



tcpa

Town and Country Planning Association

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ENGLAND: CONSULTATION ON DRAFT FLOOD AND WATER MANAGEMENT BILL: JULY 2009

1.0 About the TCPA

The Town and Country Planning Association (TCPA) is an independent charity working to improve the art and science of town and country planning. This response represents the views of our membership organisations and individuals from local authorities, planning academics and practitioners under the policy guidance of the Policy Council.

The TCPA puts social justice and the environment at the heart of policy debate and inspires government, industry and campaigners to take a fresh perspective on major issues, including planning policy, housing, regeneration and climate change.

Our objectives are to:

- *Secure a decent, well designed home for everyone, in a human-scale environment combining the best features of town and country*
- *Empower people and communities to influence decisions that affect them*
- *Improve the planning system in accordance with the principles of sustainable development*

2.0 Introduction

We broadly welcome the proposals set out in The Draft Flood and Water Management Bill. Our comments begin with a summary of the TCPA's position with respect to climate change and flood risk, followed by a summary of our observations, and then a detailed response to the consultation paper.

3.0 Climate change and flood risk context

In its Manifesto for the 21st century¹, the TCPA sets out its vision for Towns and Countryside for a New Age of Challenge. Amongst its aspirations, a priority is to plan for the future of our towns and countryside to address, directly, the challenges arising from climate change.

Even with the most successful implementation of climate change mitigation measures, it is known that climate change will still continue for many decades

¹ TCPA (June 2009), Towns and Countryside for a New Age of Challenge, available at: http://www.tcpa.org.uk/data/files/tcpa_manifesto.pdf

as a result of the greenhouse gases emitted, and still present in the atmosphere, since the 1960s. Since some form of change in climate seems inevitable, it is important that we face up to the likely impacts, such as coastal and inland flooding, and the effects on local ecosystems and agriculture, and plan appropriately.

Long-range regional planning must therefore play a major role in identifying areas under threat and taking important decisions in preparing for, adapting to, and wherever possible mitigating, the potential impacts. An essential part of this process will be designing protection (such as coastal defences and flood prevention schemes) that will stand up to more extreme conditions. However, where protection is not deemed to be desirable, guidance and plans at a strategic level should also be identifying areas of managed retreat.

Equally important will be the reduction of flood risks through such measures such as sustainable urban drainage schemes (SUDS), increased flood-storage capacity in wetlands, and surface water flow-attenuation, for instance through the creation of woodlands.

4.0 Summary of the TCPA position

The following summarises our main comments on the proposals:

- **The Need to Adapt:**

The draft Bill needs to give more emphasis to climate change adaptation, for which there is no explicit provision made. Adaptation needs to be built into planning and risk management *now* (evidence provided by the UKCP09 scenarios² point to the need to act immediately on the adaptation agenda) – and much of this adaptation will need to be implemented at the local level. Government departments will be producing high level Adaptation Plans by Spring 2010, and the actions in the draft Bill will need to be linked to these and other climate change strategies. It is understandable why the draft Bill does not explicitly make any provision to adapt to climate change, but the TCPA feels that a great opportunity will be missed unless it does so. Although the Climate Change Act 2008 creates overarching obligations to respond to climate change, there are no specific requirements to act on adaptation, or any secondary legislation which might define clearly the scope of adaptation. The LGA Climate Change Commission's final report³ suggests that only a statutory duty will deliver resilience to climate change, and this Bill can one of the vehicles to deliver this.

It is the TCPA's view that the Bill does not go far enough to enable innovatively designed, well-adapted developments on land at risk of flooding, which can be carried out with planned, engineered solutions (drawing on best practice from European examples of towns and cities built on floodplains). The Environment Agency's firm policy position of 'no development' is not feasible, and acts as a barrier to the growth of the built environment.

² Jenkins, G.J., Murphy, J.M., Sexton, D.S., Lowe, J.A., Jones, P. and Kilsby, C.G. (2009): *UK Climate Projections: Briefing report*. Met Office Hadley Centre, Exeter, UK.

³ LGA Climate Change Commission, November 2007, *A Climate of Change: final report of the LGA climate change commission*

- **Risk-based regime:**

The 'Climate Change Adaptation by Design' guide⁴ describes key guiding principles and specific mechanisms by which regions and local authorities can deliver climate change adaptation. One of these principles is to adopt a sequential and risk-based approach to development decisions – “assessing risk over the life of a development and locating and designing developments accordingly”. We agree with the new powers introduced in the draft Bill to allow bodies to undertake flood and coastal risk management functions. However the TCPA wishes to see a greater emphasis on ensuring a fair share of costs and benefits alongside an obligation on people and organisations in all sectors to conserve water. In doing this they should seek to improve water quality and minimise flood risk. In order to achieve the most appropriate combination of measures are chosen for any given property, joined-up thinking and working in partnership with planners will be key.

