

# Draft Flood and Water Management Bill – LGA Group response

23 July 2009



## Executive Summary

The LGA Group welcomes the draft Bill and recognises the achievement of Government in producing such a comprehensive and ambitious legislative proposal in so short a timeframe. We believe the draft Bill:

- Clarifies roles and responsibilities in line with Pitt recommendations
- Links flood risk management and water management issues
- Supports environmentally responsible flood and water management
- Places flood and coastal erosion risk management firmly within the context of climate change and population growth challenges.

However, we have very serious reservations on the following issues:

### Two Tier arrangements

- We propose local agreement, rather than a prescriptive model on which tier should undertake the lead role.
- We believe local agreement will ensure more effective joint working, political priority and commitment and capture the expertise that currently exists, which may lie at district rather than county level.

### Funding

- Our members unanimously reject the funding assumptions made in the consultation and we believe much more work needs to be done to assess the full costs of the Bill proposals and any related savings for local authorities.
- The way in which funding has been addressed is a major weakness in the draft Bill and undermines the positive aims and objectives of the legislative proposals.

### Skills and capacity

- We urge Government to develop proposals to address the skills and training issues that authorities will face as they take on more responsibilities.
- Without this, existing capacity issues could turn into a more serious problem and limit authorities ability to undertake the lead role effectively.

### SUDs funding mechanism

- We do not think the funding mechanism proposed provides any incentive for developers or authorities to expand the number of SUDs.
- We need a sustainable funding mechanism that will increase revenue for maintenance as the number of SUDs increases. A sustainable funding mechanism will ensure early progress and sustained take up in all areas

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# submission

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## **Introduction**

1. The LGA Group welcomes this draft Bill and consultation. We welcome particularly the very clear invitation to comment on the workability of the proposals and have consulted widely with our member authorities on how the proposals will impact on their authority and flood risk management in their wider area.

2. It is clear that our members welcome the opportunity that the draft legislation presents to local authorities to lead on understanding local flood risk, working with partners to reduce risk and actively improving the management of water resources and the local environment. Whilst the proposals do not provide the single unifying Act called for in the Pitt Report, they do build strongly on the Pitt recommendations and meet the needs of the EU flood directive. We believe they will provide a strong framework of powers, co-operation and joint working between all the key players in water and flood risk management. This will help to address the lack of clear roles, responsibilities or partnerships that the Pitt Report identified and the need to embed flood and water management more clearly within strategic planning, climate change and sustainability policy. We believe the proposed legislation will also help to raise the profile of flood and coastal erosion risk and ensure that we all accord a greater value to water as a precious resource. This will support the implementation of the Water Framework Directive.

3. We are not satisfied with current arrangements for communicating with the LGA Group and others and recommend that Defra establishes a Bill Practitioner Group to assist legislators during the months when the final Bill will be drawn up. Such a group should comprise representatives from all types of authorities, IDBs, EA, water companies and the private sector. Defra should also ensure that there is wide and consistent representation in any working groups set up to help develop guidance to accompany the final legislation.

4. Our response is structured around the main themes of the draft Bill and consultation and attempts to point out where we consider the proposals need to be adjusted, what additional analysis, guidance or support is needed to ensure proposals will work in practice and what else is needed in the legislation or guidance to ensure flood risk becomes a priority for all authorities. Answers to some of the specific questions in the draft are included in Appendix 1.

## **Flood and Coastal Erosion Risk Management – Issues covered by Bill proposals**

### **Main issues and challenges for local authorities**

5. The LGA Group supports the complementary roles of the Environment Agency for strategic flood risk and of lead authorities for local flood risk. We are pleased to see significantly closer working already between local government and the EA at both national and local level. Effective local frameworks for understanding and managing flood risk will help to connect and reinforce these roles and the local impact of river and coastal flooding. It is crucial that the lead local authorities have the co-operation and commitment from all local partners now to establish more strategic local partnerships on flood risk. We will need Government to reinforce the need for this commitment in the legislation and guidance so that work can progress quickly.

6. We recommend that the Bill should include the detail of how the EA should develop and apply its' strategy for Flood and Coastal Erosion Risk Management, who should be consulted, how and when guidance and reporting should happen.

7. It is vitally important that local authorities work with partners at a local and national level to reinforce messages on the need to value water as a resource and communicate to local residents and businesses that there are many actions they can take to both conserve water and reduce the risk of flooding. Climate change scenarios make it clear that not all properties can be protected from flooding.

However, simple actions by local people and businesses could cascade into a significant improvement in the flood resistance and resilience of specific neighbourhoods and their contribution to flood risk reduction.

## **The Climate Change Context**

8. The links between flood management and climate change are fundamental and we support an emphasis within the proposed legislation and associated guidance on the climate change context. We would support work to ensure more authorities use National Indicators 188 and 189 as a helpful framework for clarifying local action to reduce flood risk, promote sustainable urban drainage and measure progress. In addition, a greater emphasis on the role of the public within the Bill will help to raise awareness of the climate change context and the role of the public in adapting to future flood and coastal erosion risk.

9. In light of the recently published national assessments of flood risk and the estimate of over 4 million properties at risk of surface water flooding in England and Wales, it is essential that all authorities make flood risk a priority. The LGA will continue to reinforce to all our member authorities the urgency of taking action to reduce flood risk and the growing risk that extreme weather will pose to local communities.

10. The Climate Impact Projections 09 and the National Assessments of Flood Risk need to be communicated forcefully across central and local government to reinforce the objectives of the proposed legislation. The cost benefit case for investing in flood risk management also needs to be communicated more clearly, to all partners, including the public and business sector. We also need the insurance industry to develop clear incentives for policy holders to take action to reduce the risk and impact of flooding.

## **A lead role in Managing Local Flood Risk - Supporting authorities to take on the lead role**

11. CSS/LGA Group in-depth research in June and July this year, questioned 14 local authorities on the draft Bill proposals. Responses indicated that these authorities generally had good awareness of the new roles and responsibilities as included in the Draft Bill. However, they were not all clear as to the implications or how the new roles and responsibilities will be implemented and what support there will be for new skills and additional staff.

12. It is clear that some local authorities are making good progress in managing local flood risk and coastal erosion. The LGA Group is encouraging our members to get on with the job and to learn from those authorities that are leading the way in managing local flood risk

13. However, more detailed analysis is needed of the likely costs of the lead role and reassurance of future support for the capacity needs of authorities. This will create greater confidence within all authorities that they can make flood risk management a priority, in the face of other competing priorities.

14. Without confidence that the perceived new costs associated with undertaking the lead role will be met, many local authorities could be slow to commit the finances and political priority required to expand flood management teams, develop work plans and set up local partnerships.

15. Guidance should outline the links between the roles and activities across local authorities and their potential to support local flood and coastal erosion risk management. Many activities that are fundamental to reducing flood risk have other benefits to the local area. Local strategies to reduce carbon or local pollution can over the long term help to reduce local flood risk, particularly at a neighbourhood level. Soft measures such as tree planting, reed beds, green spaces to improve public spaces and encourage walking and cycling can at the same time

help to reduce run-off and localised flooding. Flood management projects and indeed the whole leadership role for local authorities can help to create new jobs and develop new skills. Flood management projects can be linked to regeneration or economic development projects. By placing flood risk firmly within the context of climate change and making links to wider objectives at both the national and local level, we can help to secure additional funding, bring in partners to support projects and promote activities that also meet objectives on flooding.

