



# Planning and Byelaw Strategy

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## Abbreviations

Abbreviations used in this document are set out below:

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

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## Section 1: Introduction

This Planning and Byelaw Strategy has been produced by the Upper Medway Internal Drainage Board ("UM IDB"). It has been compiled to provide:

- Guidance on how the Upper Medway Board will engage with planning applications within their Internal Drainage Districts ("IDDs") or that have the potential to significantly impact their IDD.
- Guidance to organisations and individuals on the Boards 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 IDB districts or their 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.

Each member Board has an adopted Business Plan Policy Statement that sets out the Board's approach to meeting the national policy aims and objectives. These policy statements should be read in conjunction with this document and are available on the links below:

- [Upper Medway IDB Policy Statement](#)

Please note where reference is made to the "Board" within this document this should be taken as meaning the Upper Medway IDB.

## 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 their 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, the watercourses within their area. 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 Site of Special Scientific Interest (“SSSIs”).

### 2.2. The Upper Medway IDB

The Upper Medway IDB manages an area comprising the Upper Districts of the River Medway running from East Grinstead to Bethersden. The water is almost entirely fluvial and channeled through 100 miles of watercourse across 55,500 hectares of Kent, Sussex and Surrey.

### 2.3. 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.

Please see Appendix 3 of this document for further information relating to the vision and mission of the Upper Medway IDB, including how these link to National Objectives.

## Section 3: The Planning Process

### Introduction

The UMIDB cover parts of 8 Local Planning Authority (“LPA”) areas.

Each Board’s Business Plan Policy Statement sets out that the Board will 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.

### Board involvement in the planning process

By engaging with the planning process the UM Boards are seeking 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 IDB areas so they can be considered through the planning process.

### When should the Board be consulted

The Board will aim to review and comment on applications located wholly or partly within its Internal Drainage District (IDD), if the application meets at least one of the following criteria:

- The site is within 8 metres of a Board Maintained Watercourse
- Works are, or may be, proposed to alter any Ordinary Watercourse
- The proposals will, or may, displace water through the alteration of site levels
- The proposals will, or may, result in the introduction of water into the IDD
- The site is in an area known to suffer from poor drainage.

The Board will also aim to review and comment on applications outside of their IDD if the proposals will, or may, result in the introduction of water into the IDD.

### Standing Advice

The Board has approved the following standing advice to assist Local Planning Authorities and applicants alike.

*(overleaf)*

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

This standing advice applies where the proposed development site is within the IDD and watershed catchment of the Upper Medway IDB. Please see our website ([www.medwayidb.co.uk](http://www.medwayidb.co.uk)) for detailed mapping of the Board's District, including which drains are designated as a Maintained Watercourse in each District. 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 Upper Medway IDBs watershed catchment, the Board's byelaws may apply. The Byelaws for the Board are available on the byelaws pages of our website (<http://www.medwayidb.co.uk/development>).
- If the proposals include works to alter a watercourse (including culverting for access) consent is required under Section 23 of the Land Drainage Act 1991. If the site is within an IDD the relevant IDB is the consenting authority for these works. If outside an IDD, the Lead Local Authority is the consenting authority.
- If a treated foul water discharge is proposed to a watercourse within the IDD (either directly or indirectly), then the proposed development will require a land drainage consent in line with the Board's byelaws (specifically Byelaw 3).
- If a surface water discharge is proposed to a watercourse within the watershed catchment of the IDD (either directly or indirectly) then the proposed development will require a land drainage consent in line with the Board's 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 Ordinary Watercourse, consent is required under Byelaw 10/17.
- 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.
- For the maintenance of SuDS infrastructure each Board may consider adopting certain assets within their IDD. If the applicant wishes to explore this option they should contact [planning@medwayidb.co.uk](mailto:planning@medwayidb.co.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.

### **3.2. Further Information**

Please see Appendix 5 of this document for further information relating to the rationale for, and scope of, IDB involvement with the planning process

Please see Appendix 6 of this document for a list of Local Planning Authorities whose area has coverage by the Upper Medway IDB.



## Section 4: Regulation - Overview

### 4.1. Introduction

The oversight, management, and regulation of watercourses in England is 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 effecting 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. As the majority of the watercourse network within IDD’s are in private or riparian ownership the role of the IDB 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 set 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 that 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. It should be noted that introduction of increased flows or volumes into either the IDD or the watershed catchment as a result of development may still require consent from the IDB under byelaw 3.

