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**To:** Cabinet, 13<sup>th</sup> July 2009

**Subject:** Kent County Council response to the government consultation on the draft Flood and Water Management Bill

**Classification:** Unrestricted

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**Summary:** This paper provides an overview of the government's consultation on the draft Flood and Water Management Bill and presents the key points of Kent County Council's response. Whilst the new approach to flood risk management, and the leadership role for local authorities, is welcomed there are serious concerns regarding the funding of these new responsibilities.

The paper seeks Cabinet support for the key points of the response and agreement to delegate approval of the full response to the Cabinet Member for Environment, Highways & Waste, to be submitted to government 24<sup>th</sup> July 2009.

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## **Introduction – purpose of the Flood and Water Management Bill**

1. The UK Government is introducing the Flood and Water Management Bill to provide new legislation for the management of flood and coastal erosion risk in England and Wales. These changes are intended to respond to and address:

- a) Outmoded approaches and organisational structures in our current flood and coastal erosion risk management and reservoir safety legislation.
- b) Sir Michael Pitt's Review of the Summer 2007 floods, which identified clear gaps in the way that flood risk is managed.
- c) Climate change and the need to adapt to an increased risk of flood and coastal erosion.
- d) EU Floods Directive and the need to transpose its associated new legal obligations.
- e) A range of outstanding commitments to legislate arising from water policy statements.

- f) The need to enhance certain aspects of Ofwat's regulatory powers.
2. In developing the draft Bill (published 21st April 2009, for consultation until 24th July 2009), the Government has four objectives:
- a) to provide the greatest possible clarity and accountability about who is responsible for what, including for leadership at a national and local level;
  - b) that the roles and responsibilities of existing delivery organisations are retained wherever possible to ensure the continued engagement of local knowledge and expertise;
  - c) to provide flexibility for different delivery organisations to deliver flood and coastal erosion risk management on the ground; and
  - d) to promote the growth of effective local partnerships and to provide a strong duty on all bodies to cooperate and share information.
3. The overall effect of this change in legislation, and ultimately management of flood risk and water, will be a healthier environment, better service and greater protection for people, their communities and businesses.
4. A copy of the draft Flood and Water Management Bill is available to view in the Members Lounge and can also be found online at: <http://www.defra.gov.uk/environment/water/flooding/flow/index.htm>

#### **Implications for Kent County Council – new responsibilities**

5. For the first time, the law will cover all forms of flooding and shift the emphasis from defence to actual risk management. To deliver this, new responsibilities for local authorities have been outlined by the draft Bill, including:
- a) County and unitary authorities will be responsible for setting Local Strategy for flood risk management and undertaking local flood risk assessment, mapping and planning in relation to ordinary watercourses, surface run-off and groundwater.
  - b) County and unitary authorities will lead the production of local surface water management plans and associated programmes of work, which will be developed in partnership with relevant organisations.
  - c) Local authorities will be required to map local flood risk management assets, and who owns them, so that any local problems that occur can be resolved.
  - d) Local authorities will have a leading role in planning for managing any flooding should it occur, including from reservoirs.
  - e) County and unitary authorities will have responsibility for adopting and maintaining new Sustainable Drainage Systems (SUDS).
  - f) County and unitary authorities will have the power to formally designate natural and man-made features which help manage flood or coastal erosion risk. Once designated, permission would need to be received from the designating authority before change to, or removal of, the feature.
  - g) Involvement in partnership initiatives with water companies, and others, to reduce the number of misconnections to sewers.

6. It is understood from the draft Bill that where local authorities are referred to this relates to county or unitary authority. Therefore the new responsibilities above will be applicable to Kent County Council. It should be noted that the draft Bill does make provisions for district authorities to take the lead role on coastal erosion risk issues where appropriate or where responsibility has been delegated from county level.

### **Resource implications of new responsibilities**

7. In order to undertake the new responsibilities outlined above, partnership working is key. The draft Bill promotes this approach and, to assist with this, introduces a duty for all relevant authorities to co-operate and share information.

8. In order to take on these new responsibilities, local authorities will have to invest significantly to provide the necessary staff and technical capabilities. Kent County Council is in the process of establishing a new post for flood risk management, as recommended by the KCC Flood Risk Select Committee, but considerably more staff resources will be required in the future.

9. A set of Regulatory Impact Assessments (RIA) have been produced alongside the draft Bill to identify the potential costs and benefits of the future legislation. In its assessment of the costs of surface water management, it has identified the following future costs for a local authority:

- a) Preparation of surface water management plan (SWMP): £100,000 each.
- b) Additional staff for SWMP production and management: £140,000 p/a (in addition to £100k for preparation).
- c) Mapping of local flood risk management assets: £20,000 p/a.

10. Without the initial local flood risk assessment, it is not possible to determine the number or extent of SWMPs required for the county nor the total cost of doing so. As this will have an impact on the number of additional staff required, the appropriateness of the RIA estimation of costs for additional staff can therefore not be determined at this time.

11. It should be noted that the RIA has not considered the costs associated with adopting and maintaining new SUDS. The government proposes that local authorities will be able to require a bond from developers, to ensure that they are not left with unfunded liabilities, and that the new maintenance role will be funded by the transfer of responsibility for private sewers to sewerage companies. The consultation period has not allowed time for a full assessment of whether these funding mechanisms are feasible nor if they will generate sufficient resources however initial thoughts are that they are not properly thought-out nor sufficient. Also, the proposals do not take account of the staff resource required to oversee and manage this new responsibility for SUDS. There is concern therefore that the full financial resources required for the adoption and maintenance of SUDS will not be met by the government's proposals.

