



## Planning and Byelaw Strategy

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### MEMBER INTERNAL DRAINAGE BOARDS

*Broads (2006) IDB, East Suffolk WMB, King's Lynn IDB, Norfolk Rivers IDB,  
South Holland IDB, with Pevensey and Cuckmere WLMB  
and Waveney, Lower Yare and Lothingland IDB*



<b>Section 1: Introduction .....</b>	<b>3</b>
<b>Section 2: Background .....</b>	<b>4</b>
2.1. Internal Drainage Boards .....	4
2.2. The Water Management Alliance .....	4
<b>Section 3: The Planning Process .....</b>	<b>5</b>
3.1. Introduction .....	5
3.2. Board involvement in the planning process .....	5
3.3. When the Board will usually comment on a Planning Application .....	5
3.4. Standing Advice .....	6
<b>Section 4: Regulation - Overview .....</b>	<b>8</b>
4.1. Introduction .....	8
4.2. WMA approach .....	8
4.3. The Requirement for Prior Written Consent .....	9
4.5. Conditions of Consent .....	9
4.6. Right of Appeal .....	10
4.7. Implementation Timescales .....	10
4.8. Other Requirements .....	10
<b>Section 5: Regulation - Policies .....</b>	<b>11</b>
5.1. Discharges .....	11
5.2. Watercourse Alterations .....	13
5.3. Works near Drainage Infrastructure .....	14
5.4. Other Bodies requiring the Board's Consent .....	15
<b>Section 6: Enforcement .....</b>	<b>16</b>
6.1. Introduction .....	16
6.2. WMA Approach .....	16
6.3. Additional Information: .....	18
6.4. Policy .....	19
6.5. Fly Tipping / Waste .....	20
<b>Section 7: Watercourse Maintenance .....</b>	<b>21</b>
7.1. Introduction .....	21
7.2. Responsibilities of Riparian Owners .....	21
7.3. Arterial Watercourses .....	21
7.4. Designation Changes (Arterial Watercourses) .....	21
<b>Section 8: Board's Estate .....</b>	<b>23</b>

# Section 1: Introduction

This Planning and Byelaw Strategy has been produced by the Water Management Alliance (WMA) group of Internal Drainage Boards, (IDBs). It has been compiled to provide:

- Guidance on how the WMA Member Boards will engage with planning applications within their Internal Drainage Districts (IDDs) or that have the potential to significantly impact their IDD. **Section 3.**
- Guidance to organisations and individuals on the Boards regulatory requirements and processes, including the policies against which it will assess and determine applications. **Sections 4, 5 and 6.**
- Guidance regarding watercourse maintenance activities and responsibilities including signposting to relevant external guidance. **Section 7.**
- Guidance on how the WMA Member Boards will engage with enquiries relating to use of the Board Owned Land. **Section 8.**

Each member Board has an adopted Business Plan Policy Statement that sets out the Board's approach to meeting the national policy aims and objectives. These policy statements should be read in conjunction with this document and are available online.

Please note where reference is made to the "Board" within this document this should be taken as meaning any of the Member Boards of the Water Management Alliance.

## Section 2: Background

### 2.1. Internal Drainage Boards

IDBs are local public authorities that manage flood risk and land drainage within areas of special drainage need in England. Each Internal Drainage Board (IDB) has permissive powers to undertake water management activities within their IDD. The purpose of delivering this work is to reduce flood risk to people and property and to manage water in a way that meets the local needs of business and agriculture, including during times of drought, whilst also dealing with its obligations and commitments to the environment.

IDBs exercise a general power of supervision over all matters relating to water level management within their district. This is undertaken through the use of permissive powers that enable IDBs to regulate works on, or affecting, the watercourses within their area. Advice is also provided by IDBs through the planning system to ensure that planning applications for new development within their districts are supported by appropriate drainage strategies. IDBs conduct their work in accordance with a number of general environmental duties and promote the ecological wellbeing of their districts.

### 2.2. The Water Management Alliance

The Water Management Alliance (WMA) is a group of 7 IDBs who share vision, values and standards, and have chosen to jointly administer their affairs in order to reduce costs, strengthen their own organisations and increase influence at both a national and regional level, without losing an unacceptable degree of autonomy.

Member IDBs in the WMA include the following IDBs:

- Broads (2006) Internal Drainage Board
- East Suffolk Water Management Board
- King's Lynn Internal Drainage Board
- Norfolk Rivers Internal Drainage Board
- South Holland Internal Drainage Board
- Waveney, Lower Yare and Lothingland Internal Drainage Board
- Pevensey and Cuckmere Water Level Management Board

## Section 3: The Planning Process

### 3.1. Introduction

Each Board's Business Plan Policy Statement sets out that the Board will take an active role in the assessment of individual planning applications as well as planning policy documents to prevent inappropriate development and land use to ensure that flood risk is not increased.