### 4.2. Upper Medway’s approach

As part of the Boards Policy Statement the Board have set out their 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 Upper Medway IDB 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 relevant Board for consideration. The [application form](#) is available on the Board's webpage.

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) some applications may be determined by officers acting under delegated authority, whereas some may only be determined by the Board. Additionally, where the applicant or agent is a member or employee of the Board or is related to a Member or employee, then the application will have to be determined by the Board. The same approach is taken if the applicant or agent is a company where the partner or director of that company is a member of the Board or is related to a Member or employee.

Board meetings are usually only held between 3 and 6 times each year. Due to the need to prepare reports, it will not normally be possible to discuss at the meeting applications received less than 14 days before a meeting. It may therefore be some time after submission of an application when it is discussed by the Board. The applicant will be advised of the date of the relevant meeting as soon as possible. The Scheme of Delegation allows decisions on planning consents to be taken by the Clerk, the Chairman, Vice-Chairman and a selection of local members (in cases of major development and/or alterations deemed appropriate by the Clerk). In the event of a Board meeting not being within the prescribed 2-month period this may be utilised should the Clerk or Sustainable Development Officer deem it necessary. The Board will be informed of all decisions and applications regardless at the next meeting.

Applications for consent under the LDA must be decided within two months of the date they are validated by the relevant Board. 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.

#### **4.4. Conditions of Consent**

Consent may be issued subject to conditions as per byelaw 25 of 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 notify the Board of when works are to be started
- Specific stipulations regarding the nature and extent of the works
- The requirement for environmental 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 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 that includes works that may have an impact on the interest features of a Site of Special Scientific Interest (SSSI), 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. In drainage matters the agreement essentially attempts to negate or limit the risk which the IDB is exposed to as a consequence of the third-party activities the Board has consented to. The Deed must be completed, signed by all affected parties (including mortgage lenders on the property, if appropriate) and successfully registered against the property at HM Land Registry, before the Board’s consent will be valid.

Where a property is not currently registered, the Deed will have to be noted on the property’s title documents, and written confirmation to this effect be provided by a solicitor. Most Deeds once registered against a property require the restriction to be continued at the point of sale of the title via the purchasers entering into a Deed of Covenant with a certificate of compliance being issued to HM Land Registry.

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 Board Maintained Watercourse the Board will seek to ensure that there are 8 metre wide easement strips kept clear of any development. The Board will usually seek to have the above-mentioned easement strips conveyed to it wherever possible, regardless of whether or not the adjacent drain is owned by the Board. The Board will also normally stipulate that the strips have to be suitably-fenced and gated to all sides, except alongside an open watercourse, and that the transfer is free from encumbrances and completed at no cost to the Board (including the developer paying the Board’s legal costs).

#### **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 considered favourably, despite being against Boards policies. The matter will then be taken to the next Board meeting where it will be re-considered. Where this timeframe may not be suitable the Clerk, Sustainable Development Officer, Chairman, and Vice-Chairman may take a decision on behalf of the Board as per the Scheme of Delegation.

#### **4.6. Implementation Timescales**

All consents granted by the Board are subject to the approved works being completed within a period of 3 years (or as otherwise stated in the conditions of consent) 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, land owners 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

**Consent is required where a discharge of water is proposed to a watercourse.**

#### 5.1.1. Treated Foul Water

**The discharge of treated foul water (via a treatment plant) required consent in accordance with Byelaw 3 where the receiving watercourse is within the Board’s Internal Drainage District.**

##### **Policy 1- Discharge of Treated Foul Water**

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

The Board will only approve an application to discharge treated foul water where the watercourse can be evidence as being connected to the wider watercourse network.

Applications may be refused if the Board's Officers consider that the proposals may increase flood risk or negatively impact the efficiency of local drainage or that the receiving watercourse will not be capable of accepting the planned additional flows.

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 drain batter. Suitable erosion protection should be installed below the headwall down to the toe of the watercourse and also dug in flush with the drain batter.

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 specification 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.

On Board Maintained 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.

Conditions of consent:

- On all watercourses drain 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 Board Maintained watercourses a Commuted Maintenance Fee may be payable if new assets are built within a Boards watercourse to accommodate the proposed discharge

e.g. a new inspection chamber.