16. It is crucial that the links between effective flood risk management and other objectives are made across Government. The various roles of local authorities in other areas can also have an additional benefit in reducing flood risk and improving resilience, for example:

- Partnerships to manage the local area and protect communities
- Mitigating and adapting to climate change and improving the resilience of local people, property and infrastructure to extreme weather
- Improving the management of the local and natural environment
- Enhancing the quality of the local environment

### **Practical support for the lead role**

17. If Government and partner organisations can provide additional support for local authorities for skills development and training, this will help them to make the political and practical case for investing more in flood risk management work.

18. It is essential that local authorities and their partners have good models of partnership working, scrutiny, intelligent commissioning etc. The LGA Group are developing dedicated web pages, a self-evaluation checklist, good practice models and leadership modules. The first of these resources will be available from the end of July 2009. The aim is to help all local authorities to learn from those that are leading on this agenda, spread ideas, innovation and learning.

19. The LGA has set up a National Partners Group on Flooding which brings together all the main national stakeholders and representatives from local government to discuss key issues on flooding and coastal erosion. The aim is to ensure good working relationships and agreements at a national level, to support better relationships between authorities and their partners locally. Sir Michael Pitt has to date chaired this Group and expressed the added value of bringing these stakeholders together and the contributions they have made. We hope that work by the Group on funding, skills and capacity will provide better information about the needs of authorities and their partners and identify how the proposed legislation and guidance can best address these needs.

### **Funding the lead role**

#### General Comments

20. The consultation states that there will be no new net burdens on authorities from taking on the lead role, because they will benefit from savings made through better flood risk management and the transfer of private sewers. The LGA believes that we cannot make any assumptions on the likely cost of the lead role, including adopting and maintaining SUDs at this stage. Many of the likely costs will not be clear until councils have taken on the lead role, have completed asset registers, developed Surface Water Management Plans and have begun an expansion of SUDs.

21. We would request an explanation of the assumed savings from better flood risk management. We feel this is missing from the consultation and we suggest that there will be a need for an on-going independent analysis of costs as these unfold, backed by a renewed commitment from Government that any emerging new net burdens will be funded. This will help to reassure those councils that can see clear new costs but very few savings and encourage them to take on new responsibilities with greater confidence.

22. The 2008 LGA/Defra survey of all local authorities in England revealed that almost 60% of authorities are already unable to fund current flood risk management responsibilities. Better flood risk management will produce some cost savings, but the initial costs for local authorities in taking on the lead role for flood management could be significant. Insufficient work has been undertaken by any of the organisations involved in flood risk management to be certain of the costs involved. CSS/LGA Group research on the costs of mapping local water and drainage assets for example indicated much higher costs than the Impact Assessment accompanying the draft Bill.

23. The consultation suggests that the leadership role will be cost neutral. We think this is unrealistic and our members are telling us in the strongest possible terms that they estimate the costs will be significant and on-going. One of our authorities has estimated that setting up the lead role will cost an additional £2.4m in the first year of operations, rising to £4.196m pa over ten years. Wakefield estimate that their additional costs will be around £1.5m per year and this will need to be spent for a considerable number of years. Cambridgeshire estimate that they will need to recruit at least 5 full time staff to cover additional work on engineering, planning, drainage etc.

24. Without a sustainable funding mechanism for SUDs and Surface Water Management Plans the lead role could become a serious cost burden. It is clear that local authorities will be and already are taking on significant new burdens, including expanding existing teams, setting up and administering strategic partnerships and undertaking skills and training to meet co-ordination roles etc. These set up costs will be incurred before any future savings can be realised. It will not be until all lead authorities have undertaken strategic flood risk assessments, completed asset registers and started to develop Surface Water Management Plans that they will have a better understanding of local flood risk and the potential costs of managing this risk.

25. There is a danger that by concentrating the £15 million additional funding that Government has allocated for developing the first tranche of Surface Water Management Plans in 50 priority areas, that we unintentionally set up a vicious circle of under-funding and lack of expertise in other areas. Without initial pump-priming funding, flood risk will have less chance of becoming a local priority, SWMPs and other aspects of the lead role and local expertise will be less likely to be developed. There will be less understanding of local flood risk and therefore if an unexpected flood were to occur, less ability locally to deal effectively with the consequences.

26. Additional funding mechanisms, such as local levies, are being explored by colleagues in local authorities, but these are unlikely to yield the significant and sustained income needed to fund the extra work involved in undertaking the lead role. The threat of flooding in most areas will be periodic, so it will be difficult to implement local funding mechanisms if the actual or perceived threat is not consistently high.

27. Evidence from member councils suggests that there are very few savings and a great deal more expenses connected to both the lead role and to technical issues around implementing Sustainable Urban Drainage Systems (SUDs). At best there may be some avoidance of the cost of recovery in future flood scenarios. Cost savings that exist appear to be saved in districts and incurred in counties. Since these are anticipated future savings they cannot contribute to the expenditure that will be incurred in the future. A typical county with relatively modest levels of planned growth has calculated that they will need to create 5 new full time posts as well as fund new works and maintenance regimes, to meet some of the Pitt recommendations. Government are already asking authorities for progress reports on Pitt but there is not yet any additional funding for authorities to undertake the recommendations, aside from the £15 million that will be allocated to around 50 priority areas.

28. CSS/LGA Group research this June and July with 14 local authorities, indicated universal concern about the lack of clarity of how the burden of the new roles and

responsibilities will be funded. All unanimously discounted the draft Bill's claims of potential savings. Most of the local authorities questioned were of the opinion that the new roles and responsibilities will require extensive resources and funding

29. We are concerned that even where it is acknowledged that there may be additional costs (e.g. with long term maintenance of SUDs), the assertion that these costs will need to be considered as part of future spending reviews alongside other priorities and pressures, will not induce confidence or enthusiasm amongst cash-strapped authorities. Changes to the way Revenue Support Grant funding for flood risk management is distributed are currently being developed by Defra and CLG. LGA finance colleagues are involved in Settlement Working Group meetings and will provide further information on proposals imminently.

30. The recently published long term investment strategy provides an overview of investment in flood defences. But authorities need greater clarity on the Revenue Support grant and the calculations used for distributing grant, plus better awareness and models of other funding mechanisms, including the benefits of collaborative working, joint commissioning etc.

#### Revenue Support Grant

31. Given the opaque nature of the revenue support grant the amount allocated for flood risk management activities is difficult if not impossible to discern. The status of the funding allocation in CSR is somewhat blurred. In the government's response to the Pitt Review it is implied that alongside the "Pitt Fund" (£15 million for the fifty highest priority areas) the CSR settlement will assist in funding the implementation of Pitt's recommendations.

32. However, it is evident when reading the Pitt Review that few of the local authority recommendations can be carried forward without this Bill. Therefore, it would be reasonable to question how relevant this allocation is to this new burden, particularly when the three year settlement was agreed in 2007/08 (prior to the drafting of the Bill or the publication of the final version of the Pitt Review).

33. The House of Commons Environment Food and Rural Affairs (EFRA) Committee criticised the CSR07 settlement in respect of flooding as it represents a decline in real terms over the three year period to 2011 and is lost within the block grant. Furthermore, the committee felt that the CSR settlement looked inadequate to cope with the traditional and new risks the country faces. In light of the Pitt Review and the resources needed to implement what could be an expensive programme, the EFRA committee urged government to reassess the adequacy of the CSR07 allowance. The LGA supports this recommendation.

#### Cost savings from better flood risk management

34. There are several assumptions made in the draft Bill which the LGA would question. One is that better flood risk management will produce cost savings to the local authority. This may well be the case in the future, but as Local Authorities do not have these functions yet, this would only be a future saving against future anticipated spend, rather than a real resource that could be deployed now.

