Planning and Byelaw Strategy

Version 2

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** Unless revisions to Government legislation or guidance require modifications of the document ahead of February 2028 in order for the Board to be legally compliant.*

Abbreviations

Abbreviations used in this document are set out below:

BRE	Building Research Establishment
DEFRA	Department for Environment, Food and Rural Affairs
EA	Environment Agency
FCERM	Flood and Coastal Erosion Risk Management
FRA	Flood Risk Assessment
FRMP	Flood Risk Management Plan
GIS	Geographic Information System
Ha	Hectares
HRA	Habitats Regulations Assessment
IDB	Internal Drainage Board
IDD	Internal Drainage District
LDA	Land Drainage Act 1991
LFRMS	Local Flood Risk Management Strategy
LGO	Local Government Ombudsman
LLFA	Lead Local Flood Authority
LPA	Local Planning Authority
MAFF	Ministry of Agriculture, Fisheries and Food
NPPF	National Planning Policy Framework
NRA	National Rivers Authority
PPG	Planning Practice Guidance
RoFSW	Risk of Flooding from Surface Water
RMA	Risk Management Authority
SFRA	Strategic Flood Risk Assessment
SI	Statutory Instrument
SMO	Standard Maintenance Operations
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Drainage Systems
WCS	Water Cycle Studies

Section 1: Introduction

This Planning and Byelaw Strategy has been produced by the River Stour (Kent) Internal Drainage Board (RSIDB). It has been compiled to provide:

- Guidance on how the RSIDB will engage with planning applications within its Internal Drainage District (IDD) or that have the potential to significantly impact its IDD.

- Guidance to organisations and individuals on the Board's regulatory requirements and processes, including information on the policies against which it will assess and determine applications.

This document is intended for use by IDB Board Members and Officers, the Members and Officers of other Risk Management Authorities (RMAs) as well as land managers and developers that are undertaking works and developments within the RSIDB district or its highland catchments. This is a non-statutory document intended to support the strategies and plans of other RMAs that relate to flood risk, erosion and environmental matters. It does not seek to repeat the work of these documents, instead signposting the reader to relevant external documentation where appropriate.

Section 2: Background

2.1. Internal Drainage Boards

IDBs are local public authorities that manage flood risk and land drainage within areas of special drainage need in England. Each IDB has permissive powers to undertake water management activities within its IDD. The purpose of delivering this work is to reduce flood risk to people and property and to manage water in a way that meets the local needs of business and agriculture, including during times of drought, whilst also dealing with its obligations and commitments to the environment.

IDBs exercise a general power of supervision over all matters relating to water level management within their district. This is undertaken through the use of permissive powers that enable IDBs to regulate works on, or affecting, ordinary watercourses within their district. Advice is also provided by IDBs through the planning system to ensure that planning applications for new development within their districts are supported by appropriate drainage strategies. IDBs conduct their work in accordance with a number of general environmental duties and promote the ecological wellbeing of their districts. They have a specific duty to further the conservation and enhancement of all designated environmental sites within their districts, such as Sites of Special Scientific Interest (SSSIs).

2.2. Further Information

Please see Appendix 1 of this document for further information relating to the current legislative framework for Internal Drainage Boards.

Please see Appendix 2 of this document for further information relating to the roles and functions of Internal Drainage Boards.

Section 3: The Planning Process

3.1. Introduction

The RSIDB Drainage District covers parts of 5 Local Planning Authority (LPA) areas: (Ashford, Canterbury, Dover, Folkestone & Hythe and Thanet), and sits entirely within Kent County Council's area of jurisdiction.

We seek to take an active role in the assessment of individual planning applications as well as planning policy documents to prevent inappropriate development and land use to ensure that flood risk is not increased.

3.2. Board involvement in the planning process

By engaging with the planning process, the RSIDB aims to:

- Reduce flood risk to communities within its Internal Drainage District and highland catchment.
- Promote sustainable development in sustainable locations by supporting sound planning decisions that can be implemented by applicants and developers.
- Reduce the potential for conflict between the planning process and the IDB regulatory process.
- Develop an understanding within other authorities and third parties, of the flood risk and capacity issues within the IDB district so they can be considered through the planning process.
- Make a contribution towards the achievement of Sustainable Development, in line with Section 27 of the Flood and Water Management Act 2010.

3.3. When the Board will usually comment on a Planning Application

With the aim of promoting sustainable development, the RSIDB will aim to review and comment on applications which may increase flood risk within the Board's Internal Drainage District (IDD) in one or more of the following ways:

- The site is within 8 metres of an RSIDB adopted watercourse.
- Works may be proposed to alter any ordinary watercourse.
- The proposals may result in the displacement of floodwater.
- The proposals may introduce water to the IDD.
- The area is known to suffer from poor drainage.

The Board will therefore usually comment on the following applications:

	Inside IDD *Adjacent to IDB adopted watercourse or works are proposed to alter a watercourse*	**Inside IDD** *Not adjacent to IDB adopted watercourse and no works proposed to any watercourse*	**Outside IDD** *Within Watershed Catchment*
Major Development	Yes	Yes	Yes
Minor Application	Yes	Yes	No
Householder Application	Yes	No	No

3.4. Further Information

Please see Appendix 4 of this document for further information relating to the rationale for, and scope of, IDB involvement in the planning process

3.5. Standing Advice

We will provide the following standing advice to the LPAs in our district to provide general guidance on our requirements for proposals for new development.

Standing Advice 1: General savings for Internal Drainage Board regulatory powers

This standing advice applies where the proposed development site is near to, or within, the RSIDB Internal Drainage District (IDD). Please see our website (www.rsidb.org.uk) for detailed mapping of the Board's District, including which watercourses are designated as an adopted watercourse. In order to avoid conflict between the planning process and the relevant Board's regulatory regime and consenting process please be aware of the following:

- If the site is within the IDBs district, the Board's Byelaws apply. The Byelaws are available on our website.
- Regardless of whether the site is within our Drainage District, if the proposals include works to alter an ordinary watercourse (including culverting for access) consent is required under Section 23 of the Land Drainage Act 1991. If the site is within our IDD, we will be the consenting authority for these works. If outside our IDD, Kent County Council (as Lead Local Flood Authority) is the consenting authority.
- If a surface water (or treated foul water) discharge is proposed to a watercourse within our IDD (either directly or indirectly), then the proposed development will require a land drainage consent in line with our Byelaws (specifically Byelaw 3). Any consent for surface water discharges granted will likely be conditional, pending the payment a surface water development contribution fee, calculated in line with the Board's charging policy.
- If the proposals include works within 8 metres of an IDB adopted watercourse, or access to this 8m margin, consent is required under Byelaw 10.
- If the applicant has proposed to manage surface water by infiltration, this should be supported by infiltration testing in line with BRE 365 and an understanding of the expected groundwater levels (in consultation with KCC's SuDS team).