12. The draft Bill does put forward that developments should fund the additional pressure they put on future budgets and that this can be achieved through section 106 of the Town and Country Planning Act (1990) and the Community Infrastructure Levy (CIL). However, it notes there are also other flood defence asset and non-asset costs that will arise from having more people and property in at-risk areas that may not be covered fully by Section 106 or the CIL contributions. It also notes that CIL funds will be needed for a number of competing priorities and that it cannot be assumed that CIL receipts can be spent on flood risk management.

13. The County Council is concerned that this could become another example of central government transferring significant additional responsibilities to local government without adequate funding or the sufficient transfer of resources from the relevant agency (in this case the Environment Agency).

14. The government has said that no new net burdens placed on local authorities as a result of the new legislation will be unfunded. However, there is concern that the assessment of burden is not comprehensive enough and may underestimate the reality of implementing the Bill.

15. There is further concern regarding the burden that the government are proposing to place on developers in providing funding to underpin the changes to flood risk management. Section 106, CIL and developer bonds will not be a feasible source of funding to provide for the new responsibilities for local authorities under this draft Bill. This burden should be met by central government.

### **Sustainability implications of draft Bill**

16. As referred to in paragraph three of this paper, the implication of the proposed change in legislation, and ultimately management of flood risk and water, will be a healthier environment, better service and greater protection for people, their communities and businesses. Following an assessment of the draft Bill it is considered that the new legislation will help to deliver these aspirations. From a the County Council perspective, the greater role for local authorities in flood risk management will ensure Kent County Council has more influence in achieving these aims at a local level.

### **Consultations**

17. The Kent County Council response has been prepared in consultation with the following Council divisions: Kent Highways Services; Community Safety and Regulatory Services (Emergency Planning); Environment & Waste; Integrated Strategy and Planning.

18. Consultation has also been undertaken with a number of external bodies, including: Internal Drainage Boards; Environment Agency; South East Regional Flood Defence Committee; South East Coastal Group; Shepway District Council; Canterbury City Council; Jacobs; Southern Water; South East Counties Service Improvement Group. Discussions with these bodies have helped to inform the Kent County Council response and ensure consistency of responses across the county were appropriate.

## **Local members**

19. Messrs. Andrew Bowles, Mike Harrison and Richard King sit on the South East Regional Flood Defence Committee (RFDC). They have been consulted on the Council's response to the proposed changes to the RFDCs.

## **Conclusions - Kent County Council response to the draft Bill**

20. A full response to the 163 questions posed by the consultation is in preparation and will be put to the Cabinet Member for Environment, Highways & Waste for approval in July.

21. In addition to responding to these questions, the following key points will be made in the Kent County Council response:

- a) The County Council welcomes the draft Bill and the new approach to flood risk management it promotes.
- b) The County Council welcomes the clarity of responsibilities and, in particular, its role in local leadership. The Council is pleased to see greater accountability at the local level for local flood risk management.
- c) The County Council urges government to ensure all new net burdens are funded, so that local authorities are able to effectively assume their new responsibilities in flood risk management. Local authorities cannot assume their new role without assurances of full reimbursement of associated costs.
- d) The County Council suggests that central government should be providing all the necessary reimbursement and not looking to the developer community to provide additional funding through bonds, S106, CIL or any other such mechanism. As recognised by the draft Bill, these mechanisms are already over-stretched and therefore the application of these to flood risk management is unrealistic.
- e) The County Council welcomes measures to improve the uptake of SUDS but reserves support for local authority adoption and maintenance of new systems until better understanding of the full implications of this responsibility can be ascertained.
- f) The County Council supports proposals for improved reservoir safety management but considers that management should be based on risk rather than arbitrary water volume criteria, as suggested by the draft Bill.
- g) The County Council requests time for better scrutiny of the cost implications of implementing the Bill at the local level.
- h) The County Council requests better consideration of options available for raising additional funds to support flood risk management at the local level.

## **Recommendations**

22. Cabinet is asked to:

- a) NOTE and SUPPORT the contents of the report.
- b) SUPPORT consultation with the developer community in Kent regarding draft Bill's proposals to raise funds for flood risk management and SUDS

maintenance and adoption through bonds, S106, CIL and other such mechanisms.

- c) SUPPORT the key points raised in response to the consultation (as detailed in 4.2)
- d) DELEGATE responsibility to the Cabinet Member for Environment, Highways & Waste for approval of the detailed response to the consultation from Kent County Council, to be submitted to government 24<sup>th</sup> July 2009.

### **Background Documents**

Draft Flood and Water Management Bill, Defra, April 2009

<http://www.defra.gov.uk/environment/water/flooding/flow/index.htm>

### **Other Useful Information**

The Pitt Review – learning lessons from the 2007 floods, Sir Michael Pitt, June 2008

[http://archive.cabinetoffice.gov.uk/pittreview/\\_media/assets/www.cabinetoffice.gov.uk/flooding\\_review/pitt\\_review\\_full%20pdf.pdf](http://archive.cabinetoffice.gov.uk/pittreview/_media/assets/www.cabinetoffice.gov.uk/flooding_review/pitt_review_full%20pdf.pdf)

The Government's Response to Sir Michael Pitt's Review of the Summer 2007 Floods, Defra, December 2008

<http://www.defra.gov.uk/environ/fcd/floods07/Govtresptopitt.pdf>

Defra flooding web pages

<http://www.defra.gov.uk/environ/fcd/default.htm>

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