

Sustainability Committee

SC(3)-03-10 (p6, Annex A, Paper to Note): 21 January 2010

Short Inquiry into the Flood and Water Management Bill

Evidence from The Association of Drainage Authorities

1. Introduction.

This is a Summary of the Board's comments on the original Flood and Water Management Bill Consultation and relates to comments submitted to DEFRA and the Welsh Assembly Government and to the Wales Sustainability Committee Enquiry in June 2009. The comments have been grouped under a number of common themes which facilitate comparison with the our main submission on the current Bill.

2. A new risk based approach to flood and coastal erosion management.

2.1. Incorporation of the Traditional approach

- Fully support the broader range of approaches to FCERM with a portfolio of measures which are in addition to the traditional approaches of defence, drainage and protection".

"- "Whilst we endorse the need to move to 'a system based on management of all aspects of the risk and consequence of flooding and coastal erosion', we are anxious that the commitment to the construction and maintenance of existing hard defences is a full and integral part of the proposed broader approach.

2.2. Community Involvement

- Recognize the need to develop the concept of resilience in communities likely be affected.

- By the very nature of the way that the IDB operates there is a day to day involvement with the local community in the drainage district. We are also often a catalyst or interface between the public sector and the general public. We feel we have a significant and increasing potential role to fulfill WAG's commitment to 'Making the Connections', Citizen Centre and the Beecham agenda.

- IDB's are locally elected very efficient and cost effective autonomous statutory bodies, which are locally financed, representative and directly accountable to and controlled by the local communities they represent.

- In IDB Drainage Districts the approach to water and flood risk management is with the continuing involvement of the local community as a result there is generally a wealth of technical and local expertise and experience about Flood Risk Management (FRM) and Flood and Coastal Erosion Risk Management (FCERM) in these areas. IDBs operate in a way that involves the local community in the decision making process on a day to day basis

- We believe that the coordinating role of the lead local authorities should include that of being the main link to the public and local community.

3. Clarification of roles of operating authorities, the local authority lead role, oversight role of the environment agency (wales) and sharing information.

3.1 The Role of IDBs as a Risk Management Authority.

- Recognise and agree the need for all bodies and agencies involved in FCERM to work together in a coordinated way.

- Recognise the need to improve the situation in relation to surface and groundwater and for these to be fully integrated into FCERM. As we have indicated elsewhere we believe that this is currently the case in IDB Drainage Districts.

- Pleased to note that the roles and responsibilities of existing delivery organisation are to be retained wherever possible to ensure to continued engagement of local knowledge and expertise. We feel this is totally relevant to the work of IDBs in their IDD's. On a related point we are concerned to ensure that the funding for FCERM work within the IDD remains with the IDBs.

- We note and welcome the introduction of new powers in the Bill to enable operating authorities to undertake a wider suite of FCERM measures in future but urge that IDBs retain their existing powers and duties in their Internal Drainage Districts (IDDs) and where appropriate, in the wider surrounding catchments, in cooperation with other Operating Authorities.

- Welcome the proposal for a National Strategy and would also welcome the opportunity to contribute as appropriate to its development and implementation and would support a consultation process as part of the development of the strategy.

3.2. The Approach in England and Wales and the EA Oversight Role.

- Welcome the proposed EA(W) oversight role and feel that it will considerably clarify the existing position, particularly in relation to coordinating the broad range of FCERM activities and functions of Operating Authorities.

3.3. Lead Local Flood Authority Role

- Fully support the need to implement the recommendations of the Pitt Report in respect of better coordination of the Operating Authorities and local authorities are the obvious body to coordinate these activities and take the lead role in communicating with the public.

- The local authority lead role should be one of 'integrating' and 'coordinating' the activities, functions and responsibilities of the Operating Authorities. There should be a presumption to building on the strengths of the existing partners and processes rather than giving the local authorities the overall executive lead responsibility. Where an existing Operating Authority has the role and or responsibility, together with the necessary expertise and experience it would be totally unnecessary and wasteful of resources to transfer this to another body, i.e. the lead local authority.

- Concerned that any funds redirected to local authorities for FCERM works would immediately be in competition with other local authority demands and priorities and therefore be at risk, a situation in direct contravention of the recommendations of the Pitt Report. On a related point we feel there are almost certainly insufficient funds and resources (expert staff etc) - in local authorities for them to be able to take on significant additional FCERM responsibilities.

