



**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**CABINET**

**21<sup>st</sup> SEPTEMBER 2021**

**REVIEW OF REGULATION, AWARENESS AND ENFORCEMENT OF  
FLOOD AND WATER LEGISLATION.**

**REPORT OF GROUP DIRECTOR PROSPERITY DEVELOPMENT AND  
FRONTLINE SERVICES IN DISCUSSIONS WITH THE RELEVANT  
PORTFOLIO HOLDER CLLR MORGAN, LEADER OF THE COUNCIL.**

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**1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to advise members in regard to the review of the regulation, awareness and enforcement of flood and water legislation within the Council following Storm Dennis.
- 1.2 The Report will further advise members in regard to the implementation an enhanced Flood Awareness and Enforcement team and increased regulation via the enactment of Land Drainage Byelaws under S66 of the Land Drainage Act 1991.

**2. RECOMMENDATIONS**

- 2.1 It is recommended that the Cabinet:
  - 2.1.1 Agree to the creation of an enforcement team and post as indicated in Section 4.3 and Section 7.
  - 2.1.2 Agree to the creation of a flooding awareness and support officer post as indicated in Section 4.4
  - 2.1.3 Agree that officers commence the process for the adoption of the drainage byelaws and refer the matter to Council for consideration.
  - 2.1.4 Note the proposal to review the practical operational implications within 12 months of establishing the new byelaws and enforcement team to consider resourcing implications based on actual workload.

- 2.1.5 Agree that the financial implications for the current year are met from existing resources and to update the Medium Term Financial Plan for 2022/23 onwards with the additional ongoing revenue costs.

### 3 **REASONS FOR RECOMMENDATIONS**

- 3.1 Flooding remains a key threat to communities across Wales and managing this risk is important to minimise the risk to communities. The consequences of flooding can include loss of life, damage to the economy, social implications and environmental damage. Climate change is predicted to increase the frequency and the intensity of flooding, increasing the risk in RCT and across the UK. Though flooding is an inevitable natural process, through careful management the probability of flooding along with its impact can be reduced.

- 3.2 From an RCT perspective, the following summaries the current situation

- 10,071 properties in RCT were considered to be at 'high-risk' of surface water (8,611) or main river flooding (1,460), with a further 4,221 properties in the 'medium-risk' category. [Source: Communities at Risk Register \(CaRR\)](#) published as at 2019.
- RCT has 25 of the top 5% (111 communities) of Wales' highest flood risk communities meaning that RCT has 22.5% of the highest ranked communities considered to be at a high risk of flooding in Wales. RCT is ranked as number 1 in Wales for properties at risk of flooding from Surface water flooding (Pluvial). [Source: Communities at Risk Register \(CaRR\)](#) published as at 2019.
- RCT has 3 out of 33 communities defined as nationally significant high flood risk areas in Wales [Source: Preliminary Flood Risk Assessment](#).
- It is also currently predicted that by the year 2039 the peak water flows within rivers and watercourses will increase from 2015 levels by between 10% – 25% , by 2069 20%–40% and by 2115 25%-75% [Source: Adapting to Climate Change: Guidance for Flood and Coastal Erosion Risk Management Authorities in Wales](#)

- 3.3 The recommendations made in this report strongly link to the following:-

1. The Corporate Plan
  2. The National Flood Risk Management Strategy
  3. The Local Flood Risk Management Strategy
- Well-being of Future Generations Act (Wales) 2015

#### **4. BACKGROUND**

- 4.1.1 After the Unprecedented Storms in February 2020. The Council published a Cabinet paper on 18 December 2020 on “Review of Council’s Response to Storm Dennis”. Which the Cabinet agreed the following actions

**RECOMMENDATION 3 – The Council will create a Flood Support Team alongside the Housing Grants Service that supports landowners, residents and businesses in high risk flood areas to procure local flood prevention measures, provides advice and guidance**

**RECOMMENDATION 4 – Individual landowners and property owners, particularly in high flood risk areas, will be requested to consider and evidence how best they can protect their land, homes, and businesses through local measures.**

Extract – “It is proposed that we will appoint a small team of Flood Enforcement Officers including legal support to ensure landowners take their flood responsibilities seriously and are fully compliant with the relevant legislation.”

## **Current Enforcement and Regulation for Flood Risk Management Activities.**

4.1.2 The following table briefly sets out the current legislative situation :-

<b>Legislation</b>	<b>Enforcement/Regulation Activity</b>
Land Drainage Act 1991	S14– Power to carry out drainage works
	S14A – Power to carry out flood risk management works
	S23 – Prohibition of structures in ordinary watercourses.
	S24 – Enforcement powers in respect of unconsented structures in ordinary watercourse.
	S25 – Powers to require works for maintaining flow of a watercourse.
	S64 – Powers of enter onto land.
	S66 – Powers to make Byelaws (currently none in force in RCT) (See section 4.2)
Flood and Water Management Act 2010	S14 – Power to request information
	S15 – Civil Sanctions (not providing information under S14).
	Schedule 1 – Designation of Features - Ability to designate “private” structures as a significant asset and protect it from alteration. (cannot enforce maintenance)
	Schedule 3 – Sustainable Drainage Systems. The Sustainable Drainage (Enforcement) (Wales) Regs (2018)

4.1.3 The aftermath of Storm Dennis and the inspection and survey of over 50km of watercourse highlighted a significant number of instances where some form of enforcement was required. The amount of enforcement activity since Storm Callum in 2018 has slowly increased and after Storm Dennis in February 2020 a large increase with currently 15 items of enforcement activity ongoing.

