



# Development & Consent Control Guidance

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# 1. Introduction

This document has been prepared as a guide to the Witham Fourth District Internal Drainage Board's (the Board) position on key Development and Consent Control matters within the Board's drainage district.

This document will specifically cover the Board's requirements relating to:

- Consent under section 23 of the Land Drainage Act 1991 (LDA91)
- Consent requirements made for the purpose as set out in section 66 of the Land Drainage Act 1991, (the Board's Byelaws)
- Surface Water Developer Contribution framework for charging for surface water discharges into the district.

# 2. Consenting

The Witham Fourth District Internal Drainage Board is a regulatory authority. Their consent is required to permit certain activities to be undertaken within their drainage district on ordinary watercourses, both Board designated and riparian classification. Please go to <https://www.gov.uk/guidance/owning-a-watercourse> for further details on riparian responsibilities.

Failure to obtain consent from the Board could result in the Board serving notice to remedy the contravention; failure to comply with the notice could result in legal action being taken against the responsible person.

The Board is duty bound under the LDA91 to grant or refuse consent within two months of the consent application being received and they cannot unreasonably withhold the consent. However, consent may be given subject to reasonable conditions.

## 2.1 Consent to alter a watercourse

Section 23 of the LDA91 prohibits the construction of obstructions in any ordinary watercourse without prior consent of the Board. Work that is carried out without consent has the potential to increase flood risk to people and property and could result in legal action being taken.

No person shall, without prior consent of the Board, erect any mill dam, weir or other like construction that will obstruct the flow of water; and/or erect or alter any culverts in a manner that is also likely to affect the flow, either of temporary or permanent construction.

The most common section 23 applications are for the construction of culverts. A culvert is a covered channel or pipe which prevents the obstruction of a watercourse or drainage path by an artificial construction. The applicant will have to provide evidence to the Board that their proposed culverting does not increase flood risk elsewhere.

### 2.1.1 Board's Culverting Policy

The Board's policy is opposed to the unnecessary culverting, piping, or filling of watercourses due to impacts on drainage, flooding, and the environment. Consent for such works will only be given where it can be shown that there is no unreasonable loss of habitat or increase in flood risk.

The Board acknowledges that in some circumstances it may be necessary to carry out such works including to provide access, assist in efficient farming, control nuisance, manage watercourse safety, or to accommodate other overriding needs. Please refer to the Board's Culverting & Filling Watercourse Policy for more information.

### 2.1.2 Culvert Adoption

To ensure new culverts are maintained, safe and fit for purpose it is the board's policy to adopt culverts that are constructed in Board designated watercourses. In such instances these adoptions would be subject to the payment of commuted maintenance and liability fees (CMLF).

The CMLF is a one off payment to commute the future maintenance and structural liability of the culvert from the applicant to the Board, this will rest with the Board in perpetuity.

The CMLF has been derived from the costs the Board would incur in maintaining the structural integrity, the clear flow of water through the structure, and its replacement at the end of its serviceable life.

If the works are undertaken on land owned by the Board a wayleave agreement may also be required. For more information please refer to section 4.7.

Table 1 below details the commuted maintenance and liability fees for the standard culvert diameters consented in Board designated watercourses. Larger pipe sizes will be determined on a case by case basis on agreement with the Board's Officers.

Internal Culvert Diameter (Ø)	Commuted Maintenance and Liability Fee		
	Fifty Year Maintenance Liability (£/m)	Replacement Liability (£/m)	Total Fees (£/m)
0.6m	£102.90	£308.70	£411.60
0.75m	£102.90	£360.15	£463.05
0.9m	£102.90	£411.60	£514.50
1.05m	£154.35	£432.18	£586.53
1.2m	£154.35	£463.05	£617.40
1.5m	£154.35	£514.50	£668.85

Table 1:

The commuted maintenance and liability fees detailed in this document will be increased by inflation annually. This will be reviewed on the 1<sup>st</sup> March and the new rates implemented from the 1<sup>st</sup> April each year, the percentage increase will be in line with the percentage change over 12 months as reported by the Office for National Statistics.