### 3.2. Board involvement in the planning process

By engaging with the planning process the WMA Member Boards are seeking to:

- Reduce flood risk to communities within its Internal Drainage District and highland catchment.
- Promote sustainable development in sustainable locations by supporting sound planning decisions that can be implemented by applicants and developers.
- Reduce the potential for conflict between the planning process and an Internal Drainage Board's (IDB's) regulatory process.
- Develop an understanding within other authorities and third parties of the flood risk and capacity issues within IDB areas so they can be considered through the planning process.
- Make a contribution towards the achievement of Sustainable Development, as per Section 27 of the Flood and Water Management Act 2010.

### 3.3. When the Board will usually comment on a Planning Application

Although IDBs are not a statutory consultee in the planning process, the WMA Member Boards will aim to proactively review and comment on applications which may impact on flood risk and water management within the Board's Internal Drainage District (IDD) in one or more of the following ways:

- The site is within 9\* metres of an Arterial Watercourse
- Works may be proposed to alter any Ordinary Watercourse
- The proposals may result in the displacement of flood water
- The proposals may introduce water to the IDD
- The area is known to suffer from poor drainage

The Board will therefore usually comment on the following applications:

*(overleaf)*

*\*7 metres within the Waveney, Lower Yare and Lothingland IDD*

	<b>Inside IDD</b>  <i>Adjacent to arterial watercourse or works are proposed to alter a watercourse</i>	<b>Inside IDD</b>  <i>Not adjacent to arterial watercourse and no works proposed to any watercourse</i>	<b>Outside IDD</b>  <i>Within Watershed Catchment</i>
<b>Major Development</b>	Yes	Yes	Yes
<b>Minor Application</b>	Yes	Yes	No
<b>Householder Application</b>	Yes	No	No

### 3.4. Standing Advice

Each WMA Member Board has approved the following standing advice to assist Local Planning Authorities and applicants alike.

*(overleaf)*

## **Standing Advice: Development with an Internal Drainage District**

This standing advice applies where the proposed development site is near to, or within, the Internal Drainage District (IDD) of a Member Internal Drainage Board (IDB) of the Water Management Alliance.

Please see our website ([www.wlma.org.uk](http://www.wlma.org.uk)) for detailed mapping of each Board's District, including which drains are designated as an arterial watercourses in each District. In order to avoid conflict between the planning process and the relevant Board's regulatory regime and consenting process please be aware of the following:

- If the site is within a Member IDBs district, that Board's byelaws apply. The Byelaws for each Board are available on the development pages of our website ([www.wlma.org.uk](http://www.wlma.org.uk)).
- If the proposals include works to alter a watercourse (including culverting for access) consent is required under Section 23 of the Land Drainage Act 1991. If the site is within an IDD the relevant IDB is the consenting authority for these works. If outside an IDD, the County Council (Lead Local Flood Authority) is the consenting authority.
- If a surface water (or treated foul water) discharge is proposed to a watercourse within an IDD, then the proposed development will require a land drainage consent in line with the Board's byelaws.
- If the proposals include works within 9\* metres of an arterial watercourse, then the proposed development will require a land drainage consent in line with the Board's byelaws.
- If the applicant has proposed to manage surface water by infiltration, this should be supported by ground investigation to confirm the viability of infiltration and an understanding of the expected groundwater levels.

Where land drainage consent is required from a WMA Member Board, please see the relevant policy in section 5 of this document (Planning and Byelaw Strategy).

Whilst the consenting process as set out under the Land Drainage Act 1991 and the Board's Byelaws are separate from planning, the ability to implement a planning permission may be dependent on the granting of these consents. As such we strongly recommend that any required consents are sought prior to determination of the planning application.

*\*7 metres within the Waveney, Lower Yare and Lothingland IDD*

## Section 4: Regulation - Overview

### 4.1. Introduction

The oversight, management and regulation of watercourses in England is delivered across a number of regulatory authorities. Under section 1(2)(a) of the Land Drainage Act 1991 (LDA), each Internal Drainage Board (IDB) has a duty to exercise a general supervision over all matters relating to the drainage of land within their Internal Drainage District (IDD). In pursuance of this role IDBs have permissive powers to regulate (consent and enforce) third party activities effecting watercourses within their district. The purpose of watercourse regulation is to control certain activities that might have an adverse flooding impact and to ensure that riparian owners carry out their responsibilities. As the majority of the watercourse network within IDBs are in private or riparian ownership the role of the IDB as a regulator is key in ensuring positive action is undertaken by third parties.

IDBs can apply byelaws (under Section 66, LDA) relating to the management of watercourses within their district. These cover a wide set of third party activities that could impact the drainage network.

