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OBITUARY AND TRIBUTE TO UKELA FOUNDER PRESIDENT, LORD NATHAN

Lord Nathan, the Founder President of UKELA, died in July aged 84. He was a prominent City solicitor and supported many charities. He was heavily involved in environmental issues and for many years senior partner of Herbert Oppenheimer, Nathan and Vandyk. Lord Nathan recently contributed his memories of UKELA's early years to the twentieth anniversary conference.

A PERSONAL APPRECIATION

Stephen Tromans, of 39 Essex Street, one of UKELA's founder members

Roger Nathan had a large frame and a large personality. He combined a highly successful career as a City solicitor and senior partner of one of the leading firms of its day with a very significant contribution to the development of environmental law during the last three decades. During the 1980s he was a member of the Royal Commission on Environmental Pollution. Among the notable reports of the Commission during this period were the Tenth Report: *Tackling Pollution – Experience and Prospects* (Cmnd. 9149, 1984) which made the case for greater public rights of access to environmental information and warned of the need for more research and possible international action on global warming; the Eleventh Report: *Managing Waste: the Duty of Care* (Cmnd. 9675, 1985) which highlighted the deficiencies of waste legislation at that time; and the Thirteenth Report: *The Release of Genetically Engineered Organisms into the Environment* (Cm. 720, 1989). All were seminal in the development of the environmental law we have today.

Roger's other main contribution to the development of environmental law was as chairman of the Environment Sub-Committee of the House of Lords Select Committee on the European Communities. The Sub-Committee had a unique role in subjecting to critical analysis the numerous proposals for new Community environmental directives during the frenetic period of legislative activity in the 1980s and early 1990s. Its work was perhaps the only way in which impartial expert attention was directed to the rationale for, and drafting of, these measures. On more than one occasion it questioned the quality both of the legal drafting and of the technical information underpinning proposals, and urged greater transparency and a more rigorous consultative process: see for example its 1992 Report on *Implementation and Enforcement of Environmental Legislation* (Session 1991-2, 9th Report, HL Paper 53-I). One of its most effective reports, and on a topic which appealed to Roger as a lawyer, was that published in 1990 on the ultimately abortive proposed directive on civil liability for damage caused by waste: *Paying for Pollution* (Session 1989-90, 25th Report, HL Paper 84-I). The Sub-Committee suggested that attention needed to be focused primarily on public remedies for injury to the environment, which ultimately was the effect, many years later, of the Environmental Liability Directive.

Roger had great gifts as a chairman, in keeping a genial and diplomatic hand on the tiller, defusing potentially difficult situations and in unerringly seeing the nub of an issue. He was the first President of UKELA, and gave the first Annual Garner Lecture, "Fencing Our Eden", which drew on his huge breadth of knowledge and experience. He was also for many years President of the National Society for Clean Air, and the first President of the Institute for Environmental Assessment (now part of IEMA) when that was established in the late 1980s. He could be self-effacing as to his contribution in these roles. For a number of years he chaired the Environmental Development Advisory Panel of the National Grid Company, of which, for part of that time, I was also a member. The Panel had been established after NGC was the object of critical attention in respect of projects for new overhead power lines in areas on

natural beauty. Roger claimed that his main contribution as Chairman was to choose the menu and wine list for Panel dinners (which he certainly did with care and aplomb). However, he also had a keenly strategic mind, which led him to suggest a study of the comparative environmental impacts, costs and operational issues of overhead lines against installation underground. This resulted in a highly useful and influential document within the company, which (largely due to Roger's feel for plain but elegant language) set out the issues in an exemplary clear way for the external audience: *Overhead or Underground? The National Grid Company Approach*.

Roger was always encouraging and was willing to take time to assist those setting out in the field of environmental law. I first encountered him when I was a junior lecturer at Cambridge, when he agreed to co-chair a conference I was organising with Lakshman Guruswamy, then a lecturer at Durham (now an eminent Professor of international environmental law at the University of Boulder, Colorado), on the proposed privatisation of the water industry in 1986. Two days before the conference was due to take place, the Conservative government announced it was withdrawing the proposal. Roger's response to Lakshman was along the lines of, "I say, Guruswamy, they seem to have shot your fox" (he was a keen horseman and hunted with the Eridge and Cowdray Hunts). Notwithstanding this potential disaster, Roger encouraged us to go ahead with the event, which was a great success; and indeed (as I suspect Roger had thought likely) the privatisation legislation was shortly thereafter reintroduced.

With Roger's death on 19 July 2007, environmental law has lost an important figure in its history, as well as a wise, congenial and humane exponent.

NEWS FROM THE CHAIRMAN

Please get out your 2008 diaries, as I am pleased to announce that next year's UKELA conference will be held at Kent University on June 20-22. We are also delighted that we have been able to secure Canterbury Cathedral for the gala dinner venue. Bookings will be invited with the membership renewal mailing in November.

We are now starting work developing the conference speaker programme and would welcome any thoughts you may have on what you would like included. Please do email any suggestions you have for themes, topics or particularly excellent speakers to Vicki.elcoate@ntlworld.com. The programme is organised by a UKELA Council committee, this year being co-ordinated by Catherine Davey of Stevens & Bolton LLP in Guildford and myself. All your thoughts will be passed onto us.

This is also the time for any potential sponsors to make expressions of interest. We have various sponsorship opportunities to offer. Please contact Andrew Wiseman, andrew.wiseman@bllaw.co.uk for a discussion, without commitment at this stage.

A major challenge for the conference organisation is to try to ensure the conference is as environmentally responsible as possible. One aspect we are looking at is sustainable food sourcing and we may need to get back to you on that if it involves additional cost.

We will have had two successive conferences in the south of England so for 2009 we are looking elsewhere in the UK. We always welcome offers of help or expressions of interest from potential volunteers. We are fortunate in having a committed band of helpers from the South East regional group for this year's event, which is why Kent University was our final choice.

I'd also like to invite you to this year's Garner lecture, which is being held in partnership with the Oxford University Press Journal of Environmental Law, by the renowned Indian environmental lawyer, M.C.

Mehta. He has brought a series of leading environmental cases before the Indian Supreme Court including those concerning the protection from pollution of the Taj Mahal and the Ganges River. The date is November 21st at 6.30pm, at University College, London. Full details are on the flyer attached to this mailing or on www.ukela.org.

Some of the working parties have been quite active over the summer to deal with the plethora of government consultations. Our thanks to the Planning and Sustainable Development Working Party for its work on the Planning White Paper; to the Climate Change Working Party for its work on the Climate Bill and associated consultations; and to the Environmental Litigation Working Party for its input on the draft Regulatory Enforcement and Sanctions Bill. We are delighted that Angus Evers has taken over as the Waste Working Party convenor and wish him well with the new role. Two working parties – Water and Northern Ireland – need new convenors and I urge you to consider taking on these roles if you have a special interest in either of these areas. UKELA can only deliver its aim to make the law work for a better environment with the active support of its members across all the key areas. For an informal chat about what the role involves please contact our working party co-ordinator Colleen Theron, colleen.theron@lg-legal.com.

Finally, UKELA has an increasing number of student members – numbers are up significantly on last year. We are about to announce details of the annual moot and article competitions and the student social and careers information evening which will be held on December 6th in London. Last year we had over 90 students along to find out more about what it takes to work in any of the professions concerned with environmental law. If you have a couple of hours to spare from 6pm, please offer to come along and help advise students on what your job involves and what it takes to get there. Any offers please to Vicki.elcoate@ntlworld.com.

I have only been able to mention a few UKELA events but please do check out the events diary section of the website for more. We have various other events coming up including a Scottish one day conference on November 13th in Edinburgh.

If you have any feedback for us on the work of UKELA or suggestions for our work programme for 2008 please do not hesitate to get in touch.

Daniel Lawrence, Chairman of UKELA

PS25: DEVELOPMENT AT RISK OF FLOOD

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Introduction

1. This paper is concerned with development within areas subject to flood risk, and their consideration inside the 1990 and 2004 Planning Acts (as amended).
2. The paper is divided as follows:
 - Causes of flooding
 - Practical Impact of Climate Change
 - Inundation Impact
 - i. US

ii. UK

- Environment Agency
- The Precautionary Principle
- Guidance
- Law
 - i. Flood risk cases
 - ii. Liability for the creation of dangerous states
- Conclusions

3. This paper considers the practical consequences of the development of land subject to risk of inundation by water- flood risk. The crystallisation of several coincidences compounded by climate change, may give rise to property damage and, importantly, harm to life.
4. In 2007, at the very least, an increase in baseline sea levels is predicted by 2050 whilst flood defences remain projected 'as built'. Whilst Government pledges funding post-Tewkesbury, our Dutch brethren have already defended Rotterdam Port with a giant gate. Its closure, triggered by computer detection of North Sea storm surges near Scotland, protects that important commercial port from catastrophic flooding, property damage and threat to life. Similarly, despite the rejection of their initial advice, Dutch engineers experienced in dyke construction assisted in the levee reconstruction defending the New Orleans metropolis. The still recent events of Katrina and her impact upon that metropolis remain to be fully assessed.
5. In respect of domestic planning, the inundation of the coastal city of New Orleans made credible a danger some previously considered incredible. More recently, the relatively small town of Tewkesbury achieved national recognition this summer when it suffered inundation. This may have brought home the reality of risk to real property so prized by the English. The financial losses to the insurance industry appear great and their burden spread nationally. At the same time, there was also some loss of life with receding waters revealing cadavres.
6. In response to the Government's approach to this inundation, in August 2007, the Association of British Insurers wrote to the Secretary of State for the Environment. The Association expressed concern that, whilst £800million towards flood defence was to be applauded, "the long period of neglect before 2002 has not yet been made good". It identified that "some flooding took place which was not predicted by the EA's flood-risk maps", making it very hard to determine the risk level for a specific property. "Change in the climate is not just a short-term challenge" but " requires as much long term thinking in relation to adaptation as is given to mitigation". It considered that a "long term strategy for flood defence should look again at the question of new developments on the flood plain.