- **Strategic Overview, Local leadership and Information Sharing**

The TCPA agrees with the full strategic overview role of the EA for all FCERM, with support given to local authorities for their proposed leadership role for local flood risk management. However, it is not immediately apparent to what degree they will be tied into ensuring these actions are informed by the more strategic framework plans and the more detailed flood risk management plans. Without such tie-in, there is a real danger of measures being taken which are not for the wider benefit of the catchment – at sub-regional and regional levels. A combined capability and expertise between local authorities and local branches of the EA will be needed to deal with regional and local concerns, through the process of producing regional or sub-regional plans. This will also eliminate barriers to cross-boundary delivery in situations where catchment areas extend over several local authority boundaries.

The proposed new duty on co-operation and sharing of information is also crucial. In an INTERREG IVC project called GRaBS⁵, in which the TCPA is lead partner, 14 partners across Europe are working on developing adaptation action plans and a risk and vulnerability assessment tool. One of the first issues that has arisen is the lack of access, or difficulty of obtaining, the necessary data sets and information. This includes sharing information between internal departments, including those responsible for sustainable communities and planning the built environment.

With greater responsibility on local authorities comes the need for better communication and understanding at this level. Strengthening and/ or creating the necessary skills and resource capacity of local planning authorities would be a key element to successful flood risk management in

⁴ Shaw, R., Colley, M., and Connell, R., (2007), *Climate change adaptation by design: a guide for sustainable communities*, London, TCPA. Available here: http://www.tcpa.org.uk/data/files/bd_cca.pdf

⁵ Green and Blue Space Adaptation for Urban Areas and Eco-towns (GRaBS) project. See www.grabs-eu.org.

England through increasing local authority expert knowledge and general understanding base across policy, development control and enforcement departments, strengthening local authorities' human resource base, and ensuring financial resource contribution from users (applicants for planning consent).

In addition, the TCPA believes effective guidance from the primary planning and delivery body, in this case the local planning authorities in co-operation with the EA and expert bodies would be necessary to ensure the consistency of advice and decision-making required for effective flood risk management.

▪ **Green Infrastructure:**

It is laudable that the draft Bill recognises that flood risk management must take place within the wider context of wider policy objectives such as maintaining landscape for natural flood protection - a more holistic and sustainable approach to risk management is needed. The TCPA would like to see a greater focus on the benefits of green infrastructure networks, which make up the catchment areas and will hold many of the answers for strategic flood risk responses. Ensuring link up between the proposed flood risk plans and green infrastructure strategies should be supported through these proposals, and implies strong joint working between the EA and Natural England.

Joint-partnerships between regional and local agencies should continue to play an important leading role in guiding developments on flood-prone land. In addition, enhancing the holistic nature of integrated land use planning and management through principles of adapting policies for new development as well as the existing built environment along avoidance, remediation and mitigation principles, would be effective in addressing minimising the effects of flood on people and urban landscapes.

▪ **Sustainable Urban Drainage Systems:**

There needs to be more urgency in establishing a research programme on appropriate design and maintenance of SUDS, with a view to securing their adoption. Developing National Standards will be a good first step (and should be achieved in a shorter timescale if possible), but the introduction of a requirement to retro-fit SUDS in existing housing and commercial areas is also crucial to achieving well-adapted urban areas.

▪ **Enhancing the Capacity to Deliver:**

Further guidance and research is necessary on increasing the capacity of local authority resilience infrastructure to tackle increasing pressures from developments by introducing financial, land, works, services or a combination of the above contributions, through more effective use of existing funding streams, section 106 agreements, or the proposed Community Infrastructure Levy. Contributions for the management and maintenance of flood defenses, mitigation and adaptation measures would also be possible.

5.0 Question responses

In response to some of the specific questions relating to England:

Q: Response:

- 1-3 The draft bill is well written, in a clear and concise style that makes it easily understandable for readers to follow. The individual clauses and sentences are of a reasonable length with sufficient detail and clarity which ensures that the bill is easy to follow and understand.
- 8 In terms of managing climate adaptation through risk assessment, the University of Manchester, through their involvement with the GRaBS project and ASSCUE⁶, see risk as a function of three components:
- Hazard – the extent, severity and probability of the hazard of interest (in this case climate change affected phenomena)
 - Exposure – the degree to which elements at risk (e.g. people) may come into contact with the hazard of interest
 - Vulnerability – the susceptibility to damage of the elements at risk to a particular hazard at a particular intensity (as determined by the degree of exposure which could occur).

