WEST LINDSEY DISTRICT COUNCIL

LAND DRAINAGE AND FLOODING ENFORCEMENT POLICY

1. INTRODUCTION

1.1 The intention of this policy is the proactive mitigation of flood risk in accordance with outcome 4.4 of West Lindsey District Council’s Outcomes Framework 2008/09 “Carrying out appropriate preventative action to reduce the severity of flooding in the future”

1.2 The policy has been prepared to reflect national principles of good enforcement practice contained in the Enforcement Concordat: Good Practice Guide for England and Wales produced by the Department of Trade and Industry (now Department of Business, Innovation and Skills) and the regulatory reform agenda being led by the Better Regulation Executive.

1.3 The Council will seek to achieve these aims by educating land owners about their responsibilities, and where that fails, will invoke the appropriate enforcement powers under the Land drainage Act 1991 to address land drainage and flooding problems arising from poorly maintained watercourses.

2. GENERAL PRINCIPLES

2.1 The Council may seek to enforce its permissive powers and carry out its duties to address land drainage problems efficiently and effectively and will at all times be open, clear, helpful, proportionate and consistent in its application to members of the public and businesses.

2.2 The Council will endeavour to communicate the requirements of the law to the public and to businesses using plain English and when doing so will distinguish between advice and legal requirements.

2.3 The Council will endeavour to discuss fully with members of the public and businesses any compliance failures or difficulties, and will consider all relevant issues before exercising any of the enforcement powers available to it.

2.4 The Council affirms its commitment to achieving consistent, balanced, proportionate and fair enforcement of legislation and to achieve this, regard will be had to the relevant public health laws and all relevant regulations, orders and directions issued by the Secretary of State.
2.5 The Council will have regard to the Human Rights Act, Article 8 and the Regulation of Investigatory Powers Act 2000 (RIPA), to ensure that any monitoring or surveillance work, in the investigation of complaints, should not compromise an individual’s right to “privacy, a family life and correspondence”. In any situation where it is thought that “directed” or “intrusive” surveillance is required to investigate a complaint then authorisation will be applied for from the appointed authorised officer.

2.6 The Council will ensure that all authorised officers are fully acquainted with the requirements of this policy, and are appropriately trained to implement it.

2.7 The Council will endeavour to ensure that resources are targeted effectively according to risk and that there is an appropriate interpretation of what is reasonable.

2.8 In coming to any decision as to which is the appropriate form of action, regard will be had to this policy document, and in particular the following criteria:-

- the past compliance performance of the offender
- the likely effectiveness of the various enforcement options
- the consequences of non compliance
- the public interest

2.9 The Council will seek to achieve the above objectives with reference to the Land Drainage and Flooding Decision Framework described in the following sections. Departures from the decision framework will only be made in exceptional circumstances and following approval from a senior officer.
LAND DRAINAGE AND FLOODING DECISION FRAMEWORK

3 PROMOTING AWARENESS OF THE LAND DRAINAGE LAWS AND OWNERS RESPONSIBILITY

3.1 The Council will endeavour to provide appropriate advice and information in a timely manner to any person making a reasonable request concerning a land drainage issue.

3.2 Where there are circumstances and an allegation of fault the Council may offer advice explaining responsibilities under the law and may carry out any subsequent investigations to establish responsibilities and remedies.

4 RESPONSIBILITIES TO ADDRESS LAND DRAINAGE PROBLEMS

4.1 Powers of drainage authorities
Drainage authorities are granted powers under the Land Drainage Act 1991. The responsible authority for a given land drainage problem is dependent on the location of the land drainage at fault and is detailed below. All powers under the Land Drainage Act 1991 are permissive and it remains the decision of the relevant authority as to whether it chooses to exercise its powers. The drainage authorities are as follows:

4.1.1 Environment Agency (EA)
The Environment Agency has powers under the Land Drainage Act 1991 and Water Resources Act 1991 to maintain and improve main rivers in order to ensure the efficient passage of flood flow and to manage water levels. Main rivers are usually larger streams and rivers, however they do include smaller watercourses of local significance. A main river is a watercourse marked as such on a main river map which is an official document. A main river can include any structure or appliance that controls or regulates the flow of water in, into, or out of, the main river. The Environment Agency powers to carry out flood defence works apply to main rivers only, but their pollution control duties and functions extend to all watercourses. In England, the Department of the Environment, Food and Rural Affairs (DEFRA) decides upon the classification of watercourses and main rivers.