All areas outside of an IDD are regulated by Lead Local Flood Authorities (LLFAs), while District Councils able to exercise permissive works powers and create byelaws.

The Environment Agency (EA) has permissive powers for managing watercourses designated as “Main Rivers”. These watercourses are defined on the EA’s Main River map and applications for any works to main rivers should be submitted to the EA.

### 4.2. WMA approach

As part of each Board’s Business Plan Policy Statement the Board have set out their approach to the regulation of third party activities, as shown below:

“The Board will regulate as necessary, using available legislative powers and byelaws, the activity of others to ensure their actions within, alongside, and otherwise impacting its drainage system do not increase flood risk, prevent the efficient working of drainage systems, or adversely impact the Board’s operations or the environment.”

When regulating ordinary watercourses the Water Management Alliance (WMA) member Boards will act in a manner consistent with the policies set out later in this document and in accordance with relevant Local and National Flood Risk Management Strategies.



#### **4.3. The Requirement for Prior Written Consent**

The Land Drainage Act 1991 and the Board's Byelaws require prior written consent to be sought prior to undertaking certain types of activities within a Board's Drainage District. To obtain the Board's written consent an application form should be submitted to the relevant Board for consideration. The application form is available on the relevant Board's webpage. Please note applications are not deemed valid unless they are accompanied by the correct application fee.

Applications that are made to the Board will be determined as per the policies set out in this document (Section 5).

In accordance with each Board's Scheme of Delegation, some applications may only be determined by the Board (rather than by officers). The Scheme of Delegation for each application type is summarised within Section 5 of this document. Additionally, where the applicant / agent is related to or associated with a member or employee of the Board then the application will have to be determined by the Board. Board meetings are usually only held between 2 and 5 times each year.

#### **4.4. Environmental Considerations**

Internal Drainage Boards (IDBs) have obligations under Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) to further the general biodiversity objective. Therefore IDBs must consider the conservation and enhancement of biodiversity when determining applications for Land Drainage Consent and must ensure that consent is not provided when environmental harm cannot be mitigated

Although it is the applicant's ultimate responsibility to determine the presence of a protected species or impact on designated sites (and for proposing mitigations and enhancements), the Board will screen applications for these impacts and may:

- Request that surveys are undertaken prior to considering consent (especially where the IDB suspects the works could impact upon a protected species).
- Request evidence that works will not impact upon protected species or a designated site, or cause a significant impact upon the environment.

Where proposed works may result in an impact on a designated site the Board will undertake a Habitat Regulations Assessment and/or a Countryside and Rights of Way Act 2000 (CRoW Act) assessment and may consult Natural England prior to granting consent.

#### **4.5. Conditions of Consent**

Consent may be issued subject to conditions as per byelaw 25 of the Board's Byelaws. Conditions can cover technical requirements, legal requirements, environmental matters and the need for financial payments. All conditions specified as part of any consent must be met in their entirety before the Board's formal consent is deemed valid.

Approval of certain consents may be given subject to the applicant entering into a legal agreement such as a Deed of Indemnity. A Deed of Indemnity is an agreement between two or more parties, the purpose of which is to specify the actions and consequences which will result should a particular event or events occur. Deeds of Indemnity are subject to an administration fee (see the Boards Development Control Charges and Fees document) along with the fee charged by Land Registry for lodging the document with them (see Land Registry website). Where a Deed is more complex than usual then the administration fee will be increased to reflect the additional costs to the Board.

Conditions of consent can include the requirement to make financial contributions to the Board as per the Boards Development Control Charges and Fees Policy Document.

#### **4.6. Right of Appeal**

Where you believe that consent has been unreasonably withheld by the Board then under the Land Drainage Act 1991 you have a right of appeal to an independent arbitrator. Ahead of any formal appeal to an arbitrator, the Board's policy is to afford the applicant a right of reply to the Board. This should take the form of a written statement setting out why the application should be considered favourably. The matter will then be taken to the next Board meeting where it will be re-considered.

#### **4.7. Implementation Timescales**

All consents granted by the Board are subject to the approved works being completed within a period of 3 years from the date of the Board's decision. The consent cannot be sold, inherited or otherwise passed on prior to the works being completed.

#### **4.8. Other Requirements**

Please note the IDB consenting process is independent of the need for planning permission and the granting of planning permission does not necessarily imply that consent will be granted by the relevant drainage authority. Furthermore it does not imply that an applicant's proposal will comply with the requirements of any other interested parties and it is the applicant's responsibility to ensure that they do. If the IDB is made aware of any inconsistencies then IDB officers will inform the applicant and the appropriate authorities.

## Section 5: Regulation - Policies

This section details the policies that the Board applies when seeking to regulate activities within its Internal Drainage District (“IDD”). These policies provide guidance on how applications made to the Board will be determined. It also details if further conditions would be stipulated or separate agreements or payments required.

