



ENGLISH HERITAGE

Flood and Water Management Bill Team
Department for Environment, Food and Rural Affairs
Area 2C, Ergon House
London
SWIP 2AL

Our ref: Draft FWMB
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Your ref: 07979 206699
Telephone -
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24 July 2009

Dear Sir/Madam

re: consultation on the Draft Floods & Water Management Bill

Thank you for inviting English Heritage to respond to the Draft Floods and Water Management Bill consultation.

English Heritage is a Non-Departmental Public Body established under the National Heritage Act 1983 to help protect the historic environment of England and promote awareness, understanding and enjoyment of it. We are the Government's statutory adviser on the historic environment and although we are sponsored by the Department for Culture, Media and Sport, our funding agreement is co-signed by the Department for the Environment, Food and Rural Affairs and Communities and Local Government.

We welcome the Bill's explicit recognition that the environment includes the historic environment (cultural heritage; Clause 6(3)(d)) and are pleased to note that consideration will be given to any impact on the historic environment caused by any work which may cause flooding or coastal erosion (Clause 41; 41(3)(b)). Similarly, we welcome that the preparation of Flood Risk Maps includes a requirement for assessment of the potential harmful consequences of identified flood risk to cultural heritage (Clause 58). We are committed to working with the Environment Agency to ensure that mechanisms are developed to ensure that information required by them and the lead local flood authorities can be delivered in a timely and efficient manner (Clauses 25 and 26).

However, we do have a number of issues above and beyond the specific consultation questions upon which we seek clarification:

- **Potential conflict with Scheduled Monument Consent (Clauses 34 (4) & 42 (6)):** we observe that the proposed introduction of new powers to be granted to the Environment Agency and local authorities to enable them to carry out structural and

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environmental work may have the potential to conflict with SMC required under the Ancient Monuments and Archaeological Act 1979.

- **Compulsory land acquisition by the Environment Agency (Clause 39):** we note that the proposed modification to the existing powers of compulsory land acquisition by the Environment Agency may have the potential to impact our estate. We would welcome the opportunity to discuss the implications of this process more fully in due course.
- **Designation of features for the purposes of risk management (Clause 80):** our concern rests with understanding whose designation takes primacy. For example, if a listed or scheduled historic feature such as a bridge were deemed to be causing or exacerbating a flood risk, what would be the implications for that feature with respect to alteration, removal or replacement (Clause 86).
- **Reservoir flood plans and historic environment (Clause 141):** we would hope that if reservoir flood plans were directed to show the relationship between likely areas of flooding and homes and businesses, they would also show historic environment assets under statutory protection. We therefore seek clarification on the level of detail that is expected to be directed by the Minister in the preparation of these plans.

We offer responses to a number of specific consultation questions and these are presented below: for the remainder we have no comment. The views expressed represent a compilation of comments drawn from colleagues around English Heritage who have responsibility for overseeing different aspects of management of the historic environment.

Q9 Are you content that the draft Bill should enable a wider range of approaches to managing flood and coastal erosion risk than is currently allowed under existing legislation, such as resilience, and that it should be sufficiently flexible to accommodate new approaches which may be developed in future?

We support the proposal to expand the range of approaches to managing flood risk, including resilience. However, we are concerned that the consultation document only indicates that help will be given to individuals in respect of their properties to increase resilience. We seek clarification of whether that help will be extended to community bodies responsible for historic buildings, such as Parochial Church Councils.

We recognise that new powers are required for the Environment Agency and local authorities (Clauses 34 & 42) to enable them to develop new approaches and that these powers will be accompanied by various protective measures. In particular we seek clarification on whether:

- a) the provision for members of the public to object will be extended to government advisory bodies such as English Heritage (of which there is currently no mention), including with respect to the compulsory purchase of land;
- b) the appropriate compensation provisions will extend to funding archaeological mitigation.

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We also observe that Clauses 34(4) and 42(6) include proposals to introduce powers that have the potential to conflict with Scheduled Monument Consent under the Ancient Monuments and Archaeological Act 1979.

We understand that these protective measures are currently under development and would welcome the opportunity to discuss them in relation to the protection, adaptation and mitigation of historic environment assets (see Q10).

Q10 Does the approach in the draft Bill to flood and coastal erosion risk management adequately cover adaptation?

We understand that adaptation includes approaches such as making buildings resilient to flooding or moving assets out of risk areas where this is practicable and feasible and are committed to working with flood authorities to find local solutions. However, we are aware that there are likely to be situations where adaptation is either not possible and/or appropriate and are therefore keen to discuss mitigation provision under such circumstances.

