



Draft Flood Water Management Bill

A review of ECC's proposed response to the Bill by a joint Task & Finish Group of the following Policy and Scrutiny Committees:

Central Services
Environment and Economic development
Safer and Stronger Communities

1st draft

September 2009



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Introduction

Following the 2007 floods, it was recognised that the existing arrangements to mitigate against and effectively respond to flooding were significantly lacking. The Government therefore commissioned Sir Michael Pitt to conduct a review, which put forward numerous recommendations for ensuring more effective flood and water management, many of which have been transposed into the Draft Flood and Water Management Bill. The Draft Bill was out for consultation until 24 July 2009.

Purpose of the Scrutiny

The Scrutiny Review was intended to deliver a 'critical friend' challenge to the response compiled by the Executive Member, and consequently, a Joint Task and Finish Group was established.

Due to the cross cutting nature of the topic, Members were drawn from three of the Council's Policy and Scrutiny Committees:

- Central Services
- Environment & Economic development
- Stronger and Safer Communities

based on the proportionality of four Conservatives; one Liberal Democrat; one Independent.

Task & Finish Group Membership

- Councillor Susan Barker (Chairman)
- Councillor Chris Pond
- Councillor John Dornan
- Councillor John Aldridge
- Councillor Simon Walsh
- Councillor Barry Aspinall

Witnesses

The Group invited a wide range of witnesses to assist them in scrutinising the Council's response to the Draft Bill:

- Representative from the Department of Environment, Food and Rural Affairs (DEFRA)
- Representative from the Environment Agency
- Representative of the Essex Planning Officers Group
- Another Local Authority with experience of Flood Management
- Councillor Tracey Chapman, Cabinet Member for Environment and Waste, Essex County Council
- Kevin Jones, Head of the Environmental Strategy Team, Essex County Council

Of the witnesses that were invited, the following were able or willing to attend:

- Mark Johnson, Area Flood Risk Manager, Representative from the Environment Agency
- David Green (Chelmsford Borough Council), Representative of the Essex Planning Officers Group
- Councillor Tracey Chapman, Cabinet Member for Environment and Waste, Essex County Council
- Kevin Jones, Head of the Environmental Strategy Team, Essex County Council

