



Water Management Alliance

Planning and Byelaw Policy

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Consisting of:

Broads (2006) IDB, East Suffolk IDB, King's Lynn
IDB, Norfolk Rivers IDB and South Holland IDB

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1 Executive Summary

- 1.1 Following the establishment of the Water Management Alliance (WMA), this document seeks to create a set of approved policies showing how the five member Boards should determine planning, Byelaw and Land Drainage Act applications. This is achieved by examining the “where, when, how, who and why” of the planning and Byelaw processes.

Where – the districts where planning applications need to be viewed to see if they affect a Board.

When – the circumstances when applications may need input or approval from one of the Boards.

How – how different types of application should be considered and determined by the Boards.

Who – whether certain decisions should be made by WMA Officers or Board Members, thereby making it clear on which applications each group of people will have an input.

Why – the reasons it is important for the Boards to comment on planning and Byelaw applications, as well as the reasons behind the proposed decisions for different applications.

- 1.2 The different types of development which may occur within or adjacent to Board-maintained watercourses are examined individually. A recommendation is made for each as to whether Officers or the Board should determine the application, together with a suggestion for whether or not consent should normally be granted and any standard conditions which should be appended to the consent.
- 1.3 The establishment of a committee for each Board with the delegated authority to determine planning and Byelaw applications between full Board meetings is proposed, as is a time limit for all issued consents. This then means that if the planned works are not completed within 5 years from the date of the Board’s decision, a new application must be made, and should then be determined in line with policies applicable at that time.
- 1.4 The policy next proposes using Deeds of Indemnity to consent future Byelaw relaxations. Deeds of Indemnity are legal agreements which set out why a relaxation is needed as well as the Grantee’s undertakings relating to liability for the development, the property and any damage to the Board’s watercourse. A restriction contained in the Deed is lodged at HM Land Registry, which alerts any prospective owners or mortgagees of the property to the Board’s consent. The restriction also means that the affected Board must consent to any transfer of the property, with such consent only issued after the new owner has signed a legally-binding covenant to abide by the terms of the original Deed.
- 1.5 Where a development is proposed adjacent to a Board-maintained drain, there may be a clear strip left between the drain and the first fences or structures erected as part of the development. The advantages and disadvantages of owning such strips are described, and it is proposed that each Board seeks to have such strips conveyed to it, at no cost, wherever possible.
- 1.6 Following on from this, the policy considers the various ways in which surface water may be disposed of from a development, and for which of these methods there is a requirement to obtain a Board’s consent. The impact on a Board’s drainage system of each of the methods is also studied.
- 1.7 Where there is a direct discharge to a watercourse, a Surface Water Development Contribution (SWDC) may be payable to a Board. These contributions are levied when there is an increase in the rate or volume of run-off to the drainage system, and are used to part-fund the gross cost of capital improvement works to Board-maintained watercourses. There is a proposal to standardise the SWDC rate across the five WMA Boards with effect, and to then amend this figure on an annual basis. It is suggested that WMA Officers conduct a review of the true current cost of accepting direct surface water discharges, which will allow the Boards to establish whether or not the present SWDC charges are appropriate. At the same time a formula should be developed for calculating all future annual increases to the SWDC rate.

- 1.8 Some of the major implications of Planning Policy Statement 25 (PPS25) on the Boards are examined, including the increased emphasis on Sustainable Urban Drainage Systems (SUDS) and the adverse impact this will have on the amount of money collected from SWDCs. PPS25 will also require developers to discuss individual sites' flood risk with interested parties, including IDBs, and to help with this hydrological modelling of the Boards' drainage networks is likely to be needed. Modelling will also inform the decision-making process when an application for a direct discharge is received, or when conditions designed to counteract increased flood risk may need to be specified by a Board. The requirement for management of planned SUDS by a "competent authority", and the payment of a Commuted Maintenance fee to cover this are also discussed.
- 1.9 Having looked at the proposed fees for different types of application, the final section of the policy examines a suggested method for determining retrospective applications, and an enforcement procedure for dealing with Byelaw infringements. This procedure includes the potential for court action if this is required to resolve matters.
- 1.10 Key Proposals
- Once approved by the five WMA Boards, input should be sought on this policy from at least one arbitrator approved by the Institution of Civil Engineers to determine if there are particular decisions which may be likely to be successfully appealed against (see section 2.4).
 - Decision-making powers for Members and Officers on different types of application, as well as the usual decisions which should be made (see section 5.1).
 - Each Board should establish a committee with delegated authority to determine applications between Board meetings when required (see section 5.3).
 - Officers should be authorised to set up Deeds of Indemnity between Board meetings for proposals where they determine applications and issue consents (see sections 5.1, 5.5 and 6).
 - Consented Byelaw relaxations should be subject to a 5-year time limit, and cannot be sold, inherited or passed on without prior written consent from the Board (see section 5.6).
 - Future Byelaw consents should be granted using Deeds of Indemnity (see sections 6.2-6.4).
 - Where an easement strip is created next to a Board-maintained drain when land is developed, each Board should seek to have the strip conveyed to it wherever possible (see section 7).
 - The SWDC rate for the four Boards should be standardised at £40,500 per impermeable hectare from 1 October 2007. WMA Officers should also calculate the realistic current cost of accepting direct surface water discharges, to update the rate for 1 April 2008, and should produce a formula to calculate future rate increases on an annual basis (see sections 8.4-8.5).
 - The member Boards should consider the requirement for hydrological modelling in providing accurate Flood Risk Assessment information, in determining whether or not they can accept proposed direct discharges, and in supporting conditions which they may wish to attach to discharge consents (see sections 8.7-8.8).
 - SUDS should only be consented where a competent authority will be responsible for their ongoing maintenance. If this authority is to be one of the Boards, the Commuted Maintenance paid to that Board should include an allowance for hydrological modelling (see section 8.9).
 - Proposed fees for making different applications to the five Boards (see section 9).
 - A system for handling retrospective applications and Byelaw infringements (see section 10).

