

Dear Sirs
Flood and Water Management Bill Team
Department of the Environment,
Food and Rural Affairs
Area 2C Ergon House
LONDON
SW1P 2AL

Response to the Draft Flood and Water Management Bill Consultation

Further to the letter from the Secretary of State, The Right Hon Hilary Benn MP, dated 21 April 2009 I respond on behalf of Dudley MBC to the consultation in respect of the Floods and Water Management Bill..

Whilst the response to the specific questions is attached to this letter the Council has concerns that arise from;

- The additional burdens and responsibilities that will fall on local authorities if the Draft Bill is enacted in its current form and how these will be funded.
- The impact of Ministerial Direction on reservoir owners
- Governance issues associated with the proposed Regional Flood & Coastal Committees

Funding

The current funding arrangement through Rate Support Grant means that funding is set in the CS07 period to 2010 and CS10 has, as we are now aware, been deferred which means that any reflection in increased local expenditure will probably not be realised until 2014.

Concern centres, therefore, on whether these responsibilities will, against the above background, become unfunded burdens within the Spending Review Period that will have to be (as indicated by a Senior Civil Servant at a recent seminar in London) resourced from authorities' existing Area Based Grant.

Given the increasing pressure on authorities this situation is not sustainable.

The Area Based Grant was established as a funding source for the Local Strategic Partnerships (LSPs). It is noted that within the draft Bill there is no reference to the role of the LSPs that were created to promote community well-being.

There will be difficulties for Lead Local Flood Authorities with regard to the proposed wide-ranging responsibilities if there is not adequate funding. This will not only be the costs arising from the proposed Floods & Water Act but also the very necessary

direct costs which are escalating due to the increased incidence of flooding and the need to put protection and alleviation measures in place.

Reservoirs

With a large number of open bodies of water that could fall to be regulated in addition to existing designated reservoirs there are concerns about the consequences of Ministerial Directions for Reservoir Owners. New burdens if imposed will create new financial and practical difficulties which may be onerous.

In particular there are considerable concerns about the proposed charges to be levied on reservoir owners, as these will have a significant effect on budgets set to address the wider delivery issues associated with dealing with the day-to-day problems of maintenance and flooding issues. It would appear to be a case of redirecting funding to the central enforcement role undertaken by the EA from provision of direct services that the bill seeks to secure.

Regional Flood & Coastal Committees

Following my Head of Engineering Traffic & Transportation's (HoET&T) involvement with the existing Regional Flood Defence Committee there are significant governance issues, as set out below.

When the RFDCs were established in 1989 as open meetings, my HoET&T attended with the Black Country Member. Gradually the role developed as a valuable interface between the EA and the local authorities. On many occasions meetings were suspended whilst Members sought his advice on policy, levy, capital programme, etc. This role was undertaken for nearly twenty years until work pressure and the removal of the levying arrangement meant attendance could no longer be justified.

It is the case that he was the only local authority officer within the West Midlands region to have fulfilled this role continuously through the formative period of the RFDC and this gives a unique insight into the need for an informed dialogue between constituent authorities and the EA which the RFCC potentially offers.

When established in 1989 Democratic control of the RFDC lay with the constituent authorities as the RFDC was funded by a levy on the authorities within the West Midlands region. Its 21 members comprised eleven from the local authorities and 10 representing the Environment Agency and DEFRA. This enabled scrutiny of capital spend and schemes that, in those days, lacked support were either deleted or deferred and members made a democratic decision on spending.

With the withdrawal of the levy and funding being received directly by the Agency, the illusion (which with only a majority of one control was more tenuous than real) of democratic control was lost. The only real remaining influence is the local levy.

Attendance under the levying regime was good, however, the issue of national funding and decreasing lack of control at the local level has precipitated a drop in attendance. This is not good for local accountability and runs counter to current moves to reinforce and increase local democratic accountability.

We now see under the proposals in the F&W Bill that the last vestige of democratic control is to be removed with the proposal that the RFCCs are to lose their executive role. We will then have a situation where, in effect, there is national control and no doubt this will see funds migrate from the better managed regions of the EA where assets have been maintained (the West Midlands being a case in point) to less well managed regions.

We fear that, if adopted, this will lead to a continuing decline in support to the RFCCs as the only control will be the local levy. One might ask if the sum of circa £3.5 million (West Midlands Region) warrants the RFCC structure.

Upper tier local authorities are being made Lead Local Flood Authorities and, if the executive powers of the RFCC are to be removed, there needs to be constitutional reform of the RFCC (albeit there are similar arguments with regard to how the RFDC currently operates).

The RFCC is potentially the vehicle by which local authorities can hold the Agency to account, being the interface between the EA Board and the constituent authorities, but the current constitution does not facilitate this. Indeed, if executive powers are removed and the only control is the local levy, it is not sustainable because local authority control is so tenuous.

If we are really serious about taking forward the matters considered elsewhere by the F&W Bill, we need to develop a dialogue to share best practice and to challenge the EA. The RFCC offers the vehicle to achieve this. We have a myriad of policies, initiatives and plans both from the EA and proposed as part of the Bill (laudable as they are) that are a long way from the local needs of the community that the Bill seeks to deliver.

For this to happen we need to;

- Reconstitute the RFCC to encourage officer support from the constituent authorities
- Remedy the imbalance in membership
- Bring in stakeholders (for example, the Highways Agency and major businesses)

If the local authority leadership role is to synchronise with the Agency's strategic role, there is need to develop further the reforms of the RFCC that I have set out, particularly in order to gain joint ownership.

I trust that our comments are helpful in ensuring that the Bill takes into account the anticipated increased role for local authorities and the consequent financial issues.

Yours faithfully