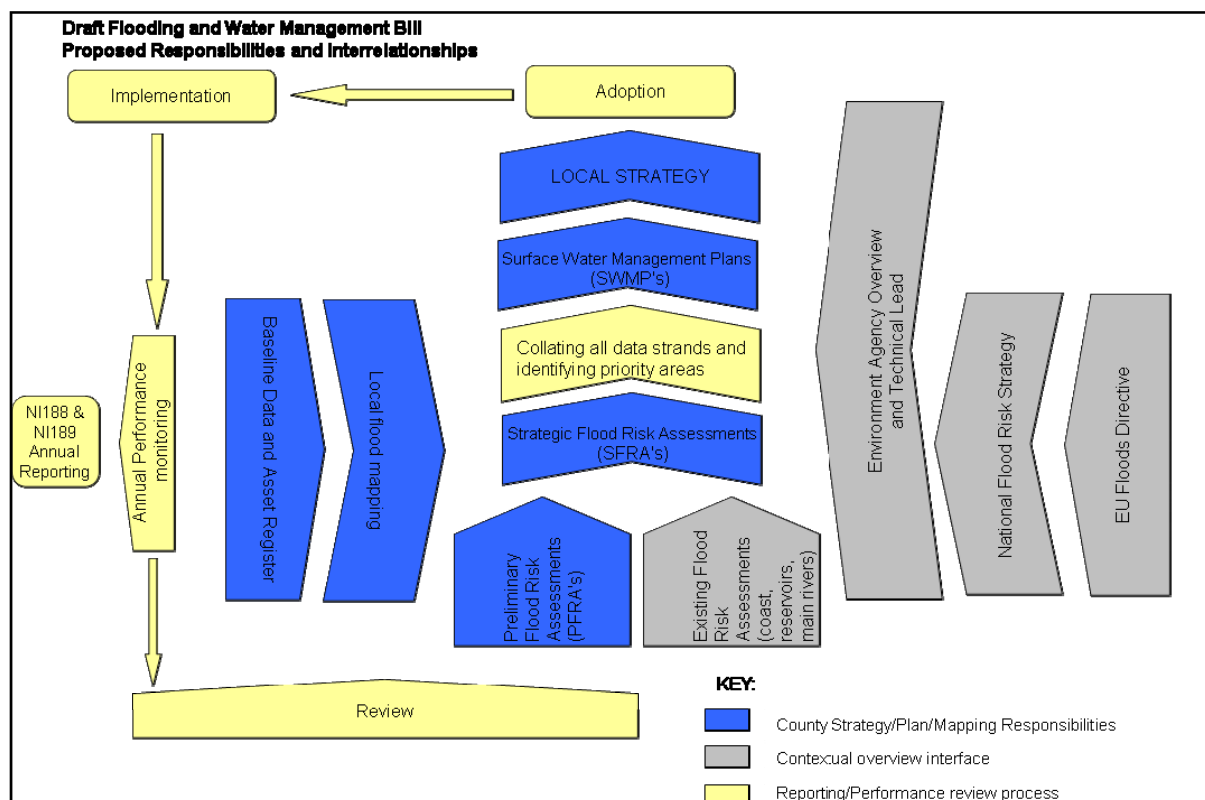
Background

The Draft Bill introduced a number of measures that would considerably impact on the effectiveness of Local Authorities to undertake local flood risk management duties. The implications of the new legislation for the Council were wide ranging. These included the following:

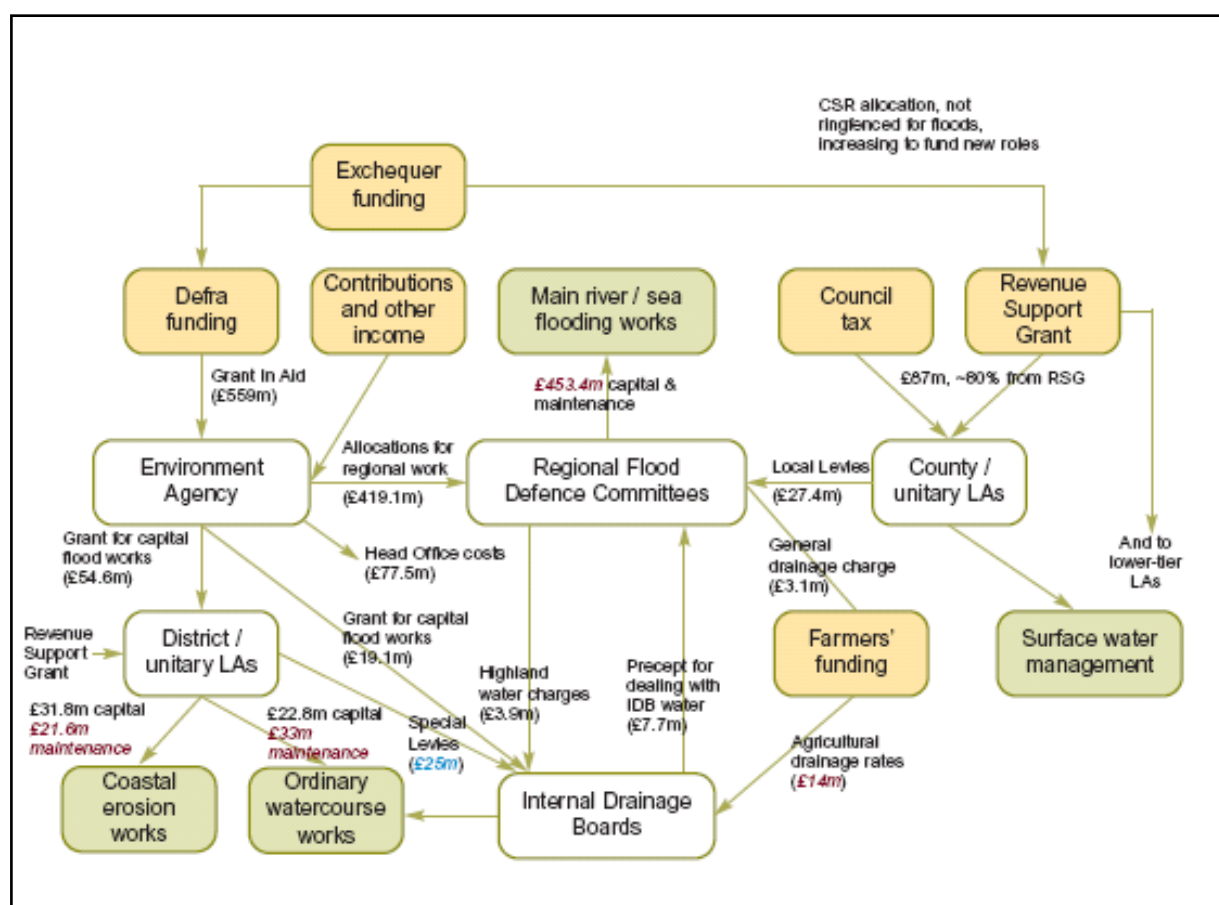
- Responsibility for co-ordinating local flood management
- Baseline data collection
- Maintenance of an asset register
- Preliminary and Strategic Flood Risk Assessments and Mapping
- The formulation of a Surface Water Management Plan
- The production, adoption and implementation of a Local Flood Management Strategy
- Deliverance of engineering works
- Raising awareness of flooding and the associated risks, and developing communication with the public
- Enforcement and accountability action

As a result of these implications a number of areas of concerns had been identified for Essex with the proposals in the Draft Bill :

- Operational Structure: Lack of clarity around roles, responsibilities and operational framework.