35. Investment by the local authority in better local management of flood risk is very likely to produce cost savings to the government, in terms of reduced grant aid to flood affected areas in the future, to individual property owners, in terms of the value of their properties and to savings in the cost of future flooding. Indirectly the insurance industry will also benefit from better local flood management.

36. We are not sure if the Regulatory Impact Assessment has taken account of the projected increase in extreme weather and EA risk assessments of the number of properties at risk of flooding.

37. Many of the properties flooded in 2007 were affected by surface water flooding. Climate change projections indicate that flash floods will become more frequent, with over 4 million properties in England and Wales at risk of surface water flooding

and over 2.4 million properties at risk of river and coastal flooding. Some of this flood risk is interlinked, when drains are unable to discharge against high main river levels. Even with the rise in EA investment on flood management over the next few years, the number of properties still at risk is projected to reduce only slightly. The proportion of funding allocated to surface water management versus that allocated to main river or coastal flooding is currently very small. Consequently, this balance should be open to frequent re-appraisal as the impacts of climate change unfold. To expect local authorities to manage the growing risk of surface water flooding with minimal new resources is unrealistic. Equally, without significant increases in the main capital grant programme, the risk of flooding from rivers, as experienced recently in Sheffield, Morpeth, Boscastle etc, will continue.

38. Our conclusion is that there is still a major public debate that needs to happen on exactly what risk we as a country are happy to live with and what extra resources we all need to put in to flood risk management. We cannot protect every property from flooding. However, if there was clearer information about risks and options, communities might decide they want more protection than we are currently planning for. Better information on adaptation, resistance and resilience measures, will be needed to reassure those at risk.

#### Transfer of Private Sewers

39. The draft Bill states (212) that 'From April 2011, local authorities are expected to benefit substantially from savings arising from the transfer of private sewers to the sewerage companies'. Authorities that the LGA Group has consulted and all those consulted as part of the CSS/LGA Group research on funding and capacity unanimously reject this statement.

40. There are several issues. One is that the figures on local authority spend used by Defra in the Impact Assessment may not be as robust as we would hope, given that they are mainly based on a 2002 survey, to which only 12 % of authorities were able to answer questions on costs. We do not know how representative these authorities are and therefore how reliable the figures on cost across the country are.

41. The figures themselves, which estimate that authorities in England and Wales spend £54.4m on private sewers, cover total spend across the authority, including authorities spend on their own private sewers as social landlords and property owners. Some member authorities advise that the costs involved in managing private sewers are not always significant, indeed some local authorities have very few if any private sewers. Other authorities estimate that because they recover most of their costs, their total spend on attending to flooding incidents involving private sewers is anything from around £1000 for an average district, to under £30,000 for a large unitary and these are predominantly staff costs, rather than the cost of works.

42. City of York Council has provided the following example of their costs for dealing with Private Sewers . The cost over the last 3 years is shown below:

2008/09 £245,000  
2007/08 £280,000  
2006/07 £267,000

All of these costs are recovered by the council. Additional to this, the council's Environmental Health Team have a budget of £30,000 to deal with a Private Sewerage system inherited at reorganisation of Local Government in 1996. Of this £30,000, the council spends £25,000 looking after a Private Sewerage system that will not transfer to the Water Company under the proposed Bill and £5,000 of staff time dealing with residents concerns over Private Sewer issues, which could be targeted to be transferred to the Water Company. Therefore, this council will only save £5,000 pa.

43. Consequently, our members do not accept the large figures used in the Impact Assessment. We urge Government to undertake a much more detailed analysis of current costs and how these are spread across different council departments.

44. We think that Government needs to address the perception that there has been a swap between the costs of responsibility for private sewers and the proposed adoption and maintenance of SUDs. In two tier areas, the costs will be saved in districts and across various departments, including Housing, Transport, Technical Services etc, not necessarily within Drainage / Flood Risk Management teams. The costs of the new lead role will fall primarily on counties.

45. Whilst there will undoubtedly be savings for authorities in some of the transfer of private sewers, these will vary widely and there may be continuing costs over some private sewers as the transfer will not affect septic tanks or those sewers draining to watercourses. We propose that more work needs to be done by Defra to establish the current costs of private sewers, the split between different council departments and some of the continuing costs for authorities.

46. The new boundary between public and private responsibility is designed to maximise the extent of the system maintained at public expense and remove the problem of one owner being responsible for a drain in another person's land, which we agree is legally and morally laudable.

47. However, the new designation makes it impossible to identify who is responsible for a blockage on either category of lateral drain without reference to CCTV inspection or radio detection probing. Under the current definitions much simpler and inexpensive methods are usually available for rapid determination of responsibility (colour testing etc.) The proposal seems the right way to go but the practical and financial difficulties with the proposal need to be recognised.

48. If the responsibility (s43) to investigate all flooding matters drills down to this level then the lead authority will require an increased resource in this area of business rather than making any savings.

49. There is concern amongst authorities that under s.43 of the proposed legislation, for a general duty on local authorities to investigate all flooding incidents, that they will still be called out to private sewer flooding incidents. Because most private sewers are unmapped, the source of flooding and the responsibility for the sewer will not be known until it is investigated, so it is likely that there will be continuing costs and not all of these will be able to be recovered from owners (e.g. staff costs). The aim of the policy in transferring private sewers is good, but the various responsibilities on lead authorities to investigate all problems could potentially cause as much confusion and cost as at present.

50. In relation to the conclusion that the costs of the lead role for authorities will be cost neutral because of savings made on the transfer of private sewers, we need Defra to clarify how any savings might stack up and how they will be reallocated to the department or the authority that will be undertaking new responsibilities.

51. In conclusion, we would reiterate that not enough analysis has been done on either the current costs of dealing with private sewers or the future cost implications of dealing with those private sewers not being transferred.

#### Bringing together different funding partners

52. Currently there are completely separate appraisal routes and analysis of how different elements are funded, particularly in regeneration schemes, and these seem to have no easy way of being brought together.

53. For instance a scheme that delivers highway benefits by a new road on top of a new dam wall that acts as a flood management benefit and also protects areas of housing and commercial development would need to submit a series of completely separate appraisals of cost and benefit to join together different funders. We need a combined cost benefit appraisal for all benefits and contributions. This would assess a scheme's role and benefit in the round. Different funders could then contribute a smaller amount to their element of the benefit of the whole scheme.

### Emergency Planning Costs

54. As with COMAH & REPIR Regulations, we recommend that reference to full cost recovery for local authorities to reflect work undertaken in Emergency Plan preparation, maintenance, training and exercising is embedded in a final Bill.

### Warning and Informing Costs

55. It is also essential that responsibility for Warning and Informing is clearly defined in the legislation. Like COMAH and REPIR it could lie with the Site Operators. The interim arrangements as proposed by CCS seem to suggest that Warning is going to lie with Local Resilience Forums in general and with regard to advance public information dissemination this would seem likely to fall to local authorities.

56. A degree of flexibility with regard to cost models is needed to reflect local situations. The extent of the downstream effects and the numbers of those in the inundation areas will affect costs in reservoir risk plan preparation and maintenance. If the duty of Informing lands upon local authorities significant printing and distribution costs will be incurred every time the information is refreshed.

### Additional funding mechanisms:

57. One possible source of additional funding is a local levy. This may be fairer than expecting additional resources for high risk areas through general taxation.

