

# Environment, Development and Transport Committee

<b>Report title:</b>	<b>Environment Agency's Rationalising the Main River Network Pilot Project</b>
<b>Date of meeting:</b>	<b>18 January 2019</b>
<b>Responsible Chief Officer:</b>	<b>Tom McCabe – Executive Director, Community and Environmental Services</b>
<b>Strategic impact</b> The Environment Agency proposes to designate three stretches of Main River as Ordinary Watercourse, as part of a pilot project to establish a process for 'demaing'. These proposals would add 31.2km of watercourse to the ~5,400km of mapped ordinary watercourse.	

## Executive summary

The Environment Agency is proposing to designate a total of 31.2km over three stretches of Main River as Ordinary Watercourse within Norfolk.

The stretches of river are the River Tud, Tunstall Dyke, and the upper stretch of the Waxham New Cut. These sections of watercourse fall within the area of Internal Drainage Boards. The management and regulation of flood risk for these three stretches of watercourse would be carried out by Internal Drainage Boards (IDBs).

The Environment Agency has assessed these watercourses as presenting low flood consequence with few properties and people at risk.

The Environment Agency have carried out a public consultation on their proposals and will consider the feedback and make a determination by March 2019. The County Council did not respond to the consultation, as the proposals do not directly affect the County Council. However, to ensure the Committee are able to make their views known prior to the EA determination, the EA have been invited to attend the committee meeting

## Recommendations:

- 1. To consider the Environment Agency's proposals for de-maing in Norfolk and agree the Committee's position on the proposals so that it can be taken into account before a decision is made on the way forward.**
- 2. The Committee can agree any position it wishes, including one of the following:**
  - 1. To support the proposals**
  - 2. To support the proposals in principle, subject to the relevant District Councils confirming their support**
  - 3. To not support the proposals**
  - 4. To offer some general comments, but to have no position on the proposals (i.e. neither support or not support), on the basis that they do not directly affect the County Council.**

## 1. Proposal

- 1.1. **The Environment Agency proposes to make a determination under the Water Resources Act 2014 s. 193C that the River Tud, Tunstall Dyke, and the upper stretch of the Waxham New Cut are no longer to be treated as a main river, or part of a main river.**
- 1.2 Designation as main river prevents Internal Drainage Boards from using their general drainage and regulatory powers (LDA s. 14A, 21 and 23) on the designated watercourse. Instead, the Environment Agency has these permissive powers to undertake maintenance, consenting, and enforcement activities (LDA s. 21 and s. 23; WRA 1991 s. 107).

This proposal to determine the River Tud, Tunstall Dyke and upper stretch of Waxham New Cut as ordinary watercourse would mean that the Environment Agency would no longer exercise these permissive powers on these watercourses.

Instead, the relevant Internal Drainage Boards would use their general drainage (LDA s. 14A) powers to undertake flood risk management activities on these watercourses. It also allows the internal drainage board to consent to obstructions and enforce works (LDA s. 21 and 23).

## **2. Evidence**

- 2.1. Statutory guidance sets out the basis on which the Environment Agency should decide whether a river or watercourse is treated as main river.

A watercourse should be a main river if significant numbers of people and/or properties are liable to flood, including areas where there are vulnerable groups and areas where flooding can occur with limited time for warnings.

Additionally, a watercourse should be main river where it can contribute to extensive flooding across the catchment or is required to reduce flood risk elsewhere or provide capacity for water flowing from other sources.

- 2.2. Proposals to change the status of a watercourse should also consider:
  - How the changes contribute to the maintenance of an efficient network
  - The competence, capability and resources of future risk management authorities

Other relevant factors including benefits and costs for local communities, and representations from the local community and others in response to consultation.

### **2.3. River Tud**

- 2.4. If these changes go ahead, the regulatory authority for consenting and enforcing works for this watercourse would be the Norfolk Rivers Internal Drainage Board.
  - 17 properties within flood zone 2 and 4 properties in flood zone 3
  - 7 hr 30 min duration from issuing a flood warning to flooding occurring
  - No known vulnerable groups within the flood zone
  - Not considered to have a significant effect on flooding elsewhere
  - Not considered to be required to reduce risk elsewhere
  - Provides capacity for water flowing from two sewage treatment works
  - Designation as ordinary watercourse would maintain a contiguous main river network and would not create an alternating management regime
  - Norfolk Rivers Internal Drainage Board has the funding mechanisms and expertise available to act competently as risk management authority
  - The River Tud is of high ecological value. Norfolk Rivers IDB is a competent authority with the governance, funding and expertise to carry out their

statutory functions in conserving and enhancing the natural environment. The Environment Agency will retain the ability to take enforcement action should any party cause hydromorphological harm.