Insurers will in future scrutinise new developments more closely and warn of potential uninsurability more robustly”.

7. The practical outturn of the insurers’ approach may be to present development funders with post-sale coverage difficulties. Since the English property market is governed by the caveat emptor principle, the risk of subsequent “uninsurability” carries with it the risk of further development stratification beyond the land use classes of PPS25. In this respect, and noting the ever increased drive to develop brownfield land, often in traditional low lying areas, or areas connected with historic river trading, land development brings with it increased dangers, in many senses of that word.
8. In terms of the danger of social stratification, the less well off may come to occupy uninsurable housing leading to the creation of ghettos. In terms of the dangers of risk crystallisation, the question is not if inundation event may occur, but when so. That is, a 1 in 100 or 200 year risk means crystallisation of that risk *at any time during* that period. For the purposes of PPS25, and practically, that period starts with the development proposed. In terms of property damage or death from drowning, who might be liable? Who pays and when?

The Causes of Flooding¹

9. Why is there any need to consider flood risk? So what “flooding”? Surely, most of us live in dry areas never subject to water damage.
10. A great part of the Earth is comprised of water. Given managed planning, water provides transport corridors, yields food, provides drink and washing facilities, and opportunities for industry and leisure. However, in large or unexpected volume, water is a hazard, both to property and, importantly, to life. A man may be knocked over by a mere 2 feet deep wall of water and that also travels faster than he can. Manhole covers blown from drain surcharging create hidden traps for unwary and out of sight below the water level.
11. Flooding occurs when the amount of water arriving on land (from rainfall, snow melt, surface flow, flow in watercourses or inundation by the sea) exceeds the capacity of the land to discharge that water (by infiltration, surface flow, piped drainage or surface watercourses). Flooding can occur on any level or near-level areas of land but the main concern is with such areas adjacent to watercourses (fluvial flood plains) or low-lying ground next to the coast (coastal flood plains).
12. Regrettably, the limits of flood plains cannot be defined precisely because floods with similar probability can arise from different combinations of event that will have different impacts. For example, the physical characteristics of the land receiving the water assume the manner in which the water arrived and the characteristics of the ground- for example, drought baked or sodden.

¹ See the full and helpfully wide explanation in Appendix C, PPS25

Flood plains otherwise act as natural reservoirs from which water inside their storage volume drains. Flood plains are often delineated by the estimated peak water level of an appropriate flooding event on the watercourse or at the coast.

13. On rivers, this probability has generally been taken to be the flood with a 1% annual probability of exceedance (the 1 in 100-year return-period flood) or the highest known water level.
14. In coastal areas, because of the generally more dynamic nature of coastal flooding, the 0.5% annual probability (the 1 in 200-year return-period flood) or the highest known flood is generally used. Of course, floods of greater magnitude than these will occur; such floods are likely to constitute extreme events.
15. Locally, flooding may occur due to groundwater overflowing, overland sheet flow or run-off exceeding the capacity of piped drainage during periods of heavy or prolonged rainfall. Such local flooding can only be addressed on a site-specific basis.
16. Consider your roof and its blocked hopper or downpipe. In Summer 2007, localised flash flooding in some London streets outside the identified flood plain raised water levels to above the height of a car tyre along entire streets due to drain surcharging.
17. The principal cause of river flooding is excessive rainfall or snow melt within a limited period, which overwhelms the drainage capacity of land, particularly when the ground is already saturated or when channels become blocked.
18. Inundation by the sea is largely due to combinations of high tide, storm surge and wave activity but may also be associated with structural failure of defences.
19. Some areas are subject to combinations of tidal and river impacts. The impacts can be aggravated by:
 - the growth of built development in catchments and other changes in land use, which increase the rate and volume of run-off;
 - sediment movement that has changed river cross-sections and affected flood levels;
 - lack of maintenance of flood defence systems, watercourses, culverts (including the flood relief areas around them) and road gullies, particularly where this leads to channel blockage;
 - canalisation, modification and diversion of rivers and watercourses, which increase the rate of flow and decrease the time taken for water to travel within a catchment; and
 - building of structures (eg embankments) which restrict flows over historical flood plains and thereby create additional flood risks both upstream and downstream.
20. It will be apparent therefore that flooding is a combination of human activity and natural physical conditions. Consequently, in determining the risk posed by flooding, account needs to be taken of

the likely depth, speed and extent of inundation and the potential for anticipatory action to be taken as a result of flood warnings.

21. Flood consequences vary with location and land use. Rapid flows due to flash flooding or inundation by the sea following failure of defences pose a greater risk to life than a steady rise in water level. For example, overtopping and possible failure of a flood defence defending a densely populated urban area is an extreme risk; the same event affecting agricultural land is unlikely to involve a serious threat to human life. These factors “coincide” (or come together) to crystallise the low risk event. However, once crystallised, the event itself appears of catastrophic proportion. Whether it is depends on the nature of the development proposed and the management of the previously identified potential event.

Practical Impact of Climate Change

22. Annex B to the flood risk guidance of PPS25 sets out the Government’s opinion in respect of “Climate Change” and its impact upon the economy. Annual damage from flooding may rise from £100 million to between £460 million and £2,500 million by 2080.
23. Of course, property damage from flooding may not occur every year. However, in August 2007, the UK requested assistance from the European Union Solidarity Fund in respect of flood damage from this year’s inundation in the sum of £2.7 billion (and rising). *The Times* newspaper reported on 21st August 2007 that:

Even if the grant is approved, only a proportion of the costs would be covered and it is likely to take nine to 12 months before the resources become available. Previous decisions by the Commission suggest that, if Britain’s total damage bill is £2.5 billion, the funding would be between £62.5 million and £125 million.

24. At the same time, the rise in sea level will change the frequency of occurrence of high water levels. For example, the current 1-in-100-year high-water level on the east coast may be expected to be exceeded every 20 years on average by 2050, assuming no change in storminess. There may also be secondary impacts such as changes in wave heights due to increased water depths, as well as possible changes in the frequency, duration and severity of storm events. It should be recognised, however, that while sea-level rise and climate change could have a significant impact on levels of risk, current information suggests that the actual areas at risk are not expected to increase significantly.
25. However, the insurance industry has identified its recent concerns in respect of inadequate information and its price of potential “uninsurability”. Further, and in any event, a part of the

equation engendering the statistical increase in probability of an inundating event has moved in favour of *occurrence*.

Inundation Impact

26. Until relatively recently in Tewkesbury, real life examples of catastrophic inundation events were difficult to find. In England, York has traditionally flooded. However, we had perhaps become accustomed – dulled even – to the dramatic consequences of the flood which that city experiences. At the same time, that city manages the flood by the design of its building. For example, undercroft parking. Consequently, development is, effectively, on stilts. Thus it occupies less of the volume required for flood water. The same is not true of other town and cities.
27. By contrast, the inundation of the metropolis of New Orleans brought the *consequences* of the inundation risk for the many into stark relief: a city of motorways, tall buildings, a large population, seemingly living at one with its neighbouring river and near to the Gulf. In simple terms, for a period, civilisation itself broke down. People sought safety inside stadia- stockades. Even there, tensions surfaced. The consideration of the risk of crystallisation is the defence to those environmental consequences.
28. New Orleans is a helpful example of how, in a city, meteorological events coincide with physical geography to engender catastrophic inundation. It is not said that the consequences will be the same. Rather, the process by which those consequences materialise is essentially the same. A small risk may have catastrophic consequences upon the crystallisation of that risk.
29. Below I consider this US example, and, briefly, English examples.

a) US Catastrophic Inundation

30. The recent inundation event in New Orleans is a helpful real life example of what *happens* when existing sea defences fail as a result of meteorological coincidence, both during the event and in the aftermath. This event is also pertinent to consideration of whether it is possible for a management plan such as may be proposed by a developer to deal with the reality of an inundation event in an area at risk of inundation subject to proposed development.
31. The 2005 event in New Orleans also assists in the understanding of:
 - the *credibility* of an inundating event consequent upon a meteorological coincidence;
 - *how* the coincidence of natural events engenders an actual risk of inundation;

- the actual *nature* of the inundation impact following a breach of sea defences- in those circumstances, levees holding back sea water at a higher level than the ground on the other side of the embankment.
32. The facts were as follows. Hurricane Katrina made landfall on Monday, August 29, 2005, as a category 4 hurricane and passed within 10 to 15 miles of New Orleans, Louisiana- not over it. Hurricanes, of course, are a species of storm. The storm brought heavy winds and rain to the city, and the damage breached several levees protecting New Orleans from the water of Lake Pontchartrain. The levee breaches flooded up to 80% of the city with water reaching a depth of 25 feet in some places. It is apparent that one event engendered danger from another- the flooding of a lake by destruction of its whole containment.
33. The event demonstrates:
- the historic build up to, and the physical design parameters of, New Orleans inundation defence system;
 - the credibility of an inundating event consequent upon a meteorological coincidence and outside the existing design parameters;
 - how the coincidence of natural events engenders an actual risk of inundation;
 - the actual nature of the inundation impact following overtopping and also a breach of sea defences- in those circumstances, levees holding back sea water at a higher level than the ground on the other side of the embankment.
34. There are many parallels between New Orleans and sites at risk of flooding in terms of location and, in coastal areas, the type of flood risk. Although the scale of UK inundation may be different and, perhaps somewhat smaller in terms of population affected, the height of existing tidal defences and the low pressure storm systems which affect these (such as to be found in the Channel), may mean that the results are similar and analogous in terms of the type of damage and the event impact on human beings, together with consequential impacts. That is, property will undoubtedly be damaged, land contaminated in some way, and, potentially, lives endangered.
35. The physical disposition of New Orleans is as follows. The city of New Orleans is constructed on an area of land which averages 1.8 m below sea level and within a natural basin resembling a shallow depression. The city is surrounded by:
- a river levee system 7.5 metres high along its southern boundary, and
 - by hurricane protection levees about 4.5 metres high along the remaining boundaries.