4.1.4 This suggests that as regulation, asset surveys and inspections continue there will be a steady increase in the requirement for enforcement, whether by warning, notice or prosecution.

4.1.5 However, it should be noted that the current Land Drainage Act 1991 does not give full regulatory control or “protect” existing watercourses

from alteration. Additional regulation of watercourses through the adoption and making of byelaws will be required.

4.1.6 Taken into consideration the review and recommendation made in the Cabinet Report dated 18 December 2021; the following actions are proposed

1. Regulation – The regulation of Flood Assets is increased by Adoption of Land Drainage Byelaws – Section 4.2
2. Enforcement – A Team of enforcement officers with legal support is created. (Section 4.3)
3. Awareness and Support – The bridge between Regulation and Enforcement is built with the introduction of a Flood Risk Support Officer. (Section 4.4)

## **4.2 Increased Regulation - Adoption of Land Drainage Byelaws**

### **Background**

Under the Flood & Water Management Act 2010, councils in Wales were given additional powers and responsibilities for managing flooding from surface water, groundwater and ordinary watercourse. As part of these new powers, the responsibility for issuing ordinary watercourse consent under Section 23 Land Drainage Act 1991 passed from Natural Resources Wales (NRW) to Lead Local Flood Authorities in April 2012.

Since taking on this consenting duty and wider flood risk management function, practitioners have noted that powers under current legislation are limited and certain activities which are not currently consented could potentially increase the risk of flooding especially in more built-up areas. It was therefore decided in 2013 to set-up a Task & Finish Group to oversee a review of current byelaws with the aim of creating a new set to help LLFAs in Wales manage more effectively and consistently activities along ordinary watercourse. For example, building over culverts, diversion of watercourses, restrictions to access for maintenance.

DEFRA model byelaws have for a number of years been widely used across the UK by the Environment Agency and Natural Resources Wales to manage activities along main rivers, and several English LLFAs and Internal Drainage Boards also enforce the same byelaws. However, these byelaws have remained unchanged, not suitable for ordinary watercourse and the majority are rarely enforceable due to their inappropriateness.

A new set of byelaws have been drafted by key strategic partners in response to concerns about measures available to manage risk arising from potential

flooding. As such they draw on the experience of a wide range of practitioners thus offering sensible and balanced powers consistent with other agencies across the region.

These standard set of byelaws have been ratified by the appropriate Welsh Minister and provides for a standard and consistent approach by the Welsh Lead Local Flood Authorities. These are included at Appendix 1.

The primary function of the new Land Drainage Byelaws is to assist Lead Local Flood Authorities manage the risk of flooding through better regulation. However, through careful revised wording and a wide range of activities being covered these byelaws can also benefit the wider environment. By doing so, they will benefit other functions within local government and help with the delivery of other legislation including the Water Framework Directive and the Habitat Directive.

Ultimately, this holistic approach to flood risk management through the use of Land Drainage Byelaws will be in line with the principles of the Well-Being and Future Generations Act and assist the LLFA its goals.

Welsh Government and the WLGA are encouraging local authorities to adopt the model byelaws without any modification to ensure consistency across Wales and avoid potential legal hurdles and lengthy approval process.

### **How can byelaws benefit flood risk management and the wider environment**

The primary function of the new Land Drainage byelaws is to help LLFAs manage the risk of flooding where it is the highest through better control. However, through careful revised wording and a wide range of activities covered these byelaws can also benefit the wider environment. By doing so, they will benefit other functions within local government and help with the delivery of other legislations including the Water Framework Directive and Habitat Directive.

Ultimately, this holistic approach to flood risk management through the use of Land Drainage byelaws will be in line with the principles of the Well-Being of Future Generations Act and help LLFAs deliver its goals.

### **Legal Framework and extent of powers**

Under Section 66 of the Land Drainage Act 1991, local authorities in Wales have the powers and authority to make byelaws. These byelaws however can only be made for 4 specific purposes:

- a- To secure the efficient working of a drainage system in the land drainage authorities' district or area;

- b- To regulate the effects on the environment in the land drainage authorities' area of a drainage system;
- c- To secure the effectiveness of flood risk management work<sup>1</sup>; or
- d- To secure the effectiveness of incidental flooding or coastal erosion works<sup>2</sup>

Byelaws cannot repeat, contradict or overrule any other legislation but are nevertheless a statutory tool at the disposition of local authorities and other public bodies. Byelaws are local laws designed to complement rather than replace existing laws. As such, they should be used in conjunction with relevant legislation.

These byelaws are intended to prevent third parties undertaking unconsented activities which may increase the risk of flooding. They cannot however stop anyone who has already a right or a duty under any other legislation such as an Act or Regulation or permit to act accordingly.

*For example, if a riparian owner has obtained planning permission to build a structure within the byelaws distance, the planning permission would override the byelaw. Having the byelaws in place would however ensure early discussion with the developer and planning colleagues and the inclusion of conditions is necessary.*

There are 3 main legal limitations to these byelaws:

1. they cannot relate to main rivers, the banks of main rivers or any drainage work in connection with a main river<sup>3</sup>;
2. they cannot prevent reasonable facilities being afforded to allow stock to access drinking water<sup>4</sup> and
3. they cannot conflict with or interfere with the operation of any byelaws made by a navigation authority, harbour authority or conservancy authority

## Local Authority's Adoption Process

The ordinary watercourse byelaws confirmed by the Welsh Minister for Environment and Rural Affairs have been designed as model for local authorities to either use in their current format **as a whole** or to help develop their individual byelaws if they wish to depart from the model.