4.1.2 Internal Drainage Boards (IDB)
In defined locations, IDBs have operational and regulatory powers over ordinary watercourses. These powers are similar to those of the Environment Agency for main rivers. An ordinary watercourse is every river, stream, ditch, drain, cut, dyke, sluice, sewer (other than a public sewer) and passage through which water flows and which does not form part of a main river.
4.1.3 **The Local Authority (West Lindsey District Council)**

Other than on main rivers, the local authority is the regulatory authority for ordinary watercourses where there is no IDB. Local authorities have powers to carry out works on ordinary watercourses for certain purposes. Local Authorities may implement their own regulations and byelaws that affect what can and cannot be done on an ordinary watercourse. Local authorities may also take enforcement action against any person(s) (known as ‘riparian owners’) failing to maintain a watercourse for which they are responsible.

Following is summary of the two most relevant sections of the Land Drainage Act 1991 to the Local Authority:

**Section 14:** Power for a local authority to perform works for the prevention or mitigation of flooding risk other than in connection with a main river or the banks or within an IDB area.

**Section 25:** The power to serve notice on persons requiring them to carry out necessary works to maintain the flow of any water course and the power to carry out works in default and recover its reasonable expenses should the riparian owner fail to carry out their responsibility.

The following is a summary of sections of the Land Drainage Act that give the local authority ancillary powers in addition to those cited above:

**Section 15:** Disposal of or deposit matter removed from a water course on land adjoining the water course

**Section 16:** Provision for powers to be conferred to the County Council

**Section 17:** Consent from the EA must be gained for any works undertaken by a local authority other than in an emergency.

**Section 26:** Requirement to notify the EA of the intention to serve notice

**Section 27:** The right person(s) served with a notice to appeal to the Magistrates Court within 21 days.

**Section 60:** The power to contribute to the expenses of drainage work having regard to the public benefit.

**Section 61B (The Land Drainage Act 1994):** Conservation of natural, geographical and physiographical features of interest.
Section 62: The power to compulsory acquire land for the purpose of exercising powers within sections 14 through 17 subject to the Acquisition of Land Act 1981 (c. 67).

Section 64: The power to enter or authorise entry of land for the purpose of surveying any land and inspecting the condition of any drainage work.

Section 66: The power to make byelaws to secure the efficient working of the drainage system.

4.2 Other Relevant Organisations
Other organisations may have responsibilities for the maintenance and improvement of their land drainage assets. These organisations include:

4.2.1 Water Companies
Are responsible for the maintenance and improvement of public sewers. Public sewers should not be confused with private sewers which may be the responsibility of private owner(s). If the ownership of a sewer is in doubt it should be referred to the relevant water company. Land drainage problems associated with defective public sewers are addressed by either Anglian Water (AW) or Severn Trent Water (STW), the two Water Companies currently operating within the West Lindsey District Council area.

4.2.2 Lincolnshire County Council
Are responsible for the maintenance and improvement of adopted public roads that are not main trunk roads. In the case of the later such roads are the responsibility of the Highway Agency. In either case the appropriate road authority will be responsible for the maintenance and improvement of drainage facilities associated with that road. It should not be automatically assumed that a drainage facility within a roadway is the responsibility of the road authority. If in doubt the appropriate road authority will provide guidance of who may be responsible and may themselves have some relevant powers under the Highways Act 1980.

4.2.3 Parish Councils, management companies and social landlords
May have responsibilities for land drainage infrastructure.

4.2.4 Riparian Owners
The owner of land adjoining a watercourse has certain rights and responsibilities. In legal terms they are a ‘riparian owner’. There will be activities for which the riparian owner will need permission from the relevant drainage authority. Those renting land should check with the

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1 Private drains or sewers installed pre 1937 are likely public sewers. This is a frequent cause for confusion.
owner and agree to who manages these rights and responsibilities. The rights and responsibilities of riparian owners are listed in appendix A.

5 **ESTABLISHING OWNERSHIP AND ASSIGNING RESPONSIBILITY**

5.1 **Prioritisation**

5.1.1 During major flooding incidents the demand for action to address defective land drains may overwhelm the Local Authority’s available resources. When this is the case The Local Authority will prioritise action based on the criteria outlined in Appendix B.

