

Land Drainage Byelaws Consultation 2018

This consultation is an opportunity for the public to get involved and have their say on the proposed implementation of Land Drainage Byelaws within Swansea Council. As part of the consultation process we welcome comments from our risk partners, employees of SC, members of our view point panel and members of the public and neighbouring authorities. This is your opportunity to influence how Swansea Council manages the risk of flooding from ordinary watercourses.

This consultation will run for 6 weeks from xxxx to xxxxxx.

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 watercourses. As part of these new powers, the responsibility for consent (permission) for watercourse works passed from Natural Resources Wales (NRW) to Swansea Council in April 2012.

Since taking on this consenting duty and wider flood risk management functions, we have noted that powers under current legislation are limited and certain activities which are not currently subject to permission could potentially increase the risk of flooding especially in more built up areas.

To address the above issue Welsh Government recently approved a set of updated Land Drainage Byelaws to help Councils in Wales to better manage land drainage and flood risk management functions.

By adopting a standard set of Land Drainage byelaws it will enable consistency across the Welsh Local Authorities.

Our proposal is to adopt the standard set of Land Drainage Byelaws as approved by the Welsh Government Cabinet Secretary for Environment and Rural Affairs. Some Byelaws such as those which relate to Tidal defences/outfalls are not applicable to the Council; however they need to be

adopted as part of the standard Byelaw set. They have been removed for the purpose of this consultation.

The document lists the Byelaws we propose to implement individually, along with an explanation of the Byelaw.

The proposed Byelaw is contained within the red box, the explanation is contained in the blue box.

Definitions

Byelaws are supported by a list of standard definitions. The list of definitions is included in Appendix A, at the end of this document.

Byelaw 1: 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.

Explanation

By implementing this Byelaw Swansea Council have to give its approval to any watercourse works which could stop up, divert, impede (block) or alter a watercourse.

Byelaw 2: 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.

- (4)** 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.

Explanation

By implementing this Byelaw Swansea Council have to give its approval to any works affecting a structure controlling the flow within a watercourse.

Byelaw 3: 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)

Explanation

This byelaw requires any person owning or having control of a flow control structure to maintain it in a proper state of repair for the purpose of preventing flooding and management of the drainage network.

Byelaw 4: 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.

Explanation

Where land is likely to flood, this Byelaw proposes to place a distance to restrict the activities people can do on this land. Such as; storing materials, lighting fires, planting trees.

Byelaw 5: 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.

“objects” include vessels.

Explanation

Flooding in urban (build up areas) areas is often caused by people not being aware of watercourses/ culverts and building over/ near to them. This means that during flooding water can escape but can often not find the way back into a channel or culvert. When buildings are constructed over/ near watercourse this prevents owners maintaining them correctly. We propose to implement a distance in which the building of structures is restricted.

This byelaw also restricts works along an existing watercourse.

Byelaw 6: 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)

Explanation

This byelaw requires any person owning or having control of a building, fence or structure on, under or over a watercourse/culvert to maintain it in a proper state of repair for the purpose of preventing flooding and management of the drainage network.

Byelaw 7: Vegetation – Ensuring the condition of the banks of a watercourse

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.

Explanation

This byelaw requires any owner or occupier of land where a watercourse is present to maintain vegetation (plant growth) situated within a fixed distance and to remove the vegetation so that flow within a watercourse is not restricted.

Byelaw 8: 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.

Explanation

In rural and urban areas animals located near a watercourse can often cause erosion of the watercourse, which can lead to an increase risk in flooding due to blockages. This byelaw proposes to restrict this activity. We note there are exceptions to this, such as, animals drinking from the watercourse.

Byelaw 9: 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.

Explanation

Animals and vehicles where trafficked across a watercourse or structure can cause significant cause erosion. This byelaw proposes to restrict these activities in locations to prevent damage and erosion.

Byelaw 9 - Incidental provisions – 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.

Byelaw 10 - Incidental provisions – 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.

Explanation

Byelaws 9 and 10 relate to the powers we possess as a land drainage authority. Sometimes we need to gain access to land for the purposes of inspecting watercourses or control structures in order to prevent/manage flooding. When we are inspecting rural land animals should be kept under proper control to protect our staff.

When the Council carry out drainage works we have certain powers. Byelaw 10 clearly explains that no person should interfere with access to land when we are carrying out our functions.

Enforcement and penalty

Failure to comply with the byelaws can lead to two proceedings:

- a. The offender may be fined and the land drainage authority can remedy the breach and recover the costs incurred.
- b. Upon conviction in relation to the breach be subject to a fine not exceeding level 5 (£5,000) and a further fine not exceeding £40 for every day on which the breach continues after conviction.

In anticipation of your involvement we wish to thank you in advance.

Appendix A

(Definitions)

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;

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