The hurricane protection levees surrounding the city are designed to protect the city from a category slow 2 or fast category 3 hurricane at worst. This was based on historic experience of flooding. That is, after an event, the levees were made higher. This is in contrast to their suitability of design before the event.

36. In terms of its physical geographical context, New Orleans was constructed on the banks of the Mississippi River. The river starts at tiny Lake Itasca in Minnesota, is the third largest drainage basin in the world covering 41% of the 48 continuous United States.
37. The river has *a/ways* been an inundation threat to the security of the valley through which it flows. Major flooding in 1912, 1913, and 1927 destroyed millions of dollars of property. This city has experience of flooding and its consequences.
38. After the flood of 1927 Congress passed the Flood Control Act of 1928. This legislation authorized the Mississippi River and Tributaries (MR&T) project. This project oversees four major flood control methods:
 - Levees;
 - Floodways;
 - Tributary Basin Improvements, and
 - Channel Improvement and Stabilization.
39. The area is subject to development pressures. Storm vulnerability is made worse by ongoing wetland loss and barrier island erosion. The Basin is home to more than one million people. It is extremely important to the vitality of the Gulf of Mexico ecosystem. For these and many other reasons, it is important to study past tropical storm events to be better prepared for future reasonably foreseeable events.
40. Prior to 1965, New Orleans had suffered substantial losses of protective barrier islands and wetlands. At the same time it had developed an elaborate system of flood control measures. After Hurricane Betsy struck in 1965, causing more than \$1 billion in damages, hundreds of millions of dollars were spent to upgrade the flood control system that now includes more than 520 miles of levees, 270 floodgates, 92 pumping stations, and thousands of miles of drainage canals.

41. While the new protections did reduce risks to people and property in developed areas, they also encouraged additional development in (now historically) flood-prone regions. Jefferson Parish and the adjoining Orleans Parish ranked first and second among communities receiving repeat payments for damage claims under the National Flood Insurance Program between 1978 and 1995. These two communities alone accounted for 20 percent of the properties with repeat losses, at an average of nearly three claims per property, for a total of \$308 million in claims.
42. It will be recalled that the design parameter of the defended area was category 3 at worst case. On 29th August 2005 Hurricane Katrina made its second landfall as a strong Category 4 hurricane in Plaquemines Parish, Louisiana.
43. Wind speeds of over 140 miles per hour (mph) were recorded in south-eastern Louisiana and winds gusted to over 100 mph in New Orleans, just west of the eye. As Katrina made its third and final landfall four hours later along the Mississippi/Louisiana border, wind speeds were approximately 125 mph. Hurricane-force winds extended up to 190 miles from the centre of the storm and tropical storm-force winds extended for approximately 440 miles.
44. The strength and extent of Hurricane Katrina's wind field resulted in a storm surge greater than that anticipated from the historical maxims: category 4 by contrast to category 3.

Coincidence

45. It is apparent that a *coincidence* of wind of strength able to drive water, increased water supply, coupled with existing wave action may have a significant impact upon physical defences not designed to withstand that same coincidence.
46. The 2005 event was caused by the meteorological coincidence of:
 - a storm surge of up to 9 metres;
 - wave action, and
 - high winds; and which
 - resulted in destruction of buildings and roads in the affected areas.
47. Levees, and other manmade defences, fail for various reasons. Commonly, overtopping water passes over their top, and thereafter engenders a negative pressure within the water which has a scouring (or cork screwing) effect upon the other side of the defence work. The scouring

corkscrews out the support for the defence by undermining it from the landward side, engendering its subsequent collapse.

48. Here, the consequent failure of earthen levees and floodwalls after the storm passed left portions of New Orleans under 6 metres of water. 30 feet in imperial.

Aftermath

49. The aftermath of Katrina was, and remains, catastrophic.
50. The total number of lives lost, number of injuries sustained, and value of property damaged as a result of Hurricane Katrina await concluded tabulation.
51. Water is no respecter of boundaries- however carefully drawn flood risk maps may appear in relation to title deeds. Of course, the inundation is likely to affect all property including stored liquids and solids. Many of these will mix with the flood waters. In turn, the water is likely to itself act as a transporter of toxic elements to other property.
52. Among the wide-scale impacts of Hurricane Katrina, the storm caused significant loss of life and disrupted power, natural gas, water, and sewage treatment, road safety, and other essential services to the city- all at the same time.
53. Early in the disaster response and recovery, federal, state, and local elected officials and public health and environmental leaders recognized the significant role of environmental health in the post-hurricane rebuilding of New Orleans.
54. A large number of organizations were required to come together in response to the inundation. At the request of the Secretary Michael Leavitt of the Department of Health and Human Services (DHHS) and Administrator Steve Johnson of the U.S. Environmental Protection Agency (EPA), the Director of the Centers for Disease Control and Prevention (CDC), Dr. Julie Louise Gerberding, created the Environmental Health Needs Assessment and Habitability Taskforce (EH-NAHT). A taskforce was charged with identifying the overarching environmental health issues faced by New Orleans to reinhabit the city.
55. The EH-NAHT collaborated extensively with a diverse group of federal, state, and local partners, including the New Orleans City Public Health Department, the Louisiana Department of Health and Hospitals (LADHH), and Louisiana Department of Environmental Quality (LDEQ), Federal Emergency Management Agency (FEMA), and U.S. Army Corps of Engineers (USACE).

56. The team was guided by the following questions:

- What are the core or fundamental environmental health issues to be addressed;
- Which agencies and organizations at the federal, state, or local level are responsible for, or involved in, the various environmental health issues;
- What progress has been made and what challenges exist;
- What is the timetable to address these environmental health issues;
- What resources exist or need to be brought to bear to address these environmental health issues; and
- What are the key milestones and endpoints that define success.

57. These questions demonstrate the wide range of considerations engendered by an inundation.

58. Applying these questions, the team identified 13 environmental health issues and supporting infrastructure to address. This initial assessment included drinking water, wastewater, solid waste/debris, sediments/soil contamination (toxic chemicals), power, natural gas, housing, unwatering/flood water, occupational safety and health/public security, vector/rodent/animal control, road conditions, underground storage tanks (e.g., gasoline), and food safety.

59. After the initial assessment, the EH-NAHT categorized these issues in the Table shown below by increasing time and complexity to full restoration of services (Level 4, most complex and requiring the most time to restoration). Part of the complexity relates to how specific and explicit the criteria for the end points are for each function.

Level 1	Level 2	Level 3	Level 4
<ul style="list-style-type: none"> • Unwatering • Power • Natural Gas • Vector/Rodent/Animal Control • Underground storage tanks (e.g., gasoline) 	<ul style="list-style-type: none"> • Drinking Water • Wastewater • Road Conditions 	<ul style="list-style-type: none"> • Solid Waste/Debris • Sediments/Soil Contamination (Toxic Chemicals) 	<ul style="list-style-type: none"> • Housing

<ul style="list-style-type: none"> • Food Safety 			
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60. Housing was identified as the most complex. Occupational safety and health as well as public security was identified as cross-cutting all the other areas. Long-term solutions to these many issues were identified as critical to allow resumption of normal life in New Orleans and to prevent reoccurrence of such an event in this area.

61. The EH-NAHT drew the following conclusions based upon the EPA initial assessment, of which the first underscores the nature of the inundation impact:

- **A complex array of environmental health problems exists in New Orleans.**

The most striking feature of the disaster is the array of key environmental health and infrastructure factors affected all at once. All key environmental health and related services are being reestablished, and this work needs to be done in a very coordinated and well-planned way.

- **The unwatering of New Orleans is a critical first step.**

The unwatering is an essential first step to allow access for assessment and repair of all basic services and habitability barriers. Some significant assessments are not yet started because of the continued unwatering, which could take an additional 4 weeks to complete. These assessments may impact the timing, resources and scope of the needed repairs/replacements.

- **It is important to bring infrastructure systems in New Orleans back on line.**

Different timeframes are necessary to bring the various infrastructure systems (e.g., drinking water, wastewater, power, and natural gas) on line with varying degrees of capabilities. Restoring drinking water systems and wastewater treatment systems needs a planned approach, but full restoration will be delayed by the many breaks in the distribution and collection systems and by the need for upgrade and repairs in older systems. Unanticipated delays must be kept in mind in the process of unwatering and the scope and complexity of the interdependent systems.

- **The cleanup of debris (including housing debris) and potentially contaminated soil/sediment in New Orleans are rate-limiting factors.**

The timeline for debris treatment, disposal, containment, and transport, as well as for the testing of potentially contaminated soils/sediment, will slow or accelerate the rate at which the city can be reinhabited. The potential contamination of soils/sediments has great uncertainty attached to it. A comprehensive sampling and testing of a broad array of toxic chemicals will be required to identify any widespread contamination or selected hot spots and to ensure the safety of returning inhabitants or for redevelopment.