5.2 **Responsibilities**

5.2.1 The responsibilities of land drainage authorities under the Land Drainage Act 1991 are permissive, not mandatory. The location of the land drainage problem will determine which drainage authority has permissive responsibility. When the local authority is made aware of a problem falling outside its remit the customer shall be referred to the appropriate drainage authority and all details forwarded to the authority that is responsible.

5.2.2 Upon report of a land drainage problem within the Local Authority’s remit, the Local Authority will record it on the document management system. Reference shall be made to prioritisation where applicable. Associated documentation will also be attached to the Local Authority’s document management system. The officer will respond in writing to the person(s) who notified the problem within 4 days with acknowledgement that notification has been received and detailing the intended action and timescales to be achieved. After an extreme weather event where this response time may not be achievable, the authority shall advise the complainant by telephone, letter or email.

5.2.3 All land drainage problems will be imported to the Local Authority’s GIS database using a code identifying the flooding risk. Each code will be interpreted onto a map with a standard symbol being a solid triangle surrounded by a designated colour code. The codes and colours used will be:

- **XF1 (Red):** Internal flooding of a residential or commercial building.
- **XF6 (Green):** External flooding of a residential or commercial property.
- **XF7 (Blue):** External Flooding of roads, public land or agricultural land.

The GIS is an effective tool for mapping problems and in establishing likely causes.
5.3 Investigation

5.3.1 Upon identification and prioritisation of land drainage problem the Local Authority will make an assessment of the circumstances usually by completing a site inspection. Relevant parties will be given advice and guidance making them aware of their responsibilities and timescales will be agreed to undertake any remedial works. The objective of the Local Authority will be to encourage completion of remedial works without recourse to enforcement action.

5.4 Implementation

5.4.1 Advice
The Local Authority will initially give advice and guidance to all relevant parties including legal responsibilities and works required. A reasonable timeframe for actions will be agreed with those responsible for the drainage system.

5.4.2 Notice
When initial guidance fails to deliver a satisfactory outcome within agreed timescales the Local Authority will consider implementing its powers under The Land Drainage Act 1991 (c. 59) Section 25 to serve notice on the riparian owner(s). This action is subject to the following measures being undertaken:

a. The EA is made aware of the intention to serve notice.

b. All Parties are made aware of their right of appeal to a magistrates' court and the period within which such an appeal may be brought under The Land Drainage Act 1991 (c. 59) Section 27.

c. All parties are made aware of their obligations in respect of other legislation.

5.4.3 Enforcement

When serving notice fails to deliver a satisfactory outcome the Local Authority will consider implementing its powers under the Land Drainage Act 1991 (c. 59) Section 25 to undertake works of behalf of riparian owners and reclaim costs. This action is subject to the following before works are carried out:

a. The appropriate term for appeal has been observed in accordance with The Land Drainage Act 1991 (c. 59) Section 27.
b. All parties are made aware in writing of the Local Authority’s intention to enforce its powers to undertake work in default and reclaim costs.

c. The EA is made aware of the Local Authority’s intention.

d. Other relevant legislation is checked and taken into account in planning for and execution of any necessary actions.

e. A detailed cost estimate is developed and all parties made aware in writing of their proportion of the costs prior to any actions being undertaken.

f. In the case that multiple riparian owners are deemed responsible, costs will be divided proportional to the actual costs for rectifying the responsibility of each individual riparian owner.

5.5 Schemes

5.5.1 In appropriate circumstances the Local Authority may promote land drainage works as a scheme. WLDC has powers under The Land Drainage Act 1991 (c. 59) Section 14 to do this. Appropriate circumstances may include:

a. The costs of implementing enforcement of riparian responsibilities are likely to out way the costs of doing the works.

b. Funding is available from an external source or other source to assist towards the cost of undertaking the works.

c. Reasonable measures to execute enforcement are ineffective.

d. Any other reason for which it is established that the benefits for the Local Authority or the community at risk outweigh costs.

5.5.2 There may opportunity for partnering with other organisations in the undertaking of a scheme. The lead organisation will be agreed from the outset and will be responsible for driving forward progress. All cost sharing will be agreed prior to implementation of a scheme. It is possible that the Local Authority’s involvement in a scheme may merely be execution of its powers under the Land Drainage Act 1991 (c. 59).

