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To: Flood Risk Management Committee

Subject: Flood and Water Management Act 2010 guidance consultations

Classification: Unrestricted

Summary:

The Flood and Water Management Act 2010 requires the publication of various strategies and guidance documents to provide risk management authorities with strategic guidance for undertaking new roles and clarify responsibilities for flood risk management. The Environment Agency and Defra have published four documents for consultation:

- The National Strategy;
- Guidance on cooperation between Authorities;
- Local Authority contribution to sustainable development; and
- Future funding for flood and coastal erosion risk management.

There is also a Strategic Environmental Assessment on the National Strategy for consultation.

National Strategy

Summary

The National Strategy is required by the Flood and Water Management Act 2010 to provide a single strategy for managing all flood risks in England. It is the responsibility of the Environment Agency (EA) to prepare the strategy. At present the document currently being consulted on is an outline for the National Strategy rather than a draft strategy itself. It leaves several areas open, to be completed once the consultation has been completed.

The National Strategy consultation has the following chapters:

1. Introduction – sets out who would be interested in the consultation;
2. Flood and coastal erosion risk in England – sets out the various risks from flooding we face;
3. Managing flood and coastal risk – sets out strategic aims for the strategy and means to meet the objectives (for instance, understanding the risks and planning for the risks);
4. Working together to protect people and property – sets out the roles and responsibilities of various organisations;
5. Funding for flood and coastal erosion risk management – sets out the proposed changes to flood defence funding mechanisms (subject to separate consultation);

6. Reporting on the strategy and supporting information – sets out responsibilities for reporting to the Minister.

In many areas the strategy states the position that is likely to be adopted in the National Strategy (for instance, avoiding development in high risk areas). However, for some issues there is no specific guidance only indications of issues that require further development (for instance, balancing protection of property against agricultural damage), which may or may not be provided in the final strategy.

Strengths

The strategy promotes a community and partnership focused approach to flood risk management. It highlights the need to increase awareness of flood risk management and cooperation between organisations and communities. A risk-based approach is advocated, recognising that not all flooding can be prevented, along with proportionality in any measures undertaken, ensuring that any investigation or subsequent scheme reflects the risks.

The strategy also promotes sustainability and multiple benefits in any measures. For instance, flood defence measures that have benefits to the wider environment, cultural heritage or the locality are encouraged. The proposed changes to the funding mechanisms for flood defence reflect many of these policies to encourage local engagement and a risk based approach.

Weaknesses

The strategy sets out a hierarchy of flood risk management documents from the National Strategy, through River Basin Management Plans, then Catchment Flood Risk Management Plans (CFMPs) and Shoreline Management Plans (SMPs), finally to Local Strategies (which are required to incorporate policies from the other plans, where necessary). This seems an unnecessary complication of documents in a strategy that is intended to simplify the process for the public. Rolling the CFMPs and SMPs into the Local Strategy would provide one document for local communities to consult for flood risk management plans in their area.

The strategy is focussed largely around the needs of the Environment Agency and their existing mechanisms. There is no mention of Water Company strategies and the AMP cycle, which local authorities will need to be mindful of in order to ensure any significant investment in drainage infrastructure that may be required, amongst other responsible bodies.

Strategic Environmental Assessment

A strategic environmental assessment (SEA) is undertaken to ensure that environmental effects are considered during the development of a plan or strategy alongside technical, economic or other considerations. This SEA has been prepared for the draft National Strategy. An assessment of the potential impacts of the strategy has been made on the following areas:

- biodiversity, flora and fauna
- population and human health
- soil

- water
- air
- climatic factors
- material assets
- cultural heritage, including architectural and archaeological heritage
- landscape and
- the inter-relationship between the above issues

The SEA concludes that the strategy either has no impact or a positive impact on these areas.

The SEA assesses impacts on a national scale. It does not replace the need for assessments on local strategies and schemes.

Guidance on Co-operation between Authorities

The purpose of this guidance is to clarify Section 13(1) and 14 of the Flood and Water Management Act 2010, which state that authorities must co-operate and that the Environment Agency and Lead Local Flood Authorities can request relevant information, respectively.