### 5.1. Discharges (Byelaw 3)

Consent is required where a discharge of water is proposed to a watercourse within a Board’s Internal Drainage District.

#### 5.1.1. Treated Foul Water (Treated Effluent)

The discharge of treated foul water (via an appropriate treatment plant) requires consent in accordance with Byelaw 3. Policy 1 below sets out how the Board will determine applications received seeking to discharge treated foul water.

The Board’s consent does not replace the applicant’s obligation to seek an Environment Permit from the Environment Agency for the treatment plant and outfall or meet the general binding rules published by DEFRA.

#### **Policy 1 – Discharge of Treated Foul Water**

The Board will only approve an application to discharge treated foul water where the watercourse can be evidenced as being connected to the wider watercourse network.

Applications may be refused if the Board’s Officers consider that the proposals may increase flood risk, cause environment harm which cannot be mitigated, negatively impact the efficiency of local drainage or if the receiving watercourse will not be capable of accepting the planned additional flows.

Where the discharge is to an open watercourse, the discharge pipe should be installed through a pre-cast concrete outfall unit dug in flush with the drain batter. Suitable erosion protection should be installed below the headwall down to the toe of the watercourse and also dug in flush with the drain batter.

Where the discharge is to a piped watercourse, the discharge pipe should be connected into an existing inspection chamber, or a new inspection chamber should be constructed to the Board’s specification to accommodate the outfall.

If consent is granted by the Board, this may be conditional.

### 5.1.2. Surface Water

The discharge of surface water requires consent in accordance with Byelaw 3. Policy 2 overleaf sets out how the Board will determine applications received seeking to discharge surface water.

#### Policy 2 – Discharge of Surface Water

Applications for consent to discharge surface water run-off into any watercourse within the Board's Internal Drainage District will be considered against the capacity of the receiving watercourse to accept the proposed surface water flows (rate and volume). To assist in determining the application, the Board may require the applicant to undertake hydraulic modelling work.

The Board will only approve an application to discharge surface water where the watercourse can be evidenced as being connected to the wider watercourse network.

The Board will advocate for the following to be evidenced by the applicant for any systems serving impermeable areas greater than 0.25ha to ensure the proposals will not increase flood risk:

- The proposed discharge rate should be no higher than 2l/s/ha or annual average flood flow rate (QBar or QMed), whichever is higher. Exceptions may be allowable when it is evidenced that to achieve this rate would require a static flow control device (vortex flow control or fixed orifice plate) with an orifice smaller than 50mm\* in diameter (or 100mm where debris control is not possible).
- Systems with a static flow control devices with an orifice smaller than 100mm in diameter should be designed to prevent debris entering the flow control device.

Applications may be refused if the Board's Officers consider that the proposals may increase flood risk, cause environmental harm which cannot be mitigated, negatively impact the efficiency of local drainage or if the receiving watercourse will not be capable of accepting the planned additional flows.

If consent is granted by the Board, this may be conditional, including the payment of a Surface Water Development Contribution as outlined by the Board's Development Control Charges and Fees Policy.

The requirement for consent to discharge surface water may be waived in writing at the officer's discretion where the impermeable area is less than 50m<sup>2</sup> and is an extension of an existing impermeable area with a satisfactory surface water outfall.

Notably it is the Board's preference that systems are adopted by statutory authorities / bodies whenever possible.

*\*75mm for the Pevensey and Cuckmere WLMB*

### 5.1.3. Byelaw 3 Delegation

All applications for consent under Byelaw 3 can be determined by officers under delegation if they meet the requirements of Policy 1 or 2, with the exception of discharges of surface water from an impermeable area greater than 5 hectares.

## **5.2. Watercourse Alterations (Section 23 of the Land Drainage Act 1991, and Byelaws 4, 6 and 15)**

The alteration of an ordinary watercourse requires consent in accordance Section 23 of the Land Drainage Act 1991, and Byelaws 4, 6 and 15. Policy 3 overleaf sets out how the Board will determine applications received seeking to alter an ordinary watercourse.

Section 23 of the Land Drainage Act prohibits the installation or alteration of a culvert, the installation of a mill, dam, weir or similar obstruction to flow without the prior consent of the Board. Byelaw 4 further restricts the reconstruction, reduction, repair and removal of these structures, as well as the operation or alteration of bridges, headwalls and water control structures.

Byelaw 6 restricts the stopping up or diversion or alteration of flow / water level of a watercourse.

Byelaw 15 restricts the dredging or raising of any material from the bed or bank of a watercourse.

Alterations to a Main River are regulated by the Environment Agency.

