

CYNGOR SIR POWYS COUNTY COUNCIL.

**CABINET EXECUTIVE
18th September 2018**

REPORT AUTHOR: County Councillor Phyl Davies
Portfolio Holder for Highways, Recycling and Assets

SUBJECT: Adoption of Land Drainage Byelaws.

REPORT FOR: Decision

1. Summary

- 1.1 The Flood & Water Management Act was enacted in Wales and England in 2010 giving Councils in Wales, as Lead Local Flood Authorities (LLFAs), additional powers and responsibilities for dealing with flooding from surface water, groundwater and ordinary watercourse.
- 1.2 As part of these new powers, the responsibility for issuing ordinary watercourse consents under section 23 of the Land Drainage Act 1991 passed from Environment Agency Wales (now Natural Resources Wales - NRW) to Lead Local Flood Authorities and Internal Drainage Boards in April 2012.
- 1.3 Since taking on this consenting duty and wider flood risk management function, practitioners have noted that powers under the Land Drainage Act are limited and certain activities which are not currently consented could potentially increase the risk of flooding especially in more built up areas.
- 1.4 Natural Resources Wales, the Environment Agency (England), 18 LLFAs in England and Internal Drainage Boards (now under the control of NRW in Wales) currently use byelaws to supplement current legislation giving them better control for managing flood risk.
- 1.5 The byelaws used were out dated and focussed mostly on main rivers which makes them unsuitable for use by LLFAs to manage activities in areas under their remit. A new set of draft byelaws has been compiled in consultation with NRW, LLFAs and other interested parties which are better suited for use in Powys. These are included at Appendix 1.
- 1.6 The making of drainage byelaws will provide scope for the Council and all Welsh Authorities to work with their local communities to reduce flood risk, and help empower communities to do more for themselves. Flooding can have serious consequences for communities and businesses affected, and can cause serious disruption to transport links.

The proposed byelaws will help the Council deliver its Vision 2025 Plan and create stronger and more resilient communities.

2. Proposal

- 2.1 The proposal is for Powys County Council as Lead Local Flood Authority (LLFA) to adopt the proposed Land Drainage Byelaws enclosed at Appendix 1.
- 2.2 Subject to the Land Drainage Byelaws being adopted, instigate the procedures set-out under Schedule 5 of the Land Drainage Act 1991 and sections 7-8 of the Local Government Act 1972 and consult all town and community councils on the proposed Land Drainage Byelaws.

3. Options Considered / Available

- 3.1 Option 1 – Do Nothing
The Council could continue to perform its statutory Land Drainage functions in the existing manner under current legislation.
- 3.2 Option 2 – Develop a set of bespoke byelaws
The Council could develop its own unique set of byelaws.
- 3.3 Option 3 – Adopt the draft byelaws included at Appendix 1
The Council could adopt the byelaws developed by NRW, LLFAs and other interested parties as included at Appendix A.

4. Preferred Choice and Reasons

- 4.1 The preferred choice is Option 3 – Adopt the draft byelaws included at Appendix A.
- 4.2 The byelaws have been drafted by key strategic partners in response to concerns about measures available to manage risk arising from potential flooding. As such they draw on the experience of a wide range of practitioners thus offering sensible and balanced powers consistent with other agencies across the region.
- 4.3 It is expected that the majority of situations will continue to be resolved through amenable discussion. The byelaws however will provide the LLFA with a robust mechanism to respond to flood risk situations where satisfactory outcomes cannot be negotiated, thus ensuring protection of the wider public interest.

5. Impact Assessment

- 5.1 Is an impact assessment required? ~~Yes~~ / No
- 5.2 If yes is it attached? Yes / No

6. Corporate Improvement Plan

- 6.1 Adoption of the byelaws will help to support delivery of Vision 2025, the Corporate Improvement Plan for 2018 – 2023 by helping to ensure that the visions for the Economy; Health and Care; Learning and Skills; Residents and Communities; can be robustly protected against risks arising from flood related issues.

7. Local Member(s)

- 7.1 These proposals apply across the whole of Powys.

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? ~~Yes~~ / No

If so please provide their comments

9. Communications

Have Communications seen a copy of this report? Yes / ~~No~~

Have they made a comment? Yes / ~~No~~ If Yes insert here:
No proactive communication action required.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

- 10.1 Legal – The Highways and Enforcement Solicitor has reviewed the report and concurs with the recommendation of implementing a standardised Byelaw.

- 10.2 Finance – The Finance Manager Place and Resources note the contents of the report the only financial implications would be court costs if individuals are taken to court, it is not envisaged that these costs will be regularly incurred or significant and will have to be managed within the annual revenue budget of the service when they do occur.

11. Scrutiny

Has this report been scrutinised? ~~Yes~~ / No?

If Yes what version or date of report has been scrutinised?

Please insert the comments.

What changes have been made since the date of Scrutiny and explain why Scrutiny recommendations have been accepted or rejected?

12. Statutory Officers

12.1 The Head of Financial Services (Deputy Section 151 Officer) notes the comments of the Finance Manager.

12.2 The Solicitor to the Council (Monitoring Officer) commented as follows : “ I note the legal comments and have nothing to add to the report.”

13. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

Recommendation:	Reason for Recommendation:
(1) That the Land Drainage Byelaws attached as Appendix 1 be adopted and sealed; (2) That, when made, the byelaws be advertised in the local press in accordance with the Local Government Act 1972; (3) That the byelaws be deposited for public inspection for a period of six weeks; (4) That all town and community councils be consulted on the byelaws; and (5) That, at the end of the consultation period, and, subject only to a further report if unresolved objections are made, the byelaws be submitted to the Cabinet Secretary for confirmation.	To ensure appropriate measures are available to the LLFA to manage land drainage issues through a consistent approach to Land Drainage Byelaws across Wales.

Relevant Policy (ies):			
Within Policy:	Y	Within Budget:	Y

Relevant Local Member(s):	All members
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Person(s) To Implement Decision:	
Date By When Decision To Be Implemented:	

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Background Papers used to prepare Report:

Flood and Water Management Act 2010

<https://www.legislation.gov.uk/ukpga/2010/29/contents>

Land Drainage Act 1991

<https://www.legislation.gov.uk/ukpga/1991/59/contents>

Appendix 1: *Land drainage (Wales) Byelaws*

DELEGATED DECISION REPORT TEMPLATE VERSION 5