- **Intense interest will exist to reinhabit New Orleans.**

Significant pressure will occur to allow rehabilitation. A single decision will not be made to reinhabit the whole city at one time. Rehabilitation is expected to be done neighborhood by neighborhood IF it is possible to prevent access to the closed areas of the city. Worker safety and health as well as public safety and security are mandatory enablers for all of the activities.

- **It is critical to address the housing issues in New Orleans.**

Housing is likely the most critical issue in reinhabiting the city because of the:

- i. Large percentage of city housing that was flooded and is not likely to be viable;
- ii. Intense personal connection an individual has to their home;
- iii. Legal, jurisdictional, and procedural issues involved in the decision-making process;
- iv. Large proportion of the city population that is displaced. Some residents are a significant distance away from New Orleans or may not intend to return;
- v. Difficulty in establishing and maintaining communications with the widely dispersed population;
- vi. Challenge of identifying acceptable methods and resources for assessing such a large number of homes; and the
- vii. Scope of the demolition process and safe and efficient removal of debris.

- **An immediate need exists to allow temporary or transient entry of recovery workers, residents, and business owners.**

In the immediate period, explicit guidelines are being developed for safe entry of recovery workers to New Orleans, for brief entry by residential and business owners to retrieve key household or business items in neighborhoods of the city where it is safe to do so, and for reinhabiting the least impacted areas of the city where key environmental health and infrastructure conditions are met.

- **Ensuring worker safety and health and public safety and security are essential.**

Public security and intensive efforts to achieve worker safety and health for the very large recovery workforce, working often in extraordinarily difficult and challenging conditions, is essential to rebuilding New Orleans.

- **The criteria for short-term and long-term return to New Orleans should be tailored to the timeframe and population.**

Different criteria will be necessary for the short-term and long-term return to the city e.g., use of bottled water in the absence of potable water will be acceptable for recovery workers and select others on a limited short-term basis versus the general population, which includes children and the elderly over the long-term).”

62. Inundation caused physical infrastructure damage. It also inundated the public services.

63. A further recommendation was made:

Resolving potential toxic chemical exposures is important.
It is important to resolve the questions about the potential for toxic chemical exposure as quickly as possible. This issue has the widest degree of uncertainty.

64. It is apparent that this recommendation raises consequential contaminated land issues.

b) UK Catastrophic Inundation

65. The coincidences and circumstances identified above, whether meteorological event or environmental impact of inundation, are applicable by analogy to the UK flood risk areas. Of course, the UK does not suffer hurricanes. It does, however, enjoy low pressure systems along the Channel, surges around Scotland, and – at times- prolonged rainfall.

66. Catastrophic inundation is not without precedent in the UK. In 1953 the Big Flood inundated parts of East Anglia. It is said that the Big Flood was the worst natural disaster to befall Britain during the twentieth century. The scale of its human impact was due to the lack of adequate disaster preparedness. The 307 deaths on land at that time were caused by drowning or from the effects of exposure. Two-thirds occurred in four clusters along the shoreline and mainly comprised inhabitants of post-war prefabricated buildings, bungalows and chalets, with the highest mortality among the elderly.

67. The then emergency response was spontaneous and community led, with the main search and rescue completed before central government became involved. No individuals or agencies were blamed for the neglected state of the flood defences or the absence of warnings, along with the post-war shortage of adequate housing - the main causes of vulnerability. The media played a limited role, and television was in its infancy. By contrast with the smaller scale Gloucestershire flooding of 2007, central Government action was not prompt, some days passing before action was taken. During that time, people were without water and basic amenities.
68. In 1953, mental health impacts were either self-limiting or failed to be articulated in a society recovering from the Second World War. The major mitigating factors included the empathetic response of people, locally and nationally, as well as the availability of armed forces personnel based in East Anglia, whose actions played a decisive part in the battle against the sea. The major legacies of the Big Flood were a coastal flood forecasting system, a more scientific approach to sea defences and the building of the Thames barrier.
69. For coastal areas of England, the coincidence of meteorological events resulting in inundation may be:
- Land subjected to on shore gales;
 - Such gale arising from an associated low-pressure system engendering a *higher* water level; and
 - a high astronomical tide;
 - resulting in overtopping of defences of massive proportions.
70. The recent Bocastle inundation event illustrates the consequences of unexpected river inundation. Tewkesbury illustrates the impact upon encroachment of development upon the historic flood plain: its church standing in isolation on high ground within the town. By contrast with the standard, some flood waters spilled into the Abbey- the first time since 1760, that is, a 1-in-250 year event.

The Environment Agency

71. The Government announced in August 2007 that “if the Environment Agency judges that the risk from flooding is too high to build in an area, we expect authorities to take their advice”. This is in contrast to the recent national guidance of PPS25 which has otherwise reduced the Agency’s role from “lead” to “key”.

72. The Environment Agency is the statutory body which came into being on 1 April 1996 as a result of the Environment Act 1995 (EA 1995). It is charged with protecting or enhancing the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development.
73. The Agency's role includes advising in the public interest the Government in respect of matters relating to flooding. The Agency has a wide range of flood defence powers, duties and responsibilities of the now abolished National Rivers Authority transferred to the Agency. Specifically, the 1995 Act stipulates that the Agency shall exercise a general supervision over all matters relating to flood defence (section 6(4) EA 1995).
74. When discharging all of its functions, the Agency's principal aim is to contribute towards attaining the objective of achieving sustainable development (section 4 EA 1995). Moreover, when exercising its powers, the Agency shall take into account the likely costs and benefits of such exercise (section 39 EA 1995). Costs includes costs to any person and to the environment (section 56(1) EA 1995).
75. The Agency has a wealth of technical expertise available to it. Further, the court has recognised its enhanced technical capability as a decision maker. Consequently, it is a consultee whose advice is to be taken seriously, which position has been endorsed by central Government's statement above.
76. By virtue of its general supervisory duty over all matters related to flood defence, the Agency is charged by the Government to advise planning authorities on development and flood risk matters. Having regard to its technical expertise and statutory functions, PPG25 'Development and Flood Risk' identified that "the Environment Agency has the *lead* role in providing advice on flood issues, at a strategic level and in relation to planning applications" (page 1 PPG25). However, more recently, PPS25 has denigrated that role to one of a "key role" alongside local authorities (see paragraph 35, PPS25).
77. Experience suggests that the Agency takes a robust view of its obligations. It is more common to find the Agency objecting at an inquiry relating to development subject to flood risk. In particular, it is likely to object where there is a risk of life arising from flood risk.
78. This approach may arise from the possibility having passed to deal with flood risk matters by their deferral under a condition requiring a scheme subsequent to the relevant planning permission grant. The reasons for this are set out below. At the heart of these considerations may be found the precautionary principle, and consideration of risk before and not after the event.

The Precautionary Principle

79. The precautionary principle is, essentially, concerned with risk assessment and avoidance of dangerous states by appropriate risk *management*. Risk management assumes identification of the

risk. Management may entail prohibiting development of land for a specific proposal, but not a different proposal for the same land. It may entail construction of development on stilts with parking beneath. It may entail construction of high level dry access bridges for escape.

80. The Communication from the Commission on the precautionary principle (February 2000). This sets out a helpful history of the precautionary principle at Annex II. In short, the application of the precautionary principles requires the refusal of planning permission in this application.

81. The precautionary principle derives from the following statement:

In order to protect the environment, the precautionary approach should be widely applied by States according to their capabilities. Where there are threats of serious and irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation

(Rio Declaration 1992).

82. The Summary notes that the precautionary principle should be considered within a structured approach to the analysis of risk which comprises three elements:

- risk assessment
- risk management;
- risk communication.

83. Risk assessment is itself sub-divided by Annex III into its component elements as follows:

- hazard identification;
- hazard characterisation;
- appraisal of exposure;
- risk characterisation.

84. The precautionary principle is particularly relevant to the management of risk. Recourse to the precautionary principle presupposes that potentially dangerous effects deriving from a

phenomenon, product or process have been identified, and that scientific evaluation does not allow the risk to be determined with sufficient certainty.

85. Helpful consideration of the principle is set by the EC in Part 3 of the Communication, together with the components of the principle set out in Part 5. Part 6 sets out the guidelines for the application of the principle. An application for planning permission for land subject to flood risk is likely to trigger the application of the precautionary principle.

Guidance

86. The Government has applied the precautionary principle to the potential of inundation through its PPG25 flood guidance. This has now been replaced by the more sophisticated PPS 25. It's terms are both clearer and more stringent than its predecessor. Further, as is increasingly common, a Practical Guide in respect of the implementation of the revised policy has also been published (presently in draft). As will be apparent, PPS25 provides guidance (not law) on development within areas subject to flood risk including that engendered by tide.

i) PPS25

87. PPS25 opens with the statement that: "flooding threatens life and causes substantial damage to property... [whose] impacts can be avoided and reduced through good planning and management" (see paragraph 1, PPS25). Importantly, "all forms of flooding and their impact on the natural and built environment are material planning considerations" (see paragraph 2). Whilst it will be noted that the Court is ultimately arbiter of that which is or is not a material consideration, the guidance statement identifies the importance of flooding inside the planning system.
88. Within PPS25, the key tools for land use allocation and the control of its development remain the sequential test and also the exceptions test. Passage through the exception requires a positive demonstration (as in objectively justifiable) that the development "will be safe". The application of this last test may render development in some areas difficult.
89. More generally, PPS25 requires that flood risk be taken into account at all stages of the planning process. To this end, the Regional Planning Bodies and also the LPA is required to prepare and to implement a planning strategy that will "help to deliver sustainable development" with regard to four factors:
 - Appraising risk;

- Managing risk;
- Reducing risk;
- A partnership approach.