- If these activities are already in hand or are more appropriately done by a body such as an IDB there is little point in a lead local authority 'developing centres of engineering and flood risk experience alongside their existing highway functions and providing support to partners' when this expertise already exists with those parties. In addition such an approach would involve unnecessary and unwarranted expense.

- The expertise and experience is currently with the IDB. We would be concerned about the resource implications of the responsibility moving to the local authority. Para 386 refers to 'growing the local authority's expertise' but does not indicate how this would be resourced.

- In IDB Drainage Districts any arrangements should build on the strengths of the existing systems, where the IDBs are ideally placed to continue to have the responsibility for FCERM and they should retain their existing supervisory and consenting powers. Any intervention by a lead local authority, or the EA in Wales should only be when the IDB concerned has defaulted.

- The lead role should be undertaken in close working partnership with the other relevant operating authorities e.g. through a 'Local Partnership Approach'. IDBs are ideally placed to continue to have responsibility for FCERM in their drainage districts and where appropriate in the surrounding catchment/area. This would ensure that the existing expertise and experience of the IDB was used to best effect and remove the need to 'grow the local authority technical expertise'

- Indeed - in areas requiring specialist drainage of lands it is entirely feasible and logical to establish new IDB's or extend existing IDB Boundaries.

- Support the Proposal to give Powers - Para 150 - to undertake functions / works for all 'other' relevant organizations (including payment) - and this will be a big step forward to once again both achieving and for filling the aims of this proposal.

- Later in this section (paras 137-139) there is reference to IDBs and others having a duty to act in a manner that is consistent with the strategic and supplementary guidance that the local authority issues. We feel that it would be advantageous for IDBs and other organisations to be part of the development of the strategy and guidance where they could input their detailed technical and local expertise and experience. Indeed Para 138 seems to indicate this type of approach.

- It will be important to have a clear explanation of the respective functions and responsibilities of the 'lead' local authority role and the EA 'Strategic Overview' role, and the relationship between them.

3.4. Widening the Arrangements Undertaking Coastal Erosion Risk Management Functions.

- We would urge that IDBs be included alongside Local Authorities in working alongside the EA in undertaking coastal erosion works.

- We broadly agree with and welcome the proposal put forward here. Such an approach would be an essential part of the coordinating and partnership approach we are advocating above.

3.5. Catchment and Local Authority Based Boundaries

- At the moment there is little reference in the Bill to geographical areas of responsibility. We feel it would be useful to address this in more detail. Thus there is potential for IDBs to support the local authorities in their lead role in their drainage districts and surrounding areas whilst Welsh Water might have a similar role in other areas

- At the moment there is little reference in the Bill to geographical areas of responsibility. We feel it would be useful to address this in more detail. IDB boundaries are based on the principle that those within drainage district are in areas of drainage need and avoid danger and derive benefit through the work of IDBs who in turn take on board local views. Local Authorities on the other hand are organised on political boundaries. In many instances local authority boundaries are rivers, with the result that some catchments have at least two local authorities within them.

- IDBs are characteristically located in areas or catchments where water management is a critical consideration. Many, if not most are at risk of flooding from water courses and often the sea. This has resulted in them having a heritage and culture with flood risk, defence and water management at its very heart.

- We are concerned that at the moment the consultation document does not take into account geographical variations in position regarding SWM, groundwater and FRM but puts forward proposals for a standard approach regardless of the existing position. In an IDB Drainage District at the present time there will already be a sustainable approach to FRM, a holistic approach to all forms of flooding.

- ANNEX A Quest. 171-173 Certain elements of the responsibilities of The individual operating authorities need to be clarified, including the assessment and

management of flood risk for ordinary water courses in relation to geographical area and type. Whilst we recognise and acknowledge the need for proper coordination and integration, we feel the responsibility for specific areas and types should be retained where the expertise and experience lies.

- Any coordinated approach to FCERM and FRM must address and incorporate this issue of hydraulic catchment based and politically based boundaries.

4. Funding issues

- Para 402-426 & Questions 108-114 "The Flood Risk Management Committee Wales and IDBs should retain their ability to raise funds locally and have powers to levy General Drainage Charges (GDCs) and Agricultural Drainage Rates (ADRs) in future; otherwise the risk of flooding will increase in the most vulnerable areas of the country:

- The EA should therefore retain powers to levy GDCs and the charge should be applied nationally in non-IDB areas, as opposed to just in the Anglian region in England. IDBs should retain their powers to levy ADRs as they protect both urban and rural communities in the most vulnerable areas of the country, and powers should not therefore transfer to Local Authorities.

