

Report of the Flood Risk Management and Riparian Land Ownership Task and Finish Group

BACKGROUND

Communities Scrutiny Committee at its meeting on 10th December 2020, following a discussion on 'Flood Risk Management Across Denbighshire' decided that

“ a task and finish group [should] be established to examine methods to further strengthen interaction and working relationships between public flood risk management authorities and riparian landowners across the county with a view to improving each other's understanding of their responsibilities in relation to ensuring the unobstructed flow of water through the land they manage”.

At the following meeting in January 2021 the Committee agreed the Task and Finish (T&F) Group's membership and its terms of reference. Consequently, each Member Area Group (MAG) was requested to appoint a representative to serve on the T&F Group. The membership being:

| Member Area Group (MAG) | Representative |
|--------------------------------|---------------------------|
| Dee Valley: | Councillor Alan Hughes |
| Denbigh: | Councillor Merfyn Parry |
| Elwy: | Councillor Peter Scott |
| Prestatyn: | Councillor Rachel Flynn |
| Rhyl: | Councillor Barry Mellor |
| Ruthin: | Councillor Huw O Williams |

The T&F Group appointed Councillor Huw O Williams as its Chair with Councillor Peter Scott as the Vice-Chair.

Specialist officer support was provided for the T&F Group from the Council's Highways, Facilities and Environmental Services Department, the Planning Department with administrative support being provided by officers from Democratic Services. External professional support and experience was provided by representatives from Natural Resources Wales (NRW), Dŵr Cymru Welsh Water (DCWW); agents from farming unions and landowners associations (National Farmers Union (NFU), Farmers Union of Wales (FUW) and the Country Landowners Association (CLA) and from Waterco (Flood Risk Consultants and Water Engineers).

From the outset the T&F Group was aware that its remit was to explore potential methods for strengthening communication channels and building effective working relationships between all parties and organisations that have responsibilities for managing flood risk from rivers and watercourses across Denbighshire.

The Group has met on 7 occasions. At the inaugural meeting it was extremely pleasing to note that all parties indicated their desire work together and play a positive role in flood risk management. All stakeholders agreed that there was a need to educate everyone involved with riparian flood risk management of each other's roles and responsibilities. It was also felt that the establishment of the Group was a positive step forward in attempting to build effective working relationships and

a mutual level of trust between all parties who may have traditionally been involved in a culture of blame.

FINDINGS

DCC and NRW are flood risk management authorities defined by the Flood and Water Management Act 2010.

NRW are responsible for risk management relating to flooding of main rivers whilst DCC manage the risk of flooding to other (lesser) watercourses – smaller rivers, ditches, drains, sewers and culverts etc.

Key topics discussed at the meetings included:

NRW's regulations, policies and guidance on the dredging and clearance of rivers and watercourses.

NRW explained their position on dredging and that it wasn't necessarily a solution for flooding. Whilst a Flood Risk Activity Permit (FRAP) should be obtained for work in, under, over or adjacent a main river only one permit had been applied for in the previous two years within DCC's administrative boundary – although there had been reports of landowners undertaking gravel removal without a permit. Confirmation on the actual number of FRAP applications received by NRW contradicted a commonly shared misconception that NRW rejected more FRAPs than it approved. NRW advised that FRAP pre-application discussions could be held to highlight constraints and site specific considerations. The Development & Flood Risk Team could be contacted by email at floodpermitting.northmid@naturalresourceswales.gov.uk.

During the course of the discussion the Group learned that a land owner - an individual or entity having legal ownership of land, small or large (including gardens) that lay next to watercourses such as rivers, streams or ditches is a 'riparian landowner'. Responsibilities of the riparian landowner include:

- maintaining river beds and banks,
- allowing the flow of water to pass without obstruction and
- manage their own flood risk.

This information came as a surprise to the Group as there was a common misconception, not only within the Group but to the public in general, that NRW were owners and/or responsible for the maintenance and management of rivers and significant watercourses.

All information provided by NRW is available on their website at [A guide to your rights and responsibilities of riverside ownership in Wales](#) and downloadable as a pdf.

Surface water and sewerage flooding.

DCC in its role as the Highway Authority have duties and powers vested by the Highways Act 1980 to ensure highway drainage is properly managed.

Highway drainage maintenance in urban areas is the Highway Authority's (DCC's) sole responsibility. However, in rural areas verges and grips cut into them to assist drainage from the road surface were the Highway Authority's responsibility. Whilst the roadside ditches, hedges and trees are that of the adjacent land owner.

Whilst there was no obligation for the Highway Authority to clear roadside ditches in rural areas it would do so in the interest of road safety.

There was a need for adjacent landowners to take ownership of their watercourses to increase the capacity of the overflow from ditches.

Flood Risk Assessment Wales Maps (FRAW) had been published and were now available for interested parties' / land owners to access to review their potential flood risk from different sources – river, tidal, small water courses or surface water.