### General comments on funding issues:

58. National government and the Environment Agency should deliver nationally important projects and local government should look at commissioning others, including EA, to deliver locally important projects. EA should not just be an agency of central government but should also be an agent for local government.

## **Local Flood Risk Management and Spatial Planning**

59. In general, we would have liked to see more references to the role of planning and future development in flood risk areas.

60. We have some concerns about the interaction between the Planning and Building Regulation systems in relation to development control. Simplistically, the Planning system should set the boundary conditions and Building Regulations the detail. Ideally planning constraints should be determined prior to Building Regs. In practice, however, even where submissions are made at the same time the time scales for determination are different (Planning 2 months; Building Regs 5 weeks).

61. A further complication arises where Building Regs are administered by an approved inspector as they may refuse to deal with the Planning Authority. The net result is that whilst there appear to be incremental statutory controls throughout the development control process, planning constraints are apparently often limited by earlier Building Regs approvals.

62. There is also limited ability in Building Regs to require sustainable development, rainwater harvesting, grey water re-use etc. Hopefully the revision of part G & H of the Regs will start to address this.

63. Defra wants the SUDs approval process to dovetail with the planning and building control processes. However, the proposal that responsibility for SUDs approval is given to county councils, which currently have no responsibility for building control approvals and whose planning responsibilities are limited to minerals, waste and their own development, will produce unnecessary additional work and capacity issues. Again, we would recommend flexibility on how the lead role is agreed locally. It makes sense for the tier that has the expertise already to continue to deliver a particular service and for this to be within a strategic flood risk partnership context that involves all the authorities in the local area.

## **Strategic Flood Risk Partnerships**

64. It is essential that there is a structure that enables the lead local authority to strategically manage local flood risk with the co-operation of all local partners. The exact model will be different in different areas, but we recommend that lead authorities set up a local strategic flood risk partnership. These should aim to:

- Include all authorities, IDBs and other partners within a county or catchment area
- Clarify roles and responsibilities
- Ensure they have the available skills, funding and cooperation (with water companies etc) to improve local flood risk management
- Set up an effective scrutiny process.

65. We need model approaches on how authorities and their partners can strategically manage flood risk; on working effectively in partnership, within county boundaries and with neighbouring authorities; on promoting local adaptation and resilience. There will be different solutions in different places, but models for authorities to learn from and build on are needed.

66. The LGA Group are developing good practice models on such things as Partnership Working, Being an Intelligent Client etc, plus action learning sets to help authorities to learn from each other and build expertise and knowledge. We need the final legislation and guidance to promote effective frameworks for partnership working. We hope that this will acknowledge the existing arrangements within Local Strategic Partnerships (see para 68 below) for joint working and the opportunities these present for effective working across tiers and for raising the priority of flood risk management by bringing it within a Local Area Agreement.

## **Two Tier Issues**

67. We hope that Government will not impose a one size fits all structure for managing local flood risk - expertise will not always lie in one authority tier and we support flexibility within the Bill for local agreement on which authority will take on the lead role, the accountability and delivery of various flood management functions. We would want a very clear accountability and agreed roles and responsibilities to be in place by an agreed deadline. The actual detail of which authority takes on the lead role in two tier areas and the local framework to manage local flood risk should be up to the authorities in these areas to agree.

68. Defra maintains that in law there must be a default accountable body for undertaking the lead role on local flood risk management and in two tier areas this should be the county. In practice, this should not be at odds with the LGA position that the lead role and delivery of particular functions should be agreed locally. LGA and Defra are committed to further discussions on this issue. Agreement, rather than delegation, is the key to ensuring an effective strategic partnership for managing local flood risk and making sure that all partners prioritise this work. The LGA maintains that Local Area Agreements are a good example of effective cross-authority partnership working and provide a useful model for strategic management of local flood risk in 2 tier areas. The key role of districts and the Local Development Framework will be critical in embedding the links between the Core Strategy and the local flood risk management strategy.

## **Skills and Capacity**

69. It is clear that lead authorities will need to invest significantly to raise technical capacity and staff resources to take on new responsibilities by the summer of 2010.

70. The LGA has serious concerns around current and future skills gaps and training needs.

71. The LGA/Defra 2008 survey indicated serious gaps in planning and engineering capacity.

72. Collaborative working between authorities and with partners in the EA, water companies and consultancy should help address some skills gaps, but even so, authorities and their partners are very likely to suffer a skills shortage.

73. Many authorities have lost in-house expertise in dealing with flood management. Difficulties in recruiting skilled staff could delay progress by some authorities in setting up the teams necessary to undertake flood risk management activities.

74. A typical large district has calculated that the transfer of private sewers would save 0.25 of a full time Environmental Health Officer. At present it is primarily Environmental Health Officers who deal with private sewer incidents, but it will be drainage engineers, planners, building control and other technical staff who will be overseeing strategy, assessing flood risk and developing Surface Water Management Plans and SUDs schemes. East Sussex County Council has estimated that the additional staff resource needed to deal with the expansion in SUDs schemes associated with 1500 new dwellings every year until 2026 may be up to 6 full time staff. In those areas with much larger projected housing growth, the implications could be much more significant.

75. As part of LGA Group work to inform our response to this consultation, we have worked with CSS to gather more evidence on the funding and capacity needs for local authorities, through in-depth research with 14 local authorities on the draft Bill proposals. The aim of this research was to establish at a national scale what additional resources, skills and hence training needs exist to undertake new duties as set out in the draft Bill.

76. The results from the research questionnaires, telephone interviews and workshop indicated universal concern about the lack of FRM staff and the lack of clarity of how the burden of the new roles and responsibilities will be funded. Some of the local authorities surveyed do not currently have any staff dedicated to FRM on a full time basis and will be less well equipped than those that have been proactive in flooding issues in implementing the new Bill. The research indicated lead authorities would need to recruit significant numbers of new technical, planners and administrative staff to implement the draft Bill, as well as operations staff.

77. A discussion on skills and training between colleagues on the LGA convened National Partners Group should help to gather more information on the current picture and any opportunities to collaborate and share knowledge and expertise. We are very keen that learning from these projects should inform Government's assessment of the support for authorities and their partners to expand Flood Risk Management teams.

78. In order for the Bill to be successfully implemented, Government must urgently undertake work with professional institutes (ICE, CIWEM), universities and networks (LANDFORM) to address the skills and training issues identified by this group, the CSS/LGA Group research and existing reports by ICE and others.

79. We welcome the progress Government has made in a very short space of time in working with the Environment Agency and local authorities to introduce a Foundation Degree in Flood Risk Management from this autumn. As there has been a very large number of applicants and interest from authorities in offering placements for these places, we recommend that Government rapidly expands available places next year. With 150 lead local authorities, it would make sense for each of these authorities to be able to host at least one trainee.

### **Duty to co-operate and share data**

80. It is vital that legislation includes a clear compulsion on key stakeholders, specifically utilities, to share relevant information with local authorities. Without this, the lead authority will not be able to meet the requirements (s.43-44) to investigate flooding incidents and maintain a register of structures that affect flood risk. A duty to co-operate will need to be supported by local agreements on the detail of how

data should be shared between different organisations, the format, timescales etc. The LGA also recommends that Government look at prescribing some basic levels of communication, to ensure that progress is not hampered by an existing lack of partnership working and co-operation. Legislation should also specify what action the lead authority can take if any authority or organisation does not co-operate or undertake required flood risk management functions. We need to ensure that all partners are committed, accountable and co-operate with local scrutiny processes. Government should encourage national level agreements between the key stakeholders in order to support local agreements and effective joint working. We think the list of stakeholders in S25 should match the list in S26.