- Nature of questioning: Inconsistent questioning within the consultation document due to variation in the degree of openness and weighting of questions.
- Local Context: the Draft Bill appears to be prioritising national and international policy objectives at the expense of local priorities. Appropriate balance and flexibility between these aspects and between the environmental, economic and social aspects of sustainability is required for effective and locally relevant local flood management.
- Environment Agency Powers: Despite the Draft Bill's focus on Local Authorities and other bodies working in partnership to deliver flood management at a local level, the proposed enhancement to the executive decision-making and enforcement powers of the Environment Agency seem to override and go against this apparently participatory approach.
- Funding: There is a lack of clarity around sources, the funding available and mechanisms for calculating and transferring funding to Local Authorities for local flood management. The funding amounts alluded to in the Draft Bill appear to be insufficient to adequately comply with the requirements introduced by the Bill, suggesting that the majority of the burden is to be borne by taxpayers.
- Broadening use of local levy: It is proposed that the local levy currently raised for delivering regional priorities through the Regional Flood Defence Committee will be used to fund a wider range of Environment Agency controlled management duties.



Scrutiny Themes

Members identified a number of themes on which to base their scrutiny review, as detailed opposite.

Witness Session

Members heard the following evidence at their meeting on 22 July 2009.

Mark Johnson - Environment Agency

Mark introduced his role at the Environment Agency and set out the potential changes that were contained in the Draft Bill, which were fully supported by the Environment Agency.

In his view, there were a number of opportunities within the Bill, including one to move forward from the Pitt Review, and to promote collaborative working and improve relationships between the Environment Agency and County, District and Borough Councils.

He further explained that the role of the Environment Agency was to assess and reduce the potential risks from flooding, and also to respond to flooding incidents in conjunction with the emergency services.

Members asked about the use of sirens as flood warnings and were advised that, due to their unreliability, the use of sirens was not currently national policy. Many of the sirens dated back to the second world war and were not operational.

The Group was assured that the present flood warning measures worked effectively.

Members questioned the communication and joined-up working that was in place between the Anglian and Thames regional offices of the Environment Agency, and were advised by Mr Johnson that, in his opinion, relations were very good. It was suggested that the establishment of a Liaison Officer to cover the geographical county of Essex would increase collaboration and the potential for joined up working.

It was also noted by Members that meetings had already taken place between the Environment Agency and Norfolk and Suffolk County Councils to consider how best they can work together. It was also confirmed that the Regional Flood Defence Committee was well attended by four Councillors from Essex and one from Southend/Thurrock.

Scrutiny Themes

Lack of clarity around proposed duties and interrelationships;

Roles; responsibilities and activities including phasing of their delivery is not clear.

How will it work?

- Lack of operational framework and governance to deliver a true local partnership approach to local flood risk management
- Interrelationships; exposure to scrutiny particularly the EA but also between undertakers not clear.
- Achieving balance between local priorities and scrutiny with delivery of national and European priorities.

How will it be funded?

- General lack of clarity;
- Has money been allocated in local government settlement? What is the rationale/methodology?
- Resulting conflict between proposed expansion of the use of regional levy and lack of clarity of funding new local authority responsibilities.

Members were advised that the Environment Agency were keen that all water sources and flooding were covered in the Draft Bill, including non-fluvial, coastal, sewerage and reservoirs. Members also raised the impact of ground water flooding as an issue. Members asked for clarification of the roles and responsibilities of County and District/Borough Councils in relation to surface water flooding. He responded that County Councils are responsible for all surface water flooding, whereas District and Borough Councils were only responsible for smaller rivers.

Questions were asked in relation to the issues identified around funding to support the initiatives proposed in the Draft Bill. Mr Johnson explained that further clarification in this area was required by DEFRA.

Members also asked about the projects that the Environment Agency support, and the amount of funding spent on capital projects. He explained that £70 million was spent in 2008/09 on capital projects, which included flood defence work, and was by far the largest spend in the country. This represented 80% of the total funding available to the Agency, and was in line with DEFRA targets.

David Green - Chelmsford Borough Council

Members noted that David was attending in his role as Vice-Chairman of the Essex Planning Officers Group.

In response to Members questions around the maintenance of water courses, Mr Green advised the Group that the responsibility for maintenance lay with land-owners, although District/Borough Councils work with this group to provide resolutions and enhance communication and joined up working between stakeholders.