For the maintenance of SuDS infrastructure, the Board may consider adopting/maintaining certain assets which have the potential to affect its IDD. If the applicant wishes to explore this option, they should contact enquiries@rsidb.org.uk. Whilst the consenting process as set out under the Land Drainage Act 1991 and the Board's Byelaws are separate from planning, the ability to implement a planning permission may be dependent on the granting of these consents. As such we strongly recommend that any required consents are sought prior to determination of the planning application to avoid a situation whereby an approved planning application is rendered potentially undeliverable.

The Environment Agency's formal written permission is required for any works whatsoever in, over, under or within 8m of a designated main river (16m if tidal). Please see https://www.gov.uk/guidance/flood-risk-activities-environmental-permits for further information.

Section 4: Regulation - Overview

4.1. Introduction

The oversight, management and regulation of watercourses in England are delivered across a number of regulatory authorities. Under section 1(2)(a) of the Land Drainage Act 1991 (LDA), each Internal Drainage Board (IDB) has a duty to exercise a general supervision over all matters relating to the drainage of land within their Internal Drainage District (IDD). In pursuance of this role IDBs have permissive powers to regulate (consent and enforce) third party activities affecting watercourses within their district. The purpose of watercourse regulation is to control certain activities that might have an adverse flooding impact and to ensure that riparian owners carry out their responsibilities. The entire watercourse network within the RSIDB district is in private/riparian ownership, so the role of the RSIDB as a regulator is key in ensuring positive action is undertaken by third parties.

IDBs can apply byelaws (under Section 66, LDA) relating to the management of watercourses within their district. These cover a wide range of third-party activities that could impact the drainage network. Under the Flood and Water Management Act 2010 IDBs can designate key third party owned structures or features within their district which relate to the management of flood risk.

All areas outside of an IDD are regulated by Lead Local Flood Authorities (LLFAs) with District Councils able to exercise permissive works powers and create byelaws. It should be noted that most District Councils have not set byelaws to cover the management of watercourses within their jurisdiction, as such the regulatory and works controls outside of IDB areas are usually less comprehensive.

The Environment Agency (EA) has permissive powers for managing watercourses designated as “Main Rivers”. These watercourses are defined on the EA’s Main River map and applications for any works to Main Rivers should be submitted to the EA.

Please see https://www.gov.uk/guidance/flood-risk-activities-environmental-permits for further information.

4.2. RSIDB approach

As part of the Board’s Policy Statement, it has set out its approach to the regulation of third-party activities, as shown below:

> “The Board will regulate as necessary, using available legislative powers and byelaws, the activity of others to ensure their actions within, alongside, and otherwise impacting its drainage system do not increase flood risk, prevent the efficient working of drainage systems, or adversely impact the environment.”

When regulating ordinary watercourses, the RSIDB will act in a manner consistent with the policies set out later in this document and as included in the relevant Local and National Flood Risk Management Strategies.

4.3. The Requirement for Written Consent

The LDA and the Board's Byelaws require written consent to be sought prior to undertaking certain types of activities within a Board's Drainage District. To obtain the Board's written consent an application form should be submitted to the Board for consideration. The application form is available on the RSIDB website (https://rsidb.org.uk/consents-byelaws).

Applications that are made to the Board will be determined as per the policies set out in this document. Applications that contravene these policies may be refused.

As outlined by each policy (Section 5) all applications for Land Drainage Consent received by the RSIDB will be determined through written con(sultation with the relevant Board Members.

Applications for consent under the LDA must be decided within two months of the date they are validated by the RSIDB. Please note applications are not deemed valid unless they are accompanied by the appropriate application fee and all information necessary for understanding the nature and impact of the proposed works. Applications for consent under the terms of a Board's Byelaws have no set time limit for determination, but best endeavours will be made to process these within two months.

4.4. Conditions of Consent

Consent may be issued subject to conditions in accordance with the Board's Byelaws. Conditions can cover technical requirements, legal requirements, environmental matters and the need for financial payments. All conditions specified as part of any consent must be met before the Board's formal consent is deemed valid. In general, conditions may include the following:

- The requirement to give the Board 7 days' prior written notice of the intended start date of the works.
- Specific stipulations regarding the nature and extent of the works.
- The requirement for environmental protection/mitigation.
- The requirement to enter into any legal agreements.
- The requirement to pay any financial contributions such as Surface Water Development Contributions (SWDCs) or Commuted Maintenance Fees (CMFs).

4.4.1. Environmental Conditions

IDBs are also designated as a section 28G authority or "Operating Authority" under the Countryside and Rights of Way Act 2000. This means that before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a Site of Special Scientific Interest (SSSI) is of special interest, the IDB must consult with Natural England. This consultation period extends for 28 days. As such when a Byelaw or Land Drainage Act 1991 consent application is received which includes works that may have an impact on the interest features of a Site of Special Scientific Interest, or on a European-designated wildlife site, the Board must consult Natural England on the potential environmental implications of the application. The results of any consultation may be to seek environmental mitigation for the proposed works which may be conditioned, to seek material amendments to the proposals or to require the refusal of the application.

4.4.2. Legal Agreement Conditions

Approval of certain consents may be given subject to the applicant entering into a Deed of Indemnity. A Deed of Indemnity is an agreement between two or more parties, the purpose of which is to specify the actions and consequences which will result should a particular event or events occur.

Deeds of Indemnity are usually prepared by IDB Officers and are subject to a small administration fee (see the Boards Development Control Charges and Fees document) along with the fee charged by Land Registry for lodging the document with them (see Land Registry website). Where a Deed is more complex, is time consuming to prepare or involves a solicitor's input, then the administration fee would be increased to reflect the additional costs to the Board.

Where the Board is involved in the commenting on, and approving, works associated with new development adjacent to IDB adopted watercourses, the Board will seek to ensure that there are 8 metre wide easement strips kept clear of any development.

