

Scrutiny Task and Finish Panel Agenda



Pitt Review on Flooding Task and Finish Panel Monday, 20th July, 2009

Place: Committee Room 1, Civic Offices, High Street, Epping

Time: Time Not Specified

Democratic Services Officer: Adrian Hendry, Office of the Chief Executive
Email: ahendry@eppingforestdc.gov.uk Tele: 01992 564246

Members:

Councillors Mrs A Grigg (Chairman), K Angold-Stephens (Vice-Chairman), G Pritchard, B Rolfe and Mrs E Webster

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- 1. APOLOGIES FOR ABSENCE**
 - 2. TERMS OF REFERENCE (Pages 3 - 4)**
To agree the attached terms of reference.
 - 3. COVERING LETTER TO DEFRA (Pages 5 - 8)**
To comment and agree on response letter to Defra on the Flooding and Water Management Bill.
 - 4. RESPONSE FROM EFDC TO THE DRAFT FLOOD AND WATER MANAGEMENT BILL (Pages 9 - 36)**
To review and comment on the EFDC's response to the draft flood and Water Management Bill.
 - 5. FUTURE MEETINGS**
To agree the next meeting of this Panel.

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Origin:

Cabinet (minute 177 - 10 March 2008) " That the Overview and Scrutiny Committee be invited to consider the implications for the Council arising from the final report of the Pitt Review, expected to be published in the summer of 2008."

The final report has now been published and the Government has published its response to the Pitt Review recommendations.

The District does suffer from river and other water courses (fluvial) and surface water (pluvial) flooding in various locations.

The Council has a proactive approach to addressing flooding issues. It has maintained a Land Drainage Section since the 1970s and continues to invest in flood risk management.

Term of Reference:

1. To establish a task and finish panel to consider and make recommendations on the implications for the Council arising from the recommendations of the review by Sir Michael Pitt following the flooding of 2007 (The Pitt Review).
2. To consider the number of flood risk assets within the District and some public infrastructure and residential properties that remain at a high risk of flooding.
3. To consider how the proposed changes in legislation will improve the management of flood risk and communication between various organisations.
4. To ensure that the Council fully understands and participates in the early stages of the implementation of the new legislation to gain maximum benefits for its residents.
5. To consider the recommendations within the Pitt Review that place additional responsibilities on Local Authorities in respect of management and coordination of all forms of flooding.
6. The District also implements Planning Policy Statement 25 'Development Control and Flood Risk' which seeks to reduce the impact of new build. To consider the changes proposed in the Pitt Review to further improve the work being done under this policy.
7. To consider that County Councils are recognised as the lead authorities, working in partnership with Districts where appropriate, for those matters affecting local authorities within the Pitt Review Recommendations. Essex County Council have not, so far, indicated the likely split of responsibilities between County and Districts but it is reasonable to assume that Districts will have a role to play in implementing the recommendations, specially a District like EFDC which takes flood risk management seriously.

Aims and Objectives:

To gather evidence and information in relation to the topics through the receipt of data, presentations and by participation in fact finding visits;

To consult with Partners, Agencies, Stakeholders and Users of the services under review, to establish key issues and future need;

PITT REVIEW ON FLOODING- TASK AND FINISH PANEL : TERMS OF REFERENCE

To evaluate all relevant facts in relation to the topics under review in an objective way and to produce recommendations for future action accordingly;

To establish whether there are any resource implications arising out of the topics under review and advise Cabinet for inclusion in the Budget Process 2009/10; and

To report back to Overview and Scrutiny Committee at appropriate intervals and to submit any final reports in the proposed Corporate Format for consideration by O & S, the Cabinet and Council.

TIMESCALE	ESTIMATED	ACTUAL
Commencement	July 2009	
<u>Finish</u> 1. Interim report to include any budgetary items for the next budget round. 2. As a time limited review - to end by January 2010.	By October 2009 January 2010	
Reports.		

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

John Gilbert

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 defence 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. 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 this authority should be the LA as defined under the 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

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, that 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 consider practicable than stronger legally binding and clear frameworks and agreements need to be proposed and well defined in the new legislation so that all tiers of Local Government can delegate and work across boundaries.