- Long term certainty of finance is essential to good flood risk management. There also needs to be consistency with locally agreed local and national strategies which can be achieved by cooperative working and IDBs working with other operating authorities beyond their current IDD boundaries as well as retaining their existing role within them.

- Para 427-432 & Question 115 - Developments - Funding Additional Pressure We support these proposals. It should be possible to develop a formula for charging developers on the basis of the number of additional people/properties.

- Paras 433 - 439 - Supplementary National Funding for FCERM We generally support these proposals. In relation to paragraph 437, we would be keen to explore the potential for funding "soft" coastal defences. We have commented in detail in Annex A.

- IDBs have the knowledge, expertise and, increasingly, the critical mass required to deliver local flood risk management services to Local Authorities. It is therefore important to encourage the Local Authorities to engage with the IDBs through Local Area Partnerships. If Local Authorities had powers to raise money themselves they may decide not to engage with IDBs and other operating authorities, which is contrary to the views expressed in the consultation document.

- If funding is taken away from Internal Drainage Districts (IDDs) to do work in other areas this will increase the risk of flooding in IDBs. There is also the issue of cross-subsidisation (IDB funds being used to finance a variety of activities outside IDBs or in other counties where IDBs operate across more than one county). Local flood risk management is a long term business and needs to remain depoliticised.

- We agree that IDBs should retain funding to determine their own delivery plans as long as they comply with the locally agreed county strategies. To ensure that this happens, IDB's could be given a statutory duty to comply with locally agreed county strategies. Lead Local Authorities could fulfill their new leadership role, without needing the power to raise money.

- IDBs should retain their powers to raise Special Levies. Mere reliance on long term contracts through the local Authorities would not provide the certainty required to guarantee delivery in Internal Drainage Districts and may therefore lead to increased flooding in these areas:

1. Responsibility for delivery would at best be unclear, which may complicate delivery and increase costs (please consider the byzantine arrangements involving the former Railtrack).
2. Flood risk may increase in the most vulnerable areas of the country, if funding was reprioritized and redistributed to other areas.
3. FCERM expertise may be lost if IDBs disappeared because the Local Authority decided not to enter into an arrangement with the IDB to provide local flood risk management services (perhaps due to issues relating to the EU Procurement Directive).

5. Consenting and enforcement

- We understand and agree the need to have effective and coordinated management of the local drainage network. However we do not feel that there needs to be a wholesale change to existing systems and process which are working both effectively, efficiently along with local accountability and Representation. We would be concerned at any loss of responsibility and/or consulting powers for IDBs in their Drainage Districts. We would also hope that the technical and local expertise and experience could be used to support relevant local

authorities in areas adjacent to their drainage districts.

- Para 315-318 We would both strongly and vehemently resist any loss of IDB's Consenting Powers (Para 320, 321) - and would be extremely concerned at the transfer of any IDB Consenting Powers to the local authority as they do not and will not have in the future the resources or the in-house expertise to deal with these important and often complex matters within IDB Districts.

- We note that these proposals only apply to England for the present time but that the intention is to extend these arrangements into Wales in any new legislation that is brought forward.

- If the extent or power of any of the IDB's existing supervisory, regulatory or consenting roles was reduced they would cease to be able to operate in anything other than an operational contracting role. There are also concerns that a loss of IDB control could result in a reduction in services and an increase in costs for the FCERM function in IDB Drainage Districts with an inevitable increase in the incidence of flooding occurring within a relatively short period of time.

- It is our belief that the position regarding all elements of FCERM works effectively and efficiently within our IDB Drainage Districts and there is no case for changing the position. We also have good coordination and integration with the other Operating Authorities.

Notwithstanding the above we fully recognise and understand the need to be fully integrated and engaged with all of the elements of FCERM in the surrounding catchments and beyond.

6. Regional flood defence committee.

- We feel that both the Role and the Remit of Flood Risk Management Wales (FRMW) should cover the extent of all the works undertaken by EA Wales on Flood Risk Management and that the Committee should meet quarterly. The advisory role should not be at the expense of the executive role.

- Assessments should be produced in Wales.(Questions 182,183,184).

- Levying powers should be extended to include coastal erosion risk management.