## **2.2 Consent for relaxation of one of the Board's Byelaws (not Byelaw No.3)**

The Board have Byelaws to protect the Board designated watercourses and structures, consent must be obtained from the Board to allow for certain activities. Breaching the Board's Byelaws would be a criminal offence and the Board may take remedial action and recover its expenses if the need arises.

A full list of the Board's Byelaws can be found here; <https://www.w4idb.co.uk/resources/document-library/byelaws/>

### **2.2.1 Relaxation of Byelaw 10**

The most common Byelaw relaxation to be applied for is Byelaw 10, No Obstructions Within 9 Metres of the Edge of the Watercourse states; *"No person without the previous consent of the Board shall erect any building or structure, whether temporary or permanent, or plant any tree, shrub, willow or other similar growth within 9 metres of the landward toe of the bank where there is an embankment or wall or within 9 metres of the top of the batter where there is no embankment or wall, or where the watercourse is enclosed within 9 metres of the enclosing structure"*.

In some instances, the Board will relax this byelaw to allow for certain activities to take place, such as the erection of certain types of fencing. Refer to the Board's Nine Metre Easement Policy for further information. **From June 2021 The Board will not under any circumstances relax the nine metre easement for any permanent development.**

## **2.3 Consent to install tile drain outfalls**

Application to install tile drain outfalls into a Board or Riparian maintained watercourse will need consent from the Board under Byelaw No.3, Control of Induction of Water and Increase in Flow or Volume of Water.

## **2.4 Consent to discharge surface water to a watercourse**

Application to discharge surface water into the Board's District via a Board or Riparian maintained watercourse will need consent from the Board under Byelaw No.3, Control of Induction of Water and Increase in Flow or Volume of Water.

Where possible the Board encourage the use of sustainable drainage systems (SUDS) as a method of surface water disposal, so not to affect the existing surface water management or expose people and property to increased flood risk.

Where the application of SUDS is not possible, the Board will consider an application to discharge surface water at a suitable rate of discharge for the surrounding drainage system. In this instance, a surface water development contribution (SWDC) will be payable to the Board. For more information on SWDC's refer to section 3.1.

## **2.5 Consent to discharge treated foul water to a watercourse**

Application to discharge treated water into the Board's District via a Board or Riparian maintained watercourse will need consent from the Board under Byelaw No.3, Control of Induction of Water and Increase in Flow or Volume of Water.

Only applications to discharge treated water from package treatment plants will be considered, discharges directly from septic tanks or trade facilities will not be consented. An environmental permit to discharge treated water may also be required from the Environment Agency, please go to <https://www.gov.uk/topic/environmental-management/environmental-permits> for further guidance.

## **2.6 Exemptions for certain undertakings**

Section 67 and schedule 6 of the LDA91 details "Protection for Particular Undertakings". Certain bodies such as Water and Sewerage Companies or the Highways Authority will normally be exempt from obtaining consent from the Board. More information can be found in the Board's Byelaw No.27, please refer to section 2.2 for access to this information.

Regardless of this exemption, other legislation states these authorities have a duty to consult with the Board over their planned works to ensure the Board is not inadvertently affected. Please contact the Board if this is the case.

## **2.7 Application process and costs**

All consent application forms can be found on the Board's website:

<https://www.w4idb.co.uk/resources/document-library/consent-forms/>

Please download the relevant form and return it to the Board's offices for consideration. Under the LDA91 the Board have two months to grant or refuse the application, however, the Board's Officers will endeavour to respond sooner.

Upon approval of an application and before a granted consent is issued, an application fee £50 and an administration fee £50 will be charged to the applicant. Additional SWDC's may also be payable.

## **2.8 Retrospective consents**

There is no provision within the LDA91 for the Board to issue a retrospective consent and in most instances the Board will ask for the unconsented works to be removed. However, in some circumstances where there is no increase in flood risk the Board may allow the unconsented works to remain, subject to certain conditions for its removal should it become a nuisance.