2 Introduction

2.1 Following the establishment of the Water Management Alliance (WMA), it has been decided to examine the way in which matters arising from planning, Byelaw and Land Drainage Act (LDA) consent applications within or adjacent to the district of any member Internal Drainage Board (IDB) are determined. Some Board Members have expressed concern over a lack of involvement with planning decisions, and have requested they take a more active role in this area. Questions have also been raised about the responses being made by the former Kings Lynn Consortium Boards to planning applications. This document aims to resolve these two issues as well as examining the four Boards' approaches to other planning and Byelaw issues.

2.2 Within the WMA, the district boundaries of the five member IDBs include parts of 15 different local Councils, as well as part of the area covered by the Broads Authority, which is the lead body on all planning applications within its region. A list of the Planning Authorities, and the Board(s) affected by each, is shown below:

Planning Authority	Member Board(s) affected
Babergh District Council	East Suffolk IDB
Boston Borough Council	South Holland IDB
Breckland District Council	Norfolk Rivers IDB
Broadland District Council	Broads IDB / Norfolk Rivers IDB
Broads Authority	Broads IDB / Norfolk Rivers IDB
Fenland District Council	Kings Lynn IDB
Great Yarmouth Borough Council	Broads IDB
Ipswich Borough Council	East Suffolk IDB
Kings Lynn & West Norfolk Borough Council	Kings Lynn IDB / Norfolk Rivers IDB
Mid Suffolk District Council	East Suffolk IDB
North Norfolk District Council	Broads IDB / Norfolk Rivers IDB
Norwich City Council	Broads IDB / Norfolk Rivers IDB
South Holland District Council	Kings Lynn IDB / South Holland IDB
South Norfolk District Council	Broads IDB / Norfolk Rivers IDB
Suffolk Coastal District Council	East Suffolk IDB
Waveney District Council	East Suffolk IDB

2.3 This policy examines why it is important for the WMA Boards to have an input to planning matters in their respective districts, and for applications in all the above Planning Authority areas to be viewed. The general types of planning applications which may affect the Boards, or which may be submitted to them for Byelaw or LDA consent, are also analysed. Proposals are included on whether each of these types of application can be determined solely by the WMA Officers, or whether such applications should be referred to the next Board meeting, and will consequently provide clear guidance to both WMA Officers and Members of each Board on how the planning process will affect them.

2.4 Although each member Board has its own set of Byelaws, made under either the Land Drainage Act 1976 or the Land Drainage Act 1991, the content of all five sets is broadly the same, and it is therefore proposed that a standard approach to planning and consent application decisions is adopted

across the five Boards. If approved, the policies contained herein will offer greater consistency, and should provide a more robust justification of how a particular decision was reached by one of the Boards if it is challenged by an applicant. Once approved by the five Boards, I would recommend that WMA Officers seek the opinion of at least one arbitrator approved by the Institution of Civil Engineers to establish if there are any areas covered in the policy where a Board may be particularly vulnerable to a successful appeal against its decision.

3. Why is it important to receive and comment on Byelaw and Planning Applications?

- 3.1 Although not a statutory consultee on planning matters, it is important for the Boards to view and comment on planning applications for a number of reasons. Firstly, the proposals may be within the 9 metre area adjacent to a Board-maintained watercourse, where development is prohibited by Byelaw 10 unless prior written consent is obtained from the Board. Without the Boards having the chance to view and comment on an application, many applicants would remain oblivious to the existence of IDB Byelaws and their implications, and within a short period of time there would be contraventions of Byelaw 10 across the districts, with the ensuing difficulties these would cause for the Boards.
- 3.2 By viewing applications before sites are developed, the affected Board also has the chance to make applicants and Planning Authorities aware of its requirements for the site and any written consents which may need to be obtained from the IDB for the plans. Depending on the nature of the proposed development, such consents may be granted directly by Officers, or may require approval at a Board meeting. Granted consents can be unconditional, or may be subject to compliance with any number of specified conditions, all of which must then be met before the Board's consent is valid.
- 3.3 Some plans submitted to a Planning Authority may be classified as "permitted development", when the applicant does not need to obtain planning approval. I would therefore suggest that the Boards seek to establish an arrangement with the Planning Authorities that when proposals within one of the IDB districts are received which are classified as permitted development, that the Planning Authority passes a copy of these to the relevant Board so that it may be determined whether or not Byelaw consent is required. However, as such an arrangement would only be on an informal basis, in order for it to work, reliance would be placed on the various Planning Authorities making all their Officers aware of the agreement and the need to follow it.
- 3.4 As well as the above, an application may involve the discharge of surface water directly to a watercourse. As the body with supervisory powers for all drainage matters within its district, each Board has a responsibility to ensure that proposals for surface water disposal from any development are unlikely to adversely affect other people or land. Each Board's Byelaws require that the Board gives prior written consent before anybody is allowed to increase the volume or flow of water in any watercourse in the district. Developments just outside a Board's area which discharge their surface water directly to a drain may also require consent if that drain then flows into the Board's system.
- 3.5 IDBs are also designated as Operating Authorities under the Countryside & Rights of Way Act 2000. This means that where one of the Boards receives a Byelaw or Land Drainage Act consent application which may have an impact on the interest features of a Site of Special Scientific Interest (SSSI), or on a European-designated wildlife site, the relevant IDB must take due account of the potential environmental implications of that application. Therefore where Byelaw consent is to be granted for proposed works to an influencing watercourse*, this consent should be conditional on the Board first being provided with a copy of the necessary approvals for the work from Natural England (NE).
- 3.6 Finally, applications may include any other works prohibited by a Board's Byelaws without prior consent, or plans to pipe a watercourse, either Board or privately-maintained. Although the likelihood of consent being granted for the latter applications will differ depending on who the drain is maintained by, failure to ensure that all infilled drainage channels include piping to the District Engineer's satisfaction may lead to future flooding problems in the locality. By having an input to these matters at an early stage, the number of such future problems will hopefully be minimised.

* - The term “influencing watercourse” is used to describe watercourses which are within, adjacent to, or drain land forming part of, a SSSI.

