

# **The Flooding and Water Bill: Realising the Opportunity**

## **Summary of Discussions and Recommendations**

---

**Written by David Balmforth, MWH**

This report summarises the findings from CIWEM's Conference on the prospective Flooding and Water Bill, aimed at realising opportunities arising from new legislation. The conference was held on January 22<sup>nd</sup> at the School of Oriental and African Studies, London, and was attended by over 240 delegates from across the water and environmental industry and associated organisations.

### **Climate Change and its Potential Impact on Flood Risk**

It was clear that the speakers and delegates still had memories of the 2007 floods firmly in their minds and were attentive to the recommendations arising out of the Pitt Review. However there tended to be a lack of focus on the very significant effects that climate change could have on the frequency, extent and resulting damage that might arise from flooding in the future. This was highlighted in the Pitt Review. Equally, climate change was likely to have a very significant effect on water resources and water use, particularly in the water stressed parts of England.

The water and environment industries and associated organisations currently emit significant quantities of carbon and most have committed to reduce their carbon emissions in the future. They will play an important role in meeting long term Government targets on carbon emission reduction.

**Recommendation 1. The Bill, and any supportive regulation, assignment of responsibilities and funding should take appropriate account of the need to adapt to the effects of future climate change and at the same time recognise the needs to substantially reduce carbon emissions in order to mitigate future climate change.**

### **Duties and Responsibilities**

The Pitt review recommends a number of changes in the responsibilities of different organisations to meet future flood risk management needs effectively. There was considerable scepticism amongst delegates over whether such changes would be effective if new roles were framed as general responsibilities rather than statutory duties, recognising that the latter would carry liabilities associated with any failure to undertake such a duty. As the Government is planning primary legislation we make the following recommendation.

**Recommendation 2. Every opportunity should be sought to frame new roles as statutory duties rather than general responsibilities.**

### **Sharing Data and Information**

The Foresight Project on Climate Change, Floods and Coastal Defence and the Defra IUD Pilots have demonstrated the substantial benefits arising from developing holistic programmes of flood risk management measures where the various responsible bodies collaborate. However there is not a history of strong collaboration between these bodies. We believe that there should be a statutory obligation for all bodies responsible for flood risk management to work collaboratively and freely share

# The Flooding and Water Bill: Realising the Opportunity

## Summary of Discussions and Recommendations

---

information and data. Since future management methods are likely to involve public participation, then the extent to which information and data on flooding and flood risk should be in the public domain should be reviewed.

**Recommendation 3. All bodies responsible for flood risk management should have a statutory duty to collaborate with other such bodies and to freely share data and information.**

**Recommendation 4. The extent to which data and information can be safely placed in the public domain should be reviewed in the context of better public engagement.**

### Funding, Capacity and Capability

The Pitt Review highlighted the current lack of capacity and capability in many local authorities to manage flood risk effectively. Whereas in the past many local authorities had maintained a competent and active drainage department, in recent times these had largely been disbanded (although there were some notable exceptions to this). Also, although the Environment Agency has many years experience of managing risk arising from fluvial and coastal flooding, their experience of managing urban flood risk may be limited. Whatever new duties or responsibilities might be assigned as a result of legislation and/or associated directives, the need to develop adequate skills and capability in the respective organisations must be recognised. In addition there should be an adequate funding stream associated with any such new duties or responsibilities.

Where a particular body is responsible for *planning* flood risk management measures, it does not necessarily follow that this might be the best body to *deliver* those measures. Any new legislation should allow sufficient flexibility for bodies that have the best capacity and capability to deliver flood risk management measures to lead on implementation.

**Recommendation 5. Funding, and the development of associated capacity and capability, should be commensurate with the assignment of any new duties and responsibilities for organisations engaged in flood risk management. There should be sufficient flexibility for bodies that have the best capacity and capability to deliver flood risk management measures to lead on implementation.**

**Recommendation 6. The different funding mechanisms and investment cycles associated with the different bodies should be reviewed to ensure that there are no unnecessary obstacles to delivering integrated flood risk management measures.**

### Statutory Nuisance

Many of the delegates engaged in discussion gave examples where one property owner had made alterations to their property which impacted on the risk of flooding of an adjacent property. In theory it should be possible for one land owner to pursue another potentially responsible for increasing flood risk, using the statutory provision for nuisance. However, in practice such claims have seldom been successful and landowners currently have little redress.

# **The Flooding and Water Bill: Realising the Opportunity**

## **Summary of Discussions and Recommendations**

---

**Recommendation 7. The provision for statutory nuisance should be strengthened to adequately cover nuisance arising from actions affecting flood risk.**

### **SUDS**

The legislative and regulatory barriers to delivering SUDS are well known, and were not therefore discussed in detail. There was general consensus that this was the opportunity to remove those barriers. In particular the “right to connect” should be repealed and replaced with measures that allow more sustainable solutions to drainage and flood risk management to be delivered. For effective implementation an adopting authority would need to secure an income stream for future maintenance and renewal. SUDS should be seen as a “normal” means of providing surface water sewerage. It was also recommended, therefore, that the definition of a sewer be extended to include appropriate elements of SUDS.

**Recommendations 8. The “right to connect” should be repealed and the definition of a sewer extended to include appropriate elements of SUDS.**

### **Building in Flood Risk Areas**

The benefits arising from PPS25 were debated. The underlying principle of PPS 25 appeared to be that there was a presumption against building in the flood plain or any other areas of high flood risk. However, application of the exception and sequential tests diluted this principle, particularly where the pressures to redevelop infill sites or sites of strategic economic importance were compelling. There appeared to be relatively few examples of major planning applications being refused on the grounds of flood risk.

**Recommendation 9. The presumption of not building in the flood plain or other areas of high flood risk should be embedded in legislation.**

### **Flood Resilient Construction**

There was a particular frustration that properties that had been subjected to flooding were reinstated with normal materials and methods rather than more flood resilient techniques. Whereas the delegates fully appreciated the position of insurers with respect to betterment, nevertheless there was a strong view that there should be an obligation to reinstate properties damaged by floods to a more resilient standard and that such a standard should also apply to new construction and refurbishment in areas of high flood risk. It was recognised that this might be better delivered via an amendment to the Building Regulations rather than through primary legislation.

**Recommendation 10. Properties damaged by floods should be reinstated to a minimum standard of flood resilience and that such a standard should also apply to new construction and refurbishment in areas of high flood risk.**

### **Time Limiting Water Abstraction Licenses**

# **The Flooding and Water Bill: Realising the Opportunity**

## **Summary of Discussions and Recommendations**

---

The lack of a time limit on current water abstraction licenses was generally considered to be an anomaly and the opportunity should be taken for amending legislation to allow water abstraction licenses to be time limited.

**Recommendation 11. Water abstraction licenses should be time-limited.**

### **Integrated Water Management**

Managing flood risk was often seen as being distinct from water resource management yet there was a considerable area of overlap that could be usefully exploited in developing more sustainable measures. This is particularly true in water stressed areas that were subject to the demands for new development and effective flood risk management.

**Recommendation 12. Any new legislation associated with water resource management and/or flood risk management should be set in the context of sustainable water cycle management.**

**February 2009**