4.4.3. Financial Conditions

Conditions of consent can include the requirement to make financial contributions to the Board as per the Boards Development Control Charges and Fees Policy Document.

4.5. Right of Appeal

Where you believe that consent has been unreasonably withheld by the Board, then under the Land Drainage Act 1991 you have a right of appeal to an independent arbitrator. Ahead of any formal appeal to an arbitrator, when an application is refused by the Board, the Board's policy is to afford the applicant a right of reply to the Board. This should take the form of a written statement setting out why the application should be reconsidered favourably. The matter will then be taken to the next Board meeting where it will be reconsidered.

4.6. Implementation Timescales

All consents granted by the Board are subject to the approved works being completed within a period of 3 years from the date of the Board's decision. The consent cannot be sold, inherited or otherwise passed on. Any person wishing to undertake work that was previously consented to another party should apply for their own consent to undertake the works in the normal manner.

4.7. Other Requirements

Please note the IDB consenting process is independent of the need for planning permission and the granting of planning permission does not necessarily imply that consent will be granted by the relevant drainage authority. Furthermore, it does not imply that an applicant's proposal will comply with the requirements of any other interested parties, including the Local Planning Authority, Water Company, landowners or occupiers, and it is the applicant's responsibility to ensure that they do. If the IDB is made aware of any inconsistencies, then IDB officers will inform the applicant and the appropriate authorities.

Section 5: Regulation - Policies

This section details the policies that the Board applies when seeking to regulate activities within its Internal Drainage District (IDD). These policies provide guidance on how applications made to the Board will be determined. It also details if further conditions would be stipulated, or separate agreements or payments required.

5.1. Byelaw 3

Policy 1 – Discharge of Treated Foul Water

Consent is required where the installation of a treatment plant and associated outfall are proposed within the Internal Drainage District that would lead to the discharge of treated foul water into a watercourse (whether privately maintained or Board adopted).

On all watercourses where the discharge is to an open drain, the discharge pipe should be installed through a pre-cast concrete outfall unit dug in flush with the bank batter. Suitable erosion protection should be installed below the headwall down to the toe of the watercourse and also dug in flush with the bank batter.

On Board adopted watercourses consent will only be granted where the following points are complied with:

- All elements of the works, except the outfall pipe, are at least 8 metres from the edge of the drain.
- Where the discharge is to a piped watercourse, the discharge pipe should be connected into an existing inspection chamber, or a new inspection chamber should be constructed to the Board's satisfaction to accommodate the outfall. In either case, the inspection chamber wall around the incoming pipe is to be repaired to the Board's satisfaction prior to completion of the works.
- The applicant may be required to enter into a Deed of Indemnity prior to undertaking the works.

Conditions of consent:

- On all watercourses, improvement works may be required to be undertaken at the applicants cost to bring the receiving watercourse up to a maintainable standard to enable it to accommodate the proposed flows.
- On IDB adopted watercourses, a Commuted Maintenance Fee may be payable if new assets are built that affect the watercourse's ability to accommodate the proposed discharge e.g. a new inspection chamber.

Applications may be refused if the Board considers that the receiving watercourse will not be capable of accepting the planned additional flows.

Policy 2 – Discharge of Surface Water Run-Off and Treated Effluent

Applications for consent to discharge surface water run-off into any watercourse within the Board's Internal Drainage District will be considered against the capacity of the receiving watercourse to accept the proposed surface water flows (rate and volume).

The Board may require the applicant to undertake hydraulic modelling work (at the applicant's cost), or to make amendments to one of the Environment Agency's existing models to assess the impact of the proposed discharge. Please note the cost incurred by the applicant in undertaking this work would be in addition to any development contribution due to the Board.

Conditions of consent:

- On all watercourses, improvement works may be required to be undertaken at the applicants cost to bring the receiving watercourse up to a maintainable standard to enable it to accommodate the proposed flows.
- On IDB adopted watercourses a Commuted Maintenance Fee may be payable if new assets are built within a watercourse to accommodate the proposed discharge (e.g. a new inspection chamber).
- Where a development will result in an increase in the rate or volume of surface water in any watercourse one of the conditions imposed would be the payment of a development contribution to the Board. (See the Board's Development Control Charges and Fees.).

It should be noted that it is the Board's preference that any system serving multiple properties is adopted by a statutory authority.

Applications may be refused if the Board considers that the receiving watercourse will not be capable of accepting the planned additional flows.

The requirement for consent to discharge surface water may be waived in writing at the officer's discretion where the impermeable area is less than 50m^2 and is an extension of an existing impermeable area with a satisfactory surface water outfall.

Policy 2a – Dischargre of Treated Effluent

Consent is required for the discharge of treated effluent into any watercourse within the Board's Internal Drainage District (direct or indirect). Unlike natural surface water runoff, treated effluent introduces an additional volume of water into the catchment that would not otherwise be present. This increased volume must be accommodated within the drainage system without adversely impacting water levels, flood risk, or maintenance requirements.

The Board's regulatory role does not extend to water quality. The responsibility for ensuring that treated effluent meets environmental quality standards lies with the appropriate regulatory bodies, such as the Environment Agency. The Board's interest is solely in managing the additional volume of water discharged into the drainage system, irrespective of its source.

The Board does not differentiate between discharges from private package treatment plants and regional Wastewater Treatment Works. Regardless of scale, all treated

effluent discharged into a watercourse within the IDD contributes to an increased water volume that must be managed.

Conditions of consent:

- On all watercourses within our IDD, improvement works may be required at the applicant's cost to bring the receiving watercourse up to a maintainable standard to enable it to accommodate the proposed flows.

- A Treated Effluent Discharge Contribution (TEDC) will be payable across the entire catchment to reflect the ongoing operational and maintenance demands associated with managing additional water volumes. This fee will be annually adjusted for inflation and will be applied to each new property to be constructed.

- Where discharge is to a piped watercourse, the applicant may be required to construct or modify an inspection chamber at their own expense to ensure appropriate connectivity.

- The applicant may be required to enter into a Deed of Indemnity prior to undertaking works to discharge treated effluent into any watercourse within the IDD.

Applications may be refused if the Board determines that the receiving watercourse does not have sufficient capacity to accept the additional treated effluent discharge without increasing flood risk or placing an unsustainable burden on drainage infrastructure.