## **Sustainable Urban Drainage Systems (SUDs)**

81. The draft Bill proposes that the lead authority (specifically the county in two tier areas) will be responsible for approving, adopting and maintaining SUDs. By removing the automatic right to connect, which the LGA supports, the option of draining to SUDs should become a first rather than last choice, and the number of SUDs schemes should expand rapidly.

82. SUDs schemes can deliver a range of benefits to the local area. As well as their obvious role in flood risk management, some solutions can also play an important part in improving local environmental quality and biodiversity. These multiple benefits need to be more widely promoted to councils, developers and the community. Recognising the benefits to the local area may also help to identify partnership arrangements and additional funding mechanisms (eg for maintenance of schemes, retro-fitting SUDs etc). We welcome the inclusion of clauses promoting both the expansion of SUDs schemes and the introduction of National Standards.

83. We would stress that SUDs are not a panacea and can have some technical difficulties depending on ground conditions. In some places, positive drainage (surface water sewers and drainage channels) will be the preferred solution. SUDs should be seen within the context of a whole management system.

84. The proposal that local authorities take on the ownership and maintenance of new SUDs is to be welcomed. We do not agree with the proposal that the SUDs Approval Body should be the county in a two tier area. The expertise on planning sits within the Local Planning Authority and it makes sense that an LPA takes on this function in two tier areas. There is no reason to set up a separate unit within a county council, when responsibility for building regulations and the majority of planning case work lies at the district level.

85. It is crucial that there is a sustainable funding mechanism for SUDs in place from the start, to avoid potentially huge maintenance costs as the number of SUDs expands over time. We need pump-priming to build capacity and a knowledge base on SUDs. To ensure a sustainable financing mechanism, LGA thinks the most appropriate mechanism would be to require all properties to continue to pay a surface water drainage charge. Water and Sewerage Companies (WASCs) could collect the surface water drainage charge from all properties and pass on to authorities the charges for those properties drained via SUDs. It would be up to the authority to ensure that they billed the WASC for the right number of SUDs properties.

86. Taxation is not a realistic option as SUDs customers would receive 'free' surface water drainage and customers draining to surface water sewers would pay 'twice' (once through bill to WASC and again through taxation). It is clear that Government want SUDs to be incentivised and brought within a sound, properly funded management regime. We believe this can be achieved using our proposed funding model.

87. The proposed model suggested in the consultation, using commuted sums from developers and assumed (at present unquantifiable) future savings from better flood risk management or the transfer of private sewers, will not provide incentives for

developers or authorities to promote SUDs. The consultation acknowledges that funding for SUDs using the Government's model will last for around 10 years and will then need to be revisited. This underlines the weakness of not having a sustainable funding mechanism that actively incentivises all parties to expand the number of SUDs schemes.

88. The costs of developing and maintaining SUDs will depend on the type of SUDs scheme chosen, what kind of maintenance will be expected and the details of what the national standards will be. The standards themselves, how they will apply in different situations and delegated responsibilities might create all sorts of costs, skills needs and other issues for local authorities. The LGA and member authorities are keen to be closely involved in developing the standards and ensuring these issues are considered.

89. The draft Bill does not explore the skills and finance issues inherent in introducing a vital new service that will provide essential flood risk management to the community. It is essential that promotion of SUDs as a first option is accompanied by a programme of learning, skills development and training as well as a sustainable funding mechanism. Without these, there is a real danger that authorities will not be able to deliver the proposals, even where there is a will to do so. Staff will need to know that the SUDs have been properly designed and built in order to maintain them effectively.

90. The proposed National Standards and SUDs Approving Bodies, should clarify roles and responsibilities. Issues that need to be considered include the following:

- The vital role of source control should be better promoted and not be overlooked in the accompanying guidance
- It is uncertain how the process of developing and adopting SUDs will interact with planning and development control functions. This may place an additional planning burden on authorities (as well as developers) and will need to be carefully managed to avoid creating delays or additional costs for developers or authorities.
- There may be capacity and finance issues for the lead authorities in taking on responsibility for adoption and maintenance.
- Models of how this can work effectively will be needed, as well as very clear guidance.
- Guidance should also consider the most appropriate solutions for different geographical areas and different kinds of sites as well as promotion of and models for retro-fitting into existing developments, particularly in urban areas, where some of the greatest flood risk reductions may be achieved.
- The role of water and sewerage companies needs to be clarified.
- The Standards should encourage SUDs that are cost effective in terms of maintenance and include reference to maintenance.
- When designed and installed in accordance with National Standards, it should be clear that the sewerage undertaker should then permit connection.

91. As with a number of actions on reducing flood risk, the greatest benefits may be realised by reducing flood risk at source and by widespread take-up of solutions in smaller settings, rather than relying only on bigger, new developments to deliver SUDs. We recommend greater emphasis in the Bill and guidance on the potential of individual, smaller, infill sites and retro-fitting to incorporate SUDs schemes.

92. National Standards should clarify the range of departments, specialists and partners who could be involved in the SUDs approval process and arrangements for delegation and enforcement. They should support a consistent approach across all potential stakeholders – EA, HA, sewerage undertakers etc.

93. Some authorities in high growth areas with high density developments could have huge costs in maintaining SUDS after a few years - a high growth area could have SUDS funding requirements of the order of £3-400,000 after three years of growth, with new developments on SUDS (based on equivalent funding of a WASC through surface water drainage charges) and few authorities will be able to make savings of that order through losing other responsibilities, or reducing flooding incidents by better flood risk management.

### **Surface Water Management Plans (SWMPs)**

94. The draft Bill proposes that the lead authority (the county in two tier areas) will develop Surface Water Management Plans, to provide the understanding of local flood risk and strategic direction for work by the authority and its partners to manage this risk.

95. Developing the plans will be costly and some authorities will need multiple plans for different flood risk areas. Pilots have indicated that they may cost in the region of £140,000 each to develop and they will need to be regularly revised. We understand that the £15 million funding earmarked for SWMPs will only cover the 50 highest priority areas.

96. The Impact Assessment for the Bill only covers 50 plans. The consultation does not clarify how those areas that do not receive any of the £15 million funding will be able to fund the development of SWMPs. An earlier Impact Assessment for the Government's Future Water Strategy covered 150 plans. It is clear that all 150 county/unitary areas will need at least one plan within the first few years and some areas will need quite a few plans. The CSS/LGA Group research estimates that the number of plans that will eventually be needed could be anything up to 2500 across England. Estimates on the costs authorities could incur in carrying out works identified in the plans also differ widely from the Defra estimates.

97. We believe much more analysis needs to be done on the number of plans that will be needed, the cost of developing and revising plans and the cost of implementing the plans. Our conclusions all point to the need for a separate, sustainable funding mechanism to ensure wide take-up and on-going development of SWMPs in all areas.

98. LGA suggests that this could be an additional precept on the surface water drainage charge raised by WASCs from customers. We are keen to discuss options with Government and the water industry for a fair and easy to administer system of contributions, including business rate contributions. For a very small charge per property, all authorities could raise the necessary funds for surface water management planning. The LGA believes it is crucial that we develop a sustainable funding mechanism for both SUDs and SWMPs to ensure early progress and sustained take-up in all areas.

99. For authorities to produce SWMP's they will need to use a variety of sources. Each consultant will have their own preferred modelling options and therefore there needs to be some flexibility in what the Environment Agency will accept. However, we will have to ensure that there is proper verification of the models used.

### **Regional Flood Defence Committees**

100. The model proposed is designed to allow local knowledge to inform the EA's national priorities. Whilst the EA will deliver the national investment strategy, RFDCs/RFCCs should provide local and regional input to this strategy.