On all watercourses, although a development contribution will not normally be payable for treated foul water discharges, the Board reserves the right to require a payment to be made if it feels it is warranted (such as where the amount of the proposed treated water discharge is significant e.g. comparable to surface water run-off rates of discharge).

### 5.1.2 Surface Water

**The discharge of surface water requires consent in accordance with Byelaw 3 where the receiving watercourse is within the Board's IDD and watershed catchment. Policy 2 overleaf sets out how the Board will determine applications received seeking to discharge surface water.**

#### **Policy 2 – Discharge of Surface Water Run-Off**

Applications for consent to discharge surface water run-off into any watercourse within the Board's Internal Drainage District and watershed catchment 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 Board'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.

The Board will only approve an application to discharge surface water where the watercourse can be evidenced as being connected to the wider watercourse network.

Applications may be refused if the Board's Officers consider that the proposals may increase flood risk or negatively impact the efficiency of local drainage or that the receiving watercourse will not be capable of accepting the planned additional flows

Conditions of consent:

- On all watercourses drain 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 Board Maintained watercourses a Commuted Maintenance Fee may be payable if new assets are built within a Boards 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 [Boards 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.

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<sup>2</sup> and is an extension of an existing impermeable area with a satisfactory surface water outfall.

### **5.1.2. Byelaw 3 Delegation**

All applications for consent under Byelaw 3 to discharge treated foul water can be determined by officers under delegation if they meet the requirements of Policy 1.

Applications for consent under Byelaw 3 to discharge surface water can be determined by officers under delegation if they are for developments of 3 or less properties, up to 3 pitches for traveler sites or developments under 330 sqm.

For sites that are classed as minor developments (or in this instance the development of between 3 and 9 dwellings; between 4 and 9 pitches for traveler sites; or where the floorspace is between 330sqm and 1,000 sqm or the site area less than one hectare) and if they meet the requirements of Policy 2, will require Board approval as per the Scheme of Delegation.

For sites that are classed as major developments (10 dwellings or more; Non-Residential development or change of use on a site of at least 1 hectare; 10 or more pitches for traveler sites) and if they meet the requirements of Policy 2, will require Board approval as per the Scheme of Delegation. Applications will be considered at the next Board meeting or in certain circumstances reported at the next Board meeting.

### **5.2. Section 23 of the Land Drainage Act 1991 (and Byelaw 4)**

The alterations of Board Maintained as well as riparian/privately owned/maintained watercourses are covered by both a statutory provision (Section 23, Land Drainage Act 1991) and the Board's Byelaws.

Byelaw 4 - Operation of Water Control Structures and Alteration, Improvement or Removal of Structures.

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 and as set out in Byelaw 4 (please note Byelaw 4 also covers 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. Where it is appropriate to do so, adequate mitigation must be provided for damage caused to 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.
- The total length of watercourse to be altered is 10 metres or less.\*

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's Officers consider 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 include;

- Specify the technical detail of the works to be constructed
- Require the need for an environmental survey and compliance with Environmental Act requirements for biodiversity net gain.
- Include the requirement for Commuted Maintenance Fee which may be payable where the new assets (within a Board-Maintained 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 long sections (over 10 metres) of 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 Boards operations (especially for Board-Maintained watercourses).



### **5.2.1 Section 23 of the Land Drainage Act 1991 (and Byelaw 4) Delegation**

All applications for temporary alterations to a watercourse can also be determined by officers acting under delegation. Where necessary the Clerk may refer the case back to the Chairman or the Board itself.

Applications for consent under Section 23 of the Land Drainage Act 1991 (and Byelaw 4) can be determined by officers under delegation in the instance of: culverts up to 10m; watercourse realignment up to 10 m; and in-channel Natural Flood Management applications below 25% of the channel height (if they meet the requirements of Policy 3).

Applications for consent under Section 23 of the Land Drainage Act 1991 (and Byelaw 4) will require Board approval as per the Scheme of Delegation in the instance of: culverts between 11 – 30 m; watercourse realignment between 11 – 30 m; dams, weirs or sluices up to 3 m in width; and in-channel Natural Flood Management applications above 25% of the channel height (if they meet the requirements of Policy 3).

Applications for consent under Section 23 of the Land Drainage Act 1991 (and Byelaw 4) will require Board approval and will be considered at the next Board meeting as per the Scheme of Delegation in the instance of: culverts over 30 m; watercourse realignment over 30 m; and dams, weirs or sluices over 3 m in width.

