

# **POLICY ON MAINTAINING WATER RESOURCES AND RESPONDING TO FLOOD INCIDENTS: A GUIDE FOR COUNCIL DEPARTMENTS**

## **Aim of the Policy**

1. The purpose of this policy is to clarify and define the scope of the Council's roles and responsibilities in relation to maintaining water resources, assessing and mitigating the risks arising, responding to related flooding incidents and supporting the communities affected by these.

## **Background**

2. Every year Leeds experiences a number of flooding incidents affecting houses, roads and other infrastructure all of which may significantly impact residents' lives. Such events may arise from unavoidable severe weather or from problems relating to the built environment in the shape of design deficiencies or poor maintenance. Whatever the origins it is apparent that the frequency and intensity of flooding in Leeds is increasing and is likely to lead to additional urban flooding and drainage problems.<sup>1</sup>
3. Although flooding problems are popularly associated with rivers, the majority of flooding incidents and the damage caused in Leeds derive from *non-main river* sources. For the purposes of this policy this is taken to mean becks, sewers, culverts, highway gullies and drains, surface water run-off, as well as Council-owned dams, lakes and reservoirs.

## **Roles and Responsibilities**

4. The effective treatment and mitigation of *non-main river* flooding risks is hindered by the number of organisations with a role in maintaining 'water resources' and in planning and responding to flooding resulting from these. These include the Council (enforcement on ordinary watercourses), Environment Agency (enforcement on reservoirs covered by the Reservoirs Act), Yorkshire Water (public sewers, reservoirs) and private landowners.
5. The Council not only has ownership responsibilities relating to highway drains gullies, culverts, Council-owned becks and lakes), but also relating to enforcement of legal duties on third parties. Annex 1 sets out these legal responsibilities in detail.

## **Legal Responsibilities for Enforcement**

6. Under the Land Drainage Act 1991, the Council as Land Drainage Authority has powers to require remedial works to becks, or to undertake these and charge costs to defaulting owners. These powers are exercised by Development Department's Land Drainage Section which undertakes a becks inspection programme in line with our Flood Defence Policy Statement.
7. It is the Council's policy that private landowners and householders with riparian ownership responsibilities should undertake maintenance in line with the requirements

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<sup>1</sup> See 'Increasing Flood Risks' in "Warming Up the Region: Yorkshire and Humber Climate Change Impact Scoping Study", Yorkshire and Humber Assembly, 2002, pp.10-11.

of common law. To this end, the Council will promote the need for compliance by third parties through the provision of public information and advice. In addition, the Council may use its permissive powers to undertake necessary work and recharge any costs incurred as appropriate to the circumstances where it is established that:

- ❑ the individuals concerned are unable to perform this duty due to unique circumstances; or
- ❑ no owner is registered or can be found for land with riparian responsibilities

### **Legal Responsibilities for Maintenance and Mitigation**

8. As a major landowner with *riparian* (riverbank) ownership responsibilities, the Council has *common law* duties to maintain its watercourses in an acceptable condition. At present, such responsibilities are vested in a range of departments and Council-owned bodies.
9. The Council has a number of other duties derived from statute which relate to water resource maintenance including:
  - ❑ as the Highway Authority (Highways Act 1980), the Council has responsibility for maintaining the highway of which the highway drains, gullies, culverts and watercourses under bridges form part.
  - ❑ as the owner of highways bridges and culverts, the Council has a responsibility for ensuring that related watercourses are kept clear of obstructions under the Public Health Act 1936.
  - ❑ as the owner of a range of lakes and dams, the Council has responsibilities under the Reservoirs Act 1975.
10. It is the Council's policy that all Council-owned water resources should be subject to regular risk assessments and maintained in line with these assessments. To enable this to happen, the Council will: (i) ensure the provision of an adequately trained and resourced capability to maintain its water assets; (ii) develop and maintain full records of the drainage systems forming part of the highway, Council-owned watercourses and culverts as well as lakes and reservoirs. Particular emphasis is given to the need for mapping known flooding 'hotspots'.
11. The implementation of water asset maintenance capabilities does not absolve land-owning departments from their duties to undertake grounds maintenance on land adjacent to watercourses.

### **Responsibilities for Flood Prevention and Emergency Response**

12. The Council's obligations as an operating authority for flood defence on ordinary watercourses is set out in its Flood Defence Policy Statement.
13. Under the Civil Contingencies Act (2004), the Council has several statutory duties impinging on potential flooding, including:
  - ❑ to assess the risk of an emergency either occurring or making it necessary for them to perform their functions;
  - ❑ to maintain plans to enable them to perform their functions in an emergency necessary to prevent, reduce, control, mitigate its effects;
  - ❑ maintain arrangements to warn the public and provide public advice;
  - ❑ co-operate and share information with other responding organisations.