101. We need to have political accountability locally but authorities don't agree that the proposed model will necessarily deliver this. There is a worry that the model proposed could transfer decision-making from local councils to a body less representative of local opinion and needs. Altering their status from an executive to an advisory role would undermine local democratic influence. Local councillors may also be less willing to take part in committees if they are only advisory. We

particularly support the retention of executive powers to set levies and decide where levy funding should be spent.

102. In two tier areas membership needs to include both county and districts. It is essential that Maritime District Authorities responsible for coastal erosion risk management in the RFDCs/RFCCs area are included.

103. The RFDCs/RFCCs would provide advice to the recently established Coastal Groups, so the Bill will need to include reference to the Coastal Groups as a significant player in developing local, regional and national policy.

104. We recommend further discussions with Defra and EA on how to ensure the RFDCs/RFCCs meet the proposed objectives.

## **EU Floods Directive**

105. The draft legislation will transpose the EU floods directive into domestic legislation and underpin progress across and between countries towards a more co-ordinated management of flood risk. We welcome progress on achieving the aims of the directive, which we believe will help to provide a comprehensive understanding of flood risk and the consequences of flooding, raise awareness of flood risk, particularly amongst the public and clarify the roles and responsibilities of the EA and local authorities in regards to managing risk. As the Bill will establish the structures and roles necessary to meet the Directive's requirements, it will be preferable, in order to achieve this by the deadline, that the Bill is introduced in the next parliamentary session.

106. It will be helpful to clarify the relationship between the requirements of the flood directive and what is expected of lead local authorities, i.e. the difference between a local flood risk management strategy under the proposed Bill, and a local flood risk management plan under the Directive.

107. We note that the regulatory impact assessment on the Directive does not cross refer to the local leadership regulatory impact assessment or vice versa. The EU Directive RIA appears to say that the work that will be needed to comply with the Floods Directive will be undertaken anyway through developing a Surface Water Management Plan.

108. However, the costs expressed in the separate RIAs do not match and we therefore need Defra to provide some explanation of the costs proposed. For the EU RIA, it is proposing that the modelling work will cost £250,000 per study and therefore in the 50 priority risk areas, there will be £12.5 million needed to fund this work. In the SWMP RIA, it is proposing that £8 million is set aside for this work, which if this is divided into 50 priority areas is just £160,000 for each Plan.

109. As only 50 areas will be funded initially to undertake SWMPs, this disregards the fact that all authorities will need to meet the deadlines set by the Floods Directive. We are concerned that this will place the remaining areas at a disadvantage in meeting the directive's deadlines.

## **Water Framework Directive (WFD)**

110. If the requirements of the WFD are widened to include all organisations involved in flood and coastal erosion risk management, this would ensure a wider awareness of and achievement of environmental and water management objectives by all local partners. In relation to a duty on Flood and Coastal Erosion Risk Management authorities to act in accordance with the WFD, we understand that as the WFD is enacted in UK law this should already be the case. We will need to consider how to address any conflicts between the WFD and meeting and enabling growth areas.

111. Good National Standards on SUDs should help to deliver the multiple benefits that are an aim of the WFD.

## **Third Party assets**

112. We support a power for the EA, local authorities or IDBs to designate assets owned by third parties that are relevant to flood and coastal erosion risk management. This will need to be supported by close working between the different organisations.

## **Consenting and Enforcement**

113. We agree that the consenting provisions within the proposed Bill will help to clarify accountability. It will be useful for local authorities to remove the need to consult the EA on projects to be undertaken on ordinary watercourses. We would be in favour of local flexibility in regards to which tier of authority is responsible for the effective management of the local drainage network.

## **Reservoir Safety**

114. The LGA supports the risk based approach to reservoir safety proposed in the draft Bill, which we believe will help to highlight the potential risk that reservoirs may pose to public safety.

115. One issue that may give significant rise to authorities costs is the reduction of volume from the Reservoirs Act 1976 of 25,000cu m to 10,000cu.m. Risk rather than quantity will be the determining factor and whilst this is welcomed, we suggest that the implications for local authorities need to be better understood by all authorities in terms of impact, reservoir inspections & maintenance – these are not cheap and could present a considerable new burden in some areas.

116. One implication of better understanding of local flood risk and an assessment of reservoirs, is that safety issues that were previously unknown will need to be addressed urgently, but without any new funding. For some small districts which own reservoirs, this could result in very large repair bills. We would urge Defra to consider what support Government might be able to make available, including loans, to ensure that councils can undertake this work in good time, without having to make extreme cuts to other services.

117. In developing the risk plans, it is suggested in the consultation that cost will not be a significant issue. If we look at £6k for example for initial costs and £3k for on costs, for an authority with 20 reservoirs that require a specific plan the cost burden is very significant at £120k and £60k respectively. As we know, some authorities could have many more than this and some may have none or only one or two.

118. We should also not underestimate the amount of time required to manipulate the mapping data into a useable format. This could be a significant new burden.

## **Flood and Coastal Erosion Risk Management - Issues not covered by draft Bill provisions**

### **Reform of Internal Drainage Boards (IDBs)**

119. We consider that IDBs operate effectively and efficiently at present and major reforms are not needed to enable lead authorities to more easily draw on their valuable knowledge and expertise. We would like a stronger emphasis in the Bill on the role of IDBs in developing effective local flood risk partnerships. A specific power to share services and form or participate in partnerships would be helpful.

120. Rationalising the number of IDBs and making it easier to alter boundaries and amalgamate where this is in the interests of local flood risk management could be helpful, but we would not be in favour of changing boundaries just to align with political boundaries. The over-riding principle should be that the IDB area is where there is a need for specialist water level management and drainage to counter local flood risk.

121. We do not see any conflict or inconsistency between the supervisory role of IDBs and the proposed lead role for local authorities. IDBs hold specific drainage and water level management expertise which would probably not be found within the local authority.

122. We do not see any advantage in giving IDBs a different title. In the areas where they operate, their title and role is already well understood.

123. We also do not see any particular benefit, but some potential problems, in transferring supervision of IDBs from the EA to the lead local authority, especially as they operate in specific flood risk areas or catchments and not solely within a local authority boundary.

124. We would not be in favour of replacing the IDB special levy. A secure funding stream is needed to address flood risk in the areas where IDBs exist. This need was the reason for the present levy being introduced.

### **Run Off Reduction Zones**

125. We would welcome the ability to designate Run-Off Reduction zones to help control all sources of flooding. This would complement Town and Country Planning Act powers and enable authorities to influence land management practices, particularly where there has been a problem with run-off associated with farming practices. If farming practice was identified as crucial to managing flood risk in an area some form of payment could be made through the Higher Level Stewardship scheme - which requires the production of a detailed Farm Environment Plan - which could relatively easily take surface water run off into account.

126. Adverse upland management practices of deforestation, removal of peat bogs, land drainage to farmland etc. can increase flood risk in both rural and urban locations. It would be beneficial to address these and also for central and local government and the EA to put resources into reversing such practices.

127. Extending the recent restriction on concreting over front gardens to patios/private roads etc in areas where the risk of run-off flooding is high, would also be a useful tool for local planning authorities to raise awareness of and actively reduce local flood risk.

128. There should be a link here to the discharge restriction limits proposed in the Defra/EA Research and Development Technical Report W5-074/A/TR1.

129. LGA research officers are already involved in a research project on Living with Environmental Change that includes land management and flooding and would be very keen to contribute to the development of proposals.