4. Development affecting Board-maintained watercourses

4.1 Some of the types of development which may occur on sites next to Board’s infrastructure or otherwise contravene IDB Byelaws, or which may require LDA consent, are as follows:

- a) Installation of a treatment plant outfall
- b) Installation of land tile outfalls
- c) Erection of fencing
- d) Change of use of an existing building adjacent to a Board-maintained watercourse
- e) First-floor extension to a property adjacent to a Board-maintained watercourse
- f) Crossing of a Board’s drain by electricity or telephone cables or by a gas or water pipe
- g) Erection of a garage
- h) Landscaping (including trees, hedges, shrubs, patios)
- i) Construction of access roads, driveways and parking areas
- j) Culverting or bridging of a privately-maintained watercourse
- k) Culverting or bridging of a Board-maintained watercourse
- l) Installation of a surface water outfall
- m) Construction of fishing lakes or reservoirs
- n) Erection of wind turbines
- o) Construction of a replacement dwelling
- p) Construction of a two-storey or ground-floor extension (including conservatories)
- q) Construction of a single new dwelling
- r) Commercial/Industrial development (including agricultural buildings or glasshouses)
- s) Residential development (multiple dwellings)
- t) Other works e.g. proposals to abstract water

5. Proposed decisions and granting of consents

5.1 Having examined the four Boards’ current methods of dealing with the general types of applications listed on the previous page, I would propose that the following decision-making procedures be adopted by all Boards, along with the suggested delegated powers for the WMA Officers. Where an application does not fall exactly into one of the categories, it will be necessary for Officers to determine how to deal with it on a case-by-case basis. Specific policies referred to are included as Appendices at the end of this report, while an explanation of the principles behind the use of Deeds of Indemnity, which are referred to throughout this section, is included on page 11.

a) Installation of a treatment plant outfall

- i. Privately-maintained drain - Consent granted by Officers, although as the accepting watercourse is privately-maintained there are unlikely to be any specific requirements to be complied with.

- ii. Board-maintained drain - Consent should be granted by Officers, subject to the discharge pipe being installed through a pre-cast concrete outfall unit dug in flush with the drain batter, and subject to the applicant entering into a Deed of Indemnity with the Board.

b) *Installation of land tile outfalls*

Consent issued by Officers subject to the applicant complying with all specified conditions.

c) *Erection of fencing*

Applications considered and determined by Officers in accordance with the “Fencing Policy” (see Appendix B).

d) *Change of use of an existing building adjacent to a Board-maintained watercourse*

Letter sent stating that although no objections will be raised to the proposals shown, future development within 9 metres of the Board’s drain would require prior written consent. This approach helps to minimise the chance of any landscaping stipulated as part of a planning approval being planted next to a Board’s drain, as well as informing the applicant how the applicable Byelaws affect their property.

e) *First-floor extension to a property adjacent to a Board-maintained watercourse*

Response sent as for “Change of use” applications (see above).

f) *Crossing of a Board’s drain by electricity or telephone cables or by a gas or water pipe*

If the application is made by or on behalf of a utility company, consent should be granted by WMA Officers subject to a licence agreement being signed by the Grantee and all specified conditions, including minimum clearances to the Board’s infrastructure, being observed. If the application is made by an individual or a company, it should again be determined by Officers, although any issued consents should be subject to compliance with all specified conditions and subject to the applicant entering into a Deed of Indemnity with the Board.

g) *Erection of a garage*

- i. Temporary, sectional type - Application dealt with by Officers, and if appropriate consent granted subject to a “Temporary Structure” Deed of Indemnity being entered into.
- ii. Permanent (inc. foundations) -Application put to the Board for determination. Proposed consent conditions would normally include entry into a Deed of Indemnity, as well as the foundations being constructed to the depth of the adjacent drain’s bed level, or the invert level in the case of a pipeline.

h) *Landscaping (including trees, hedges, shrubs, patios)*

Applications should be decided by Officers in accordance with the “Landscaping Policy” (see Appendix C). Where an application contravenes this policy and through discussions with the

applicant WMA Officers are unable to have it altered, the application should be referred to the Board.

i) Construction of access roads, driveways and parking areas

- i. Gravel / Tarmac Chippings - Applications to be determined by Officers. Unless specific circumstances dictate otherwise, such applications would usually be consented no closer than 1 metre from the affected drain, subject to a “Temporary Structure” Deed of Indemnity being entered into.
- ii. Concrete / Tarmac - Applications to be put to Board for consideration. Decisions on granting consent and any specified conditions are then made on an individual basis.

j) Culverting or bridging of a privately-maintained watercourse

Letter sent informing applicant of the requirement to obtain consent from the Board, together with an application form and guidance leaflet where applicable. If the application site falls within South Holland District Council’s area, then consent for the work must also be obtained from that Council through their standard application procedure. Received applications are determined on an individual basis by the relevant District Engineer and Works Supervisor (see Culverting Policy – Appendix A).

k) Culverting or bridging of a Board-maintained watercourse

Applications determined in accordance with the “Culverting Policy” (see Appendix A). This means some applications will be dealt with by Officers, while others can only be determined at a Board meeting. Any payments mentioned in this policy as being due to the Board should be calculated by the District Engineer.

l) Installation of a surface water outfall

All applications to be determined by Officers unless the capability of the drain to take the water is in question, or unless another part of the application requires consideration by Members, in which case referral to the Board may be appropriate. Information on standard conditions and fees due to the Board is contained in the “Culverting Policy” (see Appendix A). Where a fee is payable, the amount should again be calculated by the District Engineer.

m) Construction of fishing lakes or reservoirs

Officers should seek to ensure the whole development (including surrounding bunds or banks) is at least 9 metres from the adjacent Board’s watercourse at all points. Retrospective applications within this distance, or cases where the applicant refuses to abide by the 9 metre distance, should be decided by the Board.

n) Erection of wind turbines

Every turbine (including its foundations) must be at least 9 metres from any Board-maintained drain at all points.

o) Construction of a replacement dwelling

Officers should seek to have the dwelling sited a minimum of 9 metres from the Board's drain. However, if this is not achievable, or if the applicant wants the dwelling to be closer, the application should be put to the Board, with a recommendation that the new dwelling be no closer than 6 metres, or the existing distance, from the Board's drain, whichever is the greater. If a relaxation is to be consented, proposed conditions would include entry into a Deed of Indemnity, and the foundations being constructed to the depth of the adjacent drain's bed level, or the invert level in the case of a pipeline.