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<sup>1</sup> As defined in section 14A of the Land Drainage Act 1991

<sup>2</sup> As defined in sections 38 and 39 of the Flood and Water Management Act 2010.

<sup>3</sup> Section 66(3)

<sup>4</sup> Section 66(4)

These byelaws have been designed by experienced FRM practitioners following extensive consultation with various local authority's departments and Natural Resources Wales. Welsh Local Government Association is encouraging local Authorities to adopt the model byelaws as they are, without any modifications, to ensure consistency across Wales and avoid potential legal hurdles and a lengthy approval process.

If for any reason the authority wishes to depart from the model confirmed by the Welsh Ministers, it can do so. However, the decision would need to be justified and the Welsh Ministers would need to be satisfied with such departure before approving these byelaws.

Although already confirmed by the Welsh Ministers, to be in a position of implementing the byelaws locally, the authority must be adopted under the provisions set out in sections 7-8 of Local Government Byelaws (Wales) Act 2012.

Section 7 deals with the formalities regarding the confirmation of byelaws. This involves the Council:-

- publishing on its web site an initial written statement which describes the issue which the Council thinks may be addressed by making the byelaws;
- consult any person (including, where applicable, a community council) who the Council thinks is likely to be interested in, or affected by, the issue;
- following the consultation, considering the responses and deciding whether making the byelaws is the most appropriate way of addressing the issues;
- publishing on its web site a second statement which contains the original written statement, a summary of the consultation and the responses and its decision as to whether to make the byelaws;
- if the decision is to proceed with the adoption of the byelaws they must be submitted to Welsh Ministers for confirmation but at least 6 weeks prior to their submission notice of the Council's intention to adopt the byelaws must be published in one or more local newspapers circulating in the areas to which the byelaws are to apply and on the Council's website; and
- in addition to the notice referred to above the Council must publish the byelaws on their web site, deposit copies of the byelaws in each of the areas to which they apply, send a copy of the byelaws to all community councils affected and ensure that a copy of the byelaws are open to



public inspection at all reasonable hours without payment. In addition any person is entitled to a copy of the byelaws without charge.

As mentioned above the byelaws must be submitted to the Welsh Ministers for confirmation. They come into effect on the date fixed by the Welsh Ministers as confirming authority but if no date is fixed they come into force at the end of one month from the date they are confirmed.

Once confirmed the Council must publish the date of confirmation and copies of the byelaws on their web site, deposit copies of the byelaws in each of the areas to which they apply, send a copy of the byelaws to all community councils affected and ensure that a copy of the byelaws are open to public inspection at all reasonable hours without payment. In addition, any person is entitled to a copy of the byelaws without charge.

The power to make byelaws is a function of the Council and not the Executive and so Cabinet is asked it endorse officers commencing the process for the reasons detailed above.

## **Enforcement and penalty**

Non-compliance with the byelaws can lead to two proceedings: first the offender will be fined and the land drainage authority can remedy the breach and recover the costs incurred.

Under section 66(6) of the LDA every person who acts in contravention of or fails to comply with any of the foregoing Byelaws is liable on summary conviction in respect of each offence to a fine not exceeding the amount prescribed for level 5 (currently £5,000) on the standard and a further fine not exceeding £40 for every day on which the contravention or failure is continued after conviction.

By section 66(7) of the Act if any person acts in contravention of or fails to comply with any of these Byelaws the LLFA may without prejudice to any proceedings under section 66(6) of the Act take such action as may be necessary to remedy the effect, of the contravention or failure and may recover the expenses reasonably incurred by it in doing so from the person in default.

## **Purpose and Layout of byelaws**

The “model” set, See Appendix 1, comprises of 16 individual byelaws designed to work in parallel and complement the Land Drainage Act 1991(especially sections 23, 24 and 25), Flood & Water Management Act 2010, and Natural

Resource Wales' *guide to your rights and responsibilities of riverside ownership in Wales*<sup>5</sup> which sets out riparian owner's rights and responsibilities.

The complete set comprises of 7 sections but byelaws themselves are only grouped under 4 distinct chapters:

- I. Control the introduction of water and increase in flow or volume, or water
- II. Control any potential to cause impediment or obstruction to flow
- III. To ensure the condition of the banks of a watercourse are maintained
- IV. To cover incidental provisions

**Chapter II** which focusses on controlling the introduction of water and increase in flow or volume, or water comprises of 4 individual byelaws aimed at controlling activities that may alter the natural level or direction of the flow of water in, into or out of any watercourse. Additional wording has also been added to ensure better control over the creation or extension of watercourses which had been highlighted as an issue by practitioners. This chapter also covers unconsented interference with assets controlling flow or level of water.

**Chapter III** which focusses on controlling the potential to cause impediment or obstruction to flow comprises of 3 byelaws. These byelaws cover activities on land liable to flooding and watercourse banks as well the building and repairs of structures. Additional wording has been added to provide better control related to building over culverts which was raised as a concern period by practitioners.

**Chapter IV** comprises of 3 byelaws which have been drafted to ensure the condition of ordinary watercourse banks and avoid damages to the banks. Byelaws included in this section will also benefit WFD by protecting river banks and water quality. Please note that byelaw 14 may be challenged for the purpose of enabling animals to drink.

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<sup>5</sup> The document can be downloaded on:

<https://naturalresources.wales/flooding/managing-flood-risk/riverside-property-owners-know-your-rights-and-responsibilities/?lang=en>

### **4.3 New Enforcement Team.**

Previous enforcement actions have been carried out by non-dedicated and non-specialist officers within the Flood Risk Management Team (FRM). This has been partially successful but has been very much a reactive rather than proactive service.

