoirs under the new regime?

Answer: Yes.

85. Do you believe there might be a role for insurance in improving reservoir safety and, if so, how might this work?

Answer: It is felt that this question is better answered by those involved in the insurance industry.

86. Do you have a view on whether and how the Government could most fairly keep to a minimum the financial burdens placed on the owners of those reservoirs which are being brought within the regulatory regime for the first time?

Answer: Lower information and other requirements for registered reservoirs which are classified as low risk, spread the costs of one off registration over a number of years but predominantly keep the registration fee at a reasonable and manageable level.

87. Again, we welcome views on how to ensure charges within a scheme can be made proportionate.

Answer: As the draft Bill is seeking a power for the EA to introduce a charging regime in line with those it already has under the Environment Act 1995 we believe the EA is better placed to offer views on how the charges within a scheme can be made proportionate.

88. No decision has yet been made about making use of the existing power to give Directions contained in the Reservoirs Act 1975 (as amended by the Water Act 2003). Views are invited on whether to proceed ahead of enactment of the proposals in the draft Bill. Points to bear in mind are:

• The existing power to give a Direction would apply only to LRRs; and the costs of offsite planning would not be borne by the undertaker.

• The power to give a Direction under the new Bill proposals could apply to all high risk reservoirs above the minimum volume criterion; and could provide for the reservoir manager to meet the costs of off-site planning should a specific emergency response plan be needed. Views are sought on whether the Bill should provide for this.

Answer: It is considered that use of existing powers to give directions under the Reservoirs Act 1975 (as amended by the Water Act 2003) should be used to proceed ahead of enactment of the proposals in the draft Bill. Could a Direction also be given under the new Bill as this would be far more encompassing and focussed? Our concern is that if there are delays in the enactment of the new legislation no progress is going to be made with regard to the Reservoir Flood Plans for any of the assets. A start needs to be made somewhere.

**3.1 Possible reforms to the role and governance of Internal Drainage Boards**

89. Do you consider that there is a direct conflict or inconsistency between the IDBs' supervisory role and the local leadership role of the county and unitary local authorities?

Answer: Yes.

90. If the IDBs' supervisory role was repealed, what would IDBs no longer be able to do that they currently can?

Answer: It is felt that this question is better answered by IDBs.

91. Should regulation of the entire ordinary watercourse network (including within IDB watercourses) transfer to county and unitary authorities in order to provide a consistent approach?

Answer: No, the consultation document states that IDBs do have the benefit of having a local focus and understanding. They may be the best authority to deliver effective regulation of the relevant ordinary watercourse network. It is imperative, as with some Tier 2 authorities, that this local knowledge and focus is not lost. In our experience the suggested economies of scale and other perceived benefits of placing all the responsibilities with a `larger' authority may look to be effective from a theoretical point of view but is not always the best way of recognising what is priority and delivering services at a local level. This is particularly pertinent when responding to major flooding incidents when a more rapid response is achievable and local knowledge can be employed to ensure effective and efficient use of resources.
It appears from the consultation document that there are some concerns with regard to the management, accountability and accessibility of the LDBs; it is suggested that these management and procedural issues be addressed.

92. Do you think that IDBs should have specific powers to share services and form/participate in consortia?

Answer: No.

93. Do you think that IDBs should have specific powers to form/participate in limited companies/limited liability partnerships for the purposes of sharing services?

Answer: It is felt that this question is better answered by IDBs and the body they are accountable to (EA). However, from an outsiders point of view specific powers should not be given that would in any way reduce accountability.

94. What negative impacts might there be from providing IDBs with these specific powers?

Answer: It is felt that this question is better answered by IDBs, the body they are accountable to (EA) and the authorities who have experience of working with IDBs. There is concern that there is always the potential in these types of setups for responsibility and accountability to be diluted.

95. Do you agree the proposals outlined are the best way to simplify these procedures? If not, what alternative approaches should be considered?

Answer: Yes.

96. Do you agree that the title of IDBs should change in the future to reflect the wider approaches that IDBs will undertake now and in the future?

Answer: Yes.

97. Do you agree that 'Local Flood Risk Management Board' is an appropriate new title, or is there a better alternative?

Answer: This appears to be an appropriate new title. However, it is felt that this question is better answered by IDBs.

98. Do you agree that the principles of the Medway Letter should be relaxed allowing IDBs to expand their boundaries beyond their traditional areas?

Answer: Yes, where this is sensible for the strategic management of flood and coastal erosion risk management locally.

99. Do you agree that there should be a specific requirement for IDBs to produce an impact assessment demonstrating the cost benefit implications of a boundary expansion?

Answer: Yes.

100. Do you agree that the future supervision of IDBs would fit better with county and unitary local authorities rather than the EA in the future?

Answer: Yes.

101. Do you think that county and unitary local authorities should take over the lead on amalgamation (etc.) schemes from EA in the future under this supervisory role?

Answer: Yes.

102. Do you agree that lifting the bare majority limit on local authority membership of IDBs will allow for fairer representation on boards in the future?

Answer: Yes.

103. Are there other models of membership that you think would be more appropriate?

Answer: This council does not feel it has sufficient knowledge of the workings of IDBs to comment on this matter.

104. Do you agree that the Secretary of State should have powers to determine the size, shape and structure of IDBs in the future?

Answer: Yes.

105. What consultation would need to occur before individual changes in size, shape and structure of IDBs were to take place? What sort of powers would be most appropriate?

Answer: This council does not feel it has sufficient knowledge of the workings of IDBs to comment on this matter.

106. Views are sought on whether the assumptions are reasonable. Can further evidence be made available to improve the analysis? Are the measures proportionate with the scale of benefits assumed?

Answer: This council does not feel it has sufficient knowledge of the workings of IDBs to comment on this matter.