p) Construction of a two-storey or ground-floor extension (including conservatories)

Proposals in line with or further from the Board's drain than the closest point of the existing dwelling should be decided by WMA Officers, provided that they are a minimum of 6 metres from the watercourse, and result in an increase in footprint of less than 50% of the initial area of the main dwelling. However, where the extension is less than 6 metres from the drain, or where it will come nearer than the existing structure, the matter should be referred to the Board, with Officers' recommendations made on an individual basis. If a relaxation of Byelaw 10 is suggested, it would always be conditional on entry into a Deed of Indemnity.

q) Construction of a single new dwelling

Officers should aim to have the dwelling sited with 9 metres clearance from the Board's drain. However, where this is not achievable, the application should be determined by the Board.

r) Commercial/Industrial development (including agricultural buildings or glasshouses)

Officers should seek to ensure any new development is at least 9 metres from the Board's watercourse(s) at all points. Where a clearance of 9 metres cannot be achieved, either for a new building or an extension, the application should go to the Board for a decision.

s) Residential development (multiple dwellings)

It is recommended that all Boards stipulate that every element of the development, including any fences, must be at least 9 metres from any Board-maintained drain, with the only exception being an access culvert or a roadway perpendicular to the drainage channel. This recommendation is made as experience suggests that where Byelaw 10 is relaxed in these situations, householders will plant trees and shrubs, or erect greenhouses or sheds up to their fence line, regardless of whether or not this infringes the Board's Byelaws. A section discussing the merits of owning these strips of land is included on page 12 of this report.

t) Other works e.g. proposals to abstract water

These matters should be determined by Officers unless their specific circumstances mean it would be preferable for the matter to be determined by the affected Board.

5.2 Where Officers apply the above guidelines and an application is refused as a result, before making a formal appeal against the Board, the applicant should first have the right to state why their application should be considered favourably, despite it contravening the approved policies. This matter should then be discussed at the next Board meeting, where Members may either decide to uphold the original decision or to grant consent as an exception to the relevant policy.

- 5.3 Where an application requires discussion at a Board meeting, the applicant should be informed of the date of this meeting as soon as possible. As this could be anywhere up to approximately 15 weeks after the application is received by the Board, the applicant may strongly request that the matter be determined at an earlier time. Consequently I would recommend that each Board sets up a committee with delegated authority to decide applications between Board meetings, if the need arises.
- 5.4 All applications presented to the Board for consideration will include a brief description of the site and the proposed development, followed by the Planning Officer's recommendation, including any suggested conditions of consent. The recommendation will be made following input from, and with the support of, the Board's District Engineer and Operations Manager/Works Supervisor. Location and site plans will also be included to aid Members' understanding of each application.
- 5.5 Officers should be given delegated authority to set up Deeds of Indemnity between Board meetings for all the above scenarios where they make the decision. Deeds set up in this manner should then be reported to the relevant Board at its next meeting. All other Deeds of Indemnity should only be finalised after consent is granted by the Board.
- 5.6 I would recommend that all consented relaxations are granted subject to the works being completed within a period of 5 years from the date of the Board's decision. It should also be made clear that the consent cannot be sold, inherited or otherwise passed on without prior written agreement from the affected Board. Should an extension to the 5 year period be requested, or an application be made to pass on a consent, the Board's Officers should be permitted to determine this in line with the policies applicable at that time, with the option to refer the matter to the next Board meeting if required.

6. Consents and Deeds of Indemnity

- 6.1 Consent for works affecting a Board's drainage system may be granted in a number of ways. In the case of land tile outfalls, consent should be granted by way of a letter, including an acknowledgement which is then signed and returned to the Board to indicate the applicant's acceptance of the specified conditions. For utility companies conducting works over, under or alongside a Board-maintained watercourse, the consent should be by way of a licence agreement signed on behalf of the company and by the Board's Chief Executive.
- 6.2 For most other consents for works directly affecting a Board-maintained drain, it is proposed that the relaxation of the Byelaws be formalised in a Deed of Indemnity. This type of legal agreement would replace the licence arrangement used by the former Kings Lynn Consortium Boards, and has the advantage that the Board's rights relating to its watercourse are protected in perpetuity, as the consent is granted for the property rather than for the individual living there at the time. The Deed sets out what the proposed development is, and how it relates to the Board's drain and Byelaws, and includes clauses specifying the applicant's covenants in relation to liability for the development, the property and any damage to the Board's watercourse. The exact form of the Deed depends on whether the development being consented is classed as temporary, minor works or permanent, but in all cases, copies of the document are signed by the applicant and on behalf of the Board, as well as by the property's mortgagee in the case of "permanent" development.
- 6.3 Where the affected property has a registered title number at HM Land Registry, a restriction contained within the Deed is then lodged in the Register for that title. This is another advantage of Deeds over licence agreements as the Board is able to register the restriction, rather than relying on the property's owner to keep a copy of the licence with their Title Deeds. The restriction means that the Board's written consent must be received by the Land Registry before any change of ownership of that property will be authorised. This ensures that all prospective owners or mortgagees of the property are made aware of the existence of the Deed, and can then seek further information about it and the Board's consent if they wish. At the time of the property being sold, the new owner must enter into a simpler legal agreement known as a Deed of Covenant stating that they agree to comply by the terms of the original Deed of Indemnity. Once signed by the new owner and on behalf of the Board, consent is issued for the transfer. However, should there have been any Byelaw infringements

since the date of the Deed of Indemnity, or since the last change in ownership, the Board can seek to have these rectified before signing the Deed of Covenant and issuing its consent for the transfer.