### **Policy 3 – Alterations of watercourses**

The Board will only approve an application to culvert or infill a watercourse if;

- There is no reasonably practicable alternative (including health and safety considerations).
- The proposal is for a replacement culvert or bridge.
- Any culverting is for the sole purpose of providing access, and the total length of piping or width of the bridge is the minimum required for the access.
- The proposal forms part of a drainage, agricultural or environmental improvement scheme.

Applications for the installation or alteration of mills, dams, weirs, flow controls, headwalls, bridges and other structures regulated by Section 23 of the Land Drainage Act 1991, and Byelaws 4/6/15 will be considered on a case by case basis.

As part of any application to alter a watercourse the applicant has the responsibility to prove that the proposed works would not increase flood risk or negatively impact the efficiency of local drainage.

Applications may be refused if the Board's Officers consider that the proposals will;

- Increase flood risk or negatively impact the efficiency of local drainage
- Cause environmental harm that cannot be mitigated
- Negatively impact the ability of the Board to carry out its operations

If consent is granted by the Board, this may be conditional. Wherever practical the IDB will seek to have culverted watercourses restored to open channels.

### 5.2.1 Section 23 of the Land Drainage Act 1991 and Byelaws 4, 6 and 15 Delegation

All applications for consent under Section 23 of the Land Drainage Act 1991 and Byelaw 4/6/15 can be determined by officers under delegation if they meet the requirements of Policy 3, with the exception of permanent alterations to arterial watercourses which are over 18 metres in length.

### 5.3. Works near Drainage Infrastructure (Byelaw 10\*\*)

Consent is required for all works within 9\* metres of the edge of arterial drainage and flood risk management infrastructure (arterial watercourses and water management structures such as pumping stations). Consent is not required for works adjacent to non-arterial watercourses, but the Board recommends that adequate space for maintenance is preserved adjacent to all watercourses.

Maps on the Board's webpages clearly show which watercourses are designated as arterial watercourses. The 9\*\* metre distance is measured from the edge of the drain (whether open or piped). In the case of an embanked drain this is 9\* metres from the landward toe of the embankment.

Policy 4 below sets out how the Board will determine applications for works within 9\*\* metres of arterial drainage and flood risk management infrastructure

#### **Policy 4 – Works within 9\* metres of arterial drainage and flood risk management infrastructure**

The Board will only approve applications for consent for works (including replacement works) within 9\* metres of arterial drainage infrastructure (as required by Byelaw 10\*\*) if the Board's officers consider that the proposed works will not increase flood risk, negatively impact on the ability of the Board to carry out its operations (including but not limited to the Board's usual way of working, current access arrangements, available resources and the risks posed to Board employees, now or in the future) or increase the liabilities of the Board.

If consent is granted by the Board, this may be conditional.

Permanent Structures (any building which is not demountable, including any extension to a previous structure) are unlikely to be approved within 9\* metres of the brink of any arterial drainage infrastructure.

Although all cases will be considered on a case by case basis, the following table (overleaf) represents common works and their likely acceptable distance. This table is for guidance only, please contact the Board's officers for further discussion regarding individual proposals.

*\*7 metres within the Waveney, Lower Yare and Lothingland IDD*

*\*\* Byelaws 10 and 17 of the Waveney, Lower Yare and Lothingland Byelaws*

Works	Likely Acceptable Distance	
	Open Watercourse	Culverted Watercourse
Permanent Structures	9* metres from brink	9* metres from outside edge
Trees	9* metres from brink	9* metres from outside edge
Ground Surfacing	7 metres from brink	1 metre from outside edge
Demountable Fencing	7 metres from brink	1 metre from outside edge
Demountable Structures	7 metres from brink	3 metres from outside edge
Hedging	7 metres from brink	3 metres from outside edge

### 5.3.1. Byelaw 10\*\* Delegation

All applications for consent under Byelaw 10\*\* can be determined by officers under delegation if they meet the requirements of Policy 4, with the exception of permanent structures (any building which is not demountable, including any extension to a previous structure).

### 5.4. Other Bodies requiring the Board's Consent

As per Byelaw 26\*\*\* of the Board's Byelaws, nothing in the Byelaws shall restrict, prevent, interfere with or prejudice the exercise of any statutory rights or powers of a number of organisations (listed within Byelaw 26\*\*\*).

Where an organisation listed by Byelaw 26\*\*\* requires the Board's Consent we will liaise and negotiate with that organisation to ensure the Board's requirements are not in Breach of Byelaw 26\*\*.

### Policy 5 – Other Bodies requiring the Board's Consent

Where an organisation listed by Byelaw 26\*\*\* requires the Board's Consent we will liaise and negotiate with that organisation to ensure the Board's requirements are met without restricting, preventing, interfering with, or prejudicing the exercise of any statutory rights or powers granted to that body or organisation.