### **5.3. Byelaws 10 and 17**

Consent is required for all works within 8 metres of the edge of drainage and flood risk management infrastructure. Within the Board's Internal Drainage District this infrastructure is principally Board Maintained 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 drainage and flood risk management infrastructure**

The Board will only approve applications for a relaxation of Byelaws 10 and/or 17 (to allow works within 8 metres of drainage and flood risk management infrastructure) if the proposals meet the criteria set out in the Board's table of acceptable works (generally reflecting works that can be easily removed if required).

In addition to the table of accepted works, un-adopted service runs and the planting of hedges and shallow rooted bushes within 8 metres of an Maintained watercourse will be considered 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
- Require the applicant to apply for SSSI consent or a Habitats Regulations Assessment ("HRA")
- Require the applicant to enter into the Board's standard 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's officers consider that the proposed works will;

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

Table showing common works and their likely acceptable distance. This table is for guidance only, please contact the Board's officers for further discussion regarding individual proposals.

Works	Likely Acceptable Distance	
	Open Watercourse	Culverted Watercourse
Permanent Structures	8 metres from brink	8 metres from outside edge
Trees	8 metres from brink	8 metres from outside edge
Ground Surfacing	6 metres from brink	1 metre from outside edge
Demountable Fencing	6 metres from brink	1 metre from outside edge
Demountable Structures	6 metres from brink	3 metres from outside edge
Hedging	6 metres from brink	3 metres from outside edge

#### 5.3.1. Byelaws 10 and 17 Delegation

Applications for consent under Byelaw 10 and 17 can be determined by officers under delegation in the instance of: hedging up to 1 m in height; tree planting; demountable fencing; discharge pipes and headwalls serving developments of 3 or less properties, up to 3 pitches for traveller sites or developments under 330 sqm (if they meet the requirements of Policy 4).

Applications for consent under Byelaw 10 and 17 will require Board approval as per the Scheme of Delegation in the instance of: hedging over 1 m in height; permanent fencing; ground surfacing within 8 m of the brink not requiring a covenant; and discharge pipes and headwalls serving developments of between 3 and 9 dwellings; between 4 and 9 pitches for traveller sites; or where the floorspace is between 330sqm and 1,000 sqm or the site area less than one hectare (if they meet the requirements of Policy 4).

Applications for consent under Byelaw 10 and 17 will require Board approval and will be considered at the next Board meeting as per the Scheme of Delegation in the instance of: permanent structures and ground surfacing within 8 m of the brink requiring a covenant (if they meet the requirements of Policy 4).

#### 5.3.2. Other bodies requiring the Board's consent

As per Byelaw 26 of the Board's Byelaws, nothing in the Byelaws shall restrict, prevent, interfere with or prejudice the exercise of any statutory rights or powers of a number of organisations (listed within Byelaw 26).

Where an organisation listed by Byelaw 26 requires the Board's Consent we will liaise and negotiate with that organisation to ensure the Board's requirements are not in Breach of Byelaw 26.

Where an organisation listed by Byelaw 26 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

### 6.1. Introduction

The Upper Medway IDB set out in their Policy Statement that;

“The Board will take appropriate steps to help riparian owners understand their responsibilities for maintenance, byelaw compliance and environmental regulations.”

As there are many reasons why watercourses are found to be in poor condition the Medway Boards recognise 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. Notwithstanding the desire to work with landowners, 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. As such the policies within this document relating to enforcement seek to guide the use of the Boards enforcement powers if any unreasonable delay in restoring the functionality of a watercourse or structure is likely to result in flooding.

Specifically, these powers as set out under Sections 21, 24 and 25 of the Land Drainage Act 1991 and in the Board’s Byelaws allow the serving of notices on individuals who have caused contraventions. In issuing a notice the IDB may set out the works required to resolve the contravention to an acceptable standard and the date by which the works should be completed. If the works are not completed by the date set out in the notice, the Board may take action to remedy the effect of the contravention or failure and seek to recover the costs incurred, as well as pursue any necessary prosecution.

### 6.2. Upper Medway IDB’s Approach

The process of enforcement by the Board will follow the staged approach set out below, and within Policy 6.

#### 6.2.1. Contravention Reported

Once a complaint about an Ordinary Watercourse is received by the Board, officers will carry out an initial assessment to establish whether a contravention has been undertaken, and whether the Board are the relevant regulatory authority.