- Paras 76-83 Funding for FCERM in Wales. It is vitally important that the Flood Risk Management Committee Wales and IDBs retain their ability to raise funds locally and have powers to levy general drainage charges (GDCs) and agricultural drainage rates (ADRs) in future, otherwise the risk of flooding will increase in the most vulnerable areas of the country:

7. Sustainability

7.1. Sustainable Development

- In IDB Drainage Districts the approach to water and flood risk management is inherently sustainable and based on use of natural processes and a holistic approach to all of the potential causes of flooding. We operate in a way that intrinsically utilises natural resources and processes.

- In the case of the Board we endeavour to extend the sustainable approach to our work to areas beyond the IDD when working in partnership with others, including local authorities and developers.

- Annex A Para 14-18 Support and are pleased to see to inclusion of sustainable development principles.

- Annex A Quest. 164 We strongly support the proposal to extend sustainable development objectives to all Operating Authorities.

7.2. Sustainable Drainage

- The Board's IDD includes several areas of past, recent and ongoing residential, commercial and industrial development, particularly in Cardiff, Newport, Caldicot and Chepstow. Some of this is within the Drainage District and some in the surrounding catchment. The Board has already been involved with relevant local authorities in the development, commissioning and management of sustainable drainage systems and is anxious to expand on this area of its operations.

- A great deal of the work of IDBs is achieved by the management of natural processes, in particular water storage, direction and management, attenuation and where there are coastal issues encouraging the development of natural sea defences by measures including poldering. We are anxious to build on existing initiatives and to work with other Operating Authorities to extend the approach to the wider catchment beyond the Drainage District through working with the management of SUDS and related initiatives.

- We strongly support the use of SUDS and we believe that the IDB's have a very valuable contribution to make particularly in relation to the future maintenance and adoption of SUDS as the IDB's have both a large specialist knowledge and resources that can be called upon in this respects.

- We feel that there is great potential for IDB's to become involved with SUDS (both adoption and future maintenance) - within their drainage districts and in the surrounding catchments.

8. Third party asset

- **Paras 308-313 Questions 75-78** We agree with the proposal to give powers to the EA, local authorities and IDBs to formally designate assets owned by third parties that are integral to FCERM. We also support the proposals for a duty on those responsible for

third party assets to maintain these in good condition.

- **Para 459 - 460 & Question 119** We have past experience of a number of cases of this type, but have found existing processes extremely long-winded, protracted and expensive.

9. Other issues relating to idbs

9.1. Powers to form Consortia

- Powers to Form Consortia / Participate In Limited Companies / Limited Liability Partnership for the Purposes of sharing and benefiting from services. It is critical to the future and successful implementation of the most beneficial changes that the bill could bring to the Community of Wales that the above is embodied within the Bill and applied within Wales.

- Consortia, private companies and other innovative delivery models. We fully support these recommendations. There is an urgent need for these changes to clarify the present confused situation, particularly in Wales. IDBs need clear legislation about these powers and clear direction from Defra and WAG about funding and extent of current and future activities. Such a provision should give IDBs equivalent powers to the other key Operating Authorities. As such the powers will give individual IDBs and consortia greater flexibility and operational capability. An alternative term might be more appropriate, possibly 'partnership' or 'alliance'. Any decision to use or implement these powers should lie entirely with the individual IDBs.

- Para 374-375 & Questions 92-94 - Allow IDBs to form consortia, private companies and other innovative delivery models.

We fully support these recommendations. There is an urgent need for these changes to clarify the present confused situation, particularly in Wales. IDBs need clear legislation about these powers and clear direction from Defra and WAG about funding and extent of current and future activities. Such a provision should give IDBs equivalent powers to the other key Operating Authorities. As such the powers will give individual IDBs and consortia greater flexibility and operational capability. An alternative term might be more appropriate, possibly 'partnership' or 'alliance'.

It will be imperative to retain the special levy link with local authorities.

The decision to use or implement these powers should lie with the individual IDBs. There are unlikely to be any negative impacts and being part of a Limited Company would limit liability of rate payers.

9.2. Other Issues

There were a number of issues raised in the April 2009 Consultation Exercise, particularly in Section 3. We have not included our comments on these as they are both addressed in the current Bill. These include:

- Possible Reforms to the Role and Governance of IDBs
- Change the title of IDBs to Flood Risk Management Board
- Relax the restrictions of the Medway letter
- Move the supervision of IDBs from the EA to county and unitary authorities.
- Adjust the membership of IDBs.

We understand that these will be the subject of future legislation