*\* 7 metres within the Waveney, Lower Yare and Lothingland IDD*

*\*\* Byelaws 10 and 17 of the Waveney, Lower Yare and Lothingland Byelaws*

*\*\*\* Byelaw 27 of the Waveney, Lower Yare and Lothingland Byelaws*

## Section 6: Enforcement

### 6.1. Introduction

The WMA member Boards set out in their Business Plan Policy Statements that;

“The Board will take appropriate steps to help riparian owners understand their responsibilities for maintenance, byelaw compliance and environmental regulations.”

The Board will initially seek to work with private owners to seek their cooperation in undertaking required works within a reasonable timescale. Where an amicable resolution is no longer likely to be achieved, or where formal enforcement powers are available to the Board set out within the Board’s Byelaws and Sections 21, 24 and 25 of the Land Drainage Act 1991. The Board’s approach to enforcement is set out within this section.

### 6.2. WMA Approach

The process of enforcement by WMA member Boards will follow the staged approach set out below, and within Policy 6.

#### 6.2.1. Contravention Reported

Once a complaint about an ordinary watercourse is received by the Board, officers will carry out an initial assessment to establish whether a contravention has been undertaken, and whether the Board are the relevant regulatory authority.

An initial assessment should be completed within 21 days of receipt of the complaint however, it may be necessary to extend the period of assessment for more complex matters, high demand on the service and/or to accommodate environmental circumstances e.g. weather, flood conditions, etc.

Unless there is a good reason to the contrary, the assessment should include a full written description of the contravention from a Board employee and where possible dated photographs of the contravention. The Board may receive a written report from another Risk Management Authority (such as a LLFA flood investigation).

This assessment should consider whether a contravention has occurred and if it has, the likely impact of that contravention. Relevant factors may include on-site conditions, the impact on the Board’s operations, other relevant risk factors, any available historical data, potential flood risk information, conservation designations, the type of land holding and any site specific considerations.



### **6.2.2. Stage 1:**

Stage 1 is intended to be a pre-cursor to any formal enforcement action and should initiate open correspondence with the relevant landowner, person and/or Risk Management Authority. The aims of stage 1 are as follows:

- Inform landowners of their responsibilities under the Land Drainage Act 1991 and the Board's Byelaws, while separating contraventions into two categories:
  1. Contraventions which are negatively impacting Flood Risk or the Board's Operations. These contraventions include works which would have required determination by the Board (if an application had been received prior to the works being undertaken).
  2. Contraventions which are not impacting flood risk or the Board's Operations. These contraventions include works which would have been granted consent by officers using their delegated authority (if an application had been received prior to the works being undertaken).
- To seek the removal of contraventions which are impacting flood risk or the Board's Operations without the need for formal enforcement action.
- To seek the regularisation or removal of contraventions which are not impacting flood risk or the Board's Operations.

To achieve the aims of Stage 1 the Board's Officers may write a letter to the relevant landowner, person and/or Risk Management Authority responsible for the contravention. This will include an explanation of the contravention, its impact and the remedy required in accordance with the Land Drainage Act 1991 and the Board's Byelaws and the timeframe for the work to be undertaken (usually 21 days from the date of the letter).

If a positive response to the IDB letter has not been received within the timescale specified, and on inspection no work has been satisfactorily undertaken, the case may proceed to 'Stage 2'. In deciding whether or not to carry out further investigation the Board will consider whether it is in the public interest to do so having regard to the actual and potential impacts of the contravention, the costs of carrying out the works and the likelihood of obtaining sufficient evidence to support enforcement action.

### **6.2.3. Stage 2:**

Where further action is pursued by the Board, Stage 2 is intended to enable officers to draw on formal powers of enforcement, to ensure that a contravention of the Land Drainage Act 1991 (including Byelaws) is removed where this contravention is negatively impacting Flood Risk or the Board's Operations. The aims of stage 2 are as follows:

- Serve a formal Notice under the relevant section of the Land Drainage Act 1991 or the Board's Byelaws. The notice will include the nature of the work to be carried out, the period within which it is to be carried out and any relevant right of appeal.

- To remove contraventions of the Land Drainage Act 1991 on behalf of the landowner where they have failed to meet the requirement of the aforementioned Notice and reclaim the Board's costs.

A Notice under the Land Drainage Act 1991 or the Boards byelaws is a legal document formally requiring specific work to be carried out within a set timescale. In the event of the works not being undertaken, the IDB may carry out the work itself and recover from the person responsible the expenses reasonably incurred in doing so which will include recovering the costs of pursuing the case.

As far as possible, officers will continue to seek to resolve the situation by means of negotiation with the person responsible.

### **6.3. Additional Information:**

In certain circumstances practicalities may not allow for works to be achievable within the usual timeframe specified in the letter. The Board will assess the circumstances of each enforcement case individually and determine whether any works need to be deferred or amended to take into account the impacts of any works on wildlife or habitat.