107. No actual question in the draft FWM Bill

### 3.2 Current funding structure

108. Do you agree that there is a case to retain powers for the EA to levy (a) general drainage charges, and for IDBs to retain similar powers to levy (b) agricultural drainage rates in England and Wales?

Answer: Yes.

109. Do you agree that EA's current powers to levy special drainage charges should be repealed?

Answer: Yes, as the consultation document states it is no longer used.

110. Do you agree that only county and unitary local authorities should be funded for local flood risk management to allow them to prioritise funding based on where benefits would be greatest?

Answer: No (see comments below).

Concerns with regard to giving the responsibility for local flood risk management for ground water to any other authority other than the EA has been strongly expressed above.

We support the proposal that districts and IDBs must have regard for strategies and plans determined by the county or unitary authority and would wish to cooperate at all levels.

However, this Council is of the opinion that district, unitary local authorities and IDBs, provided they are able, competent and have the necessary experience, should retain powers and funding to determine their own delivery plans as long as they are consistent with the county strategy. It is accepted that good practice suggests that funding should be aligned with responsibilities, to make sure those accountable for delivery have the resources to achieve what is required. In our experience the suggested economies of scale and other perceived benefits of placing all the responsibilities and funding with a `larger' authority e.g. county, may look to be effective from a theoretical point of view but is not always the best way of recognising what is priority and delivering services at a local level.

It is considered that LAs, such as Epping Forest District Council, who have invested in and have experience in flood risk management, could potentially be compromised from losing the ability to be funded directly from Grant-Aid. This could also compromise the existing level of funding for flood risk management.

The consultation suggests that district authorities and IDBs would still be free to allocate any other funds available to them to the management of local flood risk, if they are not funded by the county to pursue their particular priorities as long as the works are not inconsistent with the agreed local flood risk management plan.

Whilst this in theory appears logical we have concerns as to how this will work in practice given shrinking resources, funding and competing priorities. We have concerns that Epping Forest District Council and other LAs who have been proactive and have invested in flood risk management could potentially be detrimentally affected by this arrangement, as too much reliance will be placed on the fact that 'LAs are free to allocate other funds available to them to the management of local flood risk'.

111. Do you think that replacing the IDB special levy in England and Wales with agency or contractual arrangements between IDBs and the relevant local authorities would improve the delivery and prioritisation of local flood risk management?

Answer: Yes.

112. Are there other arrangements that would remove or reduce the problems associated with the special levy in England and Wales, including those referred to above?

Answer: This council does not feel it has sufficient knowledge with regard to the `special levy' to comment on this matter.

113. Is there a case to end both IDB highland water charges and EA's precept on IDBs in England and Wales?

Answer: This council does not feel it has sufficient knowledge with regard to the `IDB highland water charges' to comment on this matter.

114. If the Medway letter were retained, would there still be a case to end the payments?

Answer: The Council does not feel it has sufficient knowledge with regard to the circular payments between IDBs and the EA to comment on this matter.

115. What additional steps or measures could be taken to make sure developers in England and Wales contribute towards the pressures new developments place on future local and central government budgets?

*Extracted from page 82 of the consultation*

'*The Department for Communities and Local Government is preparing secondary legislation that will determine how the new Community Infrastructure Levy (CIL) will work, which can help fund flood risk management in the area. However, funds raised by the CIL will be needed for a number of competing priorities –such as roads, schools, parks and playgrounds. It cannot be assumed that any receipts from CIL will be spent on flood risk management'.*

Answer:

Ring fence receipts from Community Infrastructure Levy (CIL) so it can be spent on flood risk management when it is required and identified as a priority.

Developers should contribute towards FCERM costs.

Comments from the Council's Forward Planning;
This question would be better answered once the final proposals of the CIL and how these relate to section 106s are known. It is felt that there is the potential for significant confusion here and certainly for the reluctance of developers to go with Section 106s, when they could argue that they have already paid their due through the CIL. It could be feasible to have a "sliding scale" of tariff depending on the location of new development, or of its impact on flooding elsewhere.

Theoretically at least, the new planning system should allow early warning of development in areas at risk of flooding - i.e. through the Strategic Flood Risk Assessment plans, and through existing policies (such as the Flood Risk Assessment Zones). Potential developers should therefore be aware at an early stage of the likely infrastructure costs for flood defence/mitigation and should be

able to build that into their overall costings, along with all the other infrastructure etc issues associated with individual sites.

### 3.3 Reducing property owners' and occupiers' impact upon local flood risk

116. How can people be made aware of their riparian responsibilities when they first buy properties that include riparian land? and

117. What else could be done to improve existing riparian owners' awareness and understanding of their responsibilities?

Answer to 116 & 117:

- The most effective way is for a standard question to be added to the Seller's Property Information Questionnaire in Home Information Packs (HIPs). However, it is understandable that the Government has no immediate plans to make changes to HIPs because of the possible costs of such changes, and the need for a period of stability following the introduction of HIPs. Therefore this needs to be a longer term objective;
- A standard question could be added to the Con 29 Local Land Charges search. If an optional question is added it is unlikely to be as effective but at least it would draw the purchasers attention to the issue;
- Through conveyance solicitors. Information could be distributed to the Legal Society with the request that the information be disseminated through the profession;
- Websites offering information on buying and selling properties could be targeted. A 'national' web site could be set up that informs the public about a range of matters that need to be considered throughout the conveyance process, including riparian responsibilities;
- LAs and EAs websites and newsletters could be used to inform the public about the matter;
- Adding a clause on the standard land registry information if property searches include ditches, watercourses and/or riparian land etc;
- Relevant information stored on the data bases for Planning and other relevant services such as the Environment, Land Drainage/Engineering etc so information can be declared if enquiries are made;
- General awareness campaigns – including LAs putting up leaflets in Community Halls etc;
- Officers to attend Local and Parish meetings etc in areas where there are significant riparian assets.