The enforcement activities after Storm Callum in 2018 and recently Storm Dennis in 2020 has shown a step-by-step increase in enforcement actions required. There has also been an increase in complexity of the type of enforcement required. With also the introduction of the Sustainable Drainage Approval Body (SAB) in 2019 and potentially the adoption of Byelaws there is a need for a dedicated specialist team of officers. This was also found in the Storm Dennis review in December 2020.

With 2 pieces of new legislation, The Sustainable Drainage (Enforcement) (Wales) Order 2018, and the potential byelaws it is very difficult to predict the enforcement effort that will be required. There is a risk that enforcement activities will vary greatly. However, by positioning the enforcement team within the FRM team and introducing a specialist technical element into the role the team will be flexible enough to also assist with investigations, consents and approvals.

A review of the Resource required to undertake the regulation and enforcement function of the LLFA has been undertaken taking into consideration the effects of an increased proactive approach and the adoption of byelaws on the existing FRM team and legal services team:

Additional Posts within the Flood Risk Management Team:-

No. Enforcement Officer (GR10) 1 No. Enforcement Assistant (GR7/8)

Legal support will be required to assist the new enforcement team consisting of providing legal advice and support to the officers and undertaking prosecutions.

However, due to the unknown nature of the new legislation and the work required prior to implementation and the drafting of procedures it is recommended that the Enforcement Officer be implemented immediately.

A review of the implications on workload and resources will be undertaken around 12 months after the full establishment of the service to inform future resource requirements based on actual rather than perceived workload for both the FRM and Legal Services teams.

#### **4.4 Flood Risk Awareness and Support**

Flood Risk Management is very data heavy and is very complex for communicating risk to the public. Advice and guidance on what to do if your property is within a high-risk area is not always easily accessible once the risk is communicated and access to insurance before or after an event is sometimes difficult.

It is felt that to bridge the gap between the “data” and regulation and ultimately to improve awareness and community resilience and avoid enforcement action wherever possible is a specialist role. The role will cover, but not be limited to:-

- Enhance and maintain RCTs website.
- To develop guidance on property resilience measures and insurance for residential and business.
- Develop a communications strategy to include Risk data, interventions (projects), riparian responsibilities, regulation requirements, Insurance and property and/or community resilience.
- Develop community and/or individual flood plans. Liaison with community groups.
- Help with wider consultations, for example, Local Flood Risk Strategy.
- Liaise with colleagues in Housing Grants, public health and Emergency planning to develop a support plan for communities affected by flooding.

A review of the Resource required to undertake the above role has been undertaken taking into consideration the effects of an increased proactive approach and increased awareness and regulation.:

Additional Post within the Flood Risk Management Team:-

1 no. Flood Risk Awareness and Support Officer (GR10GR8)

## **5 EQUALITY AND DIVERSITY IMPLICATIONS**

5.1 An Equality Impact Assessment screening form has been prepared for the purpose of this report. It has been found that a full EIA is not required. There are no negative or adverse equality or diversity implications associated with this report.

## **6 CONSULTATIONS**

1. Finance
2. Legal

## **7 FINANCIAL IMPLICATION(S)**

The following analysis assumes all recommendations are agreed.

### **Implementation of Byelaws.**

Although there will be an increase in consenting and regulation, it is felt that this additional burden can be absorbed into the current Flood Risk Management Team Resources as some current duties such as awareness and communications and enforcement will be carried out by additional posts.

There is therefore a **NIL** financial implication on the existing Team.

### **Creation of Enforcement Team. (Section 4.3)**

Establishment of new post (Annual cost to service) = £42,265

ICT Establishment One off charge = £3k

A review of resources/workload will be undertaken around 12 months after the service has been established to inform long-term resource requirements.

### **Creation of Flood Awareness and Support officer. (Section 4.4)**

Establishment of new post = £35,460

Printed/Publicity Materials =£1k

Consultants = £2k

Total annual additional cost to service = £38,460

ICT Establishment One off charge = £3k

Subject to the recommendations being agreed there will be a part year impact on the budget for this financial year (2021/22) depending on when the appointments to the new posts are made. This can be met from existing one-off resources within the overall Frontline Services revenue budget.

The ongoing annual impact on the revenue budget will be included in the Medium Term Financial Plan for 2022/23 onwards.

## **8 LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED**

There are legal implications and the relevant legislation has been considered in Section 4.

## **9 LINKS TO THE COUNCILS CORPORATE PLAN / OTHER CORPORATE PRIORITIES/ SIP / FUTURE GENERATIONS – SUSTAINABLE DEVELOPMENT.**

### **9.1 National Strategy for Flood and Coastal Erosion Risk Management in Wales**

9.1.1 Required by the Flood and Water Management Act 2010, the National Flood Risk Management Strategy (NFRMS)<sup>6</sup> for Wales, produced by Welsh Government, provides a policy framework for flood and coastal erosion risk management in Wales. The second iteration of the National Strategy was published in October 2020, within which sets out the following Aim of the strategy:

***‘Reduce the risk to People and Communities from Flooding and Coastal Erosion’.***

To facilitate the overarching aim, the strategy sets out 5 core Objectives which require the following:

1. Improve our understanding and communication of risk
2. Preparedness and Building Resilience
3. Prioritising investment to the most at risk Communities
4. Preventing more people becoming exposed to risk
5. Providing an effective and sustained response to events

In delivering the regulation and awareness raising as described within section 4.3 and 4.4 the authority will directly support the delivery of Objective 1, 2, 4 and 5 of the NFRMS.