In some circumstances the Board may require further information on the contravention. As such officers may arrange to meet the land owner and/or complainant and undertake additional site visits to substantiate the Board's regulatory position. This process may also involve the Board consulting with other organisations including other Local Authorities, Highway Authorities, the Environment Agency and Natural England as appropriate and/or require or commission appropriate site surveys and inspections.

As stated in the enforcement policy the Board may take no action where there is not enough evidence to support enforcement or where there is no or minimal impact.

## 6.4. Policy

### Policy 6 - Enforcement

Where responsibility for maintenance of ordinary watercourses rests with a land owner, the Board will take appropriate steps to secure their co-operation to ensure maintenance takes place. Where necessary the Board will draw on powers of enforcement to secure this maintenance of the removal of any unauthorised works or obstruction.

The WMA member Boards will take a risk-based and proportionate approach to exercising their regulatory powers under the Land Drainage Act 1991 and byelaws, taking into account the location and nature of any contravention, nuisance or flooding caused by;

- the failure to repair or maintain watercourses, bridges or drainage works
- un-consented works including works within 9\* metres of the edge of drainage and flood risk management infrastructure
- impediments to the proper flow of water

This approach will take into account whether the contraventions have or are likely to increase flood risk and what the consequences of any increase in risk may be.

Where works are un-consented the relevant IDB would require the landowner or responsible person to prove that the un-consented works do not cause a nuisance or increase flood risk. Where the landowner or responsible person provides insufficient evidence to the contrary, there will be a presumption that the un-consented works would cause a nuisance or increase flood risk.

The Board may close an enforcement case file and/or take no action where;

- there is a lack of physical evidence to corroborate the impact of a flood event;
- there is no actual or potential risk to properties or infrastructure;
- that the matter complained of is not the cause of the drainage problem;
- the matter is trivial in nature (de minimis)

Where no enforcement action is taken correspondence may inform and advise individuals of their riparian owner responsibilities and of the route for settling disputes with other riparian owners where appropriate including referral to the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage where appropriate.

Where the Board are made aware of breaches to other legislation they will advise the appropriate authorities.

*\*7 metres within the Waveney, Lower Yare and Lothingland IDD*

## **6.5. Fly Tipping / Waste**

Waste in watercourses can result from an accumulation of general litter, or from fly tipping (the illegal dumping of waste). Waste can have The main detrimental effects of waste accumulation in watercourses are a reduction of flow in the watercourse and environmental damage.

Policy 7 below outlines the Board's policy regarding fly-tipped waste.

### **Policy 7 – Fly Tipping and rubbish in Board's watercourses and on Board's property**

The Board do not have enforcement powers with regard to fly tipping as these rest with the relevant Local Authority and the Environment Agency. As such, when notified of fly tipping in the IDD the Board would consider the incident as follows:

If the incident is causing a significant obstruction to flow or is presenting an imminent risk of flooding within the Internal District the Board's operatives will remove the waste as per the Board's statutory functions. For this purpose the Board have a waste transfer licence to allow them to move waste. Waste can be temporarily stored in the relevant Board's yard, where a waste exemption license is in place, before disposing of in an appropriate manner.

If the Board's operatives consider the fly tipping incident to be of a serious nature or to have already resulted in a severe consequence the Board will report it to the appropriate enforcement body, rather than attempting to deal with it itself, in case evidence is inadvertently lost, which could have been used to prosecute offenders.

In all other incidents the waste will be reported to the relevant Local Authority. In the case of a vehicle, the Police will also be informed as soon as possible.

If the waste is causing a pollution incident then the Environment Agency will be informed at the earliest opportunity and the pollution contained.

## Section 7: Watercourse Maintenance

### 7.1. Introduction

Generally watercourses within IDB Internal Drainage Districts (“IDDs”), unless vested in some other authority, are the responsibility of riparian or private owners to maintain, repair and improve as necessary to ensure effective drainage. A ‘riparian owner’ is a person who owns land or property adjacent to a watercourse. A private owner is a person who owns land or property with a watercourse within their title. The definition of watercourse includes streams, ditches (whether dry or not), ponds, culverts, drains, pipes or any other passage through which water may flow.

Purchasers of property are often unaware of their inherited riparian or private duties. These are outlined in the Land and Property Act 1925 (Section 62), which states that “a conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey with the land all buildings, hedges, ditches, fences, ways, waters, watercourses, liberties, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land or any part thereof”.

### 7.2. Responsibilities of Riparian Owners

The government has produced a number of web pages that explain riparian responsibilities and the need for maintenance of watercourses. These are available using the following link: <https://www.gov.uk/guidance/owning-a-watercourse>.