Q16 Do you have any comments on the proposal that the EA issues a National Strategy for FCERM with which all operating authorities will be required to act consistently when delivering their FCERM functions?

We support the proposal that the EA will produce a National Strategy that will include information and guidance to local authorities and others in FCERM in fulfilling their roles. We hope that the guidance will include reference to the consideration that should be afforded to historic environment issues in the course of discharging their duties. In due course, we would welcome the opportunity to discuss with EA how we might contribute to the preparation of such guidance and its effective dissemination.

Q18 Do you think that the EA should be required to consult as part of preparing or publishing its strategy?

We would recommend that the EA should undertake consultation during preparation of the strategy and we would expect English Heritage to be invited to contribute to that consultation process.

Q19 Should the EA have a regulatory role in relation to coastal erosion risk management, in particular for consenting and enforcement as set out in paragraphs 103-105? What alternative arrangements might be preferable?

We support the proposal that the EA should have a regulatory role in this respect and recognise the benefits this would bring to national consistency and compliance with Shoreline Management Plans as well as the increased efficiency offered. However, as the proposal would remove consenting powers for FCERM schemes from local authorities we are concerned about how adequate consideration of potential historic environment impacts could be built into the consent process.

We note that planning consent may also be required, thus providing a mechanism to enable appropriate historic environment mitigation to be identified through the application of conditions under the revised PPG16. However, we are keen to establish the criteria that would trigger the requirement to apply for planning consent and to examine what provision might be made for those cases where planning consent was not required.

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Q27 Do you think that the county and unitary local authorities should be required to consult the public as part of preparing or publishing their strategy?

Local authorities should be required to consult not only the public, but other key stakeholders including their own internal historic environment advisory service and English Heritage during the preparation of their strategies.

This is of particular importance with respect to those assets that have been identified as potentially contributing to flood risk where these are of historic interest, whether or not they are under statutory protection, as well as in relation to proposals for adaptation, resilience measures and land management change.

Q28 Further to its duty to investigate flooding incidents, should the county or unitary local authority have powers to carry out works of an emergency nature? If so, what powers would be needed?

Whilst we recognise that local authorities may need to carry out emergency works in discharging their new duties under the Bill, we are keen to establish the definitions and limits of those works with respect to historic environment assets, and to understand how any new legislation would articulate with that which exists to protect the historic environment.

Q41 Should the EA and county and unitary local authorities be able to specify the format and standards for information to be shared between organisations?

We are committed to working with the EA to ensure that mechanisms are developed to ensure that information required by them and the lead local flood authorities can be delivered in a timely and efficient manner. For that to be achieved we suggest that data standards and formats need to be requested and delivered in a consistent manner. Therefore we would recommend that national standards & guidance should be developed in partnership to aid both those requesting and supplying the data, i.e. EA, English Heritage and local authority Historic Environment Records Services. English Heritage & ALGAO should be consulted on the appropriate format and standards for data delivery and presentation and agree the final decision.

Q43 Are there particular issues which must be addressed in the standards to make them effective, that have not been mentioned?

Whilst we support the implementation of sustainable drainage systems or SUDS, we seek clarification on the mechanism that will be used to assess the potential impact on the historic environment and aid the selection of the most appropriate solution. This is of particular concern with respect to some of the more engineered solutions such as the construction of attenuation tanks; the creation of ponds and wetlands; and the design and/or finish of permeable paving, swales & drains in Conservation Areas. There may also be instances where contaminated run-off may adversely impact buried archaeological remains.

We understand that national standards will be prepared by the EA and hope that those relating to protection and improvement of the environment will include consideration of the historic component. We are keen to assist in the development of these standards, and any accompanying guidance, in partnership with the EA.

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Q44 Are there examples where this form of approval, for the surface water drainage system associated with a new development, is not appropriate?

We seek clarification of whether the creation of SUDS that require excavation work, thereby having the potential to disturb known or unknown archaeological and/or palaeoenvironmental remains, will be subject to planning consent. If so, we welcome the fact that there will be a mechanism to enable appropriate historic environment mitigation to be identified through the application of conditions under the revised PPG16. However, if they will not be subject to planning consent we would like to establish what environmental appraisal process will be available to assess impact on buried archaeology.

Q58 Do you agree that the membership of RFCCs should be appointed as outlined above in future? If not, do you have any other proposals?

We support the proposal to expand the range of stakeholders comprising the Regional Flood and Coastal Committee (RFCC) membership and would strongly recommend that historic environment interests should be represented by a dedicated member in each RFCC (see also Q60).

Q60 Are there any other issues that you wish to raise in regard to RFCCs?