In this case, the hazard will be flooding or coastal erosion. The TCPA agrees with the definition of “risk management” in the draft Bill, but wishes to emphasise that assessing vulnerability to risk should be integral to this process.

- 9 Yes, the TCPA agrees that the draft Bill should enable a wider range of approaches; particularly working in partnership with stakeholders and communities to adapt. In adapting to uncertainties from the effects of climate change, it is imperative that resilience measures are taken into account, but that these should be considered within a portfolio of measures as highlighted in the Consultation Paper.
- 10 No. To achieve the solutions required to make our communities less vulnerable to the risks of climate change, governments across the world will have to make significant changes in both policy and practice. The TCPA understands why the Bill does not explicitly make any provision to adapt to climate change, but feels that a great opportunity will be missed unless it does so. Although the Climate Change Act 2008 creates overarching obligations to respond to climate change, there are no specific requirements to act on adaptation, or any secondary legislation which might define clearly the scope of adaptation. The LGA Climate Change Commission’s final report⁷ suggests that only a statutory duty will deliver resilience to climate change, and this Bill can be the vehicle to deliver this – to the extent that ‘Adaptation’ should feature in the title.

⁶ Adaptation strategies for climate change in urban environments

⁷ LGA Climate Change Commission, November 2007, *A Climate of Change: final report of the LGA climate change commission*

- 11 Yes, the TCPA commends the proposed approach. As expressed in the Eco-towns Worksheet⁸, “water should not be seen only as a potential hazard – watery environments also offer fantastic opportunities for wildlife, recreation and for providing essential environmental services”. Therefore making effective links between land management, and flooding and erosion, as outlined in the draft Bill, are commended.
- 13 Yes. The TCPA agrees that a requirement for all operating authorities to contribute to sustainable development objectives when carrying out flood and coastal erosion risk management would be valuable.
- 14-15 The TCPA supports the steps to give the Environment Agency a strategic overview role. The powers and duties as set out in the draft Bill are clear, and should strengthen proactive leadership from the EA as the most effective organisation to guide and influence local planning and development processes. It is important that the EA supports the roles of local authorities and others in FCERM by providing them with guidance, and working in partnership with them – there is an important skills and expertise implication here. If FCERM operating authorities have a duty to exercise their functions consistently with the EA’s FCERM strategy and guidance, they will need to support these authorities to develop the in-house flood and coastal erosion risk knowledge to lead convincingly on management.
- 16 Effective spatial planning will play a crucial role in the proposed “holistic and sustainable approach” to risk management – the National Strategy for FCERM must take into account the capability of the built environment to adapt to and mitigate the impacts of flooding and coastal erosion. In drawing up the National Strategy, the EA will need to cross-reference with any relevant National Planning Policy Statements, and specifically, Planning Policy Statement 25. The draft Bill would make the EA a statutory consultee on relevant planning applications, which will assist Local Planning Authorities with their decisions. The EA should continue to be actively consulted on during the development of Regional Spatial Strategies and Local Development Frameworks. It is also encouraging that the EA would be a statutory consultee in any National Policy Statement consultation.
- 18 Yes. Community and regional stakeholders should play an active role in developing the EA’s National Strategy and guidance – at the point at which various options are discussed.
- 21 Yes, it is important to have an integrated approach to ensure efficient knowledge sharing.

⁸ Sustainable Water Management: Eco-towns Water Cycle Worksheet
<http://www.tcpa.org.uk/pages/water-management.html>

- 22 Yes, the EA should maintain the coastal map which is a good method of spatially illustrating the different bodies that operate along the coast.
- 23 The proposal to place the EA under a duty to maintain the main river map is supported.
- 24 Yes.
- 25 In order to pursue an effective, integrated catchment approach, the county and unitary local authorities must consult with the EA's Regional Flood and Coastal Committees when drawing up the local flood risk management strategy. Compliance between different bodies at a local, county and regional level is important to ensure effective flood risk management.
- 26 It is beneficial to management to have defined policies and guidelines and that all bodies/organisations involved are aware of this guidance to ensure compliance. Local Planning Authorities will need to have regard to the local flood risk management strategy and guidance when determining planning applications and developer contributions.
- 27 Yes, public participation is integral to the plan making process – especially in terms of ensuring the public fully understands the benefits of development affecting the area in which they live or work.
- 29 Yes. However, support should be made available (perhaps via community events and guidance) to highlight the need for gathering this information, and why this process is necessary – i.e. to secure a better quality of life for the community at large.
- 30 Yes, effective monitoring is essential to reducing and managing flood risk. Rather than having specific annual reports on flood risk management, a more manageable approach would be to integrate them into existing strategic flood risk assessment.
- 31 Yes, to ensure an integrated approach and so local authorities receive adequate support and advice.
- 33 Yes. It is important that local authorities co-operate with regional bodies, considering the issues considered by the draft Bill cross county boundaries.
- 34 Yes, but they need to work closely with the EA's strategy, local authorities and local organisations to ensure an integrated approach.
- 35 Yes, allowing county and unitary local authorities more powers would increase involvement to ensure sufficient and more flexible flood risk management practices.