To substantiate contraventions reported to the Board we will need to be provided with the location of the contravention and one or more of the following types of evidence:

- Dated photos of the contravention or impact caused by the contravention
- A written report from another Risk Management Authority (such as a LLFA flood investigation)

#### 6.2.2. Stage 1:

The aim of stage 1 is to initiate open correspondence with the relevant landowner, person and/or Risk Management Authority informing them of their responsibilities under the Land Drainage Act 1991. This correspondence will in turn aim to either seek the removal of contraventions which are negatively

impacting Flood Risk (or the Board's operations) without the need for formal enforcement action, or to seek the regularisation of contraventions which are not impacting Flood Risk, or the Board's Operations, without the need for formal enforcement action.

The initial assessment will consider the on-site conditions, the impact on the Board's operations, any available historical data and high level indicators of potential flood risk, such as Environment Agency ("EA") flood risk maps as well as flood risk modelling outputs held by the relevant IDB. It will also consider conservation designations and the type of land holdings. This assessment should be completed within 21 days of receipt of the complaint however, it may be necessary to extend the period of assessment for more complex matters, high demand on the service and/or to accommodate environmental circumstances e.g. weather, flood conditions, etc.

Following the initial assessment, the Board's Officers may write a letter to the relevant landowner, person and/or Risk Management Authority responsible for the contravention. This will include the following:

- An explanation of the contravention, its impact and the remedy required in accordance with the Land Drainage Act 1991 and the Board's Byelaws.
- 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 case may proceed to 'Stage 2'. In deciding whether or not to carry out further investigation the Board will consider whether it is in the public interest to do so. Having 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.

### **6.2.3. Stage 2:**

Where further action is pursued by the Board, officers will seek to resolve the situation by means of negotiation with the person responsible and obtain compliance with a request to satisfactorily undertake the work required. A notice under the relevant section of the Land Drainage Act 1991 or the Boards byelaws will be served. The notice will include the nature of the work to be carried out, the period within which it is to be carried out and any relevant right of appeal to a magistrates' court within 21 days of service of the notice (where applicable). A Notice under the Land Drainage Act 1991 or the Boards byelaws is a legal document formally requiring specific work to be carried out within a set timescale.

A letter will accompany the notice and inform the responsible person that in the event of their failure to satisfactorily undertake the work, the IDB may carry out the work itself and recover from the person responsible the expenses reasonably incurred in doing so which will include recovering the costs of pursuing the case.

The person notified then should carry out the following within the stated period:

- Carry out the work to the satisfaction of the Board, requiring a site visit to confirm compliance.
- The responsible person may appeal the notice.

#### 6.2.4. Stage 3:

Following service of the notice, and failure to action or respond appropriately within a further 21 day period (as set out in stage 2), one of two things will happen:

- The Board will carry out the works and will seek to recover their expenses via a small claims court.
- If access is denied by the responsible person or landowner the Board will, where appropriate, decide whether to take a prosecution against the responsible person, in addition to requesting that the works are carried out, and additional expenses to the Board are recovered via a county court judgement.

**Officers will continue to attempt dialogue and cooperation with the responsible person/landowner at all stages to reduce the risk of stage 3 action. The Board and its Officers will demonstrate a desire to resolve the matter in a timely and amenable fashion, avoiding use of courts and legal proceedings where possible.**

**If the responsible person complies with the notice at any stage and completes the work to the satisfaction of the Board, the Board's officers will write to the responsible person confirming the closure of the case and the end of the action.**

#### 6.3. Additional Information:

- 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;
  - The nesting season for some birds occurs between the 1 March and 1 August and works might cause disruption if nests are present;
  - Presence of protected species will influence when it is most appropriate to carry out work.
- In some circumstances the Board may require further information on the contravention. As such officers may arrange to meet the land owner 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.
- As stated in the enforcement policy the Board may take no action where there is not enough evidence to support enforcement or where there is no or minimal impact. Examples of matters not requiring action may include minimal silting of the watercourse, slight vegetation growth, the accumulation of a small quantity of debris etc.

## 6.4. Policy

### Policy 6 - Enforcement

Where responsibility for maintenance of an Ordinary Watercourse rests with a land owner, the Board will take appropriate steps to secure their co-operation to ensure maintenance takes place. Where necessary the Board will draw on powers of enforcement to secure this maintenance of the removal of any unauthorised works or obstruction.