In line with these duties, it is Council policy to maintain or have access to an adequately trained and resourced capability to be able to respond to water-related incidents at any time of the day whether related to watercourses, culverts or highway drains or gullies. The Council will also ensure that generic and specific contingency plans are in place to mitigate identified flood risks.

14. In addition to its statutory duties in relation to flood prevention and response, it is Council policy - on a *discretionary* basis - to perform a number of additional non-statutory roles to assist residents and communities affected by flooding in restoring their lives to normality. The cost of these efforts may be recharged where this is deemed appropriate.

### ***Sandbags***

15. The Council may provide sandbags to householders and other parties to reduce the risk of property damage during major flooding. To this end it maintains at Highways depots a limited number of filled sandbags together with sandbag-filling machines and a strategic stock of sandbags and sand for swift deployment. To ensure they are deployed to maximum effect, sandbags are issued in the following order:
  - ❑ Vulnerable individuals or establishments;
  - ❑ Residential properties; and
  - ❑ Business or other non-residential properties.

### ***Environmental Health***

16. Environmental Health has a key role in protecting the health, safety and environment of residents and communities affected by flooding. Following a flood, officers will ensure that appropriate advice and guidance is provided to residents on possible contamination and cleaning. In addition, the Council may also provide a sampling service to determine whether properties are contaminated.

### ***Provision of Manual Labour and Other Resources***

17. It is Council policy that - on a *discretionary* basis - staff from Council departments may be deployed following major flooding to support residents in cleaning their houses, removing damaged household items or debris from their homes and gardens or the banks of watercourses for which they have responsibility.
18. It is also Council policy that - on a *discretionary* basis - Council departments may provide cleaning materials for use by residents to aid them in the clean-up and organise skips for the disposal of contaminated goods.
19. The need to provide discretionary services relates to the specific circumstances of an incident, but the wider the impact on a community the more likely these are to be needed. However, even in these circumstances, the Council will prioritise their provision on the basis of vulnerability and need. This policy does not imply the need for the Council to offer the same discretionary services in smaller, one-off types of incidents which can be effectively handled by the individual householder(s) affected.

## **THE COUNCIL'S LEGAL RESPONSIBILITIES RELATING TO WATER MANAGEMENT**

The Council's responsibilities/liabilities in relation to flooding and other water issues arises from many sources an outline of the most relevant being:

### **Part 1 - Common Law Responsibilities**

1. As a riparian owner arising out of its own land holdings of land adjacent to watercourses. Rights arise by virtue of common law and include:
  - ❑ the right to receive and the right of flow of water
  - ❑ subject to certain restrictions, the right to use the water
  - ❑ a right to build a defence against flooding provided it is not built in the channel so as to cause obstruction.
  
2. Liabilities of Riparian Owners include:
  - ❑ liability for flooding/escape of water in circumstances which amount to nuisance or negligence on the part of the owner
  - ❑ liability for damage which is the natural consequence of the escape or overflow of water (brought or collected on land for the owners use) under the Rule in Rylands and Fletcher (but this does not apply to water naturally on the land)
  - ❑ not to use the watercourse in such a way as to interfere with the rights of someone further downstream or pollute the water
  - ❑ A riparian owner is under no common law duty to clear a watercourse which becomes silted or obstructed through natural causes, but under the Land Drainage Act 1991 a local authority may require the riparian owner to carry out such works
  
3. Flood defence rests primarily with the riparian owner, but a local authority has permissive powers (but not in connection with a main river) to carry out flood defence works under the Land Drainage Act 1991.

### **Part 2. Statutory responsibilities and role of Leeds City Council**

#### **Reservoirs Act 1975**

4. The local authority has the duties of an undertaker where it is the owner of large raised reservoirs registered under the Act. The Council has a number of such reservoirs (e.g. Waterloo Lake, Yeadon Tarn, and Fenton Dam). It is also responsible for a significant number of sizeable lakes and ponds (e.g. Gledhow Lake, Paul's Pond, and Golden Acre Park Lake) that are not large enough to be registered. In respect of these the Council will have a duty of care in common law and would be liable (see Rylands v Fletcher) if a failure caused injury to third parties or their property.

### **Land Drainage Act 1991**

7. This Act makes reference to Internal Drainage Boards which have certain operational and regulatory powers. Internal Drainage Boards are in operation only in a small area of Leeds, near Wetherby.
8. Section 14 confers on the local authority permissive powers to maintain and improve ordinary watercourses and construct new works for the purpose of preventing flooding or mitigating any damage caused by flooding in their area.
9. Section 20 confers powers on a local authority to undertake drainage work for any person, but at that persons expense.
10. A Local Authority has powers to secure a proper flow under Section 25 and to serve notice on persons requiring them to carry out necessary works to maintain the flow of "ordinary" watercourses.
11. The above may require consent/consultation with the Environment Agency.
12. Section 66 enables a local authority to make bylaws to secure the efficient working of the drainage system in its area - subject to the provisions within the Act (see below).