Chelmsford Borough Council were developing a balanced strategy for planning applications that aimed to protect existing properties from future flooding whilst allowing further developments, particularly on brown field sites. Improvements had been made in the applications submitted by developers, including innovative designs to minimise and mitigate the impact of flooding to properties.

Members asked questions about new developments being built on flood plains. Mr Green advised the Group that larger developments in flood zones usually required negotiation with the Environment Agency, but this was not necessary for smaller ones.

Members noted that a key deficiency of the Bill was to allow decisions to be made on a common-sense basis, which allowed greater flexibility for District/Borough Councils in granting planning applications.

Kevin Jones-Essex County Council

Mr Jones outlined the Council's proposed response to the Draft Flooding and Water Management Bill consultation.

Members noted that although the Bill established a hierarchy in local flood management, greater clarity was required and additional flexibility should be given to enable effective local decision making.

Mr Jones explained that the Bill was mainly concerned with compliance, and the main identified issue was funding.

Councillor Tracey Chapman-Essex County Council

Councillor Chapman advised the Group that the Bill carried reputational, financial and judicial risks, but that the Council was well-placed to manage these effectively.

Councillor Chapman presented her main concerns with the Draft Bill to the Group, which included the possibility that the Local Authority would be responsible for the payment and implementation of national priorities, and may result in a local levy being used to fund schemes that should be supported nationally. Whilst relations between Essex, Southend and Thurrock were very good, the Draft Bill did not call for the introduction of Internal Drainage Boards, which in her view, would be helpful.

Councillor Chapman concluded that the Essex Flood Defence Committee should be re-established to reflect the historic membership, that would include representation from Essex County Council, District/Borough Councils, Southend, Thurrock, Land Owners and the Water Companies.

The Chairman thanked all of the witnesses for their input and evidence.

Conclusions

Following the evidence gathering sessions, Members agreed to support the general thrust of the Council's response to the Flood and Water Management Bill, but made the following comments:

Recommendation

The Executive Member should take the Group's conclusions into account when finalising the Authorities response to the draft Flood Water Management Bill.

1. Their concerns at the lack of clarity in respect of:
 - The responsibilities of and relationship between the Environment Agency, County Council and District/Borough Councils
 - How the new responsibilities within the Bill are to be funded and in particular their concern that during a time when public finances are forecast to be under severe pressures local authorities could be given additional responsibilities and risks which will simply make them accountable for future problems whilst increasing pressures on other service budgets.
 - The ability of Councillors and Members of the public to identify the classification of water courses by easily available maps and information.
2. Their support for the return to a County based Flood Defence Committee which would provide for greater local democratic accountability and
 - Incorporate both Southend and Thurrock unitary authorities
 - Include district/borough councils, water companies and land owners
 - Provide for cross border membership
3. Their support for the suggested response in respect of Sustainable Urban Drainage Systems and the need for clear definitions and powers to encourage sustainable development; but are disappointed that other opportunities have not been grasped to provide a comprehensive local approach to sustainability issues.
4. The need for the Environment Agency to adopt a pragmatic, timely and consistent approach at all levels to planning applications.

5. The absence within the Bill of clear arrangements for ensuring landowners meet their drainage obligations and supported in so doing, possibly by the reintroduction of Internal Drainage Boards.
6. The need for a flexible framework which enables local solutions to be developed to deal with local issues.
7. Assurances given by the Cabinet Member that the Council's response to question 20 will not support the proposals to give the Secretary of State reserve powers of direction unless these could be challenged in the Courts
8. The need for a Liaison Officer to be appointed to assist in communication and joined up working between the Anglian and Thames Environment Agency Regional Offices.
9. The wealth of experience of Council officers which should be offered to the appropriate Parliamentary Committee to support their in-depth review of the Bill.
10. The need to re-draft the response to question 61 to reflect the need for:
 - Water supply and sewage companies to be involved with the county based flood defence committees recommended in the County Council's submission.
 - Clear responsibilities to be given to water companies to resolve flood risks associated with both water supply and sewage infrastructure, and a means of dealing with default.
11. The need for the Bill to treat different types of reservoirs differently e.g. The Reservoirs Act 1975 applies both to water supply reservoirs which are full 75% of the time, and storm water retention reservoirs which will be full perhaps only once every ten years.
12. Their concerns that the provisions in the Bill should not be seen as a charter for district councils to increase build in urban areas without consideration to the impact on the whole catchment area.
13. Some of the responses would benefit from being simplified and wherever possible starting with a yes or no answer.
14. Their congratulation of officers for their work in producing the Council's response to the Bill.

This report is issued by

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