Whilst we are keen to ensure that historic environment issues are appropriately represented via a dedicated member of the RFCC we would like to emphasise that candidates could be drawn from local authority historic environment/archaeology services (thus presumably contributing to the required local authority majority) as well as from English Heritage.

Q64 Is this framework a suitable approach for determining 'significant risk' or are there alternative approaches to consider?

We support the proposed framework and welcome the fact that in the consideration of potential significant risk, loss or damage to the historic environment (cultural heritage) is one of the defined factors that should be taken into account. English Heritage would welcome the opportunity to support the production of nationally consistent approaches by working in partnership with the EA to develop standards and guidance on how historic environment issues should be included in the process.

Q65 Should county and unitary local authorities be responsible for determining significant local flood risk (ordinary watercourses, surface water and groundwater)? If not, who should be responsible?

We agree with the proposal that local authorities should be responsible for determining significant local flood risk if standards and guidance for consideration of the impact on the historic environment will be made available at the outset of the process to ensure national consistency of approaches. English Heritage would welcome the opportunity to develop such resources, working in partnership with the EA and/or representatives of local authorities.

Q66 Should the proposed selection of 'significant risk' areas by local authorities be moderated along the lines of the arrangements set out above?

Overall, we support the proposed moderation arrangements for the final selection of significant risk areas but seek assurance that there will be representatives of all contributory factors, including historic environment, on the quality assurance panel.

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Q75 Should we introduce a system of third party asset identification and designation, as set out above?

We understand the benefits of the proposed FCERM designation system to the EA in exercising their flood risk management function. Whilst we would not wish to compromise FCERM protection we do seek clarification of how the powers of such a system would be applied to designated structures/features protected under historic environment legislation.

Q80 Should it be possible to make consents subject to reasonable conditions?

It is essential that the consent process has provision for including conditions to ensure that impact on the historic environment is minimised where possible and mitigated appropriately when necessary.

Q98 Do you agree that the principles of the Medway Letter should be relaxed allowing IDBs to expand their boundaries beyond their traditional areas?

We seek clarification on whether the proposal to relax the criteria that currently define the boundaries of IDBs may have implications for increased groundwater abstraction exempt from licensing as this may impact the local hydrological regime. We have already registered our concern that abstraction within IDBs (for internal redistribution) is exempt from licensing through our response to the consultation on implementing aspects of the Water Act 2003 returned to Defra on 21st July 2009.

The issue relates to the fragile nature of buried organic archaeology and palaeoenvironmental remains which rely on stable, waterlogged burial environments for their long-term preservation. Certain IDB's have a particularly high concentration of sites of this nature, many of which are of national and international significance and any changes in groundwater regime in terms of water quality or levels may compromise their preservation.

Q102 Do you agree that lifting the bare majority limit on local authority membership of IDBs will allow for fairer representation on boards in the future?

We support the proposed changes to membership of IDB boards.

Q161 Do you agree that a power to improve the hydromorphological condition of water bodies in England and Wales is necessary to deliver WFD requirements on hydromorphology? Please state why.

We recognise that changes to the hydromorphological characteristics of water bodies may have significant impact on water quality and conditions, thereby having consequences for habitat and ecological status. We broadly support the proposal to provide EA with a power to enter land and carry out works to improve the hydromorphological condition of controlled waters where necessary to achieve established environmental objectives. However, given that such work may comprise modifications to weirs/sluices or the removal of redundant structures, both which may be wholly or partially under statutory protection as historic environment assets, this power may have significant implications for our interests. In addition, physical improvements to the beds, banks and riparian zones of controlled waters, such as recutting old meanders, has the potential to physically disturb or destroy archaeological and palaeoenvironmental deposits. We seek assurance that an appropriate mechanism for appraising the impact of proposed works on the historic environment will be developed in partnership with EA and agreed by both parties (see Q162).

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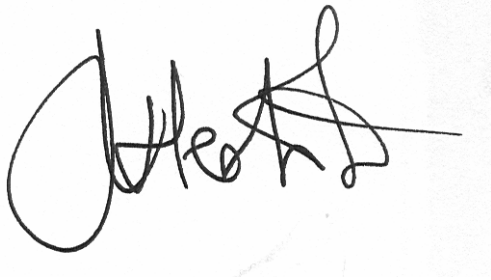


Q162 Do you agree with these criteria for the use of the power?

We welcome the statement that the EA would take into consideration the cultural and heritage value of any past alterations to the water course. However we feel that the scale and significance of the potential impacts require further consideration and would appreciate the opportunity to discuss possible mechanisms for appraising the potential impacts with EA. The development, in partnership, of standards and guidance with respect to appropriate mitigation would also be beneficial.

Please contact me directly if you would like to discuss any of the comments made in this response.

Yours sincerely



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