### **Public Health Act 1936**

13. Section 259 confers statutory nuisance powers in relation to polluted watercourses which cause a nuisance or give rise to conditions prejudicial to health
14. Section 260 confers statutory powers to execute works, including maintenance or improvement works, in relation to drainage, where filth, stagnant waters or matter likely to be prejudicial to health or a nuisance .
15. Section 262 enables the local authority to require a developer to cover etc a culvert/watercourse in relation to land to be developed.
16. Section 263 makes it unlawful to cover over or culvert and watercourse without the agreement of the local authority to plans and sections.
17. Section 264 enables a local authority to require a landowner to repair cleans etc culverts in watercourses on his land.

### **Highways Act 1980**

17. Under the Act Highway Authorities have power to drain water from highways. Section 41 places a duty on the highway authority to reasonably maintain and repair the highway so that it is free of danger to users.

### **Road Traffic Acts, Transport Act 2000, New Roads and Streetworks Act 1991**

19. These Acts also have an effect on water management.

## **Local Government Act 1972**

20. Section 138 enables local authorities to incur expenditure to avert alleviate or eradicate the effects or potential effects of any emergency or disaster - but these powers cannot be used as alternative powers to those available under Section 14 of the Land Drainage Act.

## **Environment Act 1995**

21. This places a duty on the Environment Agency to exercise a supervision in relation to flood defence generally, and to provide a 24 hour flood warning service.

## **Planning Guidance**

22. Planning Policy Guidance Note 25 (PPG25, *Development and Flood Risk*) states that flood risk should be taken into account by planning authorities in the preparation of development plans/determination of planning applications.
23. A planning authority should ensure the provisions of adequate drainage arrangements in a new development.

## **Local Acts/Bylaws**

24. Leeds has enacted bylaws in relation to Land Drainage (under Section 66 of the Land Drainage Act 1991). These give the local authority the power to prevent certain activities that might interfere with the condition or free flow of watercourses.

**OVERVIEW OF COUNCIL WATER RESPONSIBILITIES**

**ANNEX 2**

<b>TYPE OF WATER RESOURCE</b>	<b>SIZE OF COUNCIL RESPONSIBILITIES</b>	<b>EXAMPLES OF RESOURCE</b>	<b>COUNCIL RESPONSIBILITIES</b>	<b>DEPARTMENTS INVOLVED</b>	<b>RECORDS AVAILABLE</b>
Becks and watercourses	127 km	Wyke Beck Wortley Beck Meanwood/Sheepscar Beck Farnley Wood Beck Bagley Beck	As a riparian owner, ensuring that there is no impediment to the free flow of water.	ALMOs City Development (Land Drainage & Recreation) Education Leeds	Partial GIS record held by Land Drainage section.
Highway drains and culverts	450 km		Ensuring highway drains and culverts are maintained to standards that minimise the risk of highway flooding.	City Development (Highway Services)	136 km of highway drain recorded in GIS format by Land Drainage.
Highway Culvert Crossings <900mm	703 culverts		As above.	City Development (Highway Services)	(included in the above)
Highway Culvert Crossings >900mm  Highway Bridges	153 culverts  118 bridges	Wyke Beck (A64) Easterly Road  Harewood Bridge Wyke Bridge (Wyke beck) Globe Road Bridge (Hol beck)	Ensuring that the culverts and bridges are kept clear of obstructions.	City Development (Bridges Section)	Locations of bridges and culverts recorded in GIS. Additional information in Leeds Bridges Database
Lakes and reservoirs < 25,000m3	> 10, but precise number not known.	Golden Acre Lake & Paul's Pond (Bramhope) Chippy's Quarry (Scholes), Farnley Hall Lake Middleton Park Lake, Woodhall Lake, Pudsey	As a responsible body, ensuring that the lakes are maintained to a high standard to avoid unacceptable risks to the local community.	City Development (Recreation)	Records are inconsistent and need to be brought up to a coherent standard.
Lakes and reservoirs > 25,000m3	3	Waterloo Lake Yeadon Tarn Fenton Dam	As reservoir undertaker under the Reservoirs Act 1975, ensuring that the integrity of the reservoir is maintained and that all recommendations made by the Inspecting Engineer in the interests of safety are carried out.	City Development (Recreation)	Statutory Form of Record is held by the responsible department.