The Upper Medway IDB 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 relevant 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. Where the landowner or responsible person provides insufficient evidence to the contrary, there will be a presumption that the un-consented works would cause a nuisance or increase flood risk.

For the avoidance of doubt the Board will 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.

The Board may close an enforcement case file and/or take no action where;

- there is a lack of physical evidence to corroborate the impact of a flood event;
- there is no actual or potential risk to properties or infrastructure;
- that the matter complained of is not the cause of the drainage problem;
- the matter is trivial in nature (de minimis)

Where no enforcement action is taken correspondence may inform and advise individuals of their riparian owner responsibilities and of the route for settling disputes with other riparian owners where appropriate including referral to the First-tier Tribunal (Property Chamber) Agricultural Land and Drainage where appropriate.

Where the Board are made aware of breaches to other legislation they will advise the appropriate authorities.

## 6.5. Fly Tipping

The Board do 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 believe 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's watercourses can result from general litter 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's watercourses and on Board's property**

The Board do not have enforcement powers with regard to fly tipping as these rest with the relevant Local Authority and the Environment Agency. As such, when notified of fly tipping in the IDD the Board would consider the incident as follows:

If the incident is causing a significant obstruction to flow or is presenting an imminent risk of flooding within the Internal District the Board's operatives will remove the waste as per the Board's statutory functions. For this purpose the Board have a waste transfer licence to allow them to move waste. Waste can be temporarily stored in the relevant Board's yard, where a waste exemption license is in place, before disposing of in an appropriate manner.

However, if the Board's operatives 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.

The Board may seek to recover expenses where incurred for the management, removal, or disposal of all fly tipping at the expense of the responsible person/landowner.

#### **6.5.1 Stage 1**

After notification of fly tipping the Board will seek evidence to confirm the nuisance created. It may gather this evidence using site visits or photographs obtained by a third party.

One of two things may then happen:

- A letter will be sent to the landowner/responsible person notifying them of the nuisance and/or instructing the removal. This will have a 14-day time limit imposed upon it from the date of the letter.
- If the fly tipping is causing an immediate flood risk the Board may remove the nuisance and then may seek to recover the cost of doing so from the landowner/responsible person.

#### **6.5.2 Stage 2**

If the nuisance is not removed by the landowner one of two things may happen:

- The Board will send an enforcement notice to the landowner/responsible person instructing the removal of the nuisance.
- The Board will conduct a removal and seek to recover the expenses of doing so from the landowner/responsible person via a small claims court if necessary.

## Section 7: Watercourse Maintenance

### 7.1. Introduction

Generally, watercourses within IDB Internal Drainage Districts (“IDDs”), 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. Maintained Watercourses

IDBs often carry out their drainage/water level management responsibilities through the designation of Ordinary Watercourses as ‘Maintained watercourses’, also frequently known as ‘Main Drains’ or ‘District Drains’. In general Boards only adopt or “en-main” watercourses which are critical to the effective drainage or water level management of a particular area. The simple criteria governing the adoption of watercourses are 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 ‘Maintained watercourse’ 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 IDBs to fulfil any formal maintenance requirement and there is no change in the ownership or liability associated with the watercourse.

#### **7.4. IDB Infrastructure and Standard of Protection**

A large proportion of the Board's 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.

Assets for which the Board has operating authority responsibility for are also recorded in the Register of Drainage Infrastructure, as shown on each Board's Area webpage. It should be noted that for some IDBs their systems are wholly and completely dependent upon a number of strategic assets controlled by the Environment Agency that pass through or are adjacent to the Drainage District; the nature and extent of which is also shown on our website.

The Board monitors and review 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**

From time to time drains may be 'en-mained' and abandoned by the Board due to changes in circumstance. The criteria listed below have been drawn up to reinforce and assist the decision making process as to which drains should be 'en-mained' and which abandoned. It is not intended that the criteria should be used to make radical changes to the existing network of Board Maintained Watercourses but instead to provide guidance to the decision making process when in future a riparian owner asks the Board to consider adopting or abandoning a watercourse. It should also be noted that every case will have to be judged on its own merits, as the complexities and peculiarities of individual cases cannot be encompassed within a standard set of criteria (also see policy 9).