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<sup>6</sup> National Strategy for Flood and Coastal Erosion Risk Management in Wales: <https://gov.wales/national-strategy-flood-and-coastal-erosion-risk-management-wales>

## 9.2 Local Flood Risk Management Strategy

9.2.1 Rhondda Cynon Taf has published a Local Flood Risk Management Strategy (LFRMS)<sup>7</sup> in January 2013 in accordance with Section 10 of the FWMA 2010. The LFRMS defines who the 'Risk Management Authorities (RMA) are, what their function is and what their responsibilities are. The strategy further identifies the Local Objective and Measures being implemented for the short, medium and Long term to manage flood risk within the authority.

9.2.2 Within the LFRMS RCT is identified as a Lead Local Flood Authority (LLFA) which is identified as the RMA responsible for managing the risk of flooding from local sources, which includes regulation and enforcement. This function is set out within five specific measures aimed at delivering 9 Local objectives, Table 2 provides a summary of the LFRMS local objectives and measures.

Table 2: LFRMS Objectives and Measures

<b>LFRMS Measure Number</b>	<b>LFRMS Measures</b>	<b>LFRMS Strategy Objective</b>
16	<b>Power to request information and civil sanctions</b>	1, 2, 3, 4, 11
18	<b>Designation of Structures</b>	1, 2, 3, 4, 10
20	<b>Consenting of Structures Ordinary Watercourses to</b>	1, 2, 3, 4, 5, 6, 7
21	<b>Enforcement to maintain flow in watercourses</b>	1, 2, 3, 4
22	<b>Enactment of Land Drainage Byelaws</b>	1, 2, 3, 4

Table 2: Provides a summary of the LFRMS Measures and how they Link to the LFRMS Objectives; related to regulation and enforcement.

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<sup>7</sup> RCT Local Flood Risk Management Strategy:  
<https://www.rctcbc.gov.uk/EN/Resident/ParkingRoadsandTravel/Roadspavementsandpaths/FloodAlleviation/LocalFloodRiskManagementStrategy.aspx>

9.2.3 Whilst Table 2 provides a range of measures aimed at regulation and Enforcement, the LFRMS further includes for a wider range of measures aimed at managing the risk before, during and after the event with a particular focus on flooding awareness; which aims to ensure communities are prepared for flooding events, ensuring they are resilient and capable of recovering. Table 3 summarises the LFRMS local objectives and measures related to flooding awareness.

<b>LFRMS Measure Number</b>	<b>LFRMS Measures</b>	<b>LFRMS Strategy Objective</b>
5	<b>Flood Awareness</b>	1, 2, 3, 4, 10, 11, 12
6	<b>Flood Warning</b>	1, 2, 3
8	<b>Community Flood Plans</b>	10, 11, 12, 13, 14
26	<b>Local Flood Resilience</b> <b>Property-Level Mitigation –</b>	12
27	<b>Local Flood Resistance</b> <b>Property-Level Mitigation –</b>	12
35	<b>Community/Public Engagement/Consultation</b>	10, 11

Table 3: Provides a summary of the LFRMS Measures and how they link to LFRMS Objectives; related to flooding awareness.

### **9.3 Corporate Plan**

9.3.1 The Highway Maintenance and Management Delivery Plan for the 2020/21 financial year identifies areas for improvement. Specifically Service Priority 5 which specifies:

*‘To provide services related to flood risk management as required of the Lead Local Flooding Authority under Flood and Water Management Act 2010, Flood Risk Regulations 2009 and as the Land Drainage Authority under the Land Drainage Act 1991.’*

9.3.2 The service priority aligns with two corporate plan priorities specifically;

- 1 Place – Creating neighbourhoods where people are proud to live and work
- 2 Economy – Building a strong economy



## 9.4 Well-being of Future Generations Act (Wales) 2015

### 9.4.1 **A resilient Wales** - focuses on the development of a *'Biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change'*.

To support the delivery of this goal, the development of an enforcement team and adoption of the bylaws will contribute to the enhancement of the local aquatic and semi aquatic environments, specifically through the regulation of ordinary watercourse environments to reduce the loss of habitat and enforce upon those individuals that would seek to damage it.

Furthermore, the creation of a flooding awareness and support officer will enhance the authority's communication of flood risk to our communities. Whilst encouraging the interconnectivity between the natural environment and urban communities. This approach will focus on the integration of green infrastructure to manage the risk of flooding, which will promote the development of new habitats and outline the adaptability of the natural environment to manage the impacts of climate change which in turns ensures a more resilient environment that benefits the community.

### 9.4.2 **A Wales of Vibrant Culture & Thriving Welsh Language** provides a 'Society that promotes and protects culture, heritage and the Welsh Language, and which encourages people to participate in the arts, and sports and recreation.

In delivering this role, the flood awareness and enforcement officers will enable the communication of flood risk management in a bilingual manor to ensure the community understand their risk and the responsibility of the community to manage the risk of flooding.

In enhancing the engagement with the wider communities' opportunities to encourage community groups and organisations to engage with flood risk management activities will develop and provide a more resilient community network which will support a vibrant culture.

### 9.4.3 **A Healthier Wales** is a society in which peoples physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.

In delivering this goal, the flooding awareness officer will provide a mechanism for communicating the cycle of risk management i.e. preparation, response, recovery, prevention, and mitigation to ensure the mental wellbeing of communities impacted as a result of flooding are healthier and more resilient.

The regulation of ordinary watercourse's and expansion of the bylaws will further contribute to ensuring the local communities' natural environments are not detrimentally impacted. This enables the maintaining and enhancement of these environments, through consenting activities. Such activities could provide amenity value which in turn enables the communities to enhance their physical well-being.

