Bedford Group of Drainage Boards

Floods and Water Bill

Initial Submission to DEFRA November 2008

The Bedford Group of Drainage Boards is a lead board consortium comprising the Bedfordshire and River Ivel IDB, the Buckingham and River Ouzel IDB, and the Alconbury and Ellington IDB. The Group provides professional engineering and financial staff to administer the three independent Internal Drainage Boards (IDBs) with consistent, high quality governance. Each IDB comprises local membership who represents the Special Levy paying local authorities (urban areas) and the drainage rate payers (agricultural areas). The Boards' members provide extensive local knowledge and experience covering all areas of the drainage district. The Boards' districts stretch from north Oxfordshire in the west to Cambridgeshire in the east, and from Huntingdonshire in the north to south Bedfordshire and north Hertfordshire in the south. The area includes the Government's growth areas of Milton Keynes and Bedford. As a result of the high levels of growth promoted by Central Government in the area, the Boards in the Group are heavily involved with the Town & Country Planning process presently providing advice to six County Councils; one Unitary Authority and seven District & Borough Councils. Maintenance activities are undertaken on approximately 1200 km of Ordinary watercourse on a risk based regime. Strategic urban surface water assets that comply with set criteria and are appropriately funded are adopted by the Boards. Emergency support and Category 2 response is also provided.

The Boards are in a single sub catchment as identified in the IDB review.

With the extensive experience briefly illustrated above, the Bedford Group of Drainage Boards suggest that Defra take into consideration the following when developing the new Floods and Water Bill:

1. That all powers for operating authorities in the Land Drainage Act 1991 (as amended 1994) (LDA) are transferred to the new Act, eg Powers of Entry; Powers to make Byelaws; Powers to raise rates; Powers to borrow money; Powers to Undertake New Works and Maintain existing works; Powers to spread arisings from water bodies on adjoining land; etc.

Comment: The existing LDA is basically a sound document, however problems arise in the interpretation of the use of Powers. It is important that there is recognition that a Power provides a responsibility to take action (interpretation made by IDBs). Unfortunately, many Local Authorities

perspective is that only having Powers is a reason for avoiding action especially when taking action incurs expenditure.

When devising new legislation it should be remembered that it has long been established that Land Drainage/Flood Defence requires a combined effort usually beyond the ability of a single individual to successfully manage the environment and therefore an Act of Parliament has been required to enable actions of Statutory Authorities for the common good.

2. Consideration should be given for the provision of Powers for IDB drainage districts to be extended, encompassing complete sub-catchments where appropriate.

Comment: This will simplify public awareness of responsibilities; assist Local Authorities (LA)to deliver increased responsibilities in Flood Risk Management as proposed by the Pitt review and maximise the use of the flood risk management expertise which is presently restricted to IDB area, ie, in only 10% of the country. (This proposal builds on the long standing working relationships that exist between LAs and IDBs).

It is important that Flood Defence Management is based on whole catchments. This is of particular importance in development growth areas. IDBs are the principle source of advice on surface water management issues to Local Authorities in Drainage District areas. IDBs have to be aware of development within catchments, as well as outside of the Drainage District, when giving advice. Extending the Drainage District to include the whole sub-catchment would ensure quality of advice and, where new development takes place, provide an operating authority which could become responsible for the management of new surface water assets or an existing asset (watercourse) which would otherwise remain in multiple ownership/ control.

3 i. Powers for IDBs to form consortia.

3 ii. Powers to provide services to other operating authorities, IDBs, LAs, Environment Agency (EA) and Water companies.

Comment: Required in order to maximise use of local, high quality technical and professional expertise and increase cost effectiveness. However, when Statutory Authorities, ie, non-profit making, provide services to other statutory authorities, the procurement requirements need to take into consideration that IDBs ,as service providers, will not be able to retain or consider it worthwhile to train expert staff for short-term contracts.

4 i. Powers are required for all Operating Authorities, as described in PPS25, to be Statutory Consultees for all development proposed under the Town & Country Planning Act including Local,

Regional and Spatial Plans. (This includes development proposed under the Minerals and Waste Regulations).

4 ii. There is also a need to require all Highway Authorities to gain consent for any works that will affect the flow in a watercourse*.

4 iii. Additionally saving clauses for telecommunication companies should be revoked*. (Usually found in Operating Authority Byelaws)*

Comment: IDBs are the principle advisors to planning authorities in Drainage Districts. Drainage Districts have been formed in areas of the country that derive the most benefit from water management works, therefore, it is of paramount importance that operating authorities, in these areas,have equal powers with regard to Town & Country Planning decisions as those used by the Environment Agency.

**The latter two items are required to enable Operating Authorities to protect the integrity of flood defence and surface water management assets.*

Highway Authorities are required to consult Operating Authorities under Chapter 66 part XIV Extract 339 of the Highways Act 1980 but this requirement needs to be reinforced in the new Bill.