118. What examples are there of strategies that have succeeded in increasing the engagement of riparian owners and improving their contribution to maintenance?

Answer: We are not aware of any 'over arching' strategies that have been put in place. When such problems are identified in the district, Land Drainage Officers of the Council spend significant amounts of time explaining to residents their Riparian responsibilities. We have produced a 9 page leaflet entitled 'Riparian Ownership' which we send out whenever required. We also refer residents to the EA website. However, this does not always result in the riparian owners improving their contribution to maintenance.

119. How could the powers provided to drainage bodies by section 25 of the Land Drainage Act 1991 be improved?

Answer: The option to serve a notice should be replaced by an absolute duty to, as paralleled in the EPA 1990 in relation to statutory nuisances. As with statutory nuisances there should be emergency provisions for non suspension of the notice. However, this would still be limiting as formal action can only be taken if a `responsible' person is known and problems with regard to land that is not registered and where the owner cannot be traced are always going to present difficulties.

120. Do you agree with the suggestion that ENI be offered to applicants and respondents in all ALT land drainage cases?

Answer: Yes.

121. Do you agree with the introduction of a fee for all applications to the Agricultural Land Tribunal that concern land drainage? This would not affect hearings for agricultural tenancies.

Answer: Yes.

122. If an application fee were introduced, at what level should it be set?

Answer: We support the proposed application fee of £100.

123. Do you agree that a fee should be charged for an ALT hearing on drainage? Should that fee be paid by the losing party or should this be decided by the ALT?

Answer: Decided by the ALT.

124. If a hearing fee were introduced, at what level should it be set?

Answer: We support the proposed hearing fee of £1000.

125. What cases are you aware of where people might have made use of the ALT had its remit extended beyond ditches and included all ordinary watercourses?

Answer: No comment.

126. Do you think that it would be a good idea to extend the remit of the ALT to include all ordinary watercourses? Do you think that it should also be extended to cover the main river network?

Answer: Yes.

127. In what other ways, if any, could the regulations and processes of the ALT be improved as regards cases involving drainage issues?

Answer: This council does not feel it has sufficient knowledge with regard to the regulations and processes of the Agricultural Land Tribunal to comment on this matter.

128. Do you think the ALT should be renamed? If so, what name do you suggest?

Answer: Yes, we support the name as proposed in the consultation - `Drainage and Agricultural Land Tribunal' but would offer comment that perhaps `Land Drainage and Agricultural Land Tribunal' would be more transparent.

129. Do you believe that failure to maintain the flow of water through watercourses should be described in law as a statutory nuisance?

Answer: No, as only in some cases would you be able to definitely prove flood risk? Statutory nuisance is dependant on Common Law whereby the act, sufferance or neglect is caused by an actual person/s who can invariably be identified and in the main relate to discrete premises or discrete conditions. How would you prove that flood risk is only caused from the `obstruction of a watercourse' and how would you prove who caused it just because it was on somebody's land. You may make landowners responsible but you cannot necessarily prove that they caused the obstruction. The water contributing to flooding can potentially originate from a number of sources – how will it be demonstrated that it is categorically the obstruction causing the flooding and not just a problem, or the amount of water from a particular source at a particular time, upstream?

A statutory nuisance is something that has to be witnessed; grounds for prejudicial to health are well established at Common Law. We have concerns with regard to how you prove that statutory nuisance exists unless flooding has been witnessed, the degree of flooding also needs to be taken into account (many people classify flooding as water affecting any part of the curtilage of the property or land and not just the building). Formal action can only be taken if a `responsible' person is known and problems with regard to land that is not registered and where the owner cannot be traced are going to limit this provision.

By making a statutory nuisance of `obstructing watercourses' it will raise the expectations of the public with regard to authorities being able to deal with any degree of flooding, or potential flooding, of their land. On a practical note invariably when flooding does occur it is often difficult and dangerous for officers to get to site in order to witness the flooding. The burden of proof will then present some challenges.

Creating a nuisance of `an obstructed watercourse' would establish a legal responsibility that was not dependent on existing Common Law and therefore we feel there is no place in the statutory nuisance provisions for this issue. We are of the opinion that the preferred option, as stated in the consultation document, is to amend the process by which the ALT resolves disputes, extend its remit and strengthen the powers under section 25 of the Land Drainage Act 1991.

130. If a statutory nuisance were created concerning "obstructed watercourses", should it be administered by the ALT, by district and unitary local authorities or by some other body/bodies?

Answer: District and unitary local authorities alongside existing statutory nuisance powers.

131. Do you agree that a new statutory nuisance should be created to tackle the risk of runoff flooding?

Answer: The increasing risk from surface run off needs to be addressed. As we are unaware as to any other provision that is available, or could be used, to deal with this problem the response is 'yes'. It is envisaged that some of the problems as

highlighted in the answer to question 129 will occur, particularly with regard to the degree of flooding. However, in this case the nuisance will be caused from surface runoff which should be easier to relate back to a specific source and to witness. This will reinforce the new provision for planning permission to be sought when householders wish to pave their front garden with hard standing greater than 5 square meters.

132. If a statutory nuisance were created for run-off risk, which public bodies should be responsible for its administration and enforcement – the ALT, unitary and district local authorities, or unitary and county local authorities?

Answer: Unitary and district local authorities alongside existing statutory nuisance powers.

133. What is the range of costs involved in conducting expert investigations into potential surface run-off statutory nuisance?

Answer: Unable to offer justified comment, however from experience in this district we can confidently say that significant sums will be involved into investigations.

134. What sized reductions in damages can be expected when run-off risks are eliminated?

Answer: Unable to offer justified comment.