Dŵr Cymru Welsh Water (DCWW) are responsible for the public sewerage system in Denbighshire. DCWW manages 3 different types of sewers:

- I. Separate foul sewer system, which is usually gravity based and drained foul flows only
- II. Combined sewer system that drains foul flows and surface water (the majority of drainage systems on older developments are combined systems); and
- III. Adopted Surface Water System - this is a separate drainage system for surface water only (found on newer developments).

Problems with flooding tend to occur when the combined system becomes overloaded by high surface water flows.

The main causes of these blockages tends to be:

- Build-up of grit / silt – entering from surface water system;
- Fats, oils and grease (FOG) disposed of via kitchen sinks etc. and
- Non-biodegradable flushing (wet wipes etc.)

DCWW are running a campaign to educate the public on sewer misuse 'Stop the Block' as a preventative course of action in conjunction with planned de-silting maintenance.

Natural Flood Management – the effectiveness of temporary water holding management schemes.

In 2020 a Natural Flood Management (NFM) feasibility study was undertaken by DCC, Welsh government and Waterco Flood Risk Consultants assessing opportunities for NFM at four sites in Denbighshire.

The sites were located in flood prone areas and within agriculturally managed landscapes, providing a valuable opportunity to gain insights from landowners on the

‘Payment for Public Goods’ approach to NFM and gather feedback on issues of compensation, maintenance, liability and responsibility.

The following challenges had been identified:

- Lack of evidence base for NFM, particularly around sustainability
- Limited baseline data – flows of rivers and rainfall data etc.
- Persuading and co-ordinating multiple landowners across catchments to engage with the pilot projects
- Potential unclear accountability on scheme maintenance responsibilities going forward (20 or 100 years or more).
- Establishing a payment method for scheme maintenance or compensation to the riparian landowner

The main objective was to reduce flood risk at pilot sites by increased storage in the upper catchments, ‘slowing the flow’ and debris capture. It was anticipated that other benefits should include:

- Improved biodiversity and ecological benefits.
- Increased community involvement and engagement and
- Water quality improvements.

Lessons Learnt to date included:

- Project design needed to limit reliance on community groups as a means of maintenance or intervention. The key was to make the project sustainable at the outset.
- Initiating early engagement and support of the landowner. Their local knowledge and expertise would generate the best ideas.
- Flexibility with the local programme allowed alteration of a course of action if a better opportunity arose in the catchment.

Important considerations should include that any:

- riparian woodland established was covered contractually by an enforceable maintenance condition that would incorporate successive land owners and
- future recompense for landowners needed to be considered in line with the Single Farm Payment Scheme (due to expire between 2023 and 2025) and the subsequent new payment structure. It would therefore be key that the implications of post-Brexit national policies relating to the rural economy were closely monitored throughout the project’s construction and monitoring phases to ensure that they complied with various Governments’ policies and visions for rural communities whilst addressing and mitigating the effects of climate change.

Work relating to NFM is still very much in its infancy. It would therefore be sometime before the conclusions, benefits and risks associated with adopting NFM measures were fully understood.

The Flood Risk Assessment Process Relating to Development Land Designation and Technical Advice Note (TAN) 15

The Group were given a detailed joint presentation by DCC and NRW on the recent soft release of the latest Technical Advice Note 15 (TAN15), which was updated to improve the resilience to flooding and due to be fully implemented on 1 December 2021.

They provided information on the:

- Flood risk assessments undertaken in relation to identifying and designating land for future development as part of the Local Development Plan (LDP) process.
- Flood risk assessments process relating to industrial, retail and residential planning applications and
- Surface water and drainage assessments undertaken as part of all planning applications.

Since then the Welsh Government had informed local authorities that the implementation date of the new TAN 15 and Flood Map for Planning had been suspended from 1 December 2021 until 1 June 2023. The Minister for Climate Change in her notification letter to local authorities had indicated that Local Planning Authorities (LPAs) should use the 18-month deferment period to consider climate change flood related planning matters, either on a local and/or regional basis, and use the information gathered to inform future flood maps.

Links to guidance

The new TAN 15 -<https://gov.wales/sites/default/files/publications/2021-09/technical-advice-note-15.pdf>

The Flood Map for Planning -<https://flood-map-for-planning.naturalresources.wales>

The TAN 15 consultation report –

<https://gov.wales/sites/default/files/consultations/2021-09/tan-15-consultation-report-and-summary-of-responses.pdf>

The Climate Change Allowances for Flood Consequences Assessments 2021 -

https://gov.wales/sites/default/files/publications/2021-09/climate-change-allowances-and-flood-consequence-assessments_0.pdf

Sustainable Drainage (SuDS) Statutory Guidance -

<https://gov.wales/sites/default/files/publications/2019-06/statutory-guidance.pdf>

Maintenance arrangements for Rhyl Cut and Prestatyn Gutter

There has been confusion for some time over the ownership and subsequent maintenance responsibility of Rhyl Cut and Prestatyn Gutter watercourses. **Those responsibilities fall to the riparian land owner – the hundreds of properties and parcels of land that abut those watercourse routes.**

NRW confirmed that issues such as the maintenance of property gardens and walls and the need to safeguard debris etc. from entering or falling into the Rhyl Cut and Prestatyn Gutter and causing blockages was a matter for the riparian landowners i.e. individual property owners.