5.2. Section 23 of the Land Drainage Act 1991 (and Byelaws)

The alterations of IDB adopted watercourses as well as riparian/privately owned/maintained watercourses are covered by both a statutory provision (Section 23, Land Drainage Act 1991) and our Byelaws.

Both these provisions concern the erection of any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or the raising or otherwise altering of any such obstruction. This activity also includes specifically the erection of culverts in ordinary watercourses or the alteration of culverts in a manner that would likely affect the flow of an ordinary watercourse.

Written consent is required from the Board prior to undertaking the activities outlined above, including the operation of water control structures. Policy 3 below sets out how the Board will determine applications received seeking consent to alter a watercourse.

Policy 3 – Alterations of watercourses (including culverting)

As part of any application to alter a watercourse (including culverting), the applicant has the responsibility to prove that the proposed works would not increase flood risk or negatively impact the efficiency of local drainage. Adequate mitigation must be provided for the environmental impact on the watercourse.

In line with good practice, the Board will only approve an application to alter a watercourse if;

- There is no reasonably practicable alternative.
- The detrimental effects of the works would be so minor that they would not justify a more costly alternative.
- The proposal is for a replacement culvert or bridge.
- Any culverting is for the sole purpose of accessing a field, property, building plot or an estate development and the total length of piping or width of the bridge is the minimum required for the access.

Applications for the installation of weirs, flow control and other structures (not including culverting) as well as the infilling of watercourses will be considered on a case-by-case basis.

Applications may be refused if the Board considers that the proposed works will;

- Increase flood risk or negatively impact the efficiency of local drainage.
- Cause environmental harm that cannot be mitigated.
- Negatively impact the ability of the Board to carry out its operations.

If consent is granted by the Board, this may be conditional. Conditions may;

- Specify the technical detail of the works to be constructed.
- Require the need for an environmental survey and assessment.
- Include the requirement for Commuted Maintenance Fee to be payable where the new assets (within a Board-Adopted watercourse) are to be adopted by the Board.

Wherever practical the IDB will seek to have culverted watercourses restored to open channels.

Where applications are received to culvert sections of an IDB adopted watercourse, these applications will need to demonstrate an overriding need for the piping (e.g. for health and safety reasons). The application must include a clear appraisal of the environmental impact of the proposal. Applications of this nature will be considered on a case-by-case basis, including an appraisal of potential impact on the Board's operations (especially for IDB adopted watercourses).

5.3. Byelaw 10

Consent is required for all works within 8 metres of the edge of drainage and flood risk management infrastructure. Within our Drainage District this infrastructure is principally IDB adopted watercourses and water management assets such as pumping stations, sluices and inlets etc.

The 8 metre distance is measured from the edge of the drain (whether open or piped). In the case of an open drain this is 8 metres from an imaginary infinite vertical line running through the drain brink, or landward toe of the embankment if the watercourse is embanked.

The policies set out below outline the approach the Board takes when determining applications for works that qualify for the need for consent including those activities the Board will determine on a case-by-case basis and those the Board does not find acceptable in any circumstance. A separate policy is also included detailing the approach the Board will take to accommodating services.

Policy 4 – Works within 8 metres of Board adopted drainage and flood risk management infrastructure

The Board will only approve applications for a relaxation of Byelaw 10 (to allow works within 8 metres of Boards adopted drainage and flood risk management infrastructure) if the proposals can easily be removed if required. All proposals within the 8m margin will be assessed on a case-by-case basis.

Permanent works should be sited a minimum of 8 metres from the Board's infrastructure, this is regardless of the position of any previous building or structure. For clarity this includes:

- The construction of a new or replacement building (residential or commercial).
- The construction of a two-storey or ground-floor extension (including conservatories).
- Permanent fencing, the erection of a wall, hedging or tree planting.
- The boundary treatments of a new development.
- All other permanent above ground structures.
- All elements of a structure which may protrude into the 8 metre zone above ground level (such as the blades of a wind turbine or fixed canopy).
- Fishing lakes or reservoirs (including surrounding bunds or banks).
- Un-adopted service runs alongside watercourses (electricity cables, telephone wires, gas, water or sewerage pipes or any other services).

Where this is not achievable the matter will be considered by the Board on a case-by-case basis. These applications will be determined with reference to the impact on the Board's operations (e.g. by assessing current access arrangements).

If consent is granted by the Board, this may be conditional. Whilst dependent on the nature of the proposal, conditions may;

- Specify the technical detail of the works to be constructed.
- Require the need for an environmental survey/assessment.
- Require the applicant to apply for SSSI consent or a Habitats Regulations Assessment (HRA).
- Require the applicant to enter into a Deed of Indemnity.
- Require written confirmation from a suitably qualified, independent structural engineer showing that the proposed intended foundation design will ensure the structure does not have an adverse impact on the watercourse, or vice-versa.

Applications may be refused if the Board considers that the proposed works will;

- Negatively impact the ability of the Board to carry out its operations.
- Increase the liabilities of the Board.

Policy 5 – Other Bodies requiring the Board's Consent

Where an organisation listed by Byelaw 27 requires the Board's Consent we will liaise and negotiate with that organisation to ensure the Board's requirements are met without restricting, preventing, interfering with, or prejudicing the exercise of any statutory rights or powers granted to that body or organisation.

Section 6: Enforcement

As there are many reasons why watercourses are found to be in poor condition the RSIDB recognises that such neglect may not be deliberate and therefore will seek to inform and educate riparian and private owners to seek their cooperation in undertaking required works in the first instance. If flooding is to be avoided, important but neglected or damaged drainage features need to be brought back to a functional state within a reasonable timescale.

Policy 6 - Enforcement

Where remedial works are required, the Board's officers may initially write a letter to the relevant landowner, person and/or Risk Management Authority responsible for the contravention. This will include an explanation of the contravention, its impact and the remedy required in accordance with the Land Drainage Act 1991 and the Board's Byelaws and the timeframe for the work to be undertaken (usually 21 days from the date of the letter).

If a positive response to the IDB letter has not been received within the timescale specified, and on inspection no work has been satisfactorily undertaken, the Board will consider whether it is in the public interest to undertake further investigation with regard to the actual and potential impacts of the contravention, the costs of carrying out the works and the likelihood of obtaining sufficient evidence to support enforcement action.