135. Should the owners of properties that cause a surface run-off statutory nuisance have to pay the entire cost of eliminating the nuisance? What would happen if the owner was unable to afford the work? How else could the works be paid for?

Answer: Yes, as we do not see how any other party could be asked to contribute to the cost of mitigating the 'statutory nuisance'. As with other statutory nuisances the enforcing authority could carry out the works in default and make reasonable charge for doing so. This should include officers' costs as the investigation and process involved in mitigating the problem could be significant. A charge will need to be levied against the property and as in some cases the costs of the work could be high; the LA should be able to charge interest on the unpaid debt. The legislation needs to address any consents or permissions given by the LPA, EA or others.

136. Should local authorities be encouraged to make more use of their Article 4 powers to reduce the growth in surface run-off risk?

Answer: This council has very few Article 4 powers and would only seek to use them if there were very good reasons. There would need to be criteria of how serious the harm would be and then applied to indentified problem areas only.

137. Please tell us of any recent occasions you are aware of in which run-off from farmland caused substantial disruption or damage to neighbouring property.

Answer: No comment.

138. Do you agree that local authorities should, in areas of high risk of run-off flooding, be given powers to impose restrictions on management practices and oblige landowners to make improvements to drainage in particular portions of land implicated in run-off flooding?

Answer: Yes, in areas of high risk of run-off flooding.

139. If you do agree with the above proposition, what land management practices should be included in the national list of possible restrictions?

Answer: Insufficient knowledge of agricultural land management practices to offer justified response.

140. What would be the administration costs of working with a landowner to convince them to change the way they managed their land and support them with doing so?

Answer: Insufficient knowledge of agricultural land management practices to offer justified response.

**3.4 Single Unifying Act**

141. Do you agree that any proposed changes to the existing legislation, not contained in the draft Bill or covered elsewhere in this consultation document, should be discussed directly with relevant organisations in England and Wales so that changes might be introduced in the resulting legislation, without the need for further general consultation?

Answer: Yes.

142. If so, are there any particular or general issues on which you would want to be involved in this way?

Answer: As a semi rural local authority we recognise that we do not have the experience to offer justified comments with regard to coastal erosion and issues involving IDBs etc. However, as a local authority who has flood risk issues and who has significant flood risk management experience we would wish to be involved in all other matters.

**4.1 Hosepipe bans**

143. What non-essential uses of water do you think should be restricted in order to save water in times of drought?

Answer: Cleaning of patios with a hose pipe, pressure washing, and filling of domestic swimming pools. Non-essential uses with regard to commercial premises e.g. watering of landscape areas and hanging baskets at public houses, restrictions on ad hoc car washes and other uses that are unnecessary for the running of the business.

144. For those domestic uses of water which are not covered by the existing hosepipe ban powers, but which may be prohibited as a result of any changes, for example the cleaning of patios with a hosepipe or pressure washer or filling of domestic swimming pools, how can the cost of inconvenience to the householder be measured? Are you able to provide an assessment of the impacts?

Answer: It will be difficult to measure the cost of inconvenience to the householder – but these are non essential activities that may be inconvenient and affect life style but present no risk in terms of health.

145. Some businesses could be affected at an earlier stage in a drought if further uses are prohibited. Are you able to provide any assessment of the likely impact and costs for businesses should they be unable to use water supplied through a hosepipe or similar apparatus?

Answer: No.

146. Do you agree that the legislation should not set a standard notice period? If not, what period would you suggest?

Answer: Yes.

**4.2 Power of entry – water resources functions**

147. Do you agree that a power of entry should be introduced to cover the EA's functions to measure and manage water resources?

Answer: Yes.

**4.5 Water Administration Regime**

148. Should the special administrator be required to pursue the rescue objective for viable water companies that experience financial difficulties?

Answer: Yes, as the current regime for water is not consistent with the Government's approach to company insolvency and limits the ability of the water administrator to pursue other options that may result in a better outcome all round, including customers.

149. Should a hive-down provision be available in the water administration regime to make the transfer process more efficient?

Answer: We support the recommendation in the consultation that a hive-down provision should be made available in the water administration regime.

150. Do you agree that we should remove the right of an undertaker to veto a transfer?

Answer: Insufficient knowledge with regard to transfer schemes of water companies and consider this question is better answered by interested undertakers, ministers and Ofwat.

**4.6 DWI Recovery of Charges**

151. Do you agree that DWI should introduce charging to recover the cost of their regulatory activities from water companies and licensed water suppliers in line with other water regulators?

Answer: As we are unaware of the overarching costs and benefits of supporting these proposals it is considered that the related water regulators, DWI and private water companies are best placed to answer this question. However, there are concerns that the water industries may seek to pass all the costs of the regulatory services onto the public and therefore this needs to be restricted to ensure the water companies are accountable at all levels. We would wish to secure a process that has the least financial burden for the public.

152. Do you agree with the principle that charges to individual water companies and licensed water suppliers should be proportional to the relative regulatory burden they represent?

Answer: Yes.

**4.8 Misconnections**

153. Do you agree that powers should be given to sewerage companies to require householders to rectify misconnections as described above? Are there alternatives?

Answer: Yes.

**4.9 Development of a project based delivery approach for large infrastructure projects in the water sector**

154. Do you agree that a project-based approach would reveal optimal funding structures?

Answer: Yes, as the intended effect is to achieve cost-effective funding and delivery solutions for large projects to meet the requirements of community obligations and other investment drivers in the water sector.

155. Are there alternative approaches to securing effective and properly regulated collaborative projects that could be explored?

Answer: We are unaware of any other alternative approaches.