90. In respect of the identification of risk, there is now a requirement to prepare a “Regional Flood Risk Appraisal” (or a “Strategic” version “as appropriate”). This document will form part of the statutory development plan Sustainability Appraisal. It appears to follow that absent this FRA, a plan may not be “sound”.

91. In respect of risk management, much in the manner of the former PPG3, authorities are encouraged to frame policies to “avoid” risk (that is, a locational imperative), and to manage residual risk.

92. In respect of risk reduction, three matters are helpfully identified: there is a requirement to safeguard land from development that is otherwise required for current and future inundation management; a requirement to reduce risk to and from new development by development location, its layout and design (including the now ubiquitous SUDS); and “using opportunities offered by new development” to reduce the causes and impacts of flooding. It appears that the guidance in respect of risk reduction may be capitalised upon as a useful means of shoring up present inadequate defences.

93. Paragraph 7 and 8 set out guidance in respect of PPS25 “Decision-Making Principles” by reference to ten matters:

- Regional Spatial Strategies should include a broad consideration of flood risk;
- LPA’s are required to allocate sites and to control development which “avoid flood risk to people and property where possible and manage it elsewhere”;
- Where climate change increases flood risk in relation existing development, LPA’s are required to consider opportunities to relocate development including housing to more sustainable locations at less risk of flooding;
- Flood risk is required to be considered “alongside” other spatial planning issues”;
- The statutory plan sustainability appraisal must incorporate or “reflect” the strategic FRA;

- The LPA is required to take into account PPS25 which may supersede its own plan documents;
 - Planning applications are required to be supported by site-specific flood risk assessments (FRAs) as appropriate;
 - LPAs are required to apply at a site level the “sequential approach” (see PPS25, paragraphs 14-17);
 - The use of SUDS is to be prioritised;
 - The LPA is itself required to ensure that all new development in flood risk areas is “appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed”.
94. Two key points emerge: that flood risk is simply another material consideration of many in the planning system; that the LPA bears the burden of risk in ensuring the resilience of new development to inundation. Of course, LPAs are likely to pass this consideration to the developer and another layer of paperwork now appears in the planning system.
95. PPS25 paragraphs 9 to 20 set out the “Risk-Based Approach”, culminating in the PPS25 “sequential approach” of paragraphs 14 to 17. As is common in risk analysis, the source-pathway-receptor approach is applied to flood risk assessment. This requires avoiding adding to causes, managing pathways to reduce likelihood of flooding, and avoiding inappropriate development in risk areas to reduce adverse consequences.
96. Flood risk assessment now requires the risk-based approach to be applied at all levels of decision-making, subject to minimum criteria at Annex E of the PPS.

ii) The Sequential Approach

97. The sequential approach lies at the heart of PPS25 and effectively implements the precautionary principle. The approach is “central” to PPS25 and required to be applied by the LPA in its identification of land for development.
98. Annex D and Table D1 sets out the Sequential Test (see paragraph 16 of PPS 25). In its allocation of land for development, LPAs are required to apply the Test so as to positively demonstrate that

there are no other reasonably available sites in other areas with a lower probability of flood risk. That is, essentially, higher ground.

99. Sea and river flooding is dealt with inside Flood Zone 1. Only subsequent to there being no reasonable availability of sites inside that Zone can Table D.2 of Annex D be taken into account to locate development in such areas within Zone 2 or 3.
100. PPS25 provides for an Exception Test at paragraphs 18 to 20. Of course, the Exception Test assume the application of the Sequential Test has itself shown it not “possible” for the development to be located in a lower probability area. Instead, the Exception Test provides for development that remains necessary whilst at the same time managing flood risk.
101. Use of the Exception Test is further narrowed by paragraph 19 which provides that its use is “only” appropriate where there are “large area in Flood Zones 2 and 3, where the Sequential Test alone cannot deliver acceptable sites, but where some continuing development is necessary for wider sustainable development reasons”. Those reasons include essential operational infrastructure required to remain in use during inundation. They also include the need to avoid “social or economic blight”.
102. Of particular interest is the express possibility of using PPS25 Exception Test to trump “restrictive national designations” such as AONBs, SSSIs and World Heritage Sites otherwise “prevent the availability of unconstrained sites in lower risk areas”.
103. Paragraph 20 requires that all three elements of the Exception Test will need to be “passed” for the development to be allocated or permitted. This precondition reflects, in guidance terms, the EIA requirement to take into account specified information before and not after the event of planning permission grant. As a consequence, reflecting the modern approach to proper planning, flood risk planning front loads ever further the information now required before and not after the event.
104. The heart of the Sequential Test appears in Annex D where paragraph D1 states that:

Its aim is to steer new development to areas at the lowest probability of flooding.
105. Annex D, Table D.1 sets out in tabular form the Sequential Test. Essentially, the Table sets out Flood Risk Zones which expressly assume *no* flood defences are present. That is, a worst case.
106. There are three Zones:

- Zone 1: Low probability;
- Zone 2: Medium probability;
- Zone 3: High probability
 - Zone 3a (high probability);
 - Zone 3b functional flood plain.

107. The physical compass of the area of each zone is defined by reference to flood risk probability. For example, Zone 1 comprises land assessed as having less than 1 in 1,000 annual probability of river or sea flooding in any year (less than 0.1%). Consequently, the calculation of the flood risk will be an important factor in triggering the need for any assessment.

108. Subsequently, the “appropriate uses” for the Zone as defined are set out, together with the Flood Risk Assessment requirements for development inside that Zone. In addition, a policy aim is cited in respect of each Zone.

109. As may be expected, as the probability of flood risk increases, there is a tightening of potential land uses, from “all” in Zone 1 to “water compatible” and “essential infrastructure” in Zone 2, and a prohibition upon on “highly vulnerable uses” in Zone 3.

110. Of course, danger from flooding may arise from the physical displacement of water by the presence of three-dimensional buildings, as well as from an inability of water to find a conduit through which to escape. Consequently, in Zone 3 appears the need for creation of space for flooding to restore volume or pathways whose space is occupied or to which access is impeded by the presence of the development.

111. Table D.1 is read in conjunction with Table D.2 which classifies the vulnerability to flood risk of different uses- the human factor- and also the need for functional continuity during a flooding event. As may be expected, the highly vulnerable include police stations where cells may hold prisoners, basements, caravan sites and installations for hazardous substances. By degree, the more vulnerable includes hospitals (since the sick may be unable to walk to safety), and dwellings.

112. Table D.3 combines Table D.1 and D.2 to produce a matrix of compatibility with express development prohibitions for some development within Zones 3a and b.

113. As identified above, only subsequent to an assessment under the Sequential Test does consideration of Exceptions arise. Paragraph D.9 sets out the requirements for passing the test:

- It must be demonstrated that the development “provides wider sustainability benefits to the community that outweigh flood risk;
- The development must be on previously developed land (or it must be demonstrated that there are no reasonable alternatives on such sites);
- The flood risk assessment must demonstrate that the development “will be safe”, without increasing flood risk elsewhere, and where possible, will reduce flood risk overall.

114. Of particular interest is the positive requirement to demonstrate that a proposal “will be safe”. Like the LPA, the Agency self-insures. Consequently, this national Agency is unlikely to underwrite the risk of subsequent property damage or death or injury from flood without an objective demonstration that development “will be safe”.

iii) Flood Risk Assessment Content

115. Annex E sets out the principles of Flood Risk Assessment. Paragraph E1 requires iteration as between the different levels of risk assessment, whilst E3 prescribes the “minimum requirements” of its content. In short, the FRA should:

- be “proportionate to the risk and appropriate to the scale, nature and location of the development”;
- consider the risk of flooding arising “from” the development “in addition” to the risk of flooding “to” the development;
- be undertaken early in the development process, including to “avoid ...raising land-owner expectations where land is unsuitable for development”;
- consider the potential adverse and beneficial effects of flood risk management on infrastructure, and defence failure;
- consider the vulnerability of the possible occupants, and arrangements for safe access;
- consider the different types of flooding, and their joint or cumulative effects, and also identify flood risk reduction measures;

- consider a range of flooding events, including extreme events on people, property and natural and historic fabric, and upon coastal processes;
- include assessment of residual risk after risk reduction measures have been taken into account, and demonstrate the acceptability of the development in question;
- consider how the ability of water to soak into the ground may be changed by the development, and the development's affect upon drainage systems;
- be supported by data and information, including historic information on previous events.

116. Paragraph E8 requires that “an appropriate FRA will be required” at the planning application stage “to demonstrate how flood risk from all sources of flooding to the development” itself and also to others will be managed.

iv) Responsibilities

117. The damage that inundation may cause to property and life is sufficiently serious for the Government to have spelt out in paragraphs 21 and 22 relevant responsibilities.

118. Whilst pointing out that there is no “general duty” on the Government to protect land or property from flood, “the Government recognises the need for action to be taken”. Further, paragraph 22 speaks of “primary responsibility for safeguarding their land and other property against natural hazards such as flooding” Further, “those proposing development are responsible for:

- Compliance with PPS25;
- Provision of a Flood Risk Assessment;
- Designs reducing flood risk;
- Identifying opportunities to reduce flood risk, including collective solutions for its management.