- 9.4.4 **A more equal Wales** is a society that enables people to fulfil their potential no matter what their background or circumstances.

To deliver this goal the flooding awareness officer will provide a platform of flood risk management advice, to those communities identified to be at highest risk of flooding, regardless of their background or circumstances that surround those communities. This will enable communities to participate in community engagement and will assist with the decision making around future flood risk management activities.

- 9.4.5 **A Wales of cohesive communities** promotes an 'Attractive, Safe, Viable and Well-Connected Community'.

In delivering this goal both the enforcement team and flood awareness officer will support community engagement and will focus upon the education of riparian land owners to ensure they are aware of their responsibilities to manage ordinary watercourse infrastructure and ensure they are safe, attractive and viable to minimise the potential for community disruption.

- 9.4.6 **A globally responsible Wales** is a 'Nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being'.

In delivering this goal the enforcement team and flood awareness team will support the education and encourage the behavioural change related to our natural environment. This communication will focus upon the importance of the earths resources and the need to enhance the natural environment in a sustainable manor that takes into account the affects of climate change.

## 10 **CONCLUSION**

- 10.1 The Storms of Feb 2020 showed how vulnerable the communities of RCT are to intense rainfall. Climate change projections suggest a 25% to 75% increase in flows within large watercourses and rivers in the next 93 years. This is exacerbated by the way RCT's urban areas have been developed over the last 150 years, which is typical of valleys communities and not unique to RCT, with natural routes for water from the hillsides towards rivers "buried" in culverts with no space for water to travel overland once the capacity those culverts are exceeded, with urbanised areas providing very little natural attenuation or infiltration.

It is clear that RCT has challenges ahead in managing the current and future risk from flooding.

The Welsh Government's National Flood Risk Strategy being published in October 2020 triggers the requirement under S10 of the Flood and Water Management Act 2010 for the Council as Lead Local Flood Authority to review the Local Flood Risk Management Strategy. There is therefore a huge opportunity within this review to set a sustainable strategy to manage flood risk and build resilience and facilitate adaption for future generations. This will be progressed over the next 12-18 months.

The adoption of the byelaws and creation of the enforcement team and flooding awareness and support officer will help protect the assets we have, prevent new risks from being created, build resilience within our community and ultimately help communities adapt to this particular consequence of climate change, whilst providing valuable information to feed into the Local Flood Risk Strategy Review to provide a robust strategy to manage the increasing risk of flooding through climate change.

Whilst the recommendations propose the immediate recruitment of additional resources, it is unclear on the extent of workload that will be generated and the impact upon resources over the medium to long term. As such a 12-month review will enable the assessment of the future resource requirements based on actual rather than perceived workload for both the FRM and Legal Services teams.

## **Appendix 1**

### **Model Byelaws.**

# ***Land drainage (Wales) Byelaws***

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## ***Land Drainage (Wales) Byelaws***

**[Name of Local Authority]** under and by virtue of the powers and authority vested in them by section 66 of the Land Drainage Act 1991, do hereby make the following Byelaws which are considered necessary for [one or more of] the following purposes:

- a) securing the efficient working of a drainage system in the Council's area,
- b) regulating the effects on the environment in the Council's area of a drainage system,
- c) securing the effectiveness of flood risk management work within the meaning of section 14A of that Act, or
- d) securing the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion),

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## **Chapter I - Administrative**

### **1. Citation and commencement**

These Byelaws have been approved by the Cabinet Secretary for Environment and Rural Affairs Lesley Griffiths and may be cited as **[Name of Local Authority]** Land Drainage Byelaws [2017] and they shall commence on [date].

### **2. Application of Byelaws**

These Byelaws apply to ordinary watercourses situated within the area in Wales of the local authority [or: under the control of the Internal Drainage Board] making these byelaws.

### **3. Definition and Interpretation**

In these byelaws, unless defined below or the context otherwise requires, the terms and expressions to which meanings are assigned by the Water Resources Act 1991, the Land Drainage Act 1991, the Environment (Wales) Act 2016 and the Interpretation Act 1978 shall have the same meanings in these byelaws.

In these byelaws:

The expressions “bank”, “drainage”, “drainage body”, “Internal Drainage Board”, “land”, “local authority”, “ordinary watercourse” have the same meaning as defined in the Land Drainage Act 1991.

**“the Act”** means the Land Drainage Act 1991

**"Animal"** means any animal including birds, any horse, cattle, sheep, deer, goat, swine, goose or poultry; but excluding fish and human beings;

**"Byelaws distance"** means any land lying landward within the following distances measuring horizontally from any watercourse bank:

- (i) if it includes a wall or embankment 8 metres from its landward extent; or
- (ii) in other cases 8 metres from the top of the watercourse bank; or
- (iii) any land lying 8 metres horizontally from the outer perimeter of a culvert measured from the widest part of the culvert.

**“Building or structure”** means any structure or erection, and any part of a building so defined, but does not include plant or machinery comprised in a building; It also includes a fence, post, pylon, wall, wharf, bridge, loading stage, piling, groyne, pontoon, revetment, and an engine or any mechanical contrivance; any formwork, falsework, scaffold or other structure designed or used to provide support or means of access during construction work, and any reference to a structure includes part of a structure.

**“Consent of the authority”** means the prior written agreement, either by email or formal documentation, of any person authorised on behalf of the Authority, and which may include any conditions/restrictions as deemed necessary by the Authority.