156. Do you agree that consumers would benefit from a project-based approach to suitable large projects?

Answer: We do not think there is a 'yes/no' answer to this question. From the supporting statement in the consultation document it would appear, in theory, that there should be benefits to the consumers as the intended effect is to achieve cost-effective funding and maximise competition in the tendering process. There will always be concern that the benefits (including financial benefits) to the consumers will not be as transparent and as great as an 'in theory' principle might project.

157. Do you agree that existing water companies would normally be best placed to manage the procurement exercise?

Answer: Yes.

158. What types of projects should be covered by the regime?

Answer: It is considered that this question would be best answered by the water companies, Ofwat and other relevant bodies working in the water industry.

**4.10 Complaint handling powers**

159. Do you agree that these changes provide for the most appropriate body to handle complaints?

Answer: Yes.

### 4.11 Securing compliance

160. Do you agree that these changes will enhance Ofwat's ability to protect customers?

Answer: Yes.

### 5.3 Hydromorphology powers

161. Do you agree that a power to improve the hydromorphological condition of water bodies in England and Wales is necessary to deliver WFD requirements on hydromorphology? Please state why.

Answer: Yes, as this will allow for strategic planning and for the EA to target improvement activities in order to help meet environmental objectives and increase our ability to meet the obligations under the Water Framework Directive.

162. Do you agree with these criteria for the use of the power?

Answer: Yes.

163. Do you think this proposal provides an appropriate mechanism to enable improvement of hydromorphological conditions?

Answer: Yes.

**End of response as further questions relate to the policy position and flood risk management in Wales.**

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# *Report to Overview and Scrutiny Committee*

## *Date of meeting: 8 October 2009*

**Subject: Housing Subsidy Review**

**Officer contact for further information:**
**Peter Maddock (01992 564602)**
**Alan Hall (01992 564004**)

**Committee Secretary: Adrian Hendry (01992 564246)**

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**Recommendations/Decisions Required:**

**That the Overview and Scrutiny Committee approves the submission of the attached responses in Appendix 2 to the Department of Communities and Local Government (CLG) Consultation Paper on the Reform of Council Housing Finance.**

**Report:**

1. The Government has for the last three or four years been exploring possible changes to the Housing Finance system currently in operation. Part of this process was to invite authorities to pilot some of the proposals. This has now taken place and culminated in the issue of a consultation paper titled The Reform of Council Housing Finance. The paper was published in July 2009 for consultation purposes.

2. The paper puts forward two broad models, improvements to the current system - where revenues continue to flow between local and central government using assumptions on landlord costs and income, - and a 'devolved system', where rents raised locally can be used locally in exchange for a one-off reallocation of debt.

3. The consultation paper makes it clear that the Government would prefer to move to a self-financing devolved system and, indeed, the recently unveiled local authority new build properties system is very much in line with this. The Government's preferred option is that each authority would be allocated a proportion of the total national housing debt (Approx. £18 bn), based on its ability to service that debt. The opening debt level would be one based on the tenanted market value of the stock and each authority would be required to produce a 30-year business plan, which would include a stock valuation based on the present value of cash flows in the plan.

4. The paper itself is in places quite technical, therefore a summary of the main points are attached at Appendix 1 to assist members. This summary also appeared in the Council Bulletin during week commencing 31 August 2009.

5. There are seventeen questions within the consultation paper, which seek views on a number of different aspects. Appendix 2 details the questions and proposed responses. If members have any additional comments, or wish to amend some of the existing comments these can be included within the final response. The deadline for responses to the consultation is 27 October 2009.

6. The Councils HRA business planning consultant has undertaken some modelling work to assess what the financial effect of the preferred proposal might be and provided some comments on the consultation document. His comments have been included within the Council's response. The results of his modelling work are still being evaluated and any

additional information that will assist the response will be reported at the meeting.

**Reason for decision:**

The Reform of Council Housing Finance Paper represents a big change to the way Housing Finance operates and as such it is important to participate in the consultation process. There will be a General Election next year and this is unlikely to be high priority so any changes are still some way off; It is difficult to respond constructively when the actual financial effect on the Council is unknown, nevertheless comments have been made where appropriate. Members are asked to endorse the responses made and if they wish make additional comments that can be included in the response.

**Options considered and rejected:**

The Council could choose not to respond to the paper, or provide alternative responses to those proposed.

**Consultation undertaken:**

None, although the Tenants and Leaseholders Federation has discussed the contents of the Consultation Paper

**Resource implications:**

Budget provision: The effect on the Housing Revenue Account is as yet unknown, but could conceivably be significant.

Personnel: None
Land: None

**Appendix 1**

**Government Consultation Paper on the Reform of Council Housing Finance**

In 2007/8, the Council paid around £8.7m to the Government in negative housing subsidy – funded from the Council's tenants' rents. This equates to around £1,350 per annum (£26 per week) per tenancy, including tenants in receipt of housing benefit.

The Government has recently issued an important Consultation Paper on its proposed reform of the housing finance system, which will have major financial implications for the Council's Housing Revenue Account – and how much the Council pays the Government.

A proposed response to the Consultation Paper will be considered by the Cabinet at its meeting in October 2009. However, it is considered appropriate that all members are aware of the proposals and issues on this matter.

The Government says that the Consultation Paper is the result of a detailed investigation into the operation of the council housing finance system. It has drawn extensively on the input from a variety of organisations and individuals and, the Government says, has been underpinned by a strong evidence base.

The Consultation Paper is divided into five sections:

**Section 1** - describes the background to the review, its terms of reference, working methods and the ways the Government has engaged with stakeholders.

**Section 2** provides an overview of the current system for financing council housing, covering the ring-fenced landlord account (the Housing Revenue Account) and the system for redistributing income between councils (the Housing Revenue Account subsidy system).

It describes the current distribution of housing debt within the system and the rules that apply to capital receipts and borrowing.

It also provides an overview of the Decent Homes Standard and social rent policy.