- 36 There must be some collaboration with the EA, or EA input in this circumstance, but not necessarily consent.
- 38 No, allow coordination of the strategy by other reputable bodies that have expertise in flood risk management and the area in question.
- 40 During the course of the GRaBS project, as referred to above, partners have been given the task of conducting a SWOT Analysis on their perceived organisational strengths and weaknesses in delivering action on adaptation, and external opportunities or threats to delivering action. They have also been sourcing data to input into the Vulnerabilities and Risk Assessment Tool, which will screen for climate change vulnerabilities and risks in urban areas (including flood risks). The main barrier for all partners in carrying out these tasks effectively has been accessing the relevant data and information required. In order for risk assessment and subsequent management to be carried out effectively, it is therefore imperative that a process that engages the relevant public bodies or agencies is established, so that the data and information can be accessed more easily. It is also important that 'silo mentalities' within local authorities are overcome, by emphasising a need to share information and cooperate internally, to build more effective adaptive capacity.
- 41 Yes, the TCPA supports the development and approval of National Standards by the Secretary of State, with appropriate stakeholder involvement throughout the process. The National Standards will have implications for Local Planning Authorities (in terms of becoming a material consideration in planning decisions, and being taken into account during development or reviews of policies within the Local Development Framework). The TCPA would therefore expect additional guidance and support to be provided on these links and implications.
- 43 The TCPA would like to see standards and guidelines for retrofitting SUDS (as these have a key role to play in adaptation to climate change), as well as systems for new or redevelopments. There is also the issue of funding SUDS, and this is where planning authorities can help their delivery through the use of planning conditions and obligations. The proposals highlight the ability of SUDS to mitigate flood damage, but the National Standards must also emphasise their ability to adapt an area to the impacts of flooding (e.g. through the use of green infrastructure).
- 45 In principle, yes it does provide a clear and workable approach, particularly in that it sets regulation on SUDS development and implementation. However, it is important that the application process does not add unwanted complexity to the planning process and it doesn't limit the implementation of SUDS.

- 49 The TCPA recommends the guidance and best practice produced by the Construction Industry Research and Information Association (CIRIA), which provides guidance to help establish the long-term maintenance, management and government of the SUDS (including a SUDS maintenance framework agreement, and case study examples).
- 50 The TCPA agrees that a collaborative approach will be essential if SUDS are to be implemented and maintained. It is hoped that, with good support mechanisms in place, local authorities would work together and with others to adopt and maintain SUDS. However, if powers for the SUDS approving body to delegate functions to other bodies would enable more effective delivery, the TCPA agrees with this approach.
- 51 Additional enforcement powers would merely add to the complexity of the system and may cause confusion. The TCPA considers enforcement action by planning authorities to be sufficient, but additional guidance for local planning authorities on, for example, liaising with the SAB on this, is recommended.
- 52 The TCPA considers the proposal in paragraph 229 of the consultation paper to be the most appropriate course of action.
- 54 Yes.
- 55 Yes.
- 56 Yes, with regards to their key strengths and the new role of the EA.
- 57 Yes, with emphasis on providing an integrated and co-ordinated approach to ensure an effective and sustainable flood risk management service.
- 58 Yes, it is important to have representatives from a wide knowledge base to broaden the insights into potential management options.
- 60 Joint partnerships between regional and local agencies should continue to play an important leading role in guiding developments on flood-prone land. The input of a Regional Flood Coast Committee would be valuable. Members should be able to advise on adaptation to and well as mitigation of climate change impacts, having regard to the Climate Change Action Plan of the region, as well as policies in the Regional Spatial Strategy.
- 62 Yes, as they will have the strategic overview role. The TCPA welcomes the duty for all relevant authorities to co-operate and share information if the requirements of the Floods Directive are to be met. Article 10 of the Floods Directive not only states that Member States should make available to the public the preliminary flood risk assessment, maps and plans, but also that Member States “shall

encourage active involvement of interested parties in the production, review and updating of the flood risk management plans⁹. The empowerment of the EA and county and unitary local authorities to do this should be made clearer.