The guidance outlines what co-operation is in this context and the benefits of co-operation between authorities. It also provides guidance on how data requests should be made and what should be done when one is received.

This guidance is common sense and most authorities would likely have interpreted the Act in this way anyway. What it does not provide is a formal legal framework or definitions to use where authorities fail to co-operate and how the Act can be used to enforce it. There are no examples of the type of data that would be covered by Section 14 or how to resolve conflicting requirements for the data, (for instance, commercial sensitivity, data protection, etc).

Guidance for LAs on Contribution to Sustainable Development

This document sets out what sustainable development means in the context of flood risk management as the Local Strategy is required to identify how it will help to achieve sustainability goals. The guidance provides examples of sustainable activities under the following headings:

- Living within environmental limits
- Ensuring a strong healthy and just society
- Achieving a sustainable economy
- Using sound science responsibly
- Promoting good governance

The guidance also provides links to further sources of information for the implementation of sustainability under these headings.

Future Funding for Flood Defence

This document sets out proposals for a new means to fund flood defence works. It proposes a mechanism based on funding for specific outcomes (rather than for meeting specific objectives) and allows for third party money to be used to offset any deficit in the

current cost benefit analysis used to determine Grant in Aid (GiA) funding. Additionally, the proposals would promote more government investment in areas least able to pay for themselves.

Existing funding for flood defence works comes from central government if the scheme achieves a desired cost benefit ratio, typically 1 to 8. This means that many schemes are not viable as the benefits (ie the damages a flood causes) are not sufficient. By paying for specific outcomes, irrespective of whether the whole scheme achieves a desired cost-benefit ratio, and allowing additional sources of funding to meet any shortfall, either through the RFCC or raising funds locally, the government hopes to increase the number of schemes that are viable.

The consultation outlines various flood defence outcomes and how much GiA would be available for each outcome. For instance a home that is moved from one flood risk zone to another would receive a proportion of the estimated reduction in annual damages per annum of the flood defence scheme (e.g. If the household would otherwise be at significant or very significant risk (5% assumed), expected annual damages of £1,500 are reduced to £300 as a result of protection being improved, therefore Government would pay an extra £240 (1 in 5 of the benefit) a year per household better protected against very significant or significant risk). Outcomes for critical infrastructure, environmental improvements and other outcomes are also given.

Communities can make up the shortfall in GiA funding to meet the scheme costs by providing some of the funds themselves, they are also encouraged to help improve the cost-effectiveness of defence schemes. This also provides more local determinism in flood defence provision. Whilst the intentions of this proposal are supported and they may help Lead Local Flood Authorities to deliver some of the objectives of the Flood and Water Management Act, there remains a gap in how local communities could raise the required additional funds. If there are not loans or grants available for them to draw upon it is hard to see how this will change anything for small communities at risk.

The new proposals preclude any houses built after January 2009 in flood risk areas being used in any benefit calculations. Whilst this policy is accepted in principle as it helps to deter development in inappropriate areas, it is not clear if this will include areas of existing housing that have been redeveloped. If this is the case then this measure could deter redevelopment of key areas.

Recommendations

The committee should add any comments to the draft responses of Kent County Council to these consultations.

Background documents

The Floods and Water Management Act -

http://www.legislation.gov.uk/ukpga/2010/29/pdfs/ukpga_20100029_en.pdf

The National Strategy - <https://consult.environment-agency.gov.uk/portal/ho/flood/fcerm/strategy>

Co-operation and sharing of information guidance - <https://consult.environment-agency.gov.uk/portal/ho/flood/fcerm/strategy>

Local Flood Authorities Contribution to Sustainable Development -
<http://www.defra.gov.uk/corporate/consult/flood-sustainable-development/index.htm>

Future Funding for Flood and Coastal Erosion Risk Management -
<http://www.defra.gov.uk/corporate/consult/flood-coastal-erosion/index.htm>

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