## **2.9 Environmental matters relative to consenting**

When carrying out its functions the Board must pay regard to the environment and ensure that its actions do not have a negative impact on the natural environment. There are strict statutory duties placed on the Board to conserve and enhance the environment.

Therefore, the consenting process places certain obligations on the applicant to ensure their actions do not compromise the Board's environmental objectives. The applicant will be asked for proof that all environmental considerations have been assessed by a competent person, this could mean engaging with a professional ecologist.

## **2.10 Right of Appeal**

If consent is considered to have been unreasonably withheld under Section 23, the applicant has the right to appeal. Under Section 23 (5) if the question arises under this section and agreement cannot be made, the question shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be appointed by the President of the Institution of Civil Engineers on the application of either party.

## 3 Development

The Witham Fourth District Internal Drainage Board is not a Local Planning Authority or formally a “statutory consultee” on planning matters. However, the Board has regulatory powers and strategic plans to manage drainage and flood risk within its district. As flood risk is a “material condition” the Local Planning Authorities consult with the Board as a public body managing flood risk.

The Board has established arrangements with Boston Borough Council, East Lindsey District Council and Lincolnshire County Council to manage development and flood risk. Specifically relating to the management of surface water run-off, the alterations of any ordinary watercourse, and development near Board designated assets.

### 3.1 Surface Water Development Contribution (SWDC) Fees

In April 2020 the Board carried out a review of its policy on surface water discharges to the District from any development, and the charging framework surrounding this. Up to this point developers were permitted attenuated discharges of up to 1.4litres/sec/ha of impermeable area connected or 5litres/sec, whichever was greater. For larger discharges fees would have applied based on per square metre of impermeable area. Charges are now applied to all discharges from 0 to unattenuated.

#### The Reason for Change

The 1.4litres/sec/ha referred to above is regarded in Internal Drainage Board districts as the “green field run-off rate” as this is an empirical flow rate used originally for agriculture when the Internal Drainage Board districts were designed.

Under the old system there has not been a charge for discharges up to 1.4litres/sec/ha of impermeable area connected or 5litres/sec whichever is greater. It is widely acknowledged that even if discharge rates are kept below this threshold, there is potential for an additional volume of water to enter the drainage system, as the impermeable surface of the development will create “total run-off”, compared to a permeable surface where a certain volume of water will be retained in the ground through soakage. Subsequently this additional volume of water must be dealt with by the Board.

#### The Rational for Charge

The basis for the surface water development contribution (SWDC) charge is based on the cost alternative of the developer providing attenuation on site, to cater for one hectare of impermeable area and discharging down to a green field run-off rate of 1.4litre/sec/ha.

The following assumptions have been made in calculating the cost of the developer constructing on-site attenuation of one hectare:

- Excavation of attenuation pond, 1400m<sup>3</sup> of material (0.1125ha)
- 9m maintenance easement on all four sides (0.1584ha)
- Allowance for safety fencing around the retention pond
- Allowance for future maintenance as an ongoing cost

- The land purchase rate, based on figures recently obtained from the Board's Land Agent in June 2020. The rate used is the average of the upper limit for land with development potential (£42,500/ha) and the average of the upper and lower limits of land with outline planning permission (£395,000/ha)

Therefore, based on the associated costs with the construction of the above attenuation pond for an impermeable area of one hectare, the Board will use a cost of £112,304.27 or £11.23/impermeable ha/m<sup>2</sup>. For more information on the details of this calculation please contact the office.

### Variances

The Board acknowledges that the surface water development contribution rate detailed above soon becomes excessive for sites with larger impermeable areas. Therefore, the Board has taken a banding approach based on 5ha bands differentiating the rates for different sizes of impermeable area. See table 2 below.