5.5.3 Within a reasonable time prior to the execution of any scheme, the Local Authority will, in writing, make the EA aware of its intent. Should design be necessary a suitably qualified person or organisation will be consulted to perform this. Any scheme must be fully endorsed by the EA prior to proceeding with works. The Local Authority shall take all appropriate
measures to satisfy all statutory obligations associated with the works including planning consent if required.

A detailed cost estimate will be developed and the works shall be prioritised with regard to the Local Authority’s budget limitations. All reasonable measures shall be taken to secure funding for a scheme through an external source such as a government grant.

5.5.4 In the case that blocked up or otherwise defective urban drains or sewers are identified as a problem, or part thereof, the Local Authority’s Public Health Drainage Enforcement Policy may be relevant and should be referred to.
### GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>Act</td>
<td>The Land Drainage Act 1991 (c. 59) and Regulations made there under.</td>
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<tr>
<td>Local Authority</td>
<td>West Lindsey District Council (WLDC)</td>
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<td>AW</td>
<td>Anglian Water, a water company operating within the Local Authority’s area</td>
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<td>DEFRA</td>
<td>Department of the Environment, Food and Rural Affairs</td>
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<td>EA</td>
<td>The Environment Agency</td>
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<td>GIS</td>
<td>Geographic Information System</td>
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<td>IDB</td>
<td>Internal Drainage Boards</td>
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<td>LCC</td>
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<td>Riparian Owner</td>
<td>The owner of land adjoining a watercourse</td>
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<td>STW</td>
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### REFERENCE DOCUMENTS:

- The Land Drainage Act 1991 (c. 59)
Appendix A – Riparian owners rights and responsibilities (extract from “Living on the Edge” Environment Agency publication)

Your responsibilities

- You have the responsibility to pass on flow without obstruction, pollution or diversion affecting the rights of others.
- You have the responsibility to accept flood flows through your land, even if caused by inadequate capacity downstream, as there is no common law duty to improve a watercourse.
- You are responsible for maintaining the bed and banks of the watercourse (including trees and shrubs growing on the banks), and for clearing any debris, natural or otherwise, including litter and animal carcasses, even if it did not originate from your land. Again see pages 7 and 8 (‘Living on the Edge’, The Environment Agency, 3rd Edition, April 2007) regarding the need for consent for these works. Your local authority can give you advice on the removal of animal carcasses.
- You must not cause any obstructions to the free passage of fish.
- You are responsible for keeping the bed and banks clear of any matter that could cause an obstruction, either on your land or by being washed away by high flow to obstruct a structure downstream. Rivers and their banks should not be used for the disposal of any form of garden or other waste.
- You are responsible for keeping clear any structures that you own such as culverts, trash screens, weirs and mill gates.
- You may have flood defences such as walls and embankments on your property, which are vital for the protection of both yourself and others. You should discuss the maintenance of such defences with your local Environment Agency office.
- You are responsible for protecting your property from seepage through natural or man-made banks. Where such seepage threatens the structural integrity of a flood defence, it may become the concern of the Environment Agency.
- Failure to carry out your responsibilities could result in possible civil action from others.
APPENDIX B – PRIORITISATION CRITERIA

During major flooding incidents the demand for action to address defective land drains may overwhelm the Local Authority’s available resources. In this case it is imperative that demand for services is prioritised using a risk based approach to ensure the most pressing problems get attention first.

Land drainage problems will be prioritised as detailed in the flow chart below. Problems that fall within the uppermost criteria are given priority over those that fall within the criteria below. Problems may be further prioritised by the number of properties affected within each criterion.

1. The problem is known to cause or there is evidence of a risk of internal flooding to any residential or commercial building.

2. The problem is known to cause or there is evidence of a risk of external flooding to any residential or commercial property other than agricultural land.

3. The problem is known to affect or there is evidence of a risk affecting access to any residential or commercial property? i.e. inundation of access roads.

4. The problem is known to cause flooding of any agricultural land that has raised a complaint from the public.

If in assessing land drainage problem there is evidence of a direct risk to essential services and property such as electricity production, water treatment, hospital, ambulance, fire or police services the priority will be heightened and immediate steps should be taken to make available necessary resources in order to exercise any WLDC powers to rectify the problem in the shortest period of time.

Good judgement should always be used in the prioritisation process and problem areas may be grouped geographically to allow for the more efficient deployment of resources.