NRW had permissive powers under the Water Resources (1991) Act to undertake work on main rivers to mitigate the risk of flooding. NRW had access points at certain locations along the Cut and Gutter to enable them to gain access to undertake the necessary maintenance work, thus avoiding the need to seek the agreement of multiple riparian landowners in order to undertake essential flood maintenance work.

Natural Resource Wales had worked with Denbighshire County Council and Dŵr Cymru Welsh Water with a view to developing management and maintenance arrangements for the Cut and Gutter.

NRW had produced a draft document setting out the proposed maintenance activities. This would be available in the near future on NRW's website. It would include:

- an overview (setting out the contents of the document and an overview plan)
- details of maintenance responsibilities (including NRW and others)
- Incident reporting and flood risk information
- Riverbed level management (with background on the approach) and
- Maintenance summary sheets for each sub reach (watercourse section).

Review of the Group's progress.

At their final meeting the Group reviewed the information they had received over the course of the year to respond to the objectives that had been set out initially, which were to:

(i) examine and review the effectiveness of all public flood risk authorities' current communication channels and information sharing practices in relation to flood risk management across Denbighshire

(ii) engage with riparian landowners and tenants to seek their views on how interaction and working relationships between public flood risk management authorities and them can be strengthened in a bid to ensure that all parties understand their individual responsibilities in relation to flood risk management; and

(iii) foster a level of mutual trust between all parties, where advice and support can be easily sought and accessed in order to find practical and workable flood risk maintenance solutions, with a view to reducing the risk of flooding in future by ensuring the unobstructed flow of water through the land under their guardianship

It was apparent that the flood risk management authorities work regularly together, sharing information and practices, but that information did not appear to be shared more widely, among riparian land owners or their representatives. Traditionally land owner representatives would only be involved in discussions with the flood risk authorities under adversarial conditions. More proactive communication with riparian land owners and their representatives going forward needed to be a priority.

The Group reflected that the most surprising outcome of the process was learning about the responsibilities attributed to riparian land owners. The Group questioned:

- I. whether the riparian landowners were aware of their own responsibilities relating to watercourses, and
- II. how this important information could be shared with them?

One of the frequently asked questions from elected members during times of flooding is that of ownership / responsibility of Rhyl Cut and Prestatyn Gutter. The Group discussed the possibility of undertaking Land Registry searches in order to collate ownership details to potentially direct information on flood risk management, however the scale of the number of households involved made that exercise cost prohibitive.

Looking to achieve the Group's objectives going forward the following suggestions were made:

- Continuation of a Flood Risk working group to meet on an annual basis with the 3 flood risk authorities and land owner representatives for an updated position on issues and expectations.
- Land owner representatives to share the riparian land ownership responsibilities with their members and liaise with their members and NRW for help with Flood Risk Activity Permits etc. - e.g. with features in Farming Wales, Farming Connect, Y Tir etc.
- Proposal for circulating generic letters, in partnership with NRW and Dŵr Cymru / Welsh Water, regarding riparian land ownership responsibilities to Rhyl Cut and Prestatyn Gutter adjacent land owners.
- Dedicated contact links for officers from the various flood authorities be circulated.
- Compilation of a dedicated 'Flood' page for DCC's website with links to relevant information on NRW and DC/WW sites.
- the final report presented to Communities Scrutiny Committee, upon approval by the Committee, be translated and circulated to Town, City and Community Councils for inclusion on their websites.
- Consider a press release of the final report (highlighted on DCC's landing page) – potentially a joint release with NRW and DC/WW to maximise impact.

CONCLUSIONS

The roles DCC, NRW and DCWW in flood risk management were distinct but not necessarily understood by the general public. There is a widely held erroneous belief that that NRW or DCC were responsible for the various watercourses and their maintenance.

It was not clear whether riparian land owners were aware of their maintenance and flood risk management responsibilities. A concerted effort was needed to communicate that message.

All parties agreed the willingness to work together going forward in promoting flood risk management riparian land owners and general public.

| Recommendations | To be actioned by: |
|---|--|
| A Flood Risk working group comprising of the flood risk management authorities and land owner representatives continue to meet on an annual basis for an updated position on issues and expectations | Denbighshire County Council. Dwr Cymru / Welsh Water. Natural Resources Wales. Country Land Owners Association. Farmers Union of Wales. National Farmers Union. |
| A dedicated 'Flood' DCC web page be launched (with links to related Natural Resources Wales and Dŵr Cymru/Welsh Water web pages) | DCC's Web Team. |
| Working in partnership with Natural Resources Wales and Dŵr Cymru/Welsh Water a generic information leaflet/letter be created on the responsibilities of riparian land owners and distributed to properties adjacent Rhyl Cut and Prestatyn Gutter. | Denbighshire County Council. Dwr Cymru / Welsh Water. Natural Resources Wales. |
| The report be presented to Communities Scrutiny Committee, upon approval by the Committee, be translated and circulated to and Town, City and Community Councils for inclusion on their websites. | Councillor Huw Williams – Chair. DCC's Democratic Services. |