- 6.4 Under normal circumstances most Deeds of Indemnity would be prepared by WMA Officers, with administration costs of £50+VAT charged to the applicant, except in the case of “Temporary Structure” Deeds, where no such fee is payable. However, if the Deed is particularly time-consuming to prepare, its content more complex than the standard document, or if a solicitor’s input is required, then the administration charge may be increased to reflect the additional time and costs involved in the Deed’s preparation. Where the property which is the beneficiary of the Byelaw relaxation is registered at HM Land Registry, there is a fee payable to lodge the restriction (currently £40), which is always passed on to the applicant. Finally, for Deeds of Covenant, again a £50+VAT administration fee will be levied, and must be paid before consent will be issued for the transfer.

7. Ownership of land adjacent to Board-maintained watercourses

- 7.1 Where an easement strip adjacent to a Board-maintained watercourse is specified by a WMA Board as part of a development, it may be desirable for the Board to own that land wherever possible, regardless of whether the adjacent drain is an open channel or a pipeline. The only WMA Board which currently seeks to own such strips is South Holland IDB, where it has been standard practice for 8-10 years. The table below outlines some of the main advantages and disadvantages of land ownership in the above-mentioned scenario:

Advantages

Land ownership gives the Board control. It should prevent occupation or development of any form on the strip of land, thus ensuring clear access for the Board at any time.

The Board’s responsibility is clearly defined. If the developer was to sell the dwellings and leave the site, the strip may become “no-man’s land”, when the Board would have to maintain it in any case to ensure satisfactory access to the drain.

Disadvantages

Land ownership brings with it responsibility and liability. This may be for the maintenance of the strip and anything on it, or it may be due to the potential Health & Safety consequences of an accident to a person crossing that land, whether legally or illegally.

There is a time and financial cost associated with maintaining the strips. However, as these works can be undertaken at the same time as maintenance of the adjacent drain, such costs should be minimal.

- 7.2 I would propose that each Board seeks to have these easement strips conveyed to it wherever possible, regardless of whether or not the adjacent drain is owned by the Board, and provided that the transfer is completed at no cost to the Board. Once all land awarded to one of the Boards by Acts of Parliament, or land which has subsequently been purchased, has been registered at HM Land Registry, that Board should submit a plan showing the extent of its land ownership to Lincolnshire or Norfolk County Council, as appropriate, under Section 31(6) of the Highways Act 1980 (as amended). As the Boards are normally unable to inspect their owned land on a frequent basis, this course of action should then prevent rights of access being acquired by third parties through regular unauthorised access.

8. Methods of surface water disposal and Planning Policy Statement 25

- 8.1 Most planned developments require the applicant to consider how they wish to dispose of surface water from the site. In the case of an extension or a replacement building this may be through the use of the existing system, although for most other situations some form of new system is likely to be needed. The scale of a proposed development may mean certain methods would not be cost-effective or would be inefficient, but the most commonly used methods of surface water disposal are given below:

a) Soakaways

Normally used for extensions or single dwellings. A soakaway may be constructed from either a rubble-filled hole, or a purpose-built concrete or plastic chamber with holes in its walls. They are designed to allow short-term accumulation of water in the soakaway and subsequent dissipation into the surrounding ground, and are maintained after construction by the property's owner.

b) Piped sewer

Used for a variety of urban developments. Surface water is disposed of by connecting into a pipeline, which is normally within the extent of the highway, and which may be maintained by Anglian Water, the County Council's Highways Department or the local Borough/District Council. Ultimately a piped sewer will normally outfall into an IDB drain.

c) Direct to a private watercourse

This method can be used with developments in a rural or urban setting. The discharge may be to either an open or piped drain, which can be some distance from a Board-maintained drain. Subsequent maintenance of both the discharge system and the receiving watercourse can be the responsibility of any number of different parties, which may compromise the effectiveness of the system in the long-term.

d) Direct to an IDB watercourse

Can apply to any development sited in close proximity to the Board's drainage system. Proposals may involve a new connection into the Board's drain or an increase in the flow from an existing outfall. Although the upkeep of the outfall system itself can potentially rest with one of a number of different groups, a good standard of maintenance of the receiving watercourse is assured.

e) Attenuated discharge

Normally used for large residential or commercial development sites. Surface water is temporarily retained on site, either in a balancing pond or holding tank, before being discharged to a watercourse at an agreed limited rate. The developer is responsible for finding an authority to look after the attenuation system, or for setting up a company to cover its maintenance.

8.2 The use of soakaway systems for a development does not need a Board's prior consent or the payment of any fees. However, the other methods listed above may require input from the relevant Board, either because there is a payment due, or because the rate of discharge or design of an outfall structure needs to be agreed with the Board. In some cases, all these factors will apply.

8.3 Currently where a Board grants consent for a direct discharge of surface water, this will usually be subject to conditions, including payment by the applicant/developer of a one-off Surface Water Development Contribution (SWDC). Such a contribution is payable to the Board unless the site's impermeable area is being reduced as a result of the proposals, or unless the rate of surface water discharge is limited to the same as that prior to development. SWDCs are levied to compensate for the additional rate/volume of surface water run-off ultimately catered for by the Board's drainage system, and are allocated to a "Development Contributions Unapplied Reserve" (or similar). Money

held in this reserve is then used to part-fund the gross cost of any capital works required to cater for these additional flows, thus reducing the impact of such works on the drainage rates/special levies charged by that Board.