- Watercourse no longer serves surface water drainage or represents a flood risk to the district.
- The landowner has indicated that they will no longer allow the Board equipment or staff on their land, and/or communications have been terminated between the two parties and that they the landowner/responsible person will conduct all maintenance within the section / watercourse themselves.
- The watercourse has been en-mained by the EA and as such now represents a Main River section.
- The watercourse has been culverted and is now under the maintenance responsibility of the landowner/responsible person, as per the conditions of the consent.

## Policy 8 – Designation of Maintained Watercourses

Watercourses which fulfil the following criteria should be considered for designation as a Maintained Watercourse:

*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 problem (or would do if a 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. The landowner, or developer should finance the improvement to the specification of the Board before the watercourse is designated as a Maintained Watercourse.*

Consideration should also be given, when deciding whether or not 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 – Abandonment of watercourses

Watercourses which fulfil the following criteria should be considered for abandonment:

*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 the abandonment, 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 abandoned by the Board.*

Upon abandonment, the maintenance responsibility for those Board’s drains which are not owned by the Board will pass to the riparian owner. It is more difficult to abandon a drain owned by the Board as the Board will still have the responsibility, as owner, to maintain the drain following abandonment, unless the riparian owners are willing to purchase the drain from the Board and take on the maintenance responsibility.

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

- Adoption of SuDS within the Board's Drainage District

The Board will 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 Maintained watercourse or SuDS feature.
- Is above-ground and can be maintained with equipment commonly used by the Board - such as flails and roding baskets - for example attenuation ponds or linear flood storage areas.
- Has a maintenance regime similar to a Board Maintained 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).
- 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.

- 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 a Maintained watercourse**

The Board will seek to adopt the maintenance of proper flow through all **new** consented structures within a Maintained 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.

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## 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 the WMA and UMIDB 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. The Medway IDBs and a number of the current WMA member Boards are direct beneficiaries of the work and organisations set up under this historic legislation.

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. As such the WMA Boards are covered by four LLFAs: Cambridgeshire County Council, Lincolnshire County Council, Norfolk County Council and Suffolk County Council. The Medway Boards are covered by Kent County Council, Sussex County Council and Surrey County Council.

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. For the Medway IDBs the flood risk management plans are set out by [Kent County Council](#), [East Sussex County Council](#) and [Surrey County Council](#) along with the 11 LPAs who intersect the districts.

## 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<sup>1</sup> 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, Upper Medwa IDB as a Risk Management Authority ("RMA") 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 relevant Medway 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](#).

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<sup>1</sup> "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.

The Board delivers a Revenue Maintenance Programme. This is formed of an annual schedule of works aimed at maintaining the Board's infrastructure. The programme details the type of activity to be undertaken, where it is to be delivered (in some Board areas to the nearest drain reach) and when work is due to be undertaken (approximate to the month). Progress on the delivery of the programme is reported to the relevant Board and reviewed periodically to ensure it is delivering the appropriate standards. The Revenue Maintenance Programme for each Board is available on the Medway IDB website.

District Board 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 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 & Mission of the Upper Medway IDB

## 1. Vision

The vision of the Upper Medway IDB is to make the IDD and watershed catchment area a safer 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 Upper Medway IDB 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 Board support the Government's policy aim and objectives for the management of flood and coastal erosion risk and water levels. Each Board has an adopted Policy Statement that sets out the Board's approach to meeting the national policy aims and objectives. These policy statements are available on the links below;

- [Upper Medway IDB Policy Statement](#)

## Appendix 4: IDBs and the Planning Process

### 1. The Rationale for IDB engagement with the planning process

According to the National Planning Policy Framework (February 2018), 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”), Anglian 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. This framework was revised in July 2018 and the latest version published in February 2019. 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: Upper Medway IDB Local Planning Authorities

No.	Local Planning Authority	County	Area of IDD within LPA area (ha)	IDB's within LPA area
1	Tonbridge and Malling Borough Council	Kent	7388.405	Upper Medway
2	Maidstone Borough Council	Kent	2,190.296	Upper Medway
3	Ashford Borough Council	Kent	19.417	Upper Medway
4	Mid Sussex District Council	Sussex	17.574	Upper Medway
5	Sevenoaks District Council	Kent	310.772	Upper Medway
6	Tandridge District Council	Surrey	140.001	Upper Medway
7	Tunbridge Wells Borough Council	Kent and Sussex	1,676.218	Upper Medway
8	Weald District Council	Sussex	325.214	Upper Medway