In certain circumstances, practicalities may not allow for works to be achievable within the usual timeframe specified in the letter. The Board will assess the circumstances of each enforcement case individually and determine whether any works need to be deferred or amended to take into account the impacts of any works on wildlife or habitat. Examples where this may occur include:

- Seasonal farming practices and Environmental Schemes can restrict access or time schedules to carry out works;
- Between 1 March and 1 August, the potential for works to cause disruption to nesting birds, if nests are present;
- Presence of protected species will influence when it is most appropriate to carry out work.

Where necessary the Board will draw on powers of enforcement to secure this maintenance of the removal of any unauthorised works or obstruction.

The RSIDB will take a risk-based and proportionate approach to exercising their regulatory powers under the Land Drainage Act 1991 and byelaws, taking into account the location and nature of any contravention, nuisance or flooding caused by;

- the failure to repair or maintain watercourses, bridges or drainage works.
- un-consented works including works within 8 metres of the edge of drainage and flood risk management infrastructure.
- impediments to the proper flow of water.

This approach will take into account whether the contraventions have or are likely to increase flood risk and what the consequences of any increase in risk may be. Where works are un-consented the IDB would require the landowner, person and/or Risk Management Authority responsible for the works to prove that the un-consented works would not cause a nuisance or increase flood risk. For the avoidance of doubt the Board is likely to take enforcement action where there is, or has been, a risk to life or serious injury, internal flooding of residential or commercial properties or flooding impacting on critical services.

In some circumstances the Board may require further information on the contravention. As such, officers may arrange to meet the landowner/occupier and/or complainant and undertake a site visit to substantiate the Board's regulatory position. This process may also involve the Board consulting with other organisations including other Local Authorities, Highway Authorities, the Environment Agency and Natural England as appropriate and/or require or commission appropriate site surveys and inspections.

Where works are un-consented and the relevant landowner, person and/or Risk Management Authority responsible provides no evidence or insufficient evidence to support an assertion that the un-consented works would not cause a nuisance or increase flood risk, there will be a presumption that the un-consented works would cause a nuisance or increase flood risk, unless visible evidence suggests otherwise.

The Board may close an enforcement case file and/or take no action where it considers this to be appropriate.

Where the Board is made aware of breaches to other legislation, it will advise the appropriate authorities.

6.5. Fly Tipping

The Board does not have enforcement powers with regard to fly tipping as these rest with the relevant Local Authority and the Environment Agency. Despite this the Board believes it is important to clarify the role of the IDB in this area as historically there has been some confusion amongst residents and other public authorities.

Rubbish in Board adopted watercourses can result from general litter blowing into the watercourse or floating along the drain from upstream or from fly tipping (the illegal dumping of waste). Of the two types, fly tipping generally leads to the most serious problem, especially when large quantities of waste are tipped in one incident and/or location. Rubbish can have the following detrimental effects on watercourses;

- Reduce flow in the watercourse.
- Pollution.
- Unsightly.
- Environmentally damaging.

Policy 7 – Fly Tipping and rubbish in Board adopted watercourses

When notified of fly tipping in the IDD the Board will consider the incident as follows:

If the incident is causing a significant obstruction to flow or is presenting an imminent risk of flooding within its District, the Board's operatives/contractors will remove the waste as per the Board's statutory functions and place it alongside the affected channel as close to the original offence as possible. We will notify the Environment Agency and the relevant Local Authority of its presence.

However, if the Board's operatives/contractors consider the fly tipping incident to be of a serious nature or to have already resulted in a severe consequence the Board will report it to the appropriate enforcement body, rather than attempting to deal with it itself, in case evidence is inadvertently lost, which could have been used to prosecute offenders.

In all other incidents the waste will be reported to the relevant Local Authority. In the case of a vehicle, the Police will also be informed as soon as possible.

If the waste is causing a pollution incident, then the Environment Agency will be informed at the earliest opportunity and the pollution contained.

Section 7: Watercourse Maintenance

7.1. Introduction

Generally, watercourses within the RSIDB Drainage District, unless vested in some other authority, are the responsibility of riparian or private owners to maintain, repair and improve as necessary to ensure effective drainage. A 'riparian owner' is a person who owns land or property adjacent to a watercourse. A private owner is a person who owns land or property with a watercourse within their title. The definition of watercourse includes streams, ditches (whether dry or not), ponds, culverts, drains, pipes or any other passage through which water may flow.

Purchasers of property are often unaware of their inherited riparian or private duties. These are outlined in the Land and Property Act 1925 (Section 62), which states that "*a conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey with the land all buildings, hedges, ditches, fences, ways, waters, watercourses, liberties, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land or any part thereof*".

7.2. Responsibilities of Riparian Owners

Riparian owners have the following responsibilities:

- Duty of care towards neighbours upstream and downstream, avoiding any action likely to cause flooding.
- Entitled to protect their properties from flooding and their land from erosion (once the correct permissions have been obtained).
- May be required to maintain the condition of their watercourse to ensure that the proper flow of water is unimpeded.

The government has produced a number of web pages that explain riparian responsibilities and the need for maintenance of watercourses. These are available using the following link: https://www.gov.uk/guidance/owning-a-watercourse.

7.3. Adopted Watercourses

IDBs often carry out their drainage/water level management responsibilities through the designation of ordinary watercourses as 'adopted watercourses', also frequently known as 'Main Drains' or 'District Drains'. In general, IDBs only adopt watercourses which are critical to the effective drainage or water level management of a particular area. The simple criteria governing the adoption of watercourses is set out in Policy 8 of this strategy. This designation is usually made on the recommendation of IDB officers to the Board alongside consultation with the riparian landowners affected.

The status of adopted watercourses is an acknowledgement by the IDB that the watercourse is of arterial importance to the IDD and normally will receive maintenance from the IDB. This maintenance is not necessarily carried out on an annual basis but on a recurrence deemed necessary to meet water level management requirements. The designations are made under permissive powers and there is no obligation for IDB to fulfil any formal maintenance

requirement and there is no change in the ownership or liability associated with the watercourse.