### **Statutory Nuisance**

130. The responsibility for statutory nuisances currently lies with district councils, who already have discretionary powers under the Land Drainage Act 1991. However, the available expertise to deal with this kind of problem varies across councils, with some districts having lost engineering capacity whilst others have a very strong local expertise.

131. The proposal to create a statutory nuisance has both advantages and disadvantages and our members have differing opinions as to whether this is an appropriate application for a statutory nuisance. Whilst some consider that statutory nuisance is not appropriate as causing flooding is a civil matter and should remain civil, others argue that it is a statutory nuisance due to the potential health implications of contaminated water and health. Because there is such a diverse range of views, we cannot give a single response but the LGA Group, and specifically LACORS, would welcome the opportunity to explore the area further with Defra and local authority advisors.

## Scrutiny and Oversight

132. We believe Scrutiny Committees will help to improve accountability at the local level, raise the priority of flood risk management within local authorities and amongst local partners and ensure good practice in reducing flood risk. We believe that scrutiny should be light-touch and not add a significant bureaucratic burden to local authorities. All local strategic partnerships on flood risk management will develop a set of objectives and a work plan and this should form the basis of scrutiny. The LGA Group are working on a model for effective scrutiny, to help support good practice.

133. Any arrangements for scrutiny and oversight should take into account:

- the complicated nature of the drainage infrastructure means some form of readily comprehensible guidance would be helpful in helping members to grasp the complexities and subtleties of this and what the key issues to focus on are;
- what the relationship is of any scrutiny committee to other committees which focus on LDFs or specific planning issues as well as wider emergency planning
- what accountability there would be to the committee from other stakeholders in the local Flood Risk/SWMP partnership, such as water companies and the EA.

## Reducing property owners impact on flood risk

134. The draft Bill rightly includes questions on the need to increase awareness amongst owners and occupiers of their responsibilities to prevent flood risk.

135. We understand the potential of a new statutory nuisance to address localised flooding incidents. Whilst this may help to raise the profile of local flood risk and increase awareness amongst owners/occupiers, we think there are some key issues to consider:

- A new statutory nuisance might be a heavy handed approach. It could become an onerous burden on some local authorities if they (rather than an Agricultural Land Tribunal) were to take on this responsibility.
- It could be very difficult to apportion blame - run-off from a new development could theoretically be blamed on conditions imposed by the local planning authority rather than actions by the actual owner/occupier.
- Tracing the source or cause of water run-off will also be extremely difficult. There is also a requirement with statutory nuisances that the local authority proactively surveys the local area for potential nuisances, again adding to the actual burden.
- Local authorities would be reluctant to take on a new statutory nuisance unless it was accompanied by a definite new funding stream.
- Mapping of water assets / watercourses, as recommended by Pitt, will help in assessing flood risk and registering riparian ownership. The development of asset registers and Surface Water Management Plans will help lead local authorities to notify owners of their responsibilities for maintenance etc, but mapping all private sewers is unlikely to happen because of the extent of these, the potential cost and the transfer of responsibility to water and sewerage companies.
- Including the responsibilities of riparian owners in Home Information Packs might help to raise awareness.

## **Water Management - issues covered by draft Bill provisions**

136. The LGA Group welcomes the broad approach to water management proposed in the consultation. We recommend a stronger link between the proposals on water conservation and the potential of SUDs to enable recycling of water for non-drinking uses. A national standard for SUDs that includes measures for water recycling could help to reinforce the water management proposals in the second part of the Bill.

137. In regard to handing disputes around diverting the water infrastructure, we would reiterate previous comments that it would be helpful to develop a way of analysing the various costs and benefits of water, flood risk, regeneration projects etc, so that all organisations and communities who benefit from schemes can contribute fairly to costs.

## **Water Management - issues not covered by draft Bill provisions**

138. The LGA looks forward to the forthcoming Walker report on Household Charging and Metering for Water and Sewerage Services and the Cave Review of Competition and Innovation in Water Markets.

139. We welcome the general approach on water conservation in the consultation. We think this section should include direction on the climate change context within which lead authorities will be developing local strategies. There is plenty of emphasis on climate change earlier in the consultation but very little reference in this part.

140. In regard to proposals to allow the Environment Agency to make hydromorphological changes to improve water quality, we suggest that local strategic flood partnerships, which would include the local EA and all local councils, should agree what changes are necessary, rather than leaving this to the EA to decide and then notify other partners. This would fit more easily with the Water Framework Directive duty on all relevant organisations to protect the water environment and ecology.

## **Omissions in the draft Bill**

141. The Bill needs to outline how the different responsibilities, boundaries and governance of the various partners involved in flood risk management will fit together. A clear framework will help local strategic partnerships to function effectively.

142. It would be helpful to have more references to coastal erosion and to emphasise that this is a key issue to be considered by all those involved in flood risk management.

143. The Marine Management Organisation, proposed under the Marine and Coastal Access Bill, is not mentioned in the consultation material. As the MMO will have powers up to mean high water it will be an important partner in the delivery of coastal erosion strategies and operations.

144. Section 98: Reservoirs – Overview, does not include anything on transitional arrangements or how legislation will apply across the UK.

145. Section 105: Reservoir Manager – There needs to be provision for instances where reservoirs are in joint ownership, e.g. where the Highways Agency owns a road surmounting a dam.

146. Section 142: Flood Plans Preparation – we think the proposals will place too much of an additional burden on supervising engineers.

## **Conclusion**

147. The LGA welcomes the draft Bill and recognises the achievement of Government in producing such a comprehensive and ambitious legislative proposal in so short a timeframe. The strong links between flood risk management and wider issues of water management are articulated well. The result is a draft that supports environmentally responsible flood and water management and which places flood and coastal erosion risk management firmly within the context of the challenges we face from population growth and climate change.

148. We have very serious reservations on the funding assumptions made in the draft Bill and consultation. We believe that the Government's assessment on costs is incomplete and does not fully understand the operational implications of the Bill for local authorities. We also urge Government to urgently address the serious skills and training issues that authorities will face in taking on the lead role for managing local flood risk. More evidence is needed urgently on cost and capacity implications. The LGA and our member authorities are very keen to work with colleagues in Government, EA, the water and insurance industry, in resolving these issues. Continued close working at a national and local level will help us all to better protect the communities we serve from future flood risk.

## Appendix 1

The following comments respond to some of the set questions in the draft Flood and Water Management Bill

*24. The Government's response to Sir Michael Pitt's Review accepted that county and unitary local authorities should have the 'local leadership' role described above. Does the draft Bill implement this effectively and support the development of effective local flood management partnerships?*

Our response to the consultation proposals as a whole is that we believe the lead role should be agreed locally. The draft Bill proposals support effective partnerships but we would prefer a stronger compulsion on partners to co-operate, more detail on what information should be shared and how, and much more thorough analysis of the costs and capacity issues that will need to be resolved in order for partnerships to function effectively.

*25. Do you have any comments on the proposal that the county and unitary local authorities will develop a strategy for local flood risk management and that district local authorities and IDBs would be required to act in a manner which is consistent with that strategy in delivering their FCERM functions?*

We propose local agreement, rather than a prescriptive model on which tier should undertake the lead role. We believe local agreement and joint working to develop the local FCERM strategy is a more sensible idea. The Local Area Agreement model demonstrates that cross tier working is an effective way of capturing the skills and commitment of all local partners.