**Section 3** covers the future costs and standards of council housing. It describes the allowances within the current system and the evidence gathered during the review about the need to spend in future.

It proposes changes to the framework for allocating costs between the Housing Revenue Account and a local authority's general fund. It sets out a proposal for continuing the Decent Homes Standard in future and how the Government might address energy efficiency.

It also proposes changes to the Housing Revenue Account which would allow sinking funds to be set up for works to leaseholders' homes.

**Section 4** describes the options for fundamental reform of the council housing finance system. It covers improvements to the current system which would reduce volatility and improve long term planning – in particular through multi-year subsidy determinations and/or debt allocation.

It also sets out an option for a devolved system – self-financing – which would remove the need for redistribution of revenues in return for a one-off allocation of debt. It describes methods for assessing the level of debt each council would be required to support under self-financing and how this debt would be allocated. It also identifies some potential costs to the general fund from debt allocation and how these could be mitigated or funded.

In addition, Section 4 sets out proposals for managing the amount of new borrowing councils might undertake under self-financing, so that this is consistent with overall public borrowing and spending policies. It considers risks arising from self-financing and how these could be managed. It also includes a proposal to end the pooling of capital receipts subject to a condition that the currently pooled amounts are reinvested locally in housing.

Finally it describes the implications of the proposed changes on disabled adaptations, on transfer and arms-length management organisation (ALMO) policy and programmes and on local housing companies. It also invites views about any impact on equalities.

**Section 5** covers implementation of the proposed reforms. It describes the measures being taken immediately on new council homes in order to remove disincentives to council house building, the powers which would be required to implement self-financing across all councils and stock, and an indicative timetable for implementing the revenue and capital reforms

The following explains in more detail the proposals that will have implications for the Council.

**Local authority leaseholders – service charges and sinking funds**

The Government's review looked at the issue of leaseholders and the substantial costs that some have incurred from improvements to meet the Decent Homes Standard.

A sinking fund is a reserve of funds that can be built up from contributions from leaseholders (service charges) and used for a number of purposes. Whilst often used to cover expenditure which may be incurred fairly infrequently, such as large scale works, it can also be used to meet other costs that are incurred more frequently, such as redecoration of the common parts. The use of sinking funds allow contributions from leaseholders towards the cost of such works to be spread more evenly over a longer period rather than the full amount being demanded all in one go.

There are a number of reasons why the vast majority of local authorities do not operate sinking funds at present.

The Consultation Paper states that, for *future* sales, the Government will undertake further work to investigate whether:

- the sale price can be adjusted to include a lump sum that covers costs of outstanding work on the property, allowing the local authority to place this element of the sale price in a sinking fund for the property
- provisions allowing for the collection of sinking fund contributions can be introduced into the standard leasehold contract
- more information can be provided for leaseholders on their responsibilities for contributing towards costs of repair and maintenance of the building containing their property and any other estate or communal costs.

The Government will encourage local authorities to establish sinking funds - where they are supported by leaseholders - and will provide more information to encourage leaseholders to make use of sinking funds.

**Options for fundamental reform of the system**

The Consultation Paper reviews a range of options for reform within two broad models for financing council housing in future:

- **improvements to a national system for funding council housing** in which revenues continue to flow between local and central Government as a result of ongoing assumptions made by Government about landlord costs and income

- **a devolved system (self-financing)** in which rents are retained by councils to spend on their own services, in exchange for a one-off reallocation of debt

All the options share a number of characteristics:

- costs, standards and rents would be based on the same principles.

- local authorities would be required to draw up 30 year business plans based on updated

stock condition surveys following the completion of their Decent Homes programme

- all housing capital receipts would be retained locally and would be accounted for alongside housing revenues

A key criticism of the current system is the unpredictability and volatility inherent in an annual subsidy determination process. This, it is argued by councils, makes it hard to plan long term.

The Consultation Paper suggests that one option for addressing this issue would be to move to longer determination periods, of between three to five years, during which time assumptions made about costs and income would not change. This, the Government claims, would facilitate better management and enable plans for maintenance and repairs to be drawn up and adhered to with greater certainty than currently applies. It should also assist procurement, and in practice would improve the incentives for local authorities in running the stock.

**Re-allocation of Councils' Debts**

Although Epping Forest DC is "debt free" – as are many other local authorities, a number still have substantial housing debt. It has been suggested by the LGA and a number of debt free councils that the Government should pay off all the housing debt held by local authorities (currently in excess of some £18bn), leaving rents to support only the day to day running costs of the stock. However, the Government states that, since this debt was incurred in building and maintaining council housing, it is right that it should continue to be serviced from council rents. It feels that it would be unaffordable and unfair to ask the general taxpayer to support this debt in future.

The Consultation paper comments that the Government could allocate the housing debt of those councils that are not debt free, between **all** local authorities - to leave all councils with a level of debt in proportion to the value of their stock. Besides removing a main driver for revenue redistribution, it would also allow the subsidy position of each council to more closely reflect the relationship between its rental income and the running costs of its stock, providing greater transparency. The Government expresses the view that, while re-allocation of debt is likely to be contentious with debt-free and low debt authorities, those councils will already be supporting debt in other councils through the subsidy system and should be no worse off over time. Rather than indefinitely paying the interest on debt held elsewhere under the current system, these councils would instead have debt that they could manage themselves.

The Consultation Paper explains that an alternative to reallocating debt between all councils, would be to take debt into central Government and instead to charge each council for the cost of servicing an amount equal to the sum they would have been allocated. This would address concerns by councils about taking on debt. It would however require an ongoing relationship between local authorities and central Government in making annual payments. The Government says that one attraction of this approach might be that these payments could be adjusted to reflect changes in interest rates or other factors which related to the ability of councils to pay. The risk is that this would evolve over time into another mechanism for adjusting incomes – not dissimilar to the current subsidy system.