In general, the RSIDB assesses the flood risk within its IDD by taking into account the following:

- Assets in place taking into consideration their design standard, general condition and economic life.
- Environment Agency Flood Risk Maps, Catchment Flood Management Plans, System Asset Management Plans and Shoreline Management Plans.
- Local Flood Risk Strategy, as developed by the Local Flood Risk Management Partnership.
- Hydrological and hydraulic models covering the Board's catchment area.
- Access to adequate revenue funding for maintenance work and capital finance for improvement work.
- Other information such as the history of flooding and land use impacts.

For some time the EA has classified its Main Rivers to assist with prioritising work and expenditure, and the RSIDB has seen fit to apply similar appraisals of watercourses under their care.

7.4. IDB Infrastructure and Standard of Protection

A large proportion our Drainage District is at some risk of flooding (including tidal flooding). Flood risk from ordinary watercourses (that the Board is the relevant Risk Management Authority for) is controlled wherever it is practically and financially viable to do so. However, some variation in the standards of protection will apply.

The RSIDB monitors and reviews the condition of its watercourses and other assets (such as pumping stations and water level control structures), particularly those designated as high priority, over-spilling from which could affect people and property. Where standards of protection or condition are not at the desired level, improvement works will be sought where they are considered to be practical and financially viable by the Board. Where improvement works meet the criteria set by Defra, financial support will be sought from the Government’s Flood and Coastal Resilience Partnership funding.

The Board welcomes any comments from its agricultural ratepayers, special levy paying councils, flood risk management partners and members of the public on the condition of its drainage system, which could lead to any increased flood and coastal erosion risk.

7.5. Adoption and abandonment of watercourses and drainage assets

Under common law, the responsibility for maintenance of watercourses rests with the riparian owner or landowner. Different owners have different priorities, needs and expectations as to the standard of drainage required for their land use. As such it is not unusual for drainage issues to occur when the level of maintenance varies between reaches or opposite banks of the same watercourse. The result of such circumstances can be that landowners upstream are impacted by landowners further downstream failing to adequately maintain their respective reach of watercourse.

One of the primary benefits of the management of watercourses by statutory bodies such as Internal Drainage Boards is that critical watercourses are maintained adequately as a

connected and related arterial network. To incorporate watercourses into this network it is essential that the Board has and uses its permissive powers to “adopt” watercourses. Another benefit of adoption is that these watercourses are protected to a greater extent by the Board’s byelaws.

From time-to-time drains are adopted and abandoned (unadopted) by the Board due to changes in circumstance. The criteria listed below has been drawn up to reinforce and assist the decision-making process as to which drains should be adopted/unadopted. It is not intended that the criteria should be used to make radical changes to the existing network of Board adopted watercourses but instead to provide guidance to the decision-making process when in future a riparian owner asks the Board to consider adopting or unadopting a watercourse. It should also be noted that every case will have to be judged on its own merit, as the complexities and peculiarities of individual cases cannot be encompassed within a standard set of criteria.

Policy 8 – Adoption of watercourses

Watercourses which fulfil the following criteria may be considered for adoption:

A watercourse with more than one riparian owner/occupier, or that caters for more than one owner/occupier within its catchment, which causes persistent drainage problems, or would do if a perceived change in circumstances was to take place, where effective maintenance would prevent these problems from occurring. (One-off problems can normally be resolved by issuing the relevant riparian owner a Notice under the Land Drainage Act to carry out the required work). If an improvement scheme is required to be undertaken to make it an effective drainage route, then the benefit of this must outweigh the cost. A condition of the adoption would be that the riparian owners, or in the case of development, the developer, finances the improvement to the specification of the Board before the watercourse is adopted.

Consideration should also be given, when deciding whether to adopt a watercourse, to the implications of retrospectively applying the Board’s Byelaws to the adjacent owners/occupiers, particularly Byelaw 10 affecting development within 8 metres of the drain, and availability of access to the watercourse to carry out maintenance works.

Policy 9 – Decommissioning (unadoption) of watercourses

Watercourses which fulfil the following criteria may be considered for decommissioning by the RSIDB:

A watercourse, or upstream section of watercourse, which either has only one riparian owner/occupier and one owner within its catchment, or where there are multiple riparian owner/occupiers or multiple owners within the catchment and all of these owners or occupiers are in full agreement to its decommission, or a watercourse which is redundant for its original purpose, for example it has been by-passed, and would not cause a drainage problem if it were decommissioned by the Board.

Upon decommission, the maintenance responsibility for those watercourses will remain with the riparian owner.

Policy 10 - Sustainable Drainage Systems ("SuDS") Adoption Policy

[a] Adoption of SuDS within the Board's Drainage District

The Board may consider the adoption of SuDS within its Drainage District where the SuDS cater for more than one property owner. The decision whether to adopt will be:

- Made on a site-specific basis.
- Dependent on the Board having had input to the design from an early stage so that:
    - Adequate access and working space is allowed around the SuDS feature(s) for future maintenance with machinery, including in all landscaping designs.
    - Space is allowed within the site design for deposition of arisings from the SuDS proposed for adoption - where the arisings are vegetation or silts etc - so that these do not have to be removed from site. The area required for this may be additional to the access and working space. It will normally be expected that this deposition space is provided immediately adjacent to the SuDS feature(s).

Generally, the Board will only consider adopting a SuDS feature which;

- Is an extension of, or is adjacent to, an existing Board Adopted watercourse or SuDS feature.
- Is above-ground and can be maintained with equipment commonly used by the Board - such as flails and weed cutting baskets - for example attenuation ponds or linear flood storage areas.
- Has a maintenance regime similar to a Board Adopted open watercourse, especially in regard to cutting frequency (SuDS infrastructure that needs maintaining more frequently, for example swales in front of properties or SuDS which are also public open space, may be better suited to adoption by another authority).

[b] Adoption of SuDS within the Board's watershed catchment

The Board may also consider adopting SuDS outside its Drainage District, but within the watershed catchment, if doing so will be of benefit to, and/or help to protect drainage and flood risk in the Drainage District, provided that the other requirements in this policy are also met.

[c] Charges for the Board to adopt SuDS

A one-off, upfront adoption charge will be payable by the developer to the Board as part of the adoption procedure. This charge will be based on the present value of the total maintenance cost associated with the SuDS being adopted over the design life of the development (usually 100 years, unless it can be demonstrated to be less), unless otherwise agreed by the Board. The maintenance costs used to calculate this charge will be set by the Board based on a works programme agreed as part of the consenting and adoption process.