119. Of particular interest is the tacit admission by PPS25 that central and local government may have *some* responsibility – as in liability - for the burden of the risk of subsequent flood damage to property erected pursuant to a grant of planning permission, albeit that it may not be “primary” responsibility. Further, the guidance seeks to attach some responsibility to LPAs (which self-insure), and also to developers and to their designs. To underscore the financial concerns of central

Government, paragraph 23 expressly notes that the above factors “can affect the value of land, the cost of developing it and the cost of its future management”.

v) The Flood Risk Direction

120. Further reflecting its concern, interest and, perhaps in part, responsibility, the Government has also issued the 2007 “Town and Country Planning (Flooding)(England) Direction” for major development. As paragraph 28 of PPS25 notes, this Direction essentially makes provision for dispute resolution by the Secretary of State where the Agency is “unable” to withdraw its objection to development but the LPA remains “minded to approve” it in any event.
121. An example of the inability of the Agency to withdraw an objection may be a lack of information in the FRA submitted, or where the FRA fails to objectively demonstrate that the development “will be safe”.
122. The Direction provides the Secretary of State to himself ensure compliance with the terms of PPS25, and to have the opportunity to “call-in” for his own determination the development in issue. “The Secretary of State would wish to be assured ... that all reasonable steps have been taken by the LPA, the Environment Agency and the applicant through discussions” to consider changes to that major development.

Law

123. This part is divided into two parts:
 - Flood risk cases;
 - Liability for the creation of dangerous states.

a) Flood Risk Cases

124. Flood guidance has featured in a limited number of cases. The Court has considered the meaning of, approach to, and the consideration and application of the precursor to the PPS25 sequential test within PPG25 in three relevant cases. These are:
 - *R (on the application of Bates and Sons Limited) v Secretary of State for Transport* [2004] EWHC 1818 July 13th 2004 [2005] JPL 343;
 - *Fagg and Peel v Secretary of State for Transport* [2002] EWHC 1327 (Admin) 5th July 2002);

- *R(Environment Agency) v Tonbridge and Malling Borough Council and Another* [2005] EWHC 3261 (Admin) 21st December 2005.

i) Bates

125. The Court considered the correct approach to the then sequential test in the *Bates* case. The facts were briefly as follows. The Claimant applied for planning permission for construction of some 124 dwellings in Essex. The Council refused permission. The Claimant appealed.
126. The development proposed had been subject to a previous appeal decided by the same inspector, and which was subsequently quashed by consent. The inspector had decided against the Claimant in respect of tidal flood risk.
127. Following reopening of the inquiry the sole issue related to flood risk. Once again, the inspector decided the high risk of flooding remained an obstacle to development of the site. Once again, the Claimant appealed.
128. The question for the Court was the correct interpretation and application of the then sequential test. It was submitted that the inspector had had regard to the flood risk map *alone*, and not to the *actual* risk of flooding. Consequently, the inspector failed to have regard to the existing flood defence as a material consideration within the decision making process.
129. In respect of its potential application to PPS25, *Bates* supports the proposition that consideration of *actual* risk (that is, the risk *including* the existence of existing flood defences and their impact upon the statistical analysis) becomes a relevant consideration after application of the current Sequential Test (where they are now expressly required by and within Table D.1 to be excluded), but subsequently and during the application of the Exceptions test.
130. If it were otherwise, existing defences would never fall for consideration, and actual circumstances would be ignored always.

ii) Fagg

131. In *Fagg*, the Court considered the question of reasons where flood risk was an inquiry issue. The facts were briefly as follows. An interested party applied for planning permission for the development of land for a shop on a brownfield site in Suffolk.

132. The application was considered on appeal. The inspector decided of two issues, one concerned flood risk. A statutory development plan policy prohibited development within flood risk areas. However, he decided to impose a condition requiring an acceptable scheme to manage flood risk. Consequently, he held the development would not be unacceptable.
133. The Claimant issued proceedings in the High Court. They contended that no account had been taken of flood risk, and that the inspector had failed to understand and to apply PPG25. On the facts, it was clear that the Agency had attended and given evidence on flood risk to the inquiry. True it was that no mention of the sequential test was made in the decision letter. However, decision makers are familiar with national guidance. Further, the issue was not a main issue in the Claimant's evidence to inquiry.
134. Consequently, the Court held that, where the test was cited in *evidence*, and not a *principal* controversial issue, there was no need to expressly mention the sequential test (see paragraphs 41 and 42 of that case). That approach would appear to remain no less sound under PPS25.

iii) Tonbridge

135. The *Tonbridge* case is the most recent. It is also of most interest. Essentially, the Court held that the then version of the sequential test was required to be followed. Failing this, a decision to grant permission was quashed. The facts were briefly as follows.
136. The local planning authority granted planning permission for development of 63 sheltered housing apartments. The development site lay inside a 100 year flood plain. It had been severely affected by flooding on several occasions. In 2000 the site was flooded despite the presence and *operation* of a flood defence system called the Leigh Barrier.
137. The Agency objected following the statutory consultation process. It applied PPG25 and objected to the *type* of development proposed. It considered the sub-basement areas proposed would be submerged under more than 1 metre of water consequent upon inundation. The Agency required, amongst other matters, a dry route to allow escape from the building and access for emergency services.
138. The developer submitted no flood risk assessment. Further, the proposals included ground floor communal facilities of which the Agency appeared unaware.
139. In *Tonbridge*, the Court held that:

- There is a clear obligation on the Council to take due regard of the sequential test (see paragraph 17 of the PPG25 then sequential test Table Note);
- explicit application of the sequential test was not always required where it had been extensively considered during a 7 day inquiry (as in *Fagg*);
- where there was no explicit reference to the sequential test, it would be more difficult for the Court to be satisfied that it had been applied;
- there must be some material before the decision maker as to the applicability of the sequential test (see paragraph 16 of Note);
- the sequential test should be applied when drawing up both development plans and on individual applications;
- a PPG3 urban capacity study was not evidence of application of the PPG25 sequential test (see paragraph 19 of Note).

140. The PPG25 sequential test thus operates as a locational imperative directing development away from PPG25 Flood Zone 3(b), towards 2 and towards 1.

141. It is apparent that this locational imperative is the application in PPG25 of the precautionary principle:

“In accordance with the precautionary principle, local planning authorities should, therefore, follow the sequential approach set out in paragraph 30 and Table 1. When preparing development plans and considering applications for planning permission, they should consult and take into account advice from the Environment Agency, which should incorporate the latest information on climate change.”

142. The key point arising from *Tonbridge* is that PPG25 did “define a decision making process”. Consequently, a development not following that process appears at some risk of ultimate derailment. The same appears no less true under the terms of the clearer successor: PPS25. A decision making process is clearly defined.

b) Liability for the creation of dangerous states

143. The case of *Kane v New Forest District Council* [2001] EWCA Civ 878 (and remitted at LTL 12/4/2002) is interesting for the direction it takes the common law in respect of liability for omissions by public law decision makers in respect of their participation in the creation of dangerous states.

144. In simple terms, who may be liable for the loss caused where the grant of planning permission may have the effect of permitting a dangerous state of affairs in which a harmful event later (in fact)

occurs? Alternatively, by its imposition of a condition or planning obligation, may a planning authority require the creation of such a dangerous state?

145. For example, consider the permitting of development in a flood plain where risk of flood is (in private law) foreseeable and the risk assessment analysis found flawed or works inadequate when damage occurs later? Alternatively, consider a planning condition requiring construction of a flood mitigation measure whose consequence is to create a risk of flood danger to another's land- which danger later crystallises.
146. As will be recalled, the local planning authority is (initially) charged with decision making under PPS25. In *Kane*, a local planning authority was held liable for creating a dangerous state of affairs consequent upon a requirement in its grant of planning permission to construct a road on a hazardous bend.
147. In the pre-*Kane* world, it was said that local planning authorities enjoyed blanket immunity from the consequences of their planning functions. As such, they appeared then immune from negligence actions.
148. Post-*Kane*, such blanket immunity does not exist. Rather, local planning authorities are required in the exercise of their planning functions to prevent omissions arising which create a dangerous state of affairs.
149. The facts were briefly as follows:
 - There was an application for planning permission to develop land for housing;
 - A link across a road was proposed;
 - The link was described by the Highway Authority as totally unsuitable because of the lack of sightlines;
 - The Council entered into a section 52 agreement under the then 1971 Planning Act with the applicant to provide for construction of the link footpath;
 - The Council granted planning permission;
 - A further section 52 agreement was executed as a condition precedent to commencement of development, and by which the applicant agreed to construct the footpath;
 - The footpath and link were constructed;

- After a site visit, the Council said it agreed there was a safety problem due to inadequate sightlines;
 - The Highway Authority noted the current hazardous situation. It recommended improvement of sightlines;
 - The footpath opened and time passed;
 - An accident occurred within the physical circumstances created whereby (by co-incidence) a passing pedestrian was hit by a passing car and suffered serious personal injury.
150. A claim was issued for damages for personal injuries sustained. The defendant was the local planning authority. The Claim was dismissed by the District Judge on the basis of then existing legal authority.
151. The Claimant appealed to the Court of Appeal. Lord Justices Simon Brown (as he then was), May and Dyson considered the issue as follows.
152. The Respondent local authority contended that it enjoyed a blanket immunity in law in respect of anything done in the exercise of their planning functions.
153. The Court of Appeal held that:
- it was far from clear on the legal authorities that a local planning authority would be *immune* from liability if they permitted (still less if they required) the construction of a foreseeably dangerous footpath, or they failed when granting the planning permission (or requiring the work) to impose a condition forbidding the opening of the footpath to the public until the sightlines had been cleared. How could the imposition of such a condition be contrary to anyone's interests?
 - in response to the absence of any power, it was not irrational of the local planning authority not to have required or requested the footpath closed until made safe. The Court of Appeal held that it was irrational of the local authority to omit to do something to make it safer;
 - The start point is that the local authority did create the source of danger. It was they that required the footpath constructed. It is not entitled to wash its hands of that danger and simply leave it to others to improve the sightlines;
 - The local planning authority was not entitled to stand idly by whilst a dangerous circumstance remained extant and in a recognisably dangerous state;

- The Claimant had a positively powerful case;
- The submission that a planning authority has a blanket immunity from claims for negligence whatever the facts was rejected;
- the local planning authority has the effective power to prevent omissions arising;
- there was a solid basis in law that the Claimant's accident was caused by the local authority's breach of the duty of care which they assumed.