The saving clauses for telecommunications were introduced when such activities were under direct State control. Now with many private companies engaged on commercial projects, the saving clauses are not valid and can lead to inappropriate development that would not be consented under the Bye Laws.

5. Modernisation of the revaluation provisions to bring them in line with LA revaluation provisions.

6. Modernisation of the electoral provisions and local authority membership for IDBs.

Comment: Consideration needs to be given to establishing a method of extending the Local Authority membership to include all Special Levy paying authorities within a drainage district rather than having a large number of members from the highest levy paying authorities. This would be of particular importance in the event that total membership of IDBs is restricted when new boards are

formed. By way of example, the Buckingham & Ouzel IDB presently has 25 members comprising 12 directly elected and 13 from Special Levy paying authorities. The Special levy paying authorities have the following members: 6 members from Milton Keynes; 5 from South Bedfordshire DC; 1 member from Aylesbury Vale DC, 1 from Mid Beds DC; but none from South Northamptonshire DC; and none from Cherwell DC. In the event that total membership fell to say 15, 7 elected and 8 from councils, the present method of allocation of seats to LA's would result in a further two councils having no representation. This would lessen the involvement with the Councils when practice has shown the working relationships that develop between IDBs and LAs are greatly enhanced to the public's benefit where strong membership links exist.

Additionally provision should be made to increase the size of the Board in the event that a Drainage District is extended. (See above re extending area to include sub-catchments)

7. Regulation is required whereby all consents for permanent works issued under the Act by an Operating Authority are attached to the deeds of the land and/or property and form part of the Land Registry records.

8. Regulation is required to ensure that all works "affecting the flow in any watercourse" (currently regulated under Section 23 of the LDA) require the formal consent of an operating Authority and that the charge for applications for such consents reflects the true cost of administering the investigation and consenting process. (Charging allowed for in LDA 1991 but never enabled).

Comment: Consideration should be given to having both an application fee and a consent fee.

The application fee could remain at £50 or less however the consent fee should reflect the cost of engineering, administration, legal and inspection, possibly on a sliding scale which is regularly subject to review. (Zero to £3000)

These fees must be in addition to any development contributions presently raised for accepting flows into a watercourse or adoption of new surface water facilities.

9 i. Regulation is required to ensure that all Strategic Surface Water Facilities are on an appropriate data base.

9 ii. Strategic facilities need to be on a national data base available to all Local Authorities and Operating Authorities.

9 iii. Property specific facilities need to be on a Local Authority data base.

Comment: The reason for this recommendation is that , in the same way that it has been realised that changes to a permeable area on a property requires regulation, so does any modification or removal of a surface water management facility on a site eg, a property surface water management facility is agreed as a soakaway at the time of planning consent being granted, but at a later date a small extension is permitted which results in the removal of the soakaway . With planning procedures being relaxed for small extensions this issue needs to be addressed and a requirement that all changes to a surface water system must be authorised is essential.

Guidance should state that a strategic facility must be adopted by an Operating Authority or Water Company, the latter using statutory powers rather than general business arrangements.

Some Water Companies are now considering taking responsibility for SuDS systems, but through independent companies rather than under their regulated business. This could lead to these businesses being sold off in future so leaving the assets vulnerable to neglect.

10. Recognition that IDBs are Category 2 responders in relation to the Civil Contingencies Act 2004.

Comment: To assist in emergency response activities

11. Recognition must be given that Operating Authorities, when using their powers to maintain artificial or heavily modified waterbodies, have a prerequisite duty to undertake such work to protect people and property without an absolute duty to adhere to wildlife protection legislation when it can be shown that the works pre-date the introduction or colonisation of the facility by protected species.

Comment: Example: A Flood storage facility is colonised by Great Crested Newts after construction.

There should be a requirement that the facility is maintained to design standard and the Operating Authority be excused from actions to protect the new colony. Present good practise restricts maintenance to November/December/January, at which time the facility would need to be fully operational and maintenance activities not possible.

Consideration must be given to the fact that, in recent years, developers have been encouraged to provide strategic surface water attenuation facilities without which the development would not have been permitted. It is therefore essential that such facilities are maintained to design standard,

otherwise the future communities that rely on these facilities will be faced with an ever increasing risk of flooding.

12. Regulation is needed to require Statutory Infrastructure organisations to provide infrastructure data to Operating Authorities.

Comment: It is essential that critical infrastructure: reservoirs, sewage works, electricity, gas and oil infrastructure assets are known to Operating Authorities. This information is required in order to assist emergency response activities and for operating authorities to deliver suitable maintenance regimes to flood risk assets that protect or reduce the risk from flooding of the infrastructure and wider community.

The Boards' representatives would welcome the opportunity to discuss the matters raised above.

Contact : John J. Oldfield BEng CEng MICE MCIWEM
Engineer of the Boards
Bedford Group of Drainage Boards
Cambridge House
Cambridge Road
BEDFORD MK42 0LH

Tel: 01234 354396
Fax: 01234 328196
Email: contact idbs.org.uk