A national ring-fence could ensure that all the money paid into the system would either be redistributed to authorities with deficits or, if there was a national surplus, reinvested in housing. This could provide further transparency about how tenants' rents are used.

**Self-financing options**

Under self-financing, each local authority would keep the money raised locally from rents and use it to run their stock. This option would require a one-off reallocation of housing debt in order to put all councils in a position where they could support their stock from their rental income in future. The Government says that, without this reallocation of debt, some councils would either have to cut services or increase rents. But with this settlement on debt, the Government's research found that rents set in line with current social rent policy would generate sufficient income to sustain the stock in all local authorities at the higher funding levels.

Under self-financing, the Government would move to what it considers to be a sustainable funding model for council housing. It considers that councils will have enough money from the rental income from their stock to be able to service debt over time and to pay for ongoing maintenance at the Decent Homes Standard, as well as works needed to maintain lifts and common parts. Because of this certainty of funding, councils will be able to plan ahead for works and procure them efficiently.
Housing debt would be allocated to councils on the basis of each council's ability to service it. In principle, the total debt allocated to councils under self-financing could be higher or lower than the current level of debt in the system. This would depend on the value to the landlord of the stock, which in turn is determined by the assumptions made about future costs and rental income.

The opening debt level would be one based on the tenanted market value of the stock.

The principle of debt allocation is that it should achieve neutrality with the subsidy position, to the extent that this can be achieved in commuting an income stream into a capital sum. The Government envisages that the value of the landlord business would be based on the present value of the cash flows in the business – excluding any existing housing debt. If this value was lower than the current notional debt supported by subsidy, a payment would be made by the Government to the Council, sufficient to reduce the notional debt to the level of the valuation. If the value of the stock was higher than the current notional debt level, new debt would be imposed on the council to bring it up to the level of the valuation.

**Capital Receipts**

Redistribution is also currently applied to capital receipts through the 'pooling' rules. Under pooling, councils are required to pay the Government 75% of the receipts from Right to Buy sales and sales of other HRA assets. Pooled receipts are used by the Government centrally to support other national housing and capital programmes. The Government recently announced changes to the treatment of capital receipts arising from the sales of ***new*** council housing. This now allows councils to keep the full receipt from those sales provided that they are used for affordable housing and regeneration.

The Government considers that there are strong arguments for allowing councils to retain all of their capital receipts i.e. to end pooling of housing receipts.

The main justification for pooling has been that receipts do not arise in the areas that need new capital investment most. It has also been argued that, as central Government provided a large part of the investment to acquire many of these assets, it is right that Government should benefit from a share of the receipt. However, if councils take on direct responsibility for supporting the debt on their operating assets, the Government considers it sensible that councils should also keep the capital receipts arising on disposal of those operating assets.

However, the Consultation Paper states that councils could be required to reinvest some or all of these receipts in new supply or regeneration (particularly where the receipts arose from a sale of a social home). The Government says that this would help ensure that the receipts continued to be reinvested in housing programmes, and in particular new supply.

The Government's preference is to allow local authorities to keep 100 per cent of their Right to Buy receipts, keeping the local discretion over how the 25 per cent currently retained is split between the general fund and the HRA assets, but requiring the additional 75 per cent to be reinvested in housing.

**Timetable for changes**

Depending on the outcome of this consultation, the Government says that it would wish to move swiftly to have a self financing option up and running.

The Government's current powers allow for individually negotiated agreements between local authorities and central Government to exclude specified stock from the HRA subsidy system. This could, in principle, be used to bring about voluntary self financing. However, to achieve this, the Government says that there would need to be:

- an agreement about the costs of running the stock at the local level
- an understanding about the operational practicalities of the HRA ring fence in the context of self-financing; and
- any significant transaction costs from taking on or writing off debt to be reflected in the proposed debt settlement

The Government considers that it would be possible to set out the terms of such an offer by Spring 2010, subject to satisfactory working with local authorities. However, the Government does not consider it practical to conduct negotiations with over 200 local authorities. So this could only work if all stock owning authorities accepted the terms.

If agreement amongst local authorities could not be brought about, then the Government would need to secure primary legislation to achieve a national settlement. Subject to parliamentary time, a self financing system could be legislated for, and be in operation from, 2012-13.

A copy of the full Consultation Paper can be obtained on line from:

www.communities.gov.uk/housing/decenthomes/councilhousingfinance/housingfinancereview

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**Appendix 2**

**List of Questions within the Consultation Paper on "The Reform of Housing Finance", and the Proposed Responses**

# Core and non-core services

1. We propose that the HRA ring fence should continue and, if anything, be strengthened. Do you agree with the principles for the operation of the ring fence set out in paragraph 3.28?

*The existing ring-fence system appears sound, and should therefore continue. Paragraph 3.28 appears to restrict the HRA to the financing of services that a landlord is required to provide however, - other non statutory services are provided to tenants and financed through the HRA and there is no obvious reason why this should not continue. Some Housing Services are paid for by the General Fund and where they are clearly not landlord functions it seems reasonable that this should continue. The statement that requirements placed on landlords should either arise from statutory obligations or through standards set by the TSA is fine providing the standards allow authorities the freedom to provide discretionary services as mentioned above.*

2. Are there any particular ambiguities or detailed concerns about the consequences?

*Para 3.29 raises the issue of whether any ambiguities exist when assessing if a charge relates to the HRA or General Fund. None seem apparent and the test in existence seems to catch most situations. The allocation of costs between the HRA and General Fund can sometimes be problematic, but that has more to do with assessing the level of charge to each account, rather than the charge itself.*

# Standards and funding

3. We propose funding the ongoing maintenance of lifts and common parts in addition to the Decent Homes Standard. Are there any particular issues about committing this additional funding for lifts and common parts, in particular around funding any backlog through capital grant and the ongoing maintenance through the HRA system (as reformed)?