154. The Court of Appeal remitted the claim for re-determination. The local planning authority Part 20'd the driver who had hit the pedestrian.

155. The Claimant said that the defendant planning authority had caused a footpath crossing point to be created at a hazardous location and then permitted its use before measures had been taken to make the crossing point safe. The Defendant authority accepted that it owed the claimant a duty of care but disputed causation. It said that the "creation of the crossing point, albeit in a hazardous location, was not the effective cause" of the accident.

156. The Claimant said that the defendant had known for some time that in terms of road design, a footpath joining a road on the inside of a blind bend was dangerous, and that this was the effective cause of the accident. The claimant and driver were "put into a situation by the defendant's breach of duty of care where neither was able to avoid an accident".

157. The Court held that the Defendant local planning authority two thirds liable for the damages for the personal injury arising from its negligent omission engendering the dangerous circumstances giving rise to causation.

158. The out turn of this case in respect of the liability of other public decision makers remains to be seen. Importantly, this common law requirement to prevent the creation of dangerous state of affairs crystallising upon a grant of planning permission militates against future use of conditions dealing with inundation risk management. Furthermore, it encourages developers to properly consider the sequential test before and not after the event giving rise to eventual inundation. That is eminently a sustainable approach.

Conclusions

159. In conclusion, it is apparent that:

- A small risk may have catastrophic consequences upon the crystallisation of that risk: from death by drowning to extensive property damage;
- PPS25 acts as a development driver in respect of the nature and location of development which may trump national designations;
- Decision makers are required to follow the Sequential Test, and thereafter the Exceptions Test;
- Failure to consider the Sequential Test may place development at risk of quashing;
- The risk of quashing of a planning permission within a flood plain arises because of the potentially catastrophic event of flooding which, but for the development, would not occur;
- Public decision makers appear liable for the creation of dangerous states of affairs. Given this renewed age of PFI/PPP, does liability for flood damage extend to the public authorities?

OBITUARY - TOM WOOLLAM

Sadly, UKELA member, Dr Tom Woollam of Vastus Consultancy based in Cardiff passed away recently. Tom was an active member of CIWM for many years and had more recently sought to become involved with UKELA and help to promote our activities in Wales. Appended below is the obituary published by CIWM which they have kindly allowed us to reprint.

“It is with great sadness that we announce the passing of Dr. Tom Woollam at the young age of 28. Tom suffered from Cystic Fibrosis but never let his condition slow him down, if anything it only added to the drive of this spectacular young man. Tom started his career by securing a degree in Science followed by a Masters degree in Law. Not content with this he gained a PhD from Cardiff School of Engineering and was a Chartered Waste Manager. Tom worked closely with Welsh Local Authorities while undertaking his PhD research and made many friends along the way. It was during this time he became involved with CIWM Cymru Wales. Following his work with Cardiff University he established and ran his own Resource Management Consultancy called Vastus.

Tom was well known in the Welsh Centre, partly due to his early role of NGG Co-ordinator and latterly Honorary Treasurer. He was also well known because of his knowledge, professionalism, verve and sense of humour. A dynamic ball of energy he made a difference wherever he went and sought to develop himself and others along the way, while ensuring that he and those around him enjoyed themselves. He had a particular desire to see younger members of CIWM develop, and in recognition of this CIWM Cymru Wales are seeking to establish an award in his memory. There are many more things that could be said about him but I speak for his Welsh Centre colleagues and all his other friends in the waste industry when I say, ‘He will be sadly missed’ ”.

UKELA MEMBERSHIP DEVELOPMENT WORKING GROUP

There is some great news to report about UKELA's flourishing membership:

- Our numbers are growing – individual members are up to almost 700 (a 15% increase this year) and we have 474 corporate members (a 15% increase this year); and
- We are recruiting many more members from the environmental consulting (6% increase this year), academic (10% increase this year) and student (30% increase this year) sectors.

The recruitment of new members, especially those with academic or non-law backgrounds, is most welcome. It brings greater diversity to our membership. It adds a fresh perspective. This positive development is also very much in line with the plans for the association (ref: UKELA's 2006 -2009 Strategic Plan).

The Plan sets targets to increase both the size as well as the diversity of our membership. A Membership Development Working Group was set up in 2006 to promote the association in new directions and to help with the achievement of the associations' growth and diversity goals. The message conveyed is that UKELA is not simply for lawyers in private practice, but for everyone interested in environmental law.

The Group itself was intentionally set up to embrace a wide spectrum of experiences in respect of environmental law. It currently comprises an academic environmental lawyer (Donald McGillivray); two practising environmental consultants (Neil Humphrey and Tim Clare); UKELA officers Vicki Elcoate and Alison Boyd; a lawyer in the public sector (Elizabeth Lowe); and a renegade environmental lawyer / businessman (the writer).

We are very interested to extend further the Group's reach by receiving input, from time to time, from the following people:

- A student of environmental law;
- A representative of an NGO;
- A newly qualified / junior environmental lawyer from private practice.

Input can simply comprise attendance at one of our quarterly meetings which are generally held in London, or just an exchange by phone or email of your ideas for UKELA's growth and diversity. If you are interested in making such a contribution, please can you contact the Group using the contact details below.

Meantime, the Group's work has initially had two priorities for the association:

- To increase the number of environmental consultant members.

There are encouraging signs in this regard. We have 102 environmental consultant members (about 10% of our membership). The establishment of a Working Party on Environmental Due Diligence in 2006 is part of this wider initiative. We now have two environmental consultant members on Council.

- To increase the number of teachers and students of environmental law.

Again, there are some very positive developments. We have more than 80 student members (30% increase this year). We have also increased academic members to more than 30. The annual Student Careers event is part of this initiative, and there has been a campaign to attract more teachers to the association which has yielded some successes.

Ultimately, the success of UKELA hinges neither on the number nor the diversity of our members – but on the extent to which our members get involved with what we are trying to do. By broadening the range of benefits that flow from being a member of UKELA, we can all be highly confident that we will meet our goals of a growing, more diverse and more active association, appealing to everyone with an interest in this most important area of the law.

Stephen Sykes
Chair
Membership Development Working Group

sykesenvironmental@tiscali.co.uk
Tel: 0845 226 7164
07899 843248

WILD LAW

The Wild Law Workshop in Derbyshire was a great success. We were delighted at the interest in the event and grateful to the speakers who kindly gave up their time to lead discussions (our thanks to Cormac Cullinan of ENACT international, Andy Kimbrell US Public Interest attorney; Peter Roderick of the Climate Justice Programme and Brian Goodwin of Schumacher College) and to Elizabeth Rivers, who was the facilitator. UKELA is also grateful to the Body Shop Foundation for its sponsorship. There will be a full report in the next edition of e-law.

In the meantime a new on-line discussion group on Wild Law has opened.

In order to promote discussion of Wild Law concepts and to enhance communications between interested individuals, a Wild Law forum has now been created. This facility is available for immediate use and registration instructions are detailed below. We hope that the forum will be successful in providing a platform for group debate within a globally-accessible environment, within which new ideas can be expressed and developed.

Anyone wishing to post comments or initiate discussion can do so within the general discussion area after registering. Associated articles, papers and useful web-links will shortly become available from the forum page.

Registration instructions:

Anyone can view the Wild Law forum, but to start posting you will first need to register and login. The URL is as follows:

<http://www.forumality.net/environment/wildlaw/>

(1) Click on the registration button found on the top left of the main menu bar. Once you've verified your age, fill out the required details and click the submit button. You need only supply information within boxes marked with an *. The registration page will automatically suggest the safest settings. Once successfully registered, you will receive a confirmation email containing your login details.

(2) You can now log in. To do this, simply click the log in button at the top left of the menu bar. You will then be asked to enter your new password and username. Once you have entered your details you will be free to post topics and replies in the general discussion area.

NB - The locked areas of the forum are for official announcements. These can be referenced by all users but only moderators will be allowed to post.

The current moderators of the Forum are Simon Boyle (UKELA Council member) and Josie Gander.

Simon says: "we think it will be a great way for us to keep in touch, forge links with other organisations and communicate ideas".

EDITOR'S UPDATE

For those who have an environmental law job to advertise, e-law is a cost effective way of reaching over 1,000 people with relevant skills and interest. Advertising your job in e-law costs £200, with £50 for NGOs, academic institutions and statutory bodies including local authorities.

You will need to be mindful of e-law's publication dates when planning to place an advert, although we can also include them in the members' mailings which we circulate in between editions of e-law. My email is catherine.davey@stevens-bolton.co.uk and I'm happy to discuss your requirements. We hope to be able to make this opportunity available on the website soon too.

I am pleased to announce that back copies of e-law back to 2000 are now available on the website. Most of these are in pdf format so you can click on bookmarks (on the left) and search them easily. The latest edition on the website is six months' old. Only UKELA members benefit from the most recent editions.

SPECIAL OFFERS FOR UKELA MEMBERS

Complimentary copy of ENDS *Europe* REPORT

ENDS *Europe* REPORT is the European environmental policy briefing for business that will ensure you have a better understanding of the legislative constraints imposed by EU regulations on both now and in the future. We look at how the ever increasing numbers of EU directives are actually being interpreted in the European countries where you and your clients operate and assess their impacts on business.