### 7.3. Arterial Watercourses

IDBs often carry out their drainage/water level management responsibilities through the designation of ordinary watercourses as ‘Arterial Watercourses’, also frequently known as ‘Main Drains’, or ‘Adopted Watercourses’. These watercourses are (for the time being) under the control of the Board.

The status of ‘Arterial Watercourse’ is an acknowledgement by the IDB that the watercourse is of arterial importance to the IDD and normally will receive maintenance from the IDB. This maintenance is not necessarily carried out on an annual basis but on a recurrence deemed necessary to meet water level management requirements. The designations are made under permissive powers and there is no obligation for IDBs to fulfil any formal maintenance requirement and there is no change in the ownership or liability associated with the watercourse. Arterial watercourses are protected to a greater extent by the Board’s byelaws.

### 7.4. Designation Changes (Arterial Watercourses)

From time to time drains are ‘en-mained’ and abandoned by the Board due to changes in circumstance. The criteria listed within policy 8 have been created to inform ad-hoc changes to the designation of a watercourse. It should be noted that every case will have to be judged on its own merits, as the complexities and peculiarities of individual cases cannot be encompassed within a standard set of criteria.

## Policy 8 – Designation of arterial watercourses

Watercourses which fulfil the following criteria should be considered for designation as an arterial watercourse:

*A watercourse with more than one riparian owner/occupier, or that caters for more than one owner/occupier within its catchment, which causes persistent drainage problems (or would do if a change in circumstances was to take place) where effective maintenance would prevent these problems from occurring.*

*If an improvement scheme is required to be undertaken to make it an effective drainage route, then the benefit of this must outweigh the cost. The landowner, or developer should finance the improvement to the specification of the Board before the drain is designated as an arterial watercourse.*

Watercourses which fulfil the following criteria should be considered for ‘abandonment’:

*A watercourse which either has (or serves) one riparian owner, or is redundant for its original purpose, or would not cause a drainage problem if it the Board’s regular maintenance ceased.*

Consideration should also be given to the availability of access to the watercourse to carry out maintenance works.

## Policy 9 –Structures within Arterial Watercourses\*

The Board will seek to charge a maintenance fee (calculated in line with the Board’s charging policy) to undertake maintenance of proper flow through all **newly** consented structures within an arterial watercourse.

The payment of the fee means that the Board will continue to consider the altered watercourse as part of its arterial network and will maintain the flow of water through the consented structure by de-silting and clearing excess vegetation on a recurrence deemed necessary to meet water level management requirements.

Payment of the fee does not commute the liability for maintenance of the structure’s integrity which shall remain with the relevant landowner(s).

If a riparian landowner does not wish to pay the fee, the Board will instead require that the landowner agree to a standard maintenance regime, the timing of which is to be agreed annually with the Board’s Operations Manager.

\* Policy 9 has currently only been adopted by the South Holland Internal Drainage Board

## Section 8: Board's Estate

The WMA Member Boards own several land holdings, including watercourses. Most of these land holdings are registered with the Land Registry. If a third party wishes to undertake works within the curtilage of the Board's landholding, or otherwise use the Board's landholding, the Board's prior express permission is required. Any such permission may be in the form of a Deed of Easement, lease, conveyance, licence or any other agreement or disposition as required by the Board. The Board is not obliged to agree to such a request.

Entering into a landowner agreement with the Board does not alter the requirement for Land Drainage Consent in accordance with the Land Drainage Act 1991 and the Board's Byelaws.

Where any agreement is to be considered or required, the Board's reasonable costs including administrative costs and full costs of professional services (including valuation costs and legal fees) are to be paid by the third party.

The WMA Member Boards may require a Deed of Easement (or suitable alternative) in accordance with Policy 10 below.

### **Policy 10 – Landowner Agreement Policy**

The Board will require a third party to enter into a Deed of Easement (or suitable alternative) where the works are clearly proposed within the curtilage of the Board's landholding, including watercourses or where rights pertaining to the Board's landholding are to be acquired by a third party (including access rights).

The Board may require a third party to enter into a Deed of Easement (or suitable alternative) where the works are proposed adjacent to the curtilage of the Board's landholding, (including pipework entering watercourses which are owned brink to brink). Whether the Board requires a Deed of Easement will be decided by the Chief Executive's Management Committee on a case by case basis.

The Board will always consider entering into a Deed of Easement at the request of a third party (i.e. where the third party requires the granting of express rights).

In accordance with Section 63 of the Land Drainage Act 1991, the WMA Member Boards may not dispose of land owned by the Board for a consideration less than the best that can reasonably be obtained, other than with the consent of the relevant Minister. To ensure compliance with Section 63 of the Land Drainage Act 1991 the WMA Member Boards will engage the services of a chartered surveyor, to value any proposed disposition. For the avoidance of doubt, the disposition of land includes the granting of an easement (for example, enabling a third party to cross land owned by the Board).