*30. Should county and unitary local authorities be legally required to produce annual reports on the way that they are managing local flood risk? Should this requirement be annual?*

We would expect a local strategic flood risk partnership to be set up within each unitary or county area and for all relevant authorities and organisations to co-operate in developing a strategy for managing local flood risk and that this would involve a jointly agreed plan of action, revised at regular intervals. We do not think this should necessarily be an annual report, but we would expect the delivery of a flood risk management programme to be clearly set out, with a plan of action and a process of review. This should then be available for the scrutiny committee to consider.

*31. Should the EA provide support and advice to the local overview and scrutiny functions as part of the exercise of its strategic overview role?*

This could be helpful.

*32. Should the list of bodies required to cooperate with overview and scrutiny committees be extended to encompass all relevant authorities and as a result pick up IDBs and water companies?*

Yes.

*37. Should all relevant organisations have the power to undertake any flood and coastal erosion risk management at the request of another body?*

This would be helpful in ensuring effective partnership working, both within a two tier area and across neighbouring boundaries.

*45. Does the process for adoption and connection described here provide a clear and workable approach for developers, local authorities and water and sewerage companies? Do you have any suggestions which would make the process simpler, speedier or lower cost?*

We recommend that the Local Planning Authority is the best place to locate the SUDS Approval Body (SAB) as this is where the knowledge and expertise lie. It would not make sense in a two tier area to place the SAB within the county.

As worded, the lead local authority might be expected to investigate all sorts of minor flooding incidents and to continue to investigate private sewer flooding, even after transfer of this responsibility. The Bill and/or guidance should clarify the extent of the lead authority's responsibility.

The following comments respond to the set questions in section 2.12 on reservoir safety

*81. Views are sought on whether the minimum volume figure should be 5,000 or 10,000 cubic metres, or another figure.*

We feel that the minimum volume figure should be 10,000 cubic metres. This is mainly due to the relative risk factor and potentially excessive workload that a figure of 5,000 may require.

Any figure is arbitrary and 10,000 cubic metres is acceptable with the proviso in Para 332 that there is the ability to include other reservoirs below this figure if there is a significant risk not only to human life "directly" but also indirectly e.g. damage to infrastructure (sub-stations), and extensive economic disruption e.g. farming land, industry as a result of flooding

*82. Views are also sought as to whether criteria for inclusion and/or exemption can be based on other objective criteria such as embankment height, elevation, type of construction etc.*

All 10,000 cubic metre reservoirs should be registered and the EA should classify them based on risk factors. The risk factors should be a combination of likelihood factors and impact on the population downstream.

*83. Do you have a view on what information should be requested at the point of registration to enable an effective risk based approach thereafter? How can we design this and the collection process to minimise the burdens imposed by registration?*

As a minimum, the details suggested in the question at 82 (embankment height, elevation, type of construction) should be included.

The details in Para 335 form the basis of the information but other details should be included in addition to the technical specification of the reservoir e.g. age profile and on initial registration previous history of any actual or potential breaches to assist in developing the risk profile.

*84. Do you agree the proposed classification is appropriate and that the EA should have responsibility for classifying all reservoirs under the new regime?*

We agree that EA should have responsibility for classifying all reservoirs. Specifically the local authority should not have a role in determining "high risk". This process is comparable to the "competent authority" under COMAH Regulations. We are content that the factor of any potential downstream loss of life should be the priority. However the suggested process does overly simplify the process.

The classification process should be based on impact i.e. loss of human life, capacity of the reservoir and impact on infrastructure (road, rail, pipelines electricity distribution etc). It could include likelihood which would take into account other elements such as type of dam, construction, age and any known problems/ previous incidents. However it is felt that likelihood would be best reviewed by LRFs to include any known reservoirs with problems and therefore this would capture reservoirs such as Ulley.

At present it appears that the only "consequence criteria" that is being considered is "human life" and whilst this is the key priority other consequences should be considered (see 81) in assessing the overall risk to determine if a reservoir is high risk.

In any event, the classification process should be the same as that used in the interim period i.e. the period when working under a Direction until the new Bill is enacted.

*85. Do you believe there might be a role for insurance in improving reservoir safety and, if so, how might this work?*

We do not consider that there is a role for the insurance industry in improving reservoir safety.

*86. Do you have a view on whether and how the Government could most fairly keep to a minimum the financial burdens placed on the owners of those reservoirs which are being brought within the regulatory regime for the first time?*

The situation of reservoirs that are owned by small organisations e.g. angling clubs, is recognised and one avenue that may be worth exploring is that where owners are registered as limited companies there should be full cost recovery but if registered as a charity then DEFRA/EA cover costs.

*87. Again, we welcome views on how to ensure charges within a scheme can be made proportionate.*

No comment

*88. No decision has yet been made about making use of the existing power to give Directions contained in the Reservoirs Act 1975 (as amended by the Water Act 2003). Views are invited on whether to proceed ahead of enactment of the proposals in the draft Bill. Points to bear in mind are:*

- *The existing power to give a Direction would apply only to LRRs; and the costs of offsite planning would not be borne by the undertaker.*
- *The power to give a Direction under the new Bill proposals could apply to all high risk reservoirs above the minimum volume criterion; and could provide for the reservoir manager to meet the costs of off-site planning should a specific emergency response plan be needed.*

*Views are sought on whether the Bill should provide for this.*

Work should commence on the off site planning for high risk reservoirs (as classified by the EA) when the information becomes available but Local Authorities do not have necessary resources to complete this work without the necessary funding. Therefore it is vital that new legislation addresses funding issues appropriately to include the production, maintenance, training and exercising of the plans.

The Bill must be clear that local authority costs will be met and detail by whom. It is also vital that the Bill continues the same risk assessment regime for determining the high risk reservoirs requiring site specific off-site plans as under the Direction. If there is any change in the approach e.g. to base outcomes entirely on population figures (para 339), there is the possibility that costs be incurred unnecessarily by preparing some site specific off-site plans in the interim period for reservoirs which would not be classed as high risk reservoirs under the new legislation. (See also response at Q84).

Additional comments on the off site planning process:

Who will provide inundation mapping for reservoirs between 10,000m<sup>3</sup> and 25,000m<sup>3</sup>? The current production of inundation maps by Defra / EA only includes reservoirs over 25,000 cubic metres.

The legislation should cater for reservoirs not owned by anyone (or it is not clear who owns them) and should give responsibility to one organisation (possibly the EA). The power to take remedial actions to reduce risk e.g. the right to lower water levels for example, should be assigned to an organisation.

The prioritisation of the high risk reservoirs must be decided by the competent authority e.g. the EA and notified to the reservoir owner and the Local Authority (in the same way as COMAH).

The on site and off site plan model should be the same as COMAH and this should be the basis for the legislation.

Warning and Informing – under COMAH, the responsibility for this lies with the owner and we feel that the same model should be used. The owner should be responsible for W&I and the way that this is discharged should be done in consultation with the LRF W&I groups.

Public Leaflet regime for sending out information to the "at risk" community – again this should be similar to COMAH. It should be legally required once every 5 years but if certain reservoirs are considered high risk, then local discussions could reduce this time period as necessary. If the circumstances changed then this would dictate a higher frequency.

Cost Recovery – we feel that the cost recovery mechanisms need to be clearly spelt out in the Act. Top Tier Local Authorities should be given the power to recover costs associated with Off-Site plan production, maintenance, training and exercising.

A suggested model for cost recovery would be the ability to recover Initial costs – this includes multi agency Off-Site emergency planning process, GIS data manipulation (and any Warning & Informing costs incurred on behalf of the reservoir owner).

Ongoing annual costs - includes training, exercising and plan maintenance and review including revision of GIS population data.