- 8.4 The former Kings Lynn Consortium Boards levy their SWDCs at a rate of £40,542 per impermeable hectare for the period 1 July 2007–30 September 2007, with the rate being reviewed every 3 months. South Holland IDB updates its rate on an annual basis with effect from 1 April, and is currently charging £40,500 per impermeable hectare. Changing the rate only once a year would simplify matters for Officers, would not adversely impact on the total amount collected by each Board in future years, and would also mean developers are able to plan more easily for how much they will have to pay. I would therefore propose that the charge for all five Boards be standardised at £40,500 per impermeable hectare with effect from 1 October 2007, to link in with a planned date for review of the former Kings Lynn Consortium Boards' charge, and that future increases be made annually.
- 8.5 In addition to the above, I would recommend that WMA Officers be given delegated authority to conduct a review of the realistic current cost to the Boards of allowing direct discharges, taking into account national planning policies and the requirement for hydrological modelling, as well as the cost of pumping the additional water and where necessary improving the drains. The recommended updated rate should be discussed by the WMA Consortium Management Committee for implementation with effect from 1 April 2008, and in conjunction with this, a formula should be proposed detailing how subsequent annual increases of the SWDC rate will be calculated.
- 8.6 Under the terms of the recently introduced Planning Policy Statement 25: Development and Flood Risk (PPS25), developers are now encouraged to use Sustainable Urban Drainage Systems (SUDS) wherever possible, and to limit the rate and volume of surface water flow leaving a site to that of its pre-developed situation, or if achievable to reduce them even further. Common SUDS include soakaways, attenuated discharge systems and swales/basins, which are grassed depressions providing storage, conveyance, treatment and infiltration of surface water, and which are normally used for highways schemes or large areas of hardstanding. A more widespread use of SUDS is likely to significantly reduce the amount of income received from SWDCs in the coming years, and therefore any capital improvements required to cater for previous developments will need to be funded from a diminishing, and then non-existent, Development Contributions Unapplied Reserve. After this capital improvements will have to be funded purely from a Board's income, resulting in increases to the agricultural drainage rate and the Councils' special levies.
- 8.7 Another requirement of PPS25 is for developers to hold pre-application discussions with any interested parties to identify the extent and nature of the flood risk that may affect or arise from their development. Interested parties include IDBs, and the results of these discussions are intended to inform the Flood Risk Assessment (FRA) which is submitted with the planning application. As part of their FRA, many developers are likely to need information from the Board about flows and maximum water levels in the IDB drainage system. Consideration should therefore be given to whether or not a charge is made for providing this information, as well as to the potential importance of hydrological modelling in providing accurate FRA information and improving the decision-making process on whether or not one of the Boards can accept a direct surface water discharge.
- 8.8 Should an IDB either refuse to consent a direct discharge, or only be willing to grant consent subject to compliance with particular conditions, the developer may appeal against those stipulations. Provided that the specified requirements resulted from potential flooding implications either to the site being developed or to nearby land, and this could be substantiated by the results of hydrological modelling, then the Board concerned would have a much greater chance of defending its original decision. I would therefore propose that where an application is made to discharge a large volume of surface water run-off to a Board's drain, that from now on as part of the consent, the developer should make a contribution towards the cost of hydrological modelling of the drainage network.
- 8.9 PPS25 also states "It is essential that the ownership and responsibility for maintenance of every sustainable drainage element is clear; the scope for dispute kept to a minimum; and durable, long-term accountable arrangements made, such as management companies. These issues should be

addressed as part of the FRA. Where the surface water system is provided solely to serve any particular development, the construction and ongoing maintenance costs should be fully funded by the developer. Section 106 agreements may be appropriate to secure this.” For that reason if SUDS are to be approved by the Board, prior to consent being issued, proof should be provided that the future maintenance of these SUDS will be undertaken by a competent authority, and that such acceptance is either already finalised or is at worst conditional only on the satisfactory completion of their construction. If one of the WMA Boards is to accept responsibility for the future maintenance of SUDS, then I would recommend that the Commuted Maintenance figure for these should also include an allowance for the cost of hydrological modelling of the drainage network, and should not be accepted by the Board until completion of their construction.

9. Application fees

9.1 The WMA Boards currently charge applicants different fees depending on the type of application being made, and depending on which Board’s area the site falls in. The table below shows the times when I propose an application fee should be payable to a Board, together with the current fees charged by each member Board for these types of application, and suggested amendments to these prices. Please note that fees will also be subject to the payment of VAT, and that unless otherwise mentioned, the application type may apply to any watercourse, not only Board-maintained ones. Where an application fee is due to the Board, but is not included when the application is submitted, payment must be made in full before the application will be considered.

Application Type	Broads (2006) IDB		King’s Lynn IDB		Norfolk Rivers IDB		South Holland IDB	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
Land Tile Outfalls to a Board’s drain ¹	£0	£50	£0	£50	£0	£50	£50	£50
FRA Information ²	£0	£50	£0	£50	£0	£50	£100	£100
Byelaw Relaxation ³	£50	£50	£50	£50	£50	£50	£0	£50
Direct discharge ⁴	£50	£100	£50	£100	£50	£100	£0	£100
Alter watercourse ⁵	£50	£50	£50	£50	£50	£50	£0	£50

- Notes:
1. A standard application fee is payable regardless of the proposed number of land tiles.
 2. This charge may be increased at the Chief Engineer’s discretion if the information requested is particularly time-consuming to collate.
 3. May apply to an application for a relaxation of any Byelaw, but would most commonly be Byelaw 10.
 4. This may apply to a proposed direct discharge of surface water or treated foul water (the “current” fees shown being for surface water applications).
 5. This may be an application to construct a culvert, an outfall, a water level control structure, or to otherwise affect the flow of water along a drain.

10. Byelaw Infringements, Retrospective Applications and Enforcement

10.1 Where someone fails to apply for a necessary Byelaw consent; where a developer starts work before obtaining consent from the Board; or where contravention of any of the Byelaws occurs, it may be necessary for one of the Boards to take action to remedy the situation. Such action is most likely to be required where Byelaw 10 has been contravened, but could also occur when someone deposits waste within or adjacent to a watercourse, where a drain is piped or filled without consent, or from infringement of any other requirement of the relevant Byelaws or the current Land Drainage Act.