Policy 11 – Adoption of Structures within an Adopted Watercourse

The Board may seek to adopt the maintenance of proper flow through all **new** consented structures within an adopted watercourse, subject to the applicant paying a Commuted Maintenance Fee calculated in line with the Board's charging policy.

The adoption will mean that the Board will be responsible for de-silting and vegetation clearance on a recurrence deemed necessary to meet water level management requirements. Adoption of a structure does not commute the liability for maintenance of the structure's integrity which shall remain with the relevant landowner(s).

If a riparian landowner does not wish for a new structure to be adopted by the Board, the Board will instead condition that the landowner agree to a standard maintenance regime, the timing of which is to be agreed annually with the Board's Operations Manager.

Appendices

Appendices

Appendix 1: Legislative Framework for IDBs

The current legislative framework for the management of flood risk and drainage in England is a product of significant amounts of historic and modern legislation. The forebears of IDBs were first created under Ministerial Orders or Orders under the Land Drainage Act 1930. This legislation was, in many ways, a successor to the large number of Drainage Acts that had been pursued across the Country in the preceding centuries in low lying areas or areas of special drainage need.

In more recent times the Land Drainage Acts 1991 and 1994 and the Environment Act 1995 have reshaped the powers available to IDBs as well as their oversight and policy requirements. Specifically the Environment Act 1995 created the Environment Agency (EA) in 1996, subsuming in the process the National Rivers Authority (NRA) and its powers of supervision over IDBs.

In 2010, Government incorporated into legislation a number of Sir Michael Pitt's recommendations from his review into the significant flooding experienced across England and Wales in 2007. This legislation was the Flood and Water Management Act 2010 and further reshaped the powers and duties of IDBs. Specifically, it acknowledged formally flooding from ordinary watercourses, groundwater and surface run-off as Local Flood Risk. It further recognised those organisations working to manage risk from these sources as Risk Management Authorities (RMAs). The Act gave the EA a 'strategic overview' of Flood and Coastal Erosion Risk Management (FCERM), created upper tier Local Authorities (County and Unitary Councils) as Lead Local Flood Authorities (LLFAs) and placed a duty of co-operation on RMA's. LLFA's have a number of statutory duties and powers to help coordinate the management of local flood risk across their area, including the duty to produce local strategies. Kent County Council act as the LLFA for our entire Drainage District.

In November 1999 the then Ministry of Agriculture, Fisheries and Food (MAFF) set out its policy approach for IDBs in a document titled High Level Targets for Flood and Coastal Defence Operating Authorities and Elaboration of the EA's Flood Defence Supervisory Duty. The first target in this document required each operating authority to publish a policy statement setting out their plans for delivering the Government's policy aim and objectives in their area. This included an assessment of the risk of flooding in their area, and what plans they had to reduce that risk.

In June 2001 MAFF's role was subsumed into the new Department for Environment, Food and Rural Affairs (DEFRA). DEFRA's wide remit includes policy responsibility for flood and coastal management in England. From 1 April 2004 DEFRA brought IDBs under the jurisdiction of the Local Government Ombudsman (LGO) and introduced a model complaints procedure for IDBs to use.

In May 2011 DEFRA and the EA published the National FCERM Strategy for England. This forms the basis of Government's policy response to the changes in legislation brought about under the Flood and Water Management Act 2010.

Appendix 2: Roles and Functions of IDBs

1. IDB functions

As highlighted in the introduction, IDBs were established for predominantly low-lying areas where flood risk management and land drainage measures are necessary on a continually managed basis to sustain developed land uses and agriculture. Many of these measures are delivered through the use of permissive powers and are classed as Flood Risk Management Functions[1] under Section 4 of the Flood and Water Management Act 2010.

To achieve the objectives of each Board's policy statements, as well as to support the delivery of national and local strategies, the RSIDB can;

- **Undertake works** (this is the physical and practical management of water levels through the use of pumping stations and water level controls and the sustaining of volumetric capacity and flow rates within the watercourse network through maintenance activities such as desilting).
- **Regulate third party activities** (this is the consenting and enforcement of changes within their district that affect watercourses and their access and maintenance land. These changes could be the erection and alteration of structures or changes in the flow rate and volume).
- **Communicate and engage with other parties and regulatory regimes** (this is the highlighting of IDBs role, functions and requirements);
  - through the planning process to ensure that permissions granted by planning authorities are sustainable and can be implemented;
  - to riparian owners to ensure that they are aware of their responsibilities under common law
  - to other Risk Management Authorities to ensure IDB infrastructure and works are appropriately acknowledged, funded and coordinated to achieve best value.

2. Undertaking works

IDBs deliver their practical management of flood risk and water levels through capital works projects and revenue maintenance programmes.

Capital works are infrastructure replacement and improvement schemes that are usually funded through bids to regional and national funding programmes. Bids are submitted and reviewed on an annual basis for inclusion in the Environment Agency's (EAs) Medium Term Plan (MTP). The MTP is a 6 year programme of capital works projects that are aggregated at a regional level. The bids are subject to approval through the Department for Environment, Food and Rural Affairs (DEFRA) and EA administered project appraisal process. The MTP is approved by the relevant Regional Flood and Coastal Committee (RFCC) that covers the submitting RMAs area. Progress on submission and delivery of funded capital projects is reported to the Board on a quarterly basis. Further detail of the flood and coastal erosion risk management investment programme 2015 to 2021 can be found using this link.

IDB revenue programmes are generally funded by drainage rates collected from occupiers of agricultural land within the IDD as well as through special levies raised from District authorities

[1] "Flood risk management function" means a function under; Part 1 of the Flood and Water Management Act 2010, Section 159 or 160 (and a flood defence function within the meaning of section 221) of the Water Resources Act 1991, The Land Drainage Act 1991, Sections 100, 101, 110 or 339 of the Highways Act 1980, The Flood Risk Management Functions Order 2010.

who pay on behalf of occupiers of land within the IDD not used for agriculture (e.g. houses; businesses; shops). These occupiers pay their part of this levy as a proportion of Council Tax or Business Rates which is paid to their Local Authorities. In addition, some Boards also raise highland water contributions from the EA under Section 57 of the Land Drainage Act 1991 for the receipt of water into an IDD from lands at a higher level outside of the IDD.

Appendix 3: Vision and Mission of the RSIDB

1. Vision

The vision of the River Stour (Kent) IDB (RSIDB) is to make its Drainage District and watershed catchment area a safer and heathier place to live, work, learn, grow and have fun; as a model of sustainable living in a high flood risk area.

2. Mission Statement

The RSIDB aims to:

- Reduce the risk to people, property, infrastructure and the natural environment by providing and maintaining technically, environmentally and economically sustainable flood and coastal defences within our coastal zones and hydraulic sub-catchment areas.
- Become the local delivery partner of choice for all flood and coastal erosion risk management services in our coastal zones and hydraulic sub-catchments, by working closely with other Risk Management Authorities (RMAs), partners and stakeholders.
- Enable and facilitate land use for residential, commercial, recreational and environmental purposes by guiding and regulating activities that would otherwise increase flood or coastal erosion risk.
- Nurture, enhance and maintain the natural habitats and species which exist in and alongside watercourses and other Flood and Coastal Erosion Risk Management (FCERM) infrastructure.

3. Links to National Objectives

The Environment Agency (EA) has a duty under the Flood and Water Management Act 2010 to develop, maintain, apply and monitor a National Flood and Coastal Erosion Risk Management (FCERM) Strategy for England. The EA is also required to report to the Minister on flood and coastal erosion risk management including the application of the National Strategy. The EA publishes this report annually.

The overall aim of the National FCERM Strategy is **"to ensure the risk of flooding and coastal erosion is properly managed by using the full range of options in a coordinated way".** Set out in the table below are the key objectives included in the National FCERM Strategy to achieve this aim.

The Government will work with individuals, communities and organisations to reduce the threat of flooding and coastal erosion by:

- *understanding the risks of flooding and coastal erosion, working together to put in place long-term plans to manage these risks and making sure that other plans take account of them;*

- *avoiding inappropriate development in areas of flood and coastal erosion risk and being careful to manage land elsewhere to avoid increasing risks;*

- *building, maintaining and improving flood and coastal erosion management infrastructure and systems to reduce the likelihood of harm to people and damage to the economy, environment and society;*

- *increasing public awareness of the risk that remains and engaging with people at risk to encourage them to take action to manage the risks that they face and to make their property more resilient;*

- *improving the detection, forecasting and issue of warnings of flooding, planning for and co-ordinating a rapid response to flood emergencies and promoting faster recovery from flooding.*

The RSIDB supports the Government's policy aim and objectives for the management of flood and coastal erosion risk and water levels and has a Policy Statement which sets out the Board's approach to meeting the national policy aims and objectives (available on the Board's website).

Appendix 4: IDBs and the Planning Process

1. The Rationale for IDB engagement with the planning process

According to the National Planning Policy Framework, strategic policies set by Local Planning Authorities in their Local Plans should take into account advice from the Environment Agency and other relevant Risk Management Authorities, such as Lead Local Flood Authorities and Internal Drainage Boards.

In determining planning applications in accordance with national policy, local policies and relevant guidance, LPAs take into account advice from a number of different sources. These sources include from statutory consultees (such as Lead Local Flood Authorities (LLFAs) and the Environment Agency (EA) as well as from other Risk Management Authorities (RMAs) on a non-statutory basis such as Internal Drainage Boards (IDBs), Southern Water or the Canal and River Trust.

Between December 2014 and March 2015 Government reviewed and consulted the arrangements for providing advice to planning authorities on drainage and flood risk. As part of their response to this consultation Government stated they recognised the important role IDBs fulfil in flood risk management and agreed that *"there may be local instances where they should be consulted on new development proposals on a non-statutory basis."* Government considered at that time that the provision of advice from these bodies would best be established through local arrangements.

2. The Scope for IDB engagement with the planning process

The scope of IDB comments on planning applications relates primarily to each Board's role as a RMA as defined by Section 6 of the Flood and Water Management Act 2010. In March 2012 Government published the National Planning Policy Framework (NPPF). This is a key element of the planning framework used by LPAs and decision-makers, both in drawing up plans and making decisions about planning applications. Section 14 of this document, "Meeting the challenge of climate change, flooding and coastal change" (paragraphs 148 to 169) contains key information on how flood risk and Sustainable Drainage Systems (SuDS) should be considered as part of new development.

Paragraph 156 of the NPPF states that strategic policies should be supported by a SFRA and should manage flood risk from all sources. It further highlights that in developing these policies LPAs should take into account the advice from other relevant flood risk management bodies such as IDBs. Paragraph 163 of the NPPF includes important references to flood risk and SuDS for LPAs considering planning applications. Amongst many other considerations it highlights that when determining planning applications, LPAs should for all types of development ensure flood risk is not increased elsewhere.

In addition to Planning Policy, Government has updated Planning Practice Guidance (PPG) to include a section on Flood risk and coastal change. This includes a number of references to IDBs including Paragraph 006 which states that LPAs should confer with IDBs to identify the scope of their interests. Paragraph 011 also highlights that SFRAs should be prepared by LPAs in consultation with IDBs alongside other RMAs. Furthermore, the technical nature of the type of issues that Government believes IDBs could provide advice on is highlighted by

Paragraph 086 which advises LPAs to consult IDBs where the proposed drainage system from a new development may directly or indirectly involve the discharge of water into an ordinary watercourse within the board's district.

The link between such technical matters as surface water discharges from new development to the policy considerations of the NPPF relate primarily to the potential consequences of unregulated activities on the IDB network and how they may impact the communities they serve. For example, un-attenuated discharges into IDB watercourses can, in many cases, lead to an increase in flood risk downstream of the development site or, in extreme cases, on the development site itself. Where either scenario may occur then the matter becomes a material planning consideration as it would contravene the NPPF statement under Paragraph 163. To this end Table 1 has been included in this document to summarise when the Board should be consulted by LPAs as the consequence of unregulated activities may contravene planning policy or impact the ability of developers to implement their planning permission, both of which may be material planning considerations.

Appendix 5: Local Planning Authorities

No.	Local Planning Authority	Contact details
1	Ashford Borough Council	planning.comments@ashford.gov.uk
2	Canterbury City Council	planning@canterbury.gov.uk
3	Dover District Council	DevelopmentControl@dover.gov.uk
4	Folkestone & Hythe District Council	planning@folkestone-hythe.gov.uk
5	Thanet District Council	planning.services@thanet.gov.uk
6	Kent County Council	planning.applications@kent.gov.uk