*The proposal to include the funding of ongoing maintenance of lifts and common parts through Capital Grant and the HRA system as reformed is to be welcomed, provided that the additional cost is reflected within the Major Repairs Allowance (MRA). However, it is suggested that estate improvements should also be included. However the cost of this should again be reflected in the MRA.*

4. Is this the right direction of travel on standards and do you think the funding mechanisms will work or can you recommend other mechanisms that would be neutral to Government expenditure?

*The direction of travel on standards seems to be the right one. The suggestion that*

*tenants might contribute some of the savings made on lower bills might prove difficult to administer but, providing it was relatively simple and could be seen to relate back to real savings made, then this could work. It is difficult to see realistically how this could be cost neutral though.*

# Leaseholders

5. We propose allowing local authorities to set up sinking funds for works to leaseholders' stock and amending HRA rules to permit this. Will there be any barriers to local authorities taking this up voluntarily, or would we need to place an obligation on local authority landlords?

*The setting up of sinking funds for leaseholder works is potentially fraught with difficulties. It would be necessary to make this a legal obligation on local authorities and it would need to be made clear to leaseholders how this would operate. There is again potential for this to become administratively burdensome and the mechanics of the fund would need to be carefully considered and be relatively straight forward. Historically, the recovery of leasehold charges - particularly relating to major works - has been difficult and a well thought out, well managed, system using a sinking fund should ensure recovery of charges is easier. Moreover, it appears to be a fairer approach for leaseholders, with costs spread relatively evenly over a number of years, which would mean that leaseholders who happen to be living in a leasehold property when very expensive works are required, would not have to bear an inordinate cost*

# Debt

6. We propose calculating opening debt in accordance with the principles set out in paragraphs 4.22- 4.25. What circumstances could lead to this level of debt not being supportable from the landlord business at the national level?

*If the debt settlement was very high then this would clearly be unsupportable at the national level, there needs to be clear principles on which opening debt is calculated, it needs to be recognised that any cash flow forecasts are heavily reliant on assumptions related to uplift levels;  small changes in these levels spread over a 30 year period can be quite significant and be key to whether or not a business plan is robust. The reference to the imposition of debt could be questioned,- does this mean actual debt or a requirement for debt? Clearly this is an important distinction for a debt - free authority like Epping Forest that has high cash balances.*

*Moreover, there must be some recognition that prudent authorities like Epping Forest, that has invested properly in its housing stock over a number of years, are not unreasonably burdened by debt incurred by less prudent authorities.*

7. Are there particular circumstances that could affect this conclusion about the broad level of debt at the district level?

*Issuing new debt to the receiving authorities would probably give a better chance of achieving a sustainable rate of interest than the redistribution of existing debt.*

8. We identified premia for repayment and market debt as issues that would need to be potentially adjusted for in opening debt. How would these technical issues need to be reflected in the opening debt? Are there any others? Are there other ways that these issues could be addressed?

*It is difficult to comment on how complex issues such as premia and market debt need to be incorporated when it is not clear how more simple situations such as PWLB debt will be treated.*

9. We propose that a mechanism similar to the Item 8 determination that allows interest for service borrowing to be paid from the HRA to the general fund should continue to be the mechanism for supporting interest payments. Are there any technical issues with this?

*Without seeing an example of the proposed mechanism identifying any issues, it is difficult to comment. However if a mechanism along the lines of the existing item 8 is adopted there could be a financial effect on the General Fund.*

10. Do you agree the principles over debt levels associated with implementing the original business plan and their link to borrowing?

*The current subsidy system does tend to restrict prudential borrowing and, providing the levels of debt proposed can be serviced - as demonstrated by a supporting 30 year business plan - this would seem reasonable, subject to the earlier comments about the short comings of any business plan. The difficulty with relying on an original business plan is that assumptions can become out of date quickly and how would borrowing in relation to new build be factored in.*

11. In addition to the spending associated with the original business plan, what uncommitted income might be generated and how might councils want to use this?

*Uncommitted income from service charges might be raised and this could be used to provide additional housing services, improve existing housing services, make estate improvements and possibly, provide specific wider community services, from which a majority of tenants would benefit. Alternatively, where possible, some income could be used to repay debt.*

# Capital receipts

12. We have set out our general approach to capital receipts. The intention is to enable asset management and replacement of stock lost through Right to Buy. Are there any risks in leaving this resource with landlords (rather than pooling some of it as at present)?

*If the intention is to reallocate debt and allow local authorities to keep locally-generated rents, in so far as they exceed that needed to service debt, then it is essential that capital receipts are treated in the same way and can be used to invest in improving the housing stock, or providing additional affordable housing. There appear to be no obvious risks.*

13. Should there be any particular policy about the balance of investment brought about by capital receipts between new supply and existing stock?

*Any system ought to be as flexible as possible so that authorities can invest where the funds are needed, rather than be constrained by some arbitary split between spend on new and existing stock. The availability of land for such development and local priorities are also key issues to address.*

14. Are there concerns about central Government giving up receipts which it currently pools to allow their allocation to the areas of greatest need?

*This Council would welcome locally-generated receipts being used for capital expenditure locally*.

# Equality impact assessment

15. Would any of our proposed changes have a disproportionate effect on particular groups of people in terms of their gender or gender identity, race, disability, age, sexual orientation, religion or (non-political) belief and human rights?

*The changes proposed do not appear to have a disproportionate effect on any particular group of people and therefore Questions 16 and 17 are not applicable.*

16. What would be the direction (positive or negative) and scale of these effects and what evidence is there to support this assessment?

*Not Applicable*

17. What would be necessary to assemble the evidence required?

*Not Applicable*