10.2 When a suspected contravention of the Byelaws or Land Drainage Act is encountered, it should first be reported to the WMA Planning/Enforcement Officer. Following consultation with the appropriate District Engineer and Works Supervisor to ensure consent has not previously been given for the offending development, I would recommend the following course of action:

- Firstly, the relevant owner/occupier should be identified wherever possible. Identification may be achieved through information obtained from the Land Registry; the Board’s rating records or the local knowledge of the Board’s employees. If none of these sources are able to provide accurate, up-to-date owner/occupier details, it may be necessary to contact “The Occupier”.
 - A letter should then be sent by Recorded Delivery or delivered by hand to the person who is believed to have committed the Byelaw or Land Drainage Act infringement. This letter should be signed by the Board’s Chief Executive or Chief Engineer, and should give the receiving person 21 days in which to remedy the breach, or where appropriate to apply to the Board for retrospective consent.
 - If a retrospective application is made, this should be considered in line with the proposed processes set out earlier in this policy. If appropriate, the Board’s Officers may either grant consent subject to compliance with specified conditions, or may refuse consent, or it may be necessary for the application to be referred to the next Board meeting. In any case, a response should be sent to the applicant within 28 days of receipt of the application stating the Board’s decision, together with any conditions or time periods which must be complied with, or informing them when a decision will be made in cases where referral to the Board is required.
 - If the Byelaw or Land Drainage Act breach is not corrected within 21 days, or if the necessary application is not made to the Board within this time, further action will be needed. I would propose that an “Official Notice” signed by the Board’s Chief Executive, or in his/her absence by the relevant Chairman, be sent to the offending party, giving them a further 28 days in which to comply with the Board’s requirements, but also setting out the potential penalties should they not do so.
 - Should the situation not have been satisfactorily rectified by the end of this second compliance period, and where there appears no hope of resolution, the Board’s Chief Executive should arrange a time and date for a court hearing to resolve the dispute, and should inform the offending party accordingly. At this stage, the Board’s Officers who have been involved in any way should collectively document the Board’s case for use in court.
- 10.3 In situations where conditions stipulated as part of the Board’s consent are not complied with as requested, contact should first be made with the developer, either verbally or in writing, seeking a reason as to why the Board’s requirements have not been met. If compliance is unable to be achieved through this method, the above Enforcement procedure should be followed from the “Official Notice” stage. This should also be the case where a development refused retrospective consent by the Board is not removed within the period specified by Officers. Any situations where the “Official Notice” stage has been reached should be reported to the relevant Board at its next meeting.

CULVERTING POLICY

Section 23 of the Land Drainage Act 1991 prohibits any obstructions or culverts being placed in a watercourse without the prior consent of the IDB concerned, although the same section also states that such consent is not to be unreasonably withheld. In addition to this, the Environment Agency's Policy Regarding Culverts advocates retaining open drains wherever possible, due to their higher flood storage capacity and the loss of wildlife habitat if they are piped. Both these factors must therefore be taken into consideration when determining piping applications, which are most commonly received for privately-maintained drainage channels, and also less frequently, for Board-maintained ones. An adopted culverting policy will clarify the situations where piping applications can be determined by Officers, and those where deliberation by the Board is required, as well as setting out the charges which may be payable if consent is granted.

- ***Application to culvert a privately-maintained watercourse***

The above applications may be received directly by one of the Boards, or in the case of South Holland IDB or Kings Lynn IDB, as a result of consultation from South Holland District Council's Property Services Department, when a copy of an application received by them is sent to the Board for comment. Details of the application should be examined by the local District Engineer or Works Supervisor, who are to decide whether the proposed specification is satisfactory. A response should then be sent to the applicant, or to South Holland District Council where appropriate, either granting consent, providing a specification which would be acceptable to the Board, or refusing the application.

- ***Application to culvert a Board-maintained watercourse***

The application is to be determined by Officers if it is for a replacement culvert or bridge, or if it fulfils one of the following criteria:

- i. The piping is for the sole access to a field, property, building plot or an estate development, and the total length of piping or width of the bridge is the minimum required for the access, or
- ii. The piping is to form an access for the Board's maintenance operations, or
- iii. The total length of drain to be piped is 12 metres or less.

In all other cases, the application should be considered by the Board, although it will only be recommended for consent where an overriding need for the piping can be demonstrated e.g. for Health & Safety reasons, or where the piping would be of benefit to the Board.

The specification for any consented culvert in a Board's drain should be provided by the District Engineer and Operations Manager/Works Supervisor. The culvert should preferably be constructed by the Board, or alternatively by a contractor previously approved in writing by the Board for that job. The cost of installation must be met in full by the applicant unless there is a benefit to the Board, in which case the Chief Executive should be authorised to determine the Board's contribution towards the works, following input from the Chief Engineer and local Operations Manager/Works Supervisor.

- ***Application to construct an outfall in a Board-maintained watercourse***

Outfalls into a Board's drain should only be consented if they do not impede the flow of water, and if they are positioned, designed and constructed to the specification and satisfaction of the Board's Officers and built entirely at the applicant's cost. The outfall may be constructed by the relevant Board, or by a contractor previously approved in writing by the Board for that job. A legal agreement should also be used to cover the installation of the outfall, although the exact format of this will depend on who will be responsible for the future maintenance of the surface water/treated foul water system. In some cases where the system is not being adopted by a recognised authority, there may also be a Commuted Maintenance fee due to the Board for the outfall structure.

- ***Calculation of Commuted Maintenance and Wayleave fees for new culverts or outfalls***

A Commuted Maintenance fee is a one-off charge payable where the Board will become responsible for all future maintenance costs associated with a new culvert or outfall structure for as long as the affected watercourse is maintained by the Board. In the case of a culvert, the Board will not be responsible for the wearing surface, and will only maintain the headwall structure in the case of an outfall. The Commuted Maintenance fee is paid by the applicant in addition to the cost of construction of the structure, although if the future maintenance of the culvert or outfall will rest with another authority e.g. the local Highways Department, then no such fee is payable. Where the affected watercourse is owned by the Board, a further Wayleave payment will also be due to reflect the fact that the works are within an area of land owned by the Board.

Commuted Maintenance fees should be calculated based on three elements: a materials element, an engineering fee element and a Wayleave element, and should be paid in two parts, 50% when consent is granted by the Board for the structure, and the remaining 50% when construction is completed. Where costs are referred to below, in all cases these are as priced by the Board.

- a) ***Materials Element***

Cost of the materials needed to construct the culvert or outfall if the work was being undertaken by the Board.

- b) ***Engineering Fees Element***

Calculation based on 15% of the total cost of works. As on average materials account for 50% of the total cost of constructing a culvert, this element should be based on 30% of the total materials cost.

- ***Wayleave Element***

Calculation based on 50% of the total cost of the works. For the reasons given above, this can be simplified to 100% of the materials cost.