**"Culvert"** means an enclosed channel pipe or conduit for the carrying of a watercourse and any other structure forming part of a culvert including headwall, outlet and trash screen.

**"Embankment"** means a natural or artificial mound or other raised defence.

**"Flood Defence works "** means tidal, fluvial or pluvial flood defence structures and works including walls, gates, embankments or bypasses constructed or used for these purposes as well as man-made or natural sand dunes and earth retaining structures or structures constructed or used as a defence against inundation of any land by raising water levels.

**“Flood warning system”** means any apparatus used by the Authority for obtaining or providing information in relation to and warnings of flood.

**"Land liable to flooding"** means all land over which watercourse water flows in times of flood, including areas where that water is stored in times of flood.

**“Nets”** includes

- (a) a stake net, bag net or keep net;

(b) any net secured by anchors and any net, or other implement for taking fish, fixed to the soil or made stationary in any other way;

(c) any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for fish, and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary.

**"Occupier"** means any tenant, licensee or other person either in occupation of any land or entitled to its occupation.

**"Objects or matters"** means natural or man-made liquid or solid matters or objects or materials including trees, roots of trees, branches, timber, tins, bottles, boxes, tyres, bricks, stones, soil, wire, rubbish.

**"Owner"** means the owner of a legal estate, and when the owner is not in immediate occupation shall include an occupier.

**"Person"** includes where appropriate, reference to more than one person, including a body of persons corporate or non-corporate.

**"Sea defence"** means any artificial or natural defence against sea water or tidal water including natural or artificial high ground (including sand dunes and cliffs) and any works constructed or used as a defence against inundation of any land by sea or tidal waters, or for securing adequate watercourse outfalls provided it shall not include any sea defence works which are vested in or under the control of a Coast Protection Authority, a local authority or any Navigation Harbour or Conservancy Authority.

**"Tidal control works"** means any floodgate, lock, sluice or other structure or appliance provided or constructed for the purpose of defence against sea or tidal water.

**"Vegetation"** means trees, willows, shrubs, weeds, grasses, reeds, rushes or other vegetation growths;

**"Vessel"** means any ship, boat, or any other waterborne craft, including hovercraft and any remains of any vessel.

**"Watercourse"** means any river, stream, ditch, channel or other passage through which water flows including the channel of any watercourse that is for the time being dry but excluding public sewers within the meaning of the Water Industry Act 1991.

**"Watercourse bank"** means any bank, wall, revetment or embankment adjoining or confining any watercourse from the top to the bottom of the sloping or upright part.

**"Watercourse bed"** means land forming any part of a watercourse over which water normally flows.

**"Water control structure"** means a structure or appliance for introducing water into any watercourse and for controlling or regulating or affecting flow, and includes any sluice, slacker, floodgate, lock, weir, pump or pumping machinery;



#### **4. Causing or knowingly permitting**

Where by or under these byelaws the doing of any act is prohibited or restricted the same prohibition or restriction shall extend to causing or knowingly permitting the act or restriction to be done.

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## **Chapter II - Control of introduction of water and increase in flow or volume of water**

#### **5. Control of the introduction of water, altering flow and volume of water**

(1) Without prejudice to sections 23 and 25 of the Land Drainage Act 1991 no person shall without the consent of the authority take any action to:

- (a) stop up any watercourse; or
- (b) divert; or
- (c) impede; or
- (d) alter

the level of or direction of the flow of water in, into or out of any watercourse.

(2) In this byelaw 'alter' includes creating or extending a watercourse and introducing water which directly or indirectly increases the flow or volume of water in any watercourse within the local authority's area.

(3) In this byelaw impede includes blocking off or infilling of any watercourse channel, and obstruction of any arch of any bridge or causeway designed of, or which permits the passage of water in any watercourse or land liable to flooding.

#### **6. Interference with sluices, flood and tidal defences**

(1) No person shall without consent of the authority operate or interfere with any sluice, flood gate, flood or tidal defence or other water control structure or appliance or flood warning or monitoring system used for controlling, regulating or monitoring the flow of water in, into or out of an ordinary watercourse.

(2) In this byelaw "interfere" includes removing, damaging or disturbing materials forming part of a flood or tidal defence.

#### **7. Operation of watercourse or tidal control works**

Any person having control of

- (a) any sluice or flood gate; or

(b) any water control structure or appliance for controlling or regulating or affecting the flow of water in, into or out of a watercourse shall use and maintain such structure or appliance in a proper state of repair and efficiency with a view to:

- (a) the prevention of flooding or of any shortage in the flow or supply of water and
- (b) the efficient working of the drainage system in the area of the (local authority/ internal drainage board)

## **8. Tidal Outfalls**

No person shall place or abandon upon the foreshore any object or matter or vegetation which, whether immediately or as a result of subsequent tidal action, may

- (a) impede or be likely to impede the flow of water through the sluices, flood gate, or outfall pipes through the tidal banks or through the watercourses on such foreshore; or
  - (b) impede or be likely to impede the operation of such sluices, flood gate, or outfall pipes; or
  - (c) cause or be likely to cause damage to such sluices, flood gate, or outfall pipes.
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## **Chapter III - Potential to cause impediment or obstruction to flow**

### **9. Maintenance of land liable to flooding and watercourse banks**

(1) No person shall without the consent of the authority plant any tree, deposit or store objects or matters, light a fire or interfere with a watercourse bed or bank within the byelaw distance in such a manner as is likely to:

- (a) cause flooding,
- (b) impede the flow, or
- (c) cause or be likely to cause damage to, or
- (d) endanger the stability of, or
- (e) affect the efficiency of

a culvert, watercourse bank, watercourse control work, flood defence, tidal control work or sea defence.