See Appendix 1, Map 1

## **2.5. Tunstall Dyke**

2.6. If these changes go ahead, the regulatory authority for consenting and enforcing works for this watercourse would be the Broads Internal Drainage Board.

- There are no properties near the Tunstall Dyke and we consider the risk of flooding from rivers to be low
- Historical and modelled flooding is tidal flooding, not related to the management of the watercourse
- No known vulnerable groups nearby
- Not considered to have a significant effect on flooding elsewhere
- Not considered to be required to reduce risk elsewhere
- Does not provide capacity for water flowing from other sources
- Designation as ordinary watercourse maintains a contiguous main river network and does not create an alternating management regime
- The Broads Internal Drainage Board has the funding mechanisms and expertise available to act competently as risk management authority
- Not of significant ecological value.

See Appendix 1, Map 2

## **2.7. Waxham New Cut**

2.8. If these changes go ahead, the regulatory authority for consenting and enforcing works for this watercourse would be the Broads Internal Drainage Board.

- There are few properties near the Waxham New Cut and we consider the risk of flooding from rivers to be low
- Historical and modelled flooding is tidal flooding, not related to the management of the watercourse
- No known vulnerable groups nearby
- Not considered to have a significant effect on flooding elsewhere
- Not considered to be required to reduce risk elsewhere
- Does not provide capacity for water flowing from other sources
- Designation as ordinary watercourse maintains a contiguous main river network and does not create an alternating management regime
- The Broads Internal Drainage Board has the funding mechanisms and expertise available to act competently as risk management authority
- Not of significant ecological value.

See Appendix 1, Map 3

## **3. Financial Implications**

3.1. There are no financial implications for the County Council arising from these proposals

3.2. The watercourses proposed for designation as ordinary watercourse receive little maintenance or funding. The maintenance that has been carried out was funded through a combination of internal drainage board precept, general drainage

charges, and grant-in-aid.

These are payments from the IDB; agricultural landowners outside of internal drainage districts; and the central government to the Environment Agency.

- 3.3. Works carried out by the Internal Drainage Boards would be funded by special levies, highland water contributions, and drainage rates. The IDBs also seek grant contributions towards capital and environmental improvement schemes.

These are payments from the District Council in proportion to the value of non-agricultural land within the district; the Environment Agency; agricultural landowners within the drainage district; central government via the Environment Agency, and partners such as local enterprise partnerships.

The Internal Drainage Boards set special levy and drainage rates annually.

- 3.4. District Councils are already exposed to special levy in relation to

- 405km of Norfolk Rivers IDB adopted ordinary watercourse
- 340km of Broads IDB adopted ordinary watercourse

- 3.5. As these watercourses are wholly within the internal drainage district, the Lead Local Flood Authority is not exposed to additional costs except those associated with developing, maintaining, applying, and monitoring the flood risk management strategy. This may include where it describes the roles of, or working in partnership with, other risk management authorities, such as

- the flood risk management asset register
- emergency response and recovery plans

## **4. Issues, risks and innovation**

### **4.1. Benefits to local communities**

- 4.2. The purpose of river maintenance and regulation has shifted from land drainage to management of flood risk to people and property.

Flood risk in England is highly concentrated with ~90% of the property at risk within the flood plain of ~40% of the main river network.

This means that ~60% of the main river network does not present significant flood risk to people and property. These stretches are therefore subject to intermittent funding and, consequently, intermittent maintenance.

- 4.3. These proposals would allow local public bodies to consider the maintenance and regulation needs of these watercourses at the local scale and choose how to prioritise them accordingly.
- 4.4. The Environment Agency and Norfolk Rivers, Broads and East Suffolk IDBs identified a number of watercourses that could realise benefits from being managed as ordinary watercourses. Largely by supporting a more efficient drainage network achieved by:
- Maintaining confluences between drainage channels and rivers, where these have not been maintained under the present flood risk management regime
  - Reconnecting previously dry watercourses to the drainage network to improve connectivity, reduce the distance water needs to be pumped over and help manage ochre.

### **4.5. Water Framework Directive**

- 4.6. The Environment Agency is the competent authority for the implementation of the Water Framework Directive and must ensure that the proposals do not jeopardise the achievement of the objectives of the Directive or are likely to result in waterbody deterioration.