In summary, the Commuted Maintenance fee due where the watercourse is not owned by the Board will be 130% of the cost of materials, and where the drain is owned by the Board it will be 230% of the cost of materials. A period of 3 months should be given for the applicant to accept a quoted Commuted Maintenance fee, at which time the first 50% of the fee becomes due. Beyond this period, the Board's Officers should determine whether the quoted fee is still applicable, or whether it should be revised in light of any changes to the cost of materials.

Due to the many various designs and differing complexity of SUDS, the calculation of the Commuted Maintenance fees for a Board to accept responsibility for these will have to be undertaken on an individual basis. The Commuted Maintenance fee should be agreed by the Chief Executive and Chief Engineer following input from the District Engineer where appropriate.

- ***Ownership of land over newly-piped watercourses***

Where Officers consent an application for piping, either for a privately-maintained drain or one which is the responsibility of a Board, ownership of the land forming the infilled drain should remain with the riparian owners of the watercourse. However, if Members decide to consent a long length of piping of a Board-maintained drain, then it may be appropriate to seek to have the land over the pipeline conveyed to the Board. If this is achievable, the land transferred should comprise either the full width of the old open channel or 3 metres each side of the pipeline, whichever is the greater width, and should be securely fenced off at no cost to the Board. However, it must be recognised that ownership will not be possible in every situation, and I would therefore propose that it should only be sought where there would be a significant benefit to the Board.

FENCING POLICY

As South Holland IDB has recently adopted its own “Fencing Policy” based on the classification of its drains into High Priority and Lower Priority, the policy proposed below relates solely to the former Kings Lynn Consortium Boards. However, the general requirements of both policies are broadly the same.

The erection of fences adjacent to Board-maintained watercourses can have a varying impact on a Board’s ability to maintain its drains depending on the type and proximity of the fence, and depending on the specific drain. I would propose that the WMA Officers be given delegated authority to look at each new incidence of fencing individually, whether the fence is proposed or has previously been erected in contravention of the Byelaws, and to determine if consent should be granted based on this policy. Provided the adopted policy is followed in every case, this should counter any accusations of inconsistency or discrimination from applicants who are refused consent. Shown below are three classifications of drain, with their respective suggested fencing distances and conditions:

- ***Open drain (no access available)***

Fences should be no closer than 1 metre from the brink of the watercourse, and no taller than 1.80 metres (6 feet).

- ***Open drain (access available)***

All fences should be at least 6 metres from the brink of the watercourse to allow unimpeded access as and when required, and should be no taller than 1.80 metres (6 feet). However, if a 6 metre wide strip would equate to more than 5% of the field’s area, and access to that drain is not required more than once a year, then the Board’s Officers, at their discretion, may offer that the fence be erected 1 metre from the brink of the drain, provided that lockable gates fitted with a Board’s padlock are installed in the fence at each end of the field, entirely at the landowner’s cost, and provided that the fence is then no taller than 1.20 metres (4 feet) to allow the Board to maintain its watercourse by working over the fence.

- ***Pipeline***

Fences should be erected at least 0.50 metres from the outside edge of the pipeline to minimise the chance of damaging the pipe during their erection.

Any fences within the strip of land covered by a Board’s Byelaw 10 must also be of a temporary nature, with no posts to be concreted in, and are only to be consented subject to the applicant entering into a Deed of Indemnity with the Board. The Deed of Indemnity includes a clause whereby the Board can request the removal of the fence if needed in order to carry out improvement works to its drain, but I would also propose that an additional clause be added so that the Board could request the removal of the fence if machine access becomes available along that side of the watercourse for any reason.

Where a fence falls outside of the specifications given above, or where the applicant wishes to appeal against the position of the fence stipulated by this policy, then the matter should be referred to the next Board meeting.

LANDSCAPING POLICY

Due to the increasing popularity of agricultural environmental schemes, and the number of people purchasing small areas of land for equestrian use, there has been an increase in recent times of new landscaping schemes being undertaken adjacent to Board-maintained watercourses. Without the planting of trees and hedges being duly regulated, the Boards may quickly find that there are lengths of watercourse which they become unable to access with machinery. Accordingly, I would recommend that the following distances be observed when considering potential relaxations for any landscaping applications:

- ***Trees***

No relaxations of Byelaw 10 should be granted for newly-planted trees unless special circumstances apply. This will ensure the Board has a minimum of 9 metres clear access to either side of its drains, regardless of whether they are open channels or pipelines.

- ***Hedges / Shallow-rooted bushes***

a) Open Drain (no access) - Unless machine access is likely to become available in the short-term, consent should be granted for hedging or shallow-rooted bushes provided that a minimum 1 metre wide clear strip is maintained from the brink of the Board's watercourse, thereby ensuring pedestrian access is retained along that side of the drain.

b) Open Drain (access available) - Consent should only be granted subject to compliance with a minimum 6 metre clearance from the brink of the drain. This will be sufficient distance to allow unimpeded machine access along the watercourse.

c) Pipeline - Applications should be considered on an individual basis. Where the pipeline is close to ground level or of a small diameter and does not drain a large area of land, it may be possible to relax Byelaw 10 to 3 metres either side of the pipe. However, in other situations, a relaxation to 6 metres may be more appropriate.

- ***Hard landscaping (e.g. patios)***

Where appropriate, relaxations of Byelaw 10 may be granted to the same distances as shown above for hedges / shallow-rooted bushes.

Conditions specified as part of any Byelaw relaxation for landscaping should include the applicant entering into a Deed of Indemnity with the Board. It should also be stipulated that the hedge or bushes are to be maintained thereafter to leave the required clear strip next to the drain, and are to be kept at a maximum height of 1.80 metres.

The only situation where the above policy should not apply is with new residential developments where hedging is to be used as the boundary treatment. In this case, the Board's general approach to residential developments should prevail, and it should be ensured the boundary is the full 9 metres back from the brink of the Board's watercourse.

If adopted, this policy will ensure the aim to have a consistent approach to landscaping applications across the WMA Boards is achieved. However, where the Board's Officers are unable to get an applicant to comply with this policy through negotiation, or where there is a retrospective application for landscaping which contravenes this policy, then the matter should be referred to the next Board meeting.