

**CABINET MEMBER FOR COMMUNITIES, CAMPUSES, AREA BOARDS, LEISURE,  
LIBRARIES AND FLOODING – CLLR JONATHON SEED**

**HIGHWAYS AND TRANSPORT SERVICE**

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**REFERENCE:** CCALLF-2-14

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**REPORT ON LAND DRAINAGE BYELAWS FOR WILTSHIRE COUNCIL**

**Purpose of Report**

1. The making of drainage byelaws will provide scope for the Council to work with local communities to reduce flood risk, and help empower communities to do more for themselves. Flooding can have serious consequences for communities and businesses affected, and can cause serious disruption to transport links. The proposed byelaws will help the Council deliver its Business Plan and create stronger and more resilient communities.
2. This report is to inform and update the Cabinet Member for Communities, Campuses, Area Boards, Leisure, Libraries and Flooding on the procedure and progress of the making of the land drainage byelaws since November 2013 and following the sealing of the byelaws on 11 February 2014 in order that a decision can be made as to whether or not the Council should apply to the Secretary of State for Environment Food and Rural Affairs to have the land drainage byelaws confirmed.

**Relevance to the Council's Business Plan**

3. The proposed byelaws will help the Council to create stronger and more resilient communities, by giving the Council more powers to help reduce flood risk. They will enable the Council to work with communities to get essential maintenance work carried out to improve drainage and help prevent flooding. The drainage byelaws will help the Council to work with the communities, especially through the Operational Flood Working Groups, which have been identified as an example of good practice.

**Background**

4. Flooding is a serious issue in Wiltshire, as has been demonstrated by recent events. In recent years the Council has been required to respond to a number of significant flooding events which have seriously affected a number of communities. The land drainage byelaws are considered to be essential for the regulation, management and enforcement of the Council's local flood risk management strategy and which, if confirmed, will assist the Council in carrying out its duties as Highway and Lead Local Flood Authority under the Flood and Water Management Act 2010.
5. The Flood and Water Management Act 2010 amended Section 66 of the Land Drainage Act 1991 to allow local authorities to make land drainage byelaws. These byelaws created criminal offences which can be prosecuted in the Magistrates' Courts. The Council used its powers to make the byelaws which were made on 11 February 2014 in order to help it carry out its duties as Lead Local Flood Authority effectively and in doing so assist with reducing of flood risk for local communities in Wiltshire.

6. The byelaws for Wiltshire cover matters such as changes to flows in watercourses, obstructions, vegetation, damage to river banks and other issues which will be of help to the Council in carrying out its duties as Highway and Lead Local Flood Authority.

## **Main Considerations for the Council**

### Land Drainage Byelaws

7. The byelaws for Wiltshire attached at **Appendix 1** are based on the Department for Environment, Food and Rural Affairs (DEFRA) set of model land drainage byelaws, which are also broadly similar to the byelaws which have been used for many years by the Environment Agency. The byelaws cover matters such as changes to flows in watercourses, obstructions, vegetation, damage to river banks and other issues.
8. Procedure and Public Consultations
  - (i) The proposed byelaws were considered by the Environment Select Committee at its meeting on 10 December 2013. The officer's report is attached at **Appendix 2**. After discussion, the Environment Select Committee resolved to note the intention of the Council to make the proposed byelaws, which will assist the Council in carrying out its duties as Lead Local Flood Authority. A number of questions, observations and general comments about drainage were made by the public and at the Environment Select Committee and these have been summarised and attached at **Appendix 3**.
  - (ii) The draft byelaws were sent to DEFRA on 11 November 2013 who raised no objection. The draft byelaws were also sent to Natural England and the local navigational authority (in Wiltshire the Canal and River Trust) on 14 November 2013.
  - (iii) The Council carried out an informal consultation between 11 November 2013 and 10 December 2013 by sending the draft byelaws to Town and Parish Councils and the Area Boards. No objections were received by the Council during the informal consultation.
  - (iv) On 4 February 2014 a decision was made by full Council to make the land drainage byelaws. A copy of the officer's report and decision made by full Council is attached at **Appendices 4A and 4B**. The byelaws were made and sealed on 11 February 2014.
  - (v) The statutory public consultation took place on 20 February 2014 until 20 March 2014. Statutory advertisements were placed in the Wiltshire Gazette and Herald on 20 February 2014, Salisbury Journal on 20 February 2014, Wiltshire Times on 21 February 2014. The byelaws were deposited in the Council's Rights of Way offices at Newbury House, Aintree Avenue, White Horse Business Park, Trowbridge, BA14 0XB until 11 March 2014 and Ascot Court, Aintree Avenue, White Horse Business Park, Trowbridge, BA14 0XB from 13 March 2014 until 20 March 2014 (due to an office move taking place during the public consultation period). A copy of the advertisement is attached at **Appendices 5A, 5B and 5C**.
  - (vi) Copies of the Council's byelaws were supplied to the Town and Parish Councils in Wiltshire (see **Appendix 6**), Wiltshire Constabulary, Wiltshire Fire and Rescue, Network Rail and the Highways Agency on 20 February 2014.
  - (vii) A copy of the byelaws was also placed on the Council's public consultation webpage from 20 February until 17 April 2014 (see **Appendix 7**).