- 4.7. In relation to de-maining, the Environment Agency needs to be convinced that the objectives of the Directive and the risk of not meeting the expected status are not compromised. This issue can be complex based on issues including the watercourse objectives, mitigation measures and standards of protection e.g. appropriate byelaws being in place and the use of best environmental practice when planning and undertaking flood risk activities.
- 4.8. Water Framework Directive requirements as they apply to a particular watercourse will be assessed on a case by case basis depending on the river's classification, stated objectives and actions identified within the relevant River Basin Management Plan.
- 4.9. All watercourses proposed for de-maining by definition fall under the protection of the Flood and Coastal Risk Management Environmental Permitting Regulations, which take a risk-based approach to environmental risk. If this protection is disapplied via de-maining, the EA must ensure that any new regulatory regime would not add unacceptable environmental risk to the environmental receptors over and above that which presently exists. The Internal Drainage Boards have byelaws that replicate a similar level of environmental regulation and must exercise their functions with regard to relevant River Basin Management Plans
- 4.10. As part of the Rationalising the Main River Network project, the EA aim to have no ongoing liability for the land or assets on the watercourses that are transferred. There are no Environment Agency assets along these watercourses that will be transferred to the IDB as part of the de-mainment process. No assets will be transferred to NCC. There is one privately owned footbridge crossing the River Tud that the Environment Agency is withdrawing maintenance from. This is being carried out through our Asset Management Protocol and will be progressed independent of any de-mainment proposals.

## **5. Background**

- 5.1. These proposals are part of the Norfolk pilot for the Environment Agency's Rationalising the Main River Network that aims to set out a nationally consistent process of managing main river / ordinary watercourse designation changes.
- 5.2. The Environment Agency published the determinations they propose to make on Monday 12 November 2018 and a consultation on these determinations took place between Monday 12 November 2018 and Friday 21 December 2018. The County Council was not formally consulted and did not respond to the consultation.
- 5.3. The Environment Agency must consider all representations. They will summarise these and respond to them in a consultation response document published after the close of the consultation.
- 5.4. The Environment Agency may decide not to make a determination.  
If the Environment Agency make a determination, this will take place between January 2019 and March 2019, at which time they will publish the decision, the terms of any determination, and the date that map changes would give effect to the determination.
- 5.5. The Environment Agency will inform those who made representations that contained an objection to the proposal. Anyone aggrieved by the determination may appeal to the Secretary of State within six weeks from the publication of the decision.  
If no appeals are made, the map changes will give effect to the determination.  
This process is as laid out in the Water Resources Act 1991 s.193B-D
- 5.6. A watercourse is any river, stream, ditch, drain, cut, culvert, dike, sluice, sewer (other than public sewer) and passage through which water flows (Land Drainage

Act 1991 s.72).

An ordinary watercourse is any watercourse that is not main river (Land Drainage Act 1991 s.72).

A main river is any watercourse determined to be a main river by the Environment Agency (WRA s.193C) as shown by the main river map (WRA s.193).

5.7. Flood risk management activities include:

- maintenance of buildings, structures, and watercourses;
- operation of structures; improvement of buildings, structures, watercourses and obstructions;
- construction and repair of buildings, structures, watercourses etc;
- maintaining or restoring natural processes;
- monitoring, investigating or surveying locations and natural processes;
- reducing or increasing level of water;

altering or removing works

5.8. Lead Local Flood Authorities must develop, maintain, apply and monitor a flood risk management strategy for surface runoff, groundwater, and ordinary watercourses (Flood and Water Management Act 2010 s.9 (1-2)) specifying

- the risk management authorities in the authority's area;
- the flood and coastal risk management functions that may be exercised by those authorities;
- the objectives for managing local flood risk;
- the measures proposed to achieve those objectives;
- how and when the measures are expected to be implemented;
- the costs and benefits of those measures and how they are to be paid for;
- the assessment of local flood risk for the purpose of the strategy;
- how and when the strategy is to be reviewed; and
- how the strategy contributes to the achievement of wider environmental objectives.

5.9. District Councils, Internal Drainage Boards, and unitary authorities have powers to carry out works to manage flood risk from ordinary watercourses. Lead Local Flood Authorities have powers to carry out works to manage flood risk from surface runoff or groundwater if they consider work desirable with regard to the local flood risk management strategy (Land Drainage Act s.14A)

5.10. County councils may exercise the powers of District Councils at the request of the District Council or after 6 weeks notice given by the county council to the District Council (Land Drainage Act 1991 s.16)

5.11. Lead Local Flood Authorities may require the repair or maintenance of watercourses, bridges, or drainage works where these are outside of Internal Drainage Boards, except in relation to main rivers (Land Drainage Act 1991 s. 21).

5.12. The consent of Lead Local Flood Authorities is required to erect obstructions to ordinary watercourses where these are outside of the internal drainage district (Land Drainage Act 1991 s.23)

5.13. Where powers, duties, and responsibilities of Internal Drainage Boards are referred to, these powers, duties and responsibilities are often distributed between District Councils and Lead Local Flood Authorities when the watercourse in question is outside of the internal drainage district. However, this proposal does not consider watercourses outside of any Internal Drainage District.

## **Officer Contact**

If you have any questions about matters contained in this paper or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

**Officer name :** Mark Ogden

**Tel No. :** 01603 638081

**Email address :** [water.management@norfolk.gov.uk](mailto:water.management@norfolk.gov.uk)



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