Draft Legislation Tracker and National Regulations Monitor

Available only to subscribers, these keep you updated on the national environmental regulations being proposed in 31 European countries and allow you to stay ahead of compliance deadlines with an at-a-glance status report on future legislation.

As a member of UKELA, you can now trial ENDS *Europe* REPORT and get full access to www.endseuropereport.com and the above databases for one month.

Alternatively, order by 30th September and take advantage of a 20% discount on the standard rate - exclusive for UKELA members.

To receive your printed copy of ENDS *Europe* REPORT and get access to the website visit www.endseuropereport.com/sample/ukela

To take advantage of the discount offer for a 1 year subscription to *the ENDS Report* visit www.endseuropereport.com/order/ukela

WORKING PARTIES

WATER WORKING PARTY - NEW CO-CONVENORS

James Montgomery from Mott Macdonald has stood down as Convenor of the Water Working Party. UKELA is very grateful to James for his hard work with the working party. Julie Adshead from Manchester University, Mothiur Rahman from Bircham Dyson Bell and Hilary Drenth from Parkinson Wright have taken over from James as co-Convenors and we are also grateful to them for doing so. Further details about the Water WP's future activities will be posted on the website soon.

Contact details for the new convenors are:-

Julie Adshead

Associate Dean Enterprise
Faculty of Business, Law and Built Environment Room 722 Maxwell Building Manchester
M5 4WT
0161 295 3716
J.D.Adshead@salford.ac.uk

Mothiur Rahman

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50 Broadway London SW1H 0BL
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Hilary Drenth

Parkinson Wright
Suite 2
Vale Park Business Centre
Vale Park
Evesham
WR11 1GN

Tel: 01386 761176
hjd@parkinsonwright.co.uk

WASTE WORKING PARTY - NEW CONVENOR

The Waste Working Party has appointed Angus Evers as its new convenor as Andrew Bryce, the long-standing convenor and one of UKELA's founder members, retired from the role at the Bath conference. UKELA is pleased to welcome Angus to the role. His details are as follows:

Angus Evers
Norton Rose
3 More London Riverside

London SE1 2AQ
020 7283 6000
angus.evers@nortonrose.com

Andrew Bryce was UKELA Chairman from 1988 to 1991 and was on the Council for a number of years. Admitted as a solicitor in 1971, he was a partner at Cameron Markby (now part of CMS Cameron McKenna) where he set up and led the Environmental Group until his departure in 1994 to set up his own sole practice Andrew Bryce & Co specialising in environmental and health and safety law. He acts for a number of clients in the waste, industrial and oil and gas sectors. UKELA is extremely grateful to Andrew for his support – in recognition of this Andrew was made an honorary life member of UKELA at the Annual Conference.

JOBS

ENDS LEGAL COMPLIANCE MANAGER

Legislation Writer

Part-time and Full-time and home-working considered

You will write daily legal outlines and consolidated legal summaries for new, amending and forthcoming legislation which have been identified by our daily Legislation and Policy monitoring team, as well as, contribute your legal skills to the wider publishing activity of the ENDS Legal Compliance MANAGER.

Requirements:

- Qualified lawyer with additional career experience specialising in environment law or management. Preference will be given to candidates with completion of practical legal training and in environmental law
- Demonstrable ability to translate and summarise complex original environmental legislation text into a language aimed at the busy environmental professional
- Strong writing, analytical and editing skills and attention to detail and accuracy – with proven examples of your published work aimed at a business or public sector audience
- Comfortable working with new online technology and database entry
- Enthusiasm for environmental issues and publishing as a career
- Ability to work well under pressure to daily publishing cycles

Closing date for applicants: 5 October 2007

To apply, please visit the Editorial section of the career pages on the Corporate Haymarket Media Group website and apply online, using the user-friendly job application tool, at: www.haymarket.com

If you have any specific queries or would like a full job description relating to the position itself, please contact Dr. Catherine Wilson at: ELCMrecruitment@haynet.com or Tel: 02082678124

ENDS LEGAL COMPLIANCE MANAGER

Technical Writer/Editor

Office Based (Hammersmith; London)
Part-time and Full-time considered

Your key editorial job will be systematically carrying out the daily reviewing, updating and editing of our published policy briefings with new policy and legal developments identified by our Policy and Legislation monitoring team – ensuring currency, accuracy and speed to market. In addition, this position will contribute to the wider publishing activity of the ENDS Legal Compliance MANAGER, such as writing policy summaries on key documents and ad-hoc commissioning.

Requirements:

- Strong technical degree in either: environmental law, environmental policy or environmental management
- 3-5 years of professional experience working on a broad range of environmental law and policy analysis with technical depth to research, review and update on any range of environmental policy issues
- Strong writing, reviewing, analysis and editing skills with attention to detail and accuracy
- Strong demonstrable portfolio of published technical writing and analysis on environmental policy issues for a business or public sector audience
- Comfortable working with new online technology and database entry
- Strong communication skills working well with other authors and during ad-hoc commissioning
- Ability to work well under pressure to daily publishing cycles

Closing date for applicants: 5 October 2007

To apply, please visit the Editorial section of the career pages on the Corporate Haymarket Media Group website, at: www.haymarket.com

If you have any specific queries relating to the position itself or to request a full job description, please contact Dr. Catherine Wilson, at: ELCMrecruitment@haynet.com or Tel: 02082678124

WHAT'S ON – REGIONAL GROUP MEETINGS / CONFERENCES / LECTURES / SEMINARS

SCOTTISH ANNUAL CONFERENCE

UKELA's Scottish Group has organised a one day conference on "Environmental Issues in the Urban Environment" in Edinburgh on Tuesday November 13th.

The conference is chaired by Professor Kenneth Ross and the programme includes Environmental Case Law update by Sir Crispin Agnew and sessions on SEA and EIA, Public Health and Nuisance, The Whiteness Project; Enforcement of Environmental Law and Environmental Liability; Environmental Due Diligence in the Scottish Conveyancing Market and Sustainable Development.

Places for members are £145, non-members £175 and a limited number of free places for students. The booking form is on the diary section of www.ukela.org. For booking enquiries contact info@originevents.co.uk.

REGIONAL GROUPS - MEETINGS

East Anglia - meeting on Planning Law and Renewable Energy Wednesday 26 September 2007

West Midlands - meeting to give updates on Environmental Law and ELD Monday 15 October 2007

North East - meeting on REACH Tuesday 30 October 2007

South West - meeting on ELD and regional group AGM Monday 19 November 2007

All meetings can be booked via the website www.ukela.org or by contacting alisonboyd.ukela@ntlbusiness.com.

GARNER LECTURE

The date for this year's lecture will be Wednesday November 21st at 6.30pm. The event is being held in partnership with the Journal of Environmental Law and University College London. The speaker is M.C. Mehta, the leading Indian environmental lawyer, attorney in the Supreme Court of India, one of the founders of the Indian Council for Enviro-Legal Action (ICLEA), and director of the M.C. Mehta Environmental Foundation in New Delhi. M.C.'s landmark environmental cases in the Supreme Court of India have resulted in the protection of India's natural and cultural treasures – including the Ganges River and the Taj Mahal – from the adverse effects of pollution. In addition, M.C. played a key role in persuading India's Supreme Court to rule that Article 21 of the Indian Constitution, which guarantees each citizen the "right to life," necessarily includes the "right to a healthy environment."

In 2000, M.C. Mehta achieved a long-held dream to build an international facility for teaching public interest environmental advocacy. The foundation is a non-profit, non-governmental organization (NGO) working throughout India for the protection of the environment and citizens' rights. <http://www.mcmef.org/>.

Put the date in your diary – more details soon.

CONFERENCE ON EU ENVIRONMENTAL LIABILITY DIRECTIVE

27 November 2007 at The Royal Society London

The conference is organised to provide a platform for the discussion of some of the key issues surrounding the implementation of the EU **Environmental Liability Directive** (ELD). The ELD makes 'operators' legally and financially responsible for cleaning up environmental damage to water, land and protected wildlife in accordance with the Polluter Pays Principle. This conference will showcase the Toolkit produced by the REMEDE project for the European Commission on how to implement **resource equivalency methods** for assessing damage and determining remediation under Annex 2 of the ELD. The Toolkit is also relevant for selecting compensation measures under the **Habitats and Wild Birds Directives** and the **Environmental Impact Assessment Directives**. A flier with further details including how to book is attached.

STUDENT SOCIAL EVENT

Students considering a career in environmental law are warmly invited to come along to our social and careers advice evening on December 6th. The evening starts at 6pm at Freshfields Bruckhaus Deringer, 65 Fleet Street, EC4. The format is informal with advice from UKELA members working as lawyers,

barristers, environmental consultants, regulators, government lawyers, in NGOs etc. There will be a short presentation on UKELA and careers in environmental law at 7pm. All students are welcome, places are free but must be booked and numbers are limited. Refreshments will be provided. To book your place email alisonboyd.ukela@ntlbusiness.com.

UK ENVIRONMENTAL LAW ASSOCIATION

Registered Charity number: 299498 (Registered in England and Wales), Company limited by guarantee: 2133283(Registered in England and Wales)

For information about working parties and events, including copies of all recent submissions contact.

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MEMBERSHIP ENQUIRIES

Alison Boyd
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Tel: 01306 500090

E - LAW

The editorial team want articles, news and views from you for the next edition due to go out October 2007. All contributions should be dispatched to Catherine Davey as soon as possible by email at: catherine.davey@stevens-bolton.co.uk by 20 October 2007
Please use Arial font 11pt. Single space. Ensure headings are in bold capitals.

Letters to the editor will be published, space permitting

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