

Question 1

Do you agree with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications involving surface water drainage implications, subject to appropriate funding being available?

We agree with the proposal to make Lead Local Flood Authorities a statutory consultee on planning applications involving surface water drainage implications, as they hold recent information of such matters.

However, this consultation does not provide sufficient detail in relation to the proposed role of a LLFA as a statutory consultee, nor does it consider other implications of the role change.

In the past technical advice for surface water flooding and drainage has been provided by the EA through their review of site-specific Flood Risk Assessments to ensure that flood risk to/from any new development was appropriately managed. They also had a role in ensuring that new development did not have a detrimental impact to the water quality of water courses, main rivers and the underlying groundwater. This advice, strategic in nature, did not necessarily include an assessment of the functionality of proposed drainage, but may have assessed overall drainage concepts provided within the design proposal.

Schedule 3 of the FWMA defined a technical role for the drainage approving body (SAB), with the intention to overcome the issues identified by the Pitt Review regarding operation and maintenance of SUDS. This role would have ensured that construction and operational matters for SUDS were addressed, through the submission and assessment of technical details, and the ongoing functionality of the SUDS, through adoption. This technical review for a major application would have been undertaken within 12 weeks.

The ministerial statement on 18 December 2014 announcing this consultation stated that “(the LPAs should) satisfy themselves that the proposed minimum standards of operation are appropriate.” The LLFA will not be able at the time of the planning application to provide technical advice to satisfy the LPA given the lack of technical information submitted at planning and the time frame recommended within the consultation. Only a role similar to the SAB role could achieve the stated standard of response. Conditioning requirements for maintenance and ongoing obligations may be problematic.

The proposed LLFA consultation role will not be equivalent to either the EA consultation (given the strategic information the EA holds through the other functions it performs), nor will it be equivalent to a SAB review (given its restriction to 21 days, the lack of technical details submitted at planning and the lack of inclusion of adoption matters), and neither does it address the fundamental issues raised by Pitt regarding SUDS and stated in Recommendation 20 of the Pitt Review.

The proposed LLFA consultee role outlined in this consultation appears to be limited to providing advice to LPAs on the management of surface water. KCC would recommend that the proposed consultee role of the LLFAs should be expanded from the current proposal to ensure comments can be provided on all issues that fall within their remit (i.e. advising LPAs on all ‘local’ flood risk issues arising from the management of surface water, and ordinary watercourses). The LLFA consultation role must be more definitive than “provision of technical expertise”.

The level of response as a statutory consultee will depend upon a number of factors, including:

- Available funding - Insufficient funding will result in inadequate levels of service either with extensions in time for consultations or limited review of some schemes.
- Level of review within any consultation - A technical response in 21 days to a standard planning application will not involve any greater detail of technical review than what currently occurs by the EA.

This new role will require new resources, particularly additional staff. The ministerial statement announcing this consultation stated an intention for the new role to commence 6 April 2015. Given recruitment processes, new staff will not be in place for 6 April 2015. This will have a severe impact on the planning process.

This new role will have implications for each LLFA, including: increased liability for advice provided in the planning process; resource commitments for LLFA attendance at appeals to support LPAs; and, additional support to be provided by LFFAs to the LPAs to address issues in relation to enforcing conditions in relation to operation and maintenance. All of these issues, not just the resources required to assess each application, must be considered in assessing the resource burden this role will place on LFFAs.

Question 2

If Lead Local Flood Authorities were to be made a statutory consultee on development with surface water drainage implications, do you agree that this should be limited to major development?

No we do not agree that it should be limited to major development.

The intent of the proposal is to avoid over consultation through limiting the applications consulted by development size. This may not reflect the level of risk.

The proposed changes to the EA consultee role in conjunction with limiting the LLFA to major development will result in minor development within critical drainage areas and Flood Zone 2 and 3 not being reviewed **at all**.

Small developments may have potential to significantly impact local flood situations. Similarly, small developments within Flood Zones 2 and 3 must have adequate provision for management of flood risk, as this may have surface water and drainage implications. Some of this review may be managed through the provision of guidance notes from the LLFA or EA.

It would be sensible that an allowance is made for the LLFA to provide input to development planning in areas at risk either being designated as a critical drainage area or being within Flood Zone 2 or 3 as discussed in response to Question 3. Additionally LFFAs should be responsible for identifying critical drainage areas, as this is a form of flooding which falls in their remit.

Question 3

Do you think that there is a case for Lead Local Flood Authorities to be a statutory consultee on the following issues? If so, do you think this consultation requirement should apply to developments of a certain size, and/or in certain risk locations?

a) development with groundwater management implications?

- b) development in proximity to ordinary watercourses?
- c) any other local flood risk issues?

We do not agree that the LLFA should be a consultee on:

- (a) Development with groundwater management implications

The LLFAs do not have any groundwater specialists as this responsibility has been resident with the EA. The EA holds the groundwater monitoring borehole information and maintains a team with groundwater expertise who are responsible for protecting groundwater resources.

We agree that the LLFA should be a consultee on:

- (b) Development in proximity to ordinary watercourses

The role of the LLFA in managing surface water and ordinary water courses would be strengthened if the LLFA were to be consulted on development within proximity of any ordinary watercourses.

We would consider “proximity” to be defined as within 5m or any development which results in discharge to an ordinary water course. A clear definition should be included within the development order.

It should be noted that consideration should also be given to including Internal Drainage Boards as statutory consultees within their districts as they also manage ordinary watercourses.

- (c) Any other flood risks issues

The LLFA should be a consultee in critical drainage areas. The NPPF should be revised to require preparation of a FRA in critical drainage areas.

Government advice needs to be provided on the designation of Critical Drainage Areas within not only Flood Zone 1 but also Flood Zones 2 and 3. For example, surface water flooding within Flood Zone 3 may occur adjacent to a river where the surface water sewers are unable to discharge to the water course during periods of high flow.

The proposed consultation will result in no review of development applications for minor development; however utilisation of consultation on critical drainage areas has the potential to overcome lack of review in areas of concern.

Question 4

Do you agree with the proposed changes as set out in Table 1:

- a) to remove paragraph q(ii)?
- b) to remove paragraph r?
- c) to remove paragraph s?
- d) to amend paragraph t?

- e) to remove paragraph u?
- f) to remove paragraph y?
- g) to remove paragraph z?
- h) to remove paragraph zf?

We agree with the removal of the requirements for consultation, excepting the implications which result with the removal of paragraph (zf).

As noted in response to Question 2, the proposed changes to the EA consultee role in conjunction with limiting the LLFA to major development will result in minor development within critical drainage areas and Flood Zone 2 and 3 not being reviewed. The implications of this reduction in oversight of development within flood risk areas must be considered in conjunction with the LLFA role.

The NPPF requires FRAs for sites over 1 ha. It would be important that this requirement is still maintained and not impacted by the changes to the EA consultee role. FRAs may be reviewed by the LPA or the LLFA dependent upon the nature of the development.

Question 5

Do you have views on whether water companies should be made statutory consultees in respect to shale oil and gas development?

We agree that water companies should be made statutory consultees on shale oil and gas development to ensure impacts on water supplies are considered.