The Bill refers to 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 draft Bill makes an assumption that significant savings will be achieved by the transfer of private sector drainage and with better local flood risk management and that this will cover the cost of any new responsibilities under the Bill. 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 to ensure 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 me on the above on 01992 564062 or jjgilbert@eppingforestdc.gov.uk.

Yours faithfully

John Gilbert
Director of Environment and Street Scene

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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.

Response from Epping Forest District Council

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 and resourced that they can be the LA under the Act. If this is not considered practicable then stronger legally binding and clear frameworks and agreements need to be proposed and well defined in the new legislation so that all tiers of Local Government can delegate and work across boundaries.

Response from Epping Forest District Council

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.

Response from Epping Forest District Council

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

Response from Epping Forest District Council

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 and competent.

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: No, only large landowners, selected stakeholders and larger groups of representatives e.g. Parish Councils, Environmental Groups etc. In our experience, with regard to this particular type of consultation, the wider public tend to concentrate on local 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 and competent.

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.

Response from Epping Forest District Council

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: Yes, but it must be recognised that this will be a further resource issue for the relevant authority. Clear definition is needed to avoid tick box exercise. It is considered that the requirement to produce an annual report is over burdensome and that a report every 2 or 3 years should be sufficient. 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.

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 will 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.

Response from Epping Forest District Council

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 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 and 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'.*

Response from Epping Forest District Council

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.

a). EFDC 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. EFDC, to date, has not considered the resources required to develop a SWMP and therefore is not in a position to offer comments on the cost of a SWMP. 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). EFDC 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.

Response from Epping Forest District Council

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.

Response from Epping Forest District Council

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 systems.

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 and competent. 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.

Response from Epping Forest District Council

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: The Council's Legal Services has not been consulted with regard to this matter and therefore we are unable to offer 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 would appear to us 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.

Response from Epping Forest District Council

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 and for the reasons stated 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 and competent.

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 and competent.

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 and competent, 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.

Response from Epping Forest District Council

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.

Response from Epping Forest District Council

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.

Response from Epping Forest District Council

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.

Response from Epping Forest District Council

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 LAs, 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. It appears from the consultation document that there are some concerns re 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.

Response from Epping Forest District Council

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

Response from Epping Forest District Council

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).

The draft Bill

'Gives county and unitary local authorities in England local responsibility for local flood risk management (i.e. from surface runoff, groundwater and ordinary watercourses) in their area'.

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.

'Under proposals within the draft Bill they will be heavily reliant on district authorities and IDBs to perform their current executive roles and manage risk from ordinary watercourses. A duty to cooperate is proposed, and for districts and IDBs to have regard for strategies and plans determined by the county or unitary authority. But at present district and unitary local authorities and IDBs would retain powers and funding to determine their own delivery plans as long as they are consistent with the county strategy. 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. It would therefore make sense to channel all relevant funding for local flood risk management to county and unitary local authorities, for them to allocate, in line with priorities within their boundary, to areas that would achieve best value for money.

To make this work, the county authority would be responsible for agreeing a local flood risk management plan with all other relevant bodies, and then deciding how to spread available funds to each element of the Local Plan, and the bodies that would do the work on the ground. This arrangement would strengthen county authorities' role and allow them to prioritise funding to operating authorities based on the benefits that can be achieved. District authorities would be particularly affected by this as IDB 'special levies' (£25.4m in 2007/08 – includes funding by unitary authorities) and maintenance of ordinary watercourses and other local flood risk management activities (estimated at £31m in total 2007/08) are amongst the services they provide that are supported by a formula grant.

On top of the funding that would be provided to them by the county under this arrangement, district authorities and IDB's 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 or unitary local authority to pursue their particular priorities, and as long as the works are not inconsistent with the agreed local flood risk management plan'

Response from Epping Forest District Council

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 and unitary local authorities and IDBs, provided they are able and competent, 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 EFDC, who has invested in and has 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 EFDC 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.

Response from Epping Forest District Council

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;

Response from Epping Forest District Council

- 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 or include 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 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.

Response from Epping Forest District Council

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

Response from Epping Forest District Council

`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 confidentially 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.

Response from Epping Forest District Council

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: [Wait response from planning *****](#)

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.

Response from Epping Forest District Council

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.

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.

Response from Epping Forest District Council

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?

Response from Epping Forest District Council

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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