### Calculating SWDC Fees

The developer will be notified of the relevant fees when consent to discharge surface water is applied for (see section 2.4) or through the planning consultation process. The payment of fees will be stipulated as a condition of the discharge consent and payable when consent has been granted.

To calculate your fees:

- Determine the impermeable area of the site (in m<sup>2</sup>) to be drained to the arterial drainage network
- Establish the charging band the impermeable area will fall into (see table 2)
- Establish the charging band the proposed discharge rate (in L/sec/ha) will fall into (see table 3)
- Input the figures using the formula below.

The surface water development contribution equation is as follows, please note the values used below are for example only:

Surface Water Development Contribution Formula			
rate (£/m <sup>2</sup> ) x area (m <sup>2</sup> ) x proportional percentage (%) = SWDC			
£/m <sup>2</sup>	m <sup>2</sup>	%	SWDC
10.70	500	0.1	535.00

Table 2 below details the bands used for the different impermeable areas:

Banding	Impermeable area (A) discharging (ha)		Surface Water Development Contribution rate (£/m <sup>2</sup> )
	is greater than (>)	and is less than or equal to (≤)	
1	0	5	11.01
2	5	10	9.70
3	10	15	8.44
4	15	20	7.06
5	20	25	5.74
6	25	n/a	4.42

Table 3 below details the discharge rate bands:

Banding	Equivalent run-off rate (litres/second/hectare)		SWDC (as a % of the full rate)
	is greater than (>)	and is less than or equal to ( $\leq$ )	
1	0	1.4	3
	is greater than (>)	and is less than (<)	
2	1.4	5	10
	is greater than or equal to ( $\geq$ )	and is less than (<)	
3	5	10	15
4	10	15	20
5	15	20	25
6	20	25	30
7	25	30	35
8	30	35	40
9	35	40	45
10	40	45	50
11	45	50	55
12	50	55	59
13	55	60	63
14	60	65	67
15	65	70	71
16	70	75	75
17	75	80	79
18	80	85	83
19	85	90	87
20	90	95	91
21	95	100	95
22	100	n/a	100

### 3.1.1 Example Surface Water Development Contribution Calculation

The following details a worked example of the SWDC calculation, the calculation is for a SWDC fee for a site with 3.5ha of impermeable surface, discharging to a watercourse at 28L/sec/ha.

Firstly, establish the charging band the impermeable area will fall into: 3.5ha impermeable area will fall into Band 1, (see table 2) so the rate will be £10.70/m<sup>2</sup>.

Secondly, establish the proportional charging band the discharge falls into: 28L/sec/ha will fall into Band 7 (see table 3) so the proportional charge will be 35% of the full rate.

Therefore, the result will be:

$$\text{SWDC} = \text{Band 1 rate (£/m}^2\text{)} \times \text{Impermeable area (m}^2\text{)} \times \text{Band 7 rate (\%)}$$

$$\text{SWDC} = 10.70 \times 35,000 \times 0.35$$

$$\text{SWDC} = \text{£131,075.00}$$

### 3.1.2 Additional Surface Water Development Contribution Information

- The surface water development contribution rates detailed in this document will be increased by inflation annually. This will be reviewed on the 1<sup>st</sup> March and the new rates implemented from the 1<sup>st</sup> April each year, the percentage increase will be in line with the percentage change over 12 months as reported by the Office for National Statistics.
- Where a single dwelling is to be developed and an unattenuated discharge connected to the drainage network, impermeable area banding 1 at the full rate will be used.
- Where an existing impermeable area is redeveloped, only the additional impermeable area will attract SWDC fees
- Where development relies fully on soakaways, SWDC fees will not be applicable.

## **4 Additional Information**

### **4.1 Existing Watercourse Adoption**

The Board may consider adopting existing watercourses where there is a benefit to multiple occupancies and/or landowners. Depending on the costs the Board will incur in maintaining the watercourse over its lifetime, the adoption may be subject to a commuted maintenance and liability fee. This will be determined on a case by case basis. For more information please refer to the Board's Adoption & Abandