

REPORT TO: Executive Board

DATE: 10 January 2013

REPORTING OFFICER: Strategic Director, Policy and Resources

PORTFOLIO: Transportation

SUBJECT: Byelaws under Section 66 of the Land Drainage Act 1991

WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

1.1 To inform the Board about recent changes to the Council's regulatory powers under the Land Drainage Act 1991 (as amended by the Flood and Water Management Act 2010) and to seek its endorsement to the proposal to consult on a set of local land drainage byelaws.

2.0 RECOMMENDATION: That a consultation exercise be undertaken in connection with the draft Land Drainage Byelaws for Halton.

3.0 SUPPORTING INFORMATION

Background

3.1 On 6th April 2012, under the provisions of the Flood and Water Management Act 2010 (F&WMA), amendments to the Land Drainage Act (LDA) were enacted, which transferred certain powers in relation to the regulation of watercourses, from the Environment Agency (EA) to Halton Council as Lead Local Flood Authority for the area. Additionally, the Flood and Water Management Act amends Section 66 of the Land Drainage Act to allow local authorities to make byelaws for the following purposes:

- To secure the efficient working of a drainage system in its area;
- To regulate the effects of a drainage system on the environment;
- To secure the effectiveness of flood risk management work (carried out under either the F&WMA or the LDA)

3.2 In preparation for the transfer of duties and powers described above, Defra have prepared a set of Model Land Drainage Byelaws and have issued guidance for Local Authorities on making byelaws under Section 66 (LDA). The byelaws are broadly similar to those operated for many years by the Environment Agency and are appended as Appendix 1 to this report.

3.3 Partner members of the Cheshire and Mid Mersey Flood Risk Management Group have considered the model byelaws and have

agreed that they would be a very useful tool across the region in which the partnership operates for the regulation of ordinary watercourses. The making of Byelaws is not mandatory but it is seen as a key element at a tactical level to deliver flood risk management. Without byelaws, the application of the consenting and enforcing powers and duties will be very difficult.

- 3.4 At its meeting of 21 November 2012, the Environment and Urban Renewal Policy and Performance Board considered a report on the Council's new duties and powers in relation to ordinary watercourse regulation and endorsed the proposal to seek Executive Board approval for a set of Land Drainage Byelaws for Halton.
- 3.5 The model byelaws contain (inter-alia) provisions to control a range of factors that might affect (or have the potential to affect) the flow of water in a watercourse and therefore may impact on flood risk, such as:
 - The introduction and control of flow into and within watercourses;
 - Alterations to watercourses;
 - Activities within and close to the banks of watercourses;
 - Damage and obstruction to watercourses, and associated structures and property.
- 3.6 The model byelaws set out circumstances where and when the consent of the Council is required for certain works; when the directions of the Council must be complied with; or when certain actions are required by formal notice served under the provisions of the LDA. Due to current resource and budgetary constraints, there are no plans at present to undertake routine regular inspections of ordinary watercourses within the Borough. Therefore byelaw contraventions will generally only come to light as a result of problems arising, third party reports or from other inspections or surveys. It is proposed to adopt a proportionate, risk based approach to watercourse regulation and to the enforcement of the proposed byelaws.
- 3.7 The procedure for making byelaws is outlined in section 236 of the Local Government Act 1972. Also, Defra has published guidance for local authorities on making byelaws under section 66 of the Land Drainage Act 1991. Under the Council's Constitution "making and amending byelaws" is reserved to full Council.
- 3.8 The procedure and proposed timetable for the making of Byelaws under Section 66 LDA is shown in Appendix 2.
 - Early consultation with Defra on the draft documents is recommended, however, as the adoption of the 'Model' byelaws is proposed, this should be a formality.
 - There is then a need to consult initially with the canal and river navigation authorities (to avoid conflict or interference with their

byelaws) and Natural England due to the potential impact on designated sites or species.

- 3.9 Objections to the proposed byelaws are considered by and dealt with by the Council. Ideally, any objections will be resolved and withdrawn before the byelaws are submitted to the appropriate Minister within Defra for confirmation.
- 3.10 The proposed byelaws relate to ordinary watercourses. These are watercourses which do not come within the category of 'main river'. Main rivers remain the responsibility of the Environment Agency and are subject to separate byelaws.

4.0 POLICY IMPLICATIONS

- 4.1 The making of byelaws is a policy matter reserved to full Council in the Constitution. This report seeks authorisation to begin the process of byelaw making by carrying out a consultation exercise.

5.0 OTHER IMPLICATIONS

5.1 Resource Implications

The costs associated with the implementation of local land drainage byelaws are principally administrative, comprising officer time in managing the process (e.g. consultation & liaison, reporting, making, advertising and dealing with objections etc.) and sundry costs (printing, postage, newspaper advertising etc.) These costs will largely be borne through existing staffing revenue budgets and via the area based grant to LLFAs to deal with flood risk management.

As stated in paragraph 3.6, there are no plans at present to undertake routine regular inspections that would generate enforcement action in relation to ordinary watercourses. It is anticipated that the majority of issues that arise will be resolved through negotiation and informal action, the costs of which will be borne through existing budgets, as above. However, there would be more significant staff resource implications and legal costs if enforcement progresses through to a stage where prosecution action is taken against offenders, when all other avenues have been exhausted. The workload associated with watercourse regulation previously undertaken by the EA in Halton, has historically been low and there is no reason to suspect that this will change. There were no applications for consent in 2010/11 and only one in 2011/12. Over the same period, the EA took enforcement action in one case (although this did proceed to court).

The implementation of these byelaws are intended to support the Council's existing powers and duties under the LDA, which already provide for enforcement sanctions including the serving of notices, undertaking works (including the recovery of associated costs) and

prosecution for non-compliance. The adoption of these byelaws should make the Council's regulatory role in relation to ordinary watercourses more straightforward and efficient to manage.

5.2 Sustainability Checklist

The regulation and control of activities in and around ordinary watercourses is a key consideration in ensuring the sustainable development of new sites and in the regeneration of existing sites across the Borough. The adoption of land drainage byelaws is seen as a valuable tool in achieving this.

5.3 Legal Implications

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 Halton. Byelaws create criminal offences which can be prosecuted in Magistrates Courts. Breaches of byelaws can lead to a fine, the maximum being generally between £500 and £2,500.

5.4 Community Impact Review & Assessment (CIRA)

Based upon the principal aims of watercourse regulation contained in the amendments to the Land Drainage Act and the proposed byelaws, the potential impact of the policies and practices are judged to be neutral and low across all equality strands. Therefore, a CIRA is not required in this instance.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

There are no implications for Halton's Children and Young People priority.

6.2 A Healthy Halton

There are no implications for Halton's health priority.

6.3 Employment, Learning and Skills in Halton

There are no implications for Halton's Employment, Learning and Skills priority.

6.4 A Safer Halton

The adoption of proposed byelaws will enable the Council to maintain safe and secure environments around ordinary watercourses and to manage flood risk across the Borough.

6.4 Children and Young People in Halton

There are no implications for Halton's Children and Young People priority.

6.5 Environment and Regeneration in Halton

Local regulation of watercourses through the consenting and enforcement processes under the LDA and by the adoption of proposed byelaws will enable the Council to maintain a high quality and sustainable environment, and protect and enhance key areas and public spaces around ordinary watercourses. The procedures will help to support the planning and development process, protecting the physical and natural environment as sites are brought forward for development and regeneration.

7.0 RISK ANALYSIS

- 7.1 There are no significant risks associated with the proposals to consult on the draft land drainage byelaws for Halton and therefore a full risk assessment is not required.

8.0 EQUALITY AND DIVERSITY ISSUES

There are no equality and diversity issues arising from the report.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Land Drainage Act 1991	HBC Highways Offices Rutland House, Runcorn	Dave Cunliffe
Flood and Water Management Act 2010	HBC Highways Offices Rutland House, Runcorn	Dave Cunliffe
Defra Guidance for Local Authorities on making byelaws under section 66 of the Land Drainage Act 1991	HBC Highways Offices Rutland House, Runcorn	Dave Cunliffe

MODEL LAND DRAINAGE BYELAWS

LOCAL AUTHORITIES

INDEX

Preamble

1. Commencement of Byelaws
2. Application of Byelaws
3. Control of Introduction of Water and Increase in Flow or Volume of Water
4. Control of Sluices etc
5. Fishing Nets and Angling
6. Diversion or Stopping up of Watercourses
7. Detrimental Substances not to be Put into Watercourses
8. Lighting of Fires
9. Notice to Cut Vegetation
10. No Obstructions within 8 Metres of the Edge of the Watercourse
11. Repairs to Buildings
12. Control of Vermin
13. Damage by Animals to Banks
14. Vehicles not to be Driven on Banks
15. Banks not to be Used for Storage
16. Not to Dredge or Raise Gravel, Sand etc
17. Fences, Excavations, Pipes etc
18. Tidal Outfalls
19. Interference with Sluices
20. Mooring of Vessels
21. Unattended Vessels
22. Removal of Sunken Vessels
23. Navigation of Vessels
24. Damage to Property of the Council
25. Defacement of Notice Boards
26. Obstruction of the Council and Officers
27. Savings for Other Bodies
28. Saving for Crown Lands
29. Arbitration
30. Notices
31. Limitation
32. Revocation
33. Interpretation

Common Seal

Penalty Note

Amended July 2012

.....**COUNCIL LAND DRAINAGE BYELAWS**

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

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

together, "the Purposes";-

1. **Commencement of Byelaws**

These Byelaws shall come into operation at the expiration of one month beginning with the day on which they are confirmed by the Secretary of State.

2. **Application of Byelaws**

- (a) These Byelaws shall have effect within the Area;
- (b) the watercourses referred to in these Byelaws are watercourses which are for the time being vested in or under the control of the Council.

3. **Control of Introduction of Water and Increase in Flow or Volume of Water**

No person shall as a result of development (within the meaning of section 55 of the Town and Country Planning Act 1990 as amended ("the 1990 Act")) (whether or not such development is authorised by the 1990 Act or any regulation or order whatsoever or none of them) for any purpose by means of any channel, siphon, pipeline or sluice or by any other means whatsoever introduce any water into any watercourse in the Area so as to directly or indirectly increase the flow or volume of water in any watercourse in the Area (without the previous consent of the Council).

4. **Control of Sluices etc**

Any person having control of any sluice, water control structure or appliance for introducing water into any watercourse in the Area or for controlling or regulating or affecting the flow of water in, into or out of any watercourse shall use and maintain such sluice, water control structure or appliance in accordance with such reasonable directions as may from time to time be given by the Council with a view to securing or furthering one or more of the Purposes.

5. **Fishing Nets and Angling**

No person shall angle or set any nets or engines for the catching or keeping of fish in any watercourse in such a manner as to cause damage to or endanger the stability of the bank of the watercourse or to affect or impede the flow of water.

In this Byelaw “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.

6. **Diversion or Stopping up of Watercourses**

No person shall, without the previous consent of the Council, take any action, or knowingly permit or aid or abet any person to take any action to stop up any watercourse or divert or impede or alter the level of or direction of the flow of water in, into or out of any watercourse.

7. **Detrimental Substances not to be Put into Watercourses**

No person shall, so as directly or indirectly to obstruct, impede or interfere with the flow of water in, into or out of any watercourse or so as to damage the bank –

- (a) discharge or put or cause or permit to be discharged or put or negligently or wilfully cause or permit to fall into any watercourse any object or matter of any kind whatsoever whether solid or liquid;
- (b) allow any such object or matter as is referred to in sub-paragraph (a) of this Byelaw to remain in proximity to any watercourse in such manner as to render the same liable to drift or fall or be carried into any watercourse.

Provided that nothing in this Byelaw shall be deemed to render unlawful the growing or harvesting of crops in accordance with normal agricultural practice.

8. **Lighting of Fires**

No person shall light or cause or permit to be lighted or commit any action liable to cause to be lighted any fire on any land adjoining the watercourse where such action is liable to set on fire the peat land forming the banks of the watercourse or any vegetation including trees growing on land forming the banks of the watercourse.

9. **Notice to Cut Vegetation**

Any person having control of any watercourse shall, upon the receipt of a notice served on him by the Council requiring him so to do, cut down and keep cut down all vegetation, including trees, growing in or on the bank of a watercourse, within such reasonable time as may be specified in the notice, and shall remove such vegetation, including trees, from the watercourse immediately after the cutting thereof.

Provided that, where a hedge is growing on the bank of a watercourse, nothing in this Byelaw shall require more than the pruning of the hedge so as to prevent it from growing over or into the watercourse, and the removal of the resultant cuttings.

10. **No Obstructions within 8 Metres of the Edge of the Watercourse**

No person without the previous consent of the Council shall erect any building or structure, whether temporary or permanent, or plant any tree, shrub, willow or other similar growth within 9 metres of the landward toe of the bank where there is an embankment or wall or within 9 metres of the top of the batter where there is no embankment or wall, or where the watercourse is enclosed within 9 metres of the enclosing structure.

11. **Repairs to Buildings**

The owner of any building or structure in or over a watercourse or on the banks thereof shall, upon receipt of a notice from the Council that because of its state of disrepair –

- (a) the building or structure is causing or is in imminent danger of causing an obstruction to the flow of the watercourse;
- (b) the building or structure is causing or is in imminent danger of causing damage to the bank of the watercourse,

carry out such reasonable and practicable works as are specified in the notice for the purpose of remedying or preventing the obstruction or damage as the case may be within such reasonable time as is specified in the notice.

12. **Control of Vermin**

The occupier of any bank of a watercourse or any part thereof shall, upon being required by the Council by notice, within such reasonable time as may therein be specified, take such steps as are specified in the notice, being such steps as the Council consider necessary and practicable for preventing the bank from becoming infested by rabbits, rats, coypu, foxes and moles or any other wild mammal not being an animal listed in Schedule 5 or Schedule 6 to the Wildlife and Countryside Act 1981, but excluding the water vole from such control.

13. **Damage by Animals to Banks**

All persons using or causing or permitting to be used any bank of any watercourse for the purpose of grazing or keeping any animal thereon shall

take such steps including fencing as are necessary and reasonably practicable and shall comply with such reasonable directions as may from time to time be given by the Council to prevent the bank or the channel of the watercourse from being damaged by such use.

Provided that nothing in this Byelaw shall be deemed to affect or prevent the use of, for the purpose of enabling animals to drink at it, any place made or to be made or constructed as approved by the Council.

14. **Vehicles not to be Driven on Banks**

No person shall use or drive or permit or cause to be used or driven any cart, vehicle or implement of any kind whatsoever on, over or along any bank of a watercourse in such manner as to cause damage to such bank.

15. **Banks not to be Used for Storage**

No person shall use or cause or permit to be used any bank of any watercourse for the purpose of depositing or stacking or storing or keeping any rubbish or goods or any material or things thereon in such a manner as by reason of the weight, volume or nature of such rubbish, goods, material or things causes or is likely to cause damage to or endanger the stability of the bank or channel of the watercourse or interfere with the operations or access of the Council or the right of the Council to deposit spoil on the bank of the watercourse.

16. **Not to Dredge or Raise Gravel, Sand etc**

No person shall without the previous consent of the Council dredge or raise or take or cause or permit to be dredged or raised or taken any gravel, sand, ballast, clay or other material from the bed or bank of any watercourse.

17. **Fences, Excavations, Pipes etc**

No person shall without the previous consent of the Council –

- (a) place or affix or cause or permit to be placed or affixed any gas or water main or any pipe or appliance whatsoever or any electrical main or cable or wire in or over any watercourse or in, over or through any bank of any watercourse;
- (b) cut, pare, damage or remove or cause or permit to be cut, pared, damaged or removed any turf forming part of any bank of any watercourse, or dig for or remove or cause or permit to be dug for or removed any stone, gravel, clay, earth, timber or other material whatsoever forming part of any bank of any watercourse or do or cause or permit to be done anything in, to or upon such bank or any land adjoining such bank of such a nature as to cause damage to or endanger the stability of the bank;
- (c) make or cut or cause or permit to be made 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;

- (d) erect or construct or cause or permit to be erected or constructed any fence, post, pylon, wall, wharf, jetty, pier, quay, bridge, loading stage, piling, groyne, revetment or any other building or structure whatsoever in, over or across any watercourse or in or on any bank thereof;
- (e) place or fix or cause or permit to be placed or fixed any engine or mechanical contrivance whatsoever in, under or over any watercourse or in, over or on any bank of any watercourse in such a manner or for such length of time as to cause damage to the watercourse or banks thereof or obstruct the flow of water in, into or out of such watercourse.

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

18. **Tidal Outfalls**

No person shall place or cause to be placed or abandon or cause to be abandoned upon the foreshore any trees, roots of trees, branches, timber, tins, bottles, boxes, tyres, bricks, stones, soil, wire, rubbish or other object or matter whatsoever which (whether immediately or as a result of subsequent tidal action) may impede or be likely to impede the flow of water through the sluices or outfall pipes through the tidal banks or through the watercourses on such foreshore or impede or be likely to impede the operation of such sluices or outfall pipes or may cause or be likely to cause damage thereto.

19. **Interference with Sluices**

No person shall without lawful authority interfere with any sluice, or other water control structure or appliance for controlling or regulating the flow of water in, into or out of a watercourse.

20. **Mooring of Vessels**

No person shall moor or place any vessel in any watercourse or to or upon the bank of any watercourse in such manner or by such method as to cause or be likely to cause injury to such bank or in such manner as materially to obstruct or impede the free flow of water in, into or out of any watercourse.

21. **Unattended Vessels**

No person shall leave any vessel unattended without taking due care to prevent such vessel from materially obstructing or impeding the free flow of water in, into or out of any watercourse or any sluice in any bank.

22. **Removal of Sunken Vessels**

No person who is the owner of a vessel sunk, stranded, damaged or adrift in a watercourse or, in the case of a sunken vessel which is abandoned, who was the owner immediately before the abandonment shall, after ten days from

the day on which the Council serves on him notice in writing that the vessel is causing obstruction, permit the vessel to remain in the watercourse in such a manner as to impede or harmfully divert the flow of water in, into or out of the watercourse.

23. **Navigation of Vessels**

No person shall navigate any vessels in such a manner or at such a speed as to injure the bank of any watercourse and where the Council have by notice erected at any place limited the speed of vessels passing such place no person shall navigate a vessel at a speed over the bed of the watercourse greater than the speed so limited.

Provided that the Council shall not exercise their powers under this Byelaw so as to limit the speed of –

- (a) vessels in any tidal waters except after consultation with the Department for Transport, or
- (b) vessels navigating waterways of the British Waterways Board for which speed limits are prescribed by the Byelaws of such Board.

24. **Damage to Property of the Council**

No person shall interfere with or damage any bank, bridge, building, structure, appliance or other property of or under the control of the Council.

25. **Defacement of Notice Boards**

No person shall deface or remove any notice Board, notice or placard put up by the Council.

26. **Obstruction of the Council and Officers**

No person shall obstruct or interfere with any member, officer, agent or servant of the Council exercising any of his functions under the Act or these Byelaws

27. **Savings for Other Bodies**

Nothing in these Byelaws shall –

- (a) conflict with or interfere with the operation of any Byelaw made by the Environment Agency or an internal drainage board or of any navigation, harbour or conservancy authority but no person shall be liable to more than one penalty or in the case of a continuing offence more than one daily penalty in respect of the same offence;
- (b) restrict, prevent, interfere with or prejudice the exercise of any statutory rights or powers which are now or hereafter may be vested in or exercised by –
 - (i) any public utility undertaking carried on by a local authority under any Act or under any Order having the force of an Act;

(ii) the undertakings of the Environment Agency and of any water undertaker or sewerage undertaker;

(iii) any public gas transporter within the meaning of part I of the Gas Act 1986;

(iv) any navigation, harbour or conservancy authority;

(v) any person who acts as the operator of a relevant railway asset, with respect to the construction, use or maintenance and repair of any such asset, or the free, uninterrupted and safe use of any such asset and the traffic (including passengers) thereof;

(vi) any local authority;

(vii) any highway authority for the purposes of the Highways Act 1980 (as amended by any subsequent enactment) in relation to any highway whether or not maintainable at public expense;

(viii) any undertaking engaged in the operation of a telecommunications system;

(ix) a relevant airport operator within the meaning of Part V of the Airports Act 1986;

(x) the Civil Aviation Authority and any subsidiary thereof;

(xi) the British Waterways Board;

(xii) the Coal Authority;

(c) restrict, prevent, interfere with or prejudice any right of a highway authority to introduce into any watercourse surface water from a highway, for which it is the highway authority;

(d) restrict, prevent, interfere with or prejudice any right of a licence holder within the meaning of Part I of the Electricity Act 1989 to do anything authorised by that licence or anything reasonably necessary for that purpose;

(e) affect any liability arising otherwise than under or by reason of these Byelaws.

28. **Saving for Crown Lands**

(a) Nothing in these Byelaws shall operate to prevent the removal of any substance on, in or under (or the erection of any structure, building or machinery or any cable, wire or pipe on, over or under) lands belonging to Her Majesty in right of the Crown by any person thereunto authorised by the Crown Estate Commissioners.

- (b) Nothing contained in any of the foregoing byelaws should be deemed to be or shall operate as a grant by or on behalf of the Crown as owner of the foreshore below high water mark of any estate or interest in or right over such foreshore, or any part thereof, nor shall anything contained in or done under any of the provisions of the foregoing byelaws in any respect prejudice or injuriously affect the rights and interests of the Crown in such foreshore, or prevent the exercise thereon of any public rights or prejudice or injuriously affect any right, power or privilege legally exercisable by any person in over and in respect of the seashore.

29. **Arbitration**

- (a) Where by or under any of these Byelaws any person is required by a notice in writing given by the Council to do any work to the satisfaction of the Council or to comply with any directions of the Council, he may within 21 days after the service of such notice on him give to the Council a counter-notice in writing objecting to either the reasonableness of or the necessity for such requirement or directions, and in default of agreement between such person and the Council the dispute shall, when the person upon whom such notice was served is a drainage or local authority be referred to the Secretary of State whose decision shall be final, and in any other case shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party. Where such a counter-notice has been given to the Council the operation of the notice shall be suspended until either agreement has been reached or the dispute has been determined by arbitration in accordance with the provisions of this Byelaw;

- (c) where by or under these Byelaws any person is required by a notice in writing given by the Council to do any work to the satisfaction of the Council or to comply with any directions of the Council and any dispute subsequently arises as to whether such work has been executed or such directions have been complied with, such dispute if it arises between a drainage authority or local authority and the Council shall be referred to the Secretary of State whose decision shall be final, and in any other case shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party;
- (d) where by or under Byelaws 3, 6, 10, 16 or 17 any person is required to refrain from doing any act without the consent of the Council such consent shall not be unreasonably withheld and may be either unconditional or subject to such reasonable conditions as the Council may consider appropriate and where any dispute arises as to whether in such a case the consent of the Council is being unreasonably withheld, or as to whether any conditions subject to which consent is granted are unreasonable, such dispute shall if it arises between a drainage authority or local authority and the Council be referred to the Secretary of State whose decision shall be final, and in any other case such dispute shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party.

30. **Notices**

Notices and any other documents required or authorised to be served or given under or by virtue of these byelaws shall be served or given in the manner prescribed by section 71 of the Act.

31. **Limitation**

(a) Nothing in these Byelaws shall authorise the Council to require any person to do any act, the doing of which is not necessary for securing or furthering one or more of the Purposes, or to refrain from doing any act, the doing of which does not affect the environment, or adversely affect either (i) the efficient working of the drainage system of the area (ii) the effectiveness of flood risk management work within the meaning of section 14A of the Land Drainage Act 1991, or (iii) the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010.

(b) If any conflict arises between these Byelaws and

- (i) sections 61A to E of the Land Drainage Act 1991 (which relates to the Council's duties with respect to the environment),
or

- (ii) the Conservation of Habitats and Species Regulations 2010 (SI 2010/490) the said Act and the said Regulations shall prevail.

32. **Revocation**

The Byelaws made by the Council on the day of are hereby revoked.

33. **Interpretation**

In these Byelaws, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them, that is to say:-

“the Act” means the Land Drainage Act 1991;

“Animal” includes any horse, cattle, sheep, deer, goat, swine, goose or poultry;

“Area” means the area under the jurisdiction of the Council;

“Bank” includes any bank, cross bank, wall or embankment adjoining or confining or constructed for the purpose of or in connection with any watercourse and includes all land between the bank and the low water mark or level of the water in the watercourse as the case may be and where there is no such bank, cross bank, wall or embankment includes the top edge of the batter enclosing the watercourse;

“Consent of the Council” means the consent of the Council in writing signed by a proper officer of the Council;

“Council” means the Council;

“Occupier” means in the case of land not occupied by any tenant or other person the person entitled to the occupation thereof;

“Owner” includes the person defined as such in the Public Health Act 1936;

“Relevant railway asset” means

- (a) a network which was transferred, by virtue of a transfer scheme made under Section 85 of the Railways Act 1993, from the British Railways Board and vested in the company formed and registered under the Companies Act 1985 and known, at the date of vesting, as Railtrack PLC,
- (b) a station which is operated in connection with the provision of railway services on such a network, or
- (c) a light maintenance depot.

Expressions used in this definition and in the Railways Act 1993 have the same meaning in this definition as they have in that Act, and a network such as is described in (a) above shall not cease to be such a network where it is modified by virtue of having any network added to it or removed from it.

“The Secretary of State” means the Secretary of State for the Department for Environment, Food and Rural Affairs;

“Vegetation” means trees, willows, shrubs, weeds, grasses, reeds, rushes, or other vegetable growths;

“Vessel” includes any ship, hovercraft (as defined by the Hovercraft Act 1968), lighter, keel, barge, tug, launch, houseboat, pleasure or other boat, aircraft, randan, wherry, skiff, dinghy, shallop, punt, yacht, canoe, raft, float of timber or any other craft whatsoever, and howsoever worked, navigated or propelled;

“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, dam, pump, or pumping machinery;

and other expressions shall have the same meanings as in the Act.

THE COMMON SEAL OF THE

**COUNCIL was hereunto affixed on the
in the presence of:**

**The Chief Executive (or other
authorised officer)**

PENALTY NOTE

By section 66(6) of the Act every person who acts in contravention of or fails to comply with any of the foregoing Byelaws is liable on summary conviction in respect of each offence to a fine not exceeding the amount prescribed from time to time for level 5 on the standard scale referred to in section 37 of the Criminal Justice Act 1982 and a further fine not exceeding Forty pounds for every day on which the contravention or failure is continued after conviction. By section 66(7) of the Act if any person acts in contravention of or fails to comply with any of these Byelaws the Council may without prejudice to any proceedings under section 66(6) of the Act take such action as may be necessary to remedy the effect of the contravention or failure and may recover the expenses reasonably incurred by it in doing so from the person in default.

(N.B. This note may accompany the Byelaws, but is not part of them)

Halton Borough Council - Proposed Land Drainage Byelaws

Procedure and Indicative Timetable

- 10/01/13** Executive Board consider / approve Draft Land Drainage Byelaws for initial consultation.
- 21/01/13** Send Draft Byelaws to Defra, Flood Management Division for informal checking.
- 01/03/13** Initial Consultation with the following - to make sure that the proposed byelaw does not conflict with or interfere with the operation of their byelaws (Section 66(9) of the LDA 1991)
- Natural England
 - North West Inshore Fisheries and Conservation Authority (IFCA)
 - Acting Conservator of the River Mersey (ACRM)
 - United Utilities
 - Canal and River Trust (formerly British Waterways)
 - Manchester Ship Canal Company
- 31/03/13** Receive comments from initial consultation process, consider amendments, prepare report to Full Council recommending Halton Land Drainage Byelaws;
- April 2013** Full Council consider and, subject to agreement, make Halton Land Drainage Byelaws (to be signed, sealed and dated) and approve statutory advertisement.
- May 2013** Statutory Advertisement – Minimum one month period
- Advertise in one or more newspapers circulating in the area and on the Council's website, Halton Council's intention to apply to the Secretary of State for the Environment, Food and Rural Affairs for confirmation of the byelaws;
- Deposit a copy of the byelaws made at the Council's Offices for public inspection. (Council's main administrative centres and Direct Link offices);
- Supply a copy of the byelaws made to any person upon application;
- Supply a copy of the byelaws made to the following local and other public authorities:

- Hale Parish Council
- Halebank Parish Council
- Daresbury Parish Council
- Moore Parish Council
- Preston Brook Parish Council
- Sandymoor Parish Council
- St Helens Metropolitan Borough Council
- Knowsley Metropolitan Borough Council
- Warrington Borough Council
- Cheshire West Council
- Cheshire East Council
- Cheshire Constabulary
- Cheshire Fire and Rescue
- Network Rail
- The Highways Agency

Note: One month period for written objections to be received.

June 2013 Halton to write to all objectors, responding to any particular points raised and explaining why it believes the proposed byelaws are justified. Objectors invited to consider withdrawing their objections;

Note: Two week period for objectors to withdraw or sustain their objections or offer further comments. Objections will stand if objectors decline to enter into further correspondence;

Oct 2013 If objections cannot be resolved, Full Council consider report of objections and whether amendments to byelaws should be approved.

If modifications result in substantive change, the amended byelaws should be re-advertised or give all affected parties the opportunity to comment upon them;

Oct 2013 *Note: may be earlier if no objections received. Earliest date at expiry of one month from the date of publication of the notice.*

Apply to the Minister Secretary of State for the Environment, Food and Rural affairs for confirmation of the byelaws, sending:

- Two sealed and signed copies of the byelaws;
- Statement as to deposit (where deposited, dates and times, copy of the newspaper page(s) and website page(s) where advertised;

- Copies of any objections that may have been received and Halton's response;
- Statement that local and other public authorities (naming them) were notified and when.