- 63 Yes, since they will be responsible for flood risk management in their areas and for the watercourses within that area. The flood risk from surface run-off, groundwater and ordinary water courses will be at a local scale, so county and unitary local authorities would be best placed to take this forward. It should also be noted that local research establishments, such as universities, have valuable Geographical Information System skills which could be tapped into (such as in the GRaBS project, where the University of Manchester is developing a Vulnerabilities and Risk Assessment Tool). Local Environmental Partnerships can also play a key role here, in achieving their climate change adaptation strategies.
- 64 Future risks must also be taken into consideration, particularly in relation to climate change and increasing probability of flood risk.
- 65 Yes – see Q63.
- 66 Yes.
- 67 Yes.
- 68 Yes, with respect to the level of flood risk in the area.
- 69 Yes, partnerships and an integrated approach are very important for comprehensive and effective plans to be produced. The Plans should also be linked to local climate change action plans and strategies.
- 70 Yes.
- 73 Yes.
- 74 Yes.
- 75 Yes, but guidance would need to be provided on the effect this would have on planning applications and decisions.
- 78 Yes, with respect to the cost of maintenance and the owner's ability to pay for it.
- 79 Yes, providing there are people with sufficient knowledge to regulate at a county and unitary authority level.

⁹ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks

- 80 Yes, with respect to the watercourse and surrounding area.
- 89 Yes.
- 91 Yes.
- 98 Yes, so long as all parties involved agree and that the IDB have the ability to manage a larger area.
- 99 Yes.
- 100 Yes, as it allows them to fulfil their local leadership role; and as county and unitary local authorities will have responsibility for producing the strategy for local flood risk management, supervision of IDBs at this level would make sense, and encourage stronger partnership working.
- 101 Yes.
- 102 Yes, local participation and input is important.
- 115 The TCPA is supportive of securing flood mitigation and adaptation measures (such as green and blue infrastructure) arising from new development through planning obligations, and through the proposed Community Infrastructure Levy. These contributions should be required for all new and existing developments applying for planning permission in flood risk areas. The TCPA welcomed the recommendation (number 7) in the Pitt Review's final report advising local authorities to develop and publish a policy on developer contributions in relation to flood risk management. The potential of developer contributions for climate change adaptation measures appears to be much less well understood than other factors, such as transport infrastructure. Guidance is needed on the parameters of this potential, and that of securing obligations for development in areas where flood risk will increase as a result of that development.
- 117 A fundamental principle of achieving effective climate change adaptation is the continuous involvement and participation of public, private, community and NGO groups of actors in the process of planning and implementing adaptation actions. The final report of the APaNGO project¹⁰ (focusing on constructive community engagement in order to help deliver sustainable development on the ground), demonstrated that in order to involve local people and local communities (such as riparian owners), issues need to be translated to a local scale to show local relevance. It is hoped that this would result in raised awareness amongst the local community of the need for adaptation. With their new local leadership responsibility, county and

¹⁰ October 2007, "Community Engagement in Planning – Exploring the Way Forward. Final Report of the INTERREG IIIB Advocacy, Participation and NGOs in Planning (APaNGO Project).

unitary authorities should take the initiative to hold local community events in targeted areas, to raise awareness about responsibilities.

- 129 Yes.
- 131 Yes, or make it obligatory to use SUDS techniques for new developments/redevelopments – even at the householder level.
- 136 The TCPA supports the idea of using Article 4 powers to reduce the growth in surface run-off risk, and recommends further investigation into its potential to remove or restrict permitted developments in relation to actions that increase surface run-off risk.
- 138 Yes.
- 143 Other non-essential uses of water are; washing of paved areas where not for health reasons (public or private); operating decorative fountains or pools; running half loads in washing machines and dishwashers; operating non-essential ice machines; maintenance of recreational swimming pools (except those generating revenue).
- 146 No, circumstances vary and notice period is related to the severity of the drought.
- 147 Yes.
- 151 Yes.
- 152 Yes.
- 153 Yes.
- 154 Yes.
- 156 Yes.
- 160 Yes.
- 162 Yes.
- 163 Yes, must ensure that the process is exercised with a sufficient amount of assessment by a scientific knowledge body to ensure nothing is overlooked.