9. Although the Council received a number of responses to the byelaws, no objections were received. Natural England did comment on the proposed byelaws, requesting some assurance that the proposed byelaws provide safeguards where they might conflict with the conservation and enhancement of Sites of Special Scientific Interest (SSSI), including consent or assent requirements under the Wildlife and Countryside Act 1981 (as amended), and licensing requirements for species protected under the 1981 Act and/or the Habitats Regulations and their response is attached at **Appendices 8A, 8B and 8C**.
10. After contacting DEFRA the Council has agreed that Natural England's concerns can be addressed by incorporating requirements to obtain the consent from Natural England within the Council's own procedures where any proposed action under the byelaws is likely to take place in areas of interest to Natural England, such as SSSI.
11. The Council now needs to make a decision as to whether or not to forward the byelaws to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

#### Confirmation by the Secretary of State for Environment, Food and Rural Affairs

12. In order to have the byelaws confirmed the Council must make an application to the Secretary of State and addressed to the DEFRA Flood Management Division.
13. The application must include the following documents:
  - (i) two sealed and signed copies of the byelaws;
  - (ii) statement as to deposit (where deposited, dates and times, copy of the newspaper page(s) and website pages where advertised);
  - (iii) copies of any objections that may have been sent to the local authority and the local authority's response;
  - (iv) statement that local and other public authorities were notified and when.
14. If the Secretary of State for Environment, Food and Rural Affairs decides to confirm the byelaws without amendment, the byelaws will not come into operation until one month after the date they are confirmed by the Secretary of State.

#### **Safeguarding Considerations**

15. There are no safeguarding implications.

#### **Public Health Implications**

16. The drainage byelaws will, along with the Council's powers as Lead Local Flood Authority, potentially help the Council manage flood risk in Wiltshire.

#### **Environmental Impact of the Proposal**

17. The Council considers that extreme weather events are likely to occur on a more frequent basis which has implications for the Council as Lead Local Flood Authority. Once the byelaws come into operation, they will assist the Council in management of flood risk in Wiltshire.

#### **Equalities Impact of the Proposal**

18. There are considered to be no equalities impacts in connection with the confirmation of the byelaws.

### **Risk Assessment**

19. There are anticipated to be no significant risks attached to the confirmation of the byelaws. However, there is a possibility of incurring legal costs in connection with enforcement of the byelaws. However, if the byelaws are not confirmed it is considered that management of flood risk may become increasingly costly in future.

### **Financial Implications**

20. There are no anticipated immediate and significant financial implications arising from the confirmation of the byelaws. However, there is a potential for legal costs to arise as a result of any future prosecution under the byelaws. At this stage this is an unknown quantity, but is a factor that would need to be monitored and managed if the byelaws are adopted.

### **Legal Implications**

21. The byelaws are a form of 'delegated legislation' whose operation is usually restricted in order to control or regulate activities in certain places. The enforcement of the proposed land drainage byelaws will be undertaken for the purpose of securing appropriate management of flood risk in Wiltshire. The byelaws have been made using the Council's powers under the Flood and Water Management Act 2010, Land Drainage Act 1991 and the Local Government Act 1972. Section 236 of the Local Government Act 1972 sets out the formal legal requirements for making byelaws.
22. The byelaws will also create criminal offences which can be prosecuted in the Magistrates' Courts. Breaches of the byelaws can potentially lead to a fine, the maximum being generally between £500 and £2,500. However, the Ministry of Justice has recently proposed an increase in the levels of fines that can be imposed by Magistrates' Courts from £800 to £10,000.
23. When the byelaws come into operation, any person who acts in contravention of, or fails to comply with, the byelaws will be potentially guilty of a criminal offence punishable in the Magistrates' Court. The penalty for breaching the byelaws will be a fine. The new byelaws are expected to help ensure the Council meets its various obligations under the Flood and Water Management Act 2010, Land Drainage Act 1991 and Highways Act 1980 and any other relevant legislation concerned with land and highway drainage.

### **Options Considered**

24. The Council made the byelaws on 11 February 2014. No objections were received from DEFRA, Natural England, the local navigational authority, local communities or the public. The byelaws cannot come into operation until one month after they are confirmed by the Secretary of State. If the byelaws are not confirmed they will be unenforceable and the Council will not be able to rely on the byelaws to carry out any enforcement or other appropriate flood management work. The public may also ask why the Council has not confirmed the byelaws when no objections were received by the Council during the informal and formal consultations.

### **Reason for Proposal**

25. The proposed land drainage byelaws, if confirmed by the Secretary of State, will assist the Council in carrying out its duties as Lead Local Flood Authority under the Flood and Water Management Act 2010 and Land Drainage Act 1991.

## **Proposal**

26. That an application to the Secretary of State for Environment Food and Rural Affairs, to confirm the land drainage byelaws, be made by the Council. The byelaws if confirmed will come into operation one month after they are confirmed by the Secretary of State.

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**The following unpublished documents have been relied on in the preparation of this Report:**

None