(2) In this byelaw:

“interfere” includes to dredge, remove, damage or disturb materials forming part of a flood or tidal defence or of a watercourse bank or bed; and to make any excavation or do anything in, to or upon any land like to damage a watercourse bank or bed.

“light a fire” includes committing any action liable to cause any fire to be lit on any land adjoining any watercourse where such action is liable to set on fire any peat land forming the banks of the watercourse or any vegetation growing on land forming the banks of the watercourse.

“store objects or matters” includes depositing or stacking or keeping objects and solid or liquid matters including vegetation and vegetation cuttings.

“objects” include vessels.

## **10. Building of structures, pipes, etc. on land liable to flooding**

**(1)** No person shall without the consent of the authority:

(a) erect or construct any building or structure

(i) in, on, under or over any watercourse or in or on any bank of a watercourse;

(ii) within the byelaws distance;

(iii) on any watercourse control work, flood defence, tidal control work or sea defence; or

(iv) over any part of a culvert, or within the byelaws distance on either side of it; or

(b) make or cut any excavation or any tunnel or any drain, culvert or other passage for water in, into or out of any watercourse or in or through any bank of any watercourse;

in such a manner or for such length of time as to cause damage to the watercourse bed or banks; or obstruct the flow of water in, into or out of such watercourse.

**(2)** This byelaw does not apply to any temporary work executed in an emergency.

**(3)** In this byelaw:

“Emergency” means causing immediate danger to life or property.

## **11. Repairs to buildings and structures**

The person having control of any building, fence or structure in, on, under or over any watercourse, culvert, watercourse bank, flood defence works, tidal control works, tidal or sea defence shall maintain such building, fence or structure in a proper state of repair and efficiency with a view to preventing such building, fence or structure from:

(a) impeding the flow of water in into or out of any watercourse;

- (b) damaging any watercourse bank, flood protection works, tidal control works or sea defence; or
  - (c) creating danger or obstruction to the carrying out of flood defence works by the (local authority/internal drainage board)
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## **Chapter IV - Ensuring the condition of the banks of a watercourse**

### **12. Vegetation**

The owner or occupier of any land through which any watercourse flows or on which any sea defence is situated or any adjoining land over which the local authority [/internal drainage board] needs access to get to such land shall maintain all vegetation situated within the byelaws distance and shall remove such vegetation from the watercourse or bank immediately after such cutting so that it does not impede the flow of the watercourse.

### **13. Driving of animals and vehicles**

No person shall use or drive any cart or vehicle of any kind on, over or along any bank of a watercourse control work, flood protection work, tidal control work, or sea defence in such manner as to cause damage to such bank, control work, flood protection work, tidal control work, or sea defence.

### **14. Damage by grazing animals**

No person shall graze, keep or water any animal on any watercourse, watercourse bed or bank, flood protection work or sea defence without:

- (a) taking all such steps as are necessary to prevent the watercourse, the watercourse bed or bank, flood protection work or sea defence from being damaged by such use and
- (b) reporting to the local authority [/internal drainage board] any damage caused to the watercourse, the watercourse bed or bank, flood protection work or sea defence by the grazing, keeping or watering of animals, as soon as practicable following the occurrence of such damage.

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## **Chapter V – Incidental provisions**

### **15. Control of animals**

The owner or occupier of any land through which any watercourse flows or on which any sea defence is situated or any adjoining land over which the local authority [/internal drainage board] needs access to get to such land to carry out any work or inspection, shall ensure that, during the progress of any work or any inspection animals on such land are kept under proper control and supervision or, if such control and supervision is not possible, are not kept on such land.

### **16. Interference with local authority [/internal drainage board]'s functions**

No person shall interfere with:

- (a) access required to any land by the local authority [/internal drainage board] or of their agents to carry out their flood management functions; or
  - (b) the carrying out of their functions.
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## **Chapter VI – Exemptions**

### **17. Emergency works**

These Byelaws shall not apply to any work executed in an emergency but a person executing any work so excepted shall, as soon as practicable, inform the Council in writing of the execution and of the circumstances in which it was executed and comply with any reasonable directions the Council may give with regard thereto.

### **18. General Permitted Developments**

These byelaws shall not apply to any development by a drainage body in, on or under any watercourse or land drainage works and required in connection with the improvement, maintenance or repair of that watercourse or those works.

### **19. Ladders and scaffold towers**

- (1) These Byelaws shall not apply to any work requiring the temporary erection and use of ladders and scaffold towers ("equipment").
- (2) For the purposes of this paragraph, the specific conditions are—
  - (a) the suitability of river conditions is reviewed by the operator each working day;
  - (b) the equipment is erected on each working day on which it is required; and
  - (c) the equipment is removed at the end of each working day and is stored outside the river and its banks.

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## **Chapter VII – Miscellaneous**

### **20. Penalty**

By section 66(6) of the Act every person who acts in contravention of, or fails to comply with, any of the foregoing Byelaws, is liable on summary conviction in respect of each offence to a fine not exceeding the amount prescribed from time to time for level 5 (£5,000) on the standard scale referred to in section 37 of the Criminal Justice Act 1982 and a further fine not exceeding forty pounds for every day on which the contravention or failure is continued after conviction.

By section 66(7) of the Act if any person acts in contravention of, or fails to comply with any of these Byelaws the Council may without prejudice to any proceedings under section 66(6) of the Act take such action as may be necessary to remedy the effect of the contravention or failure and may recover the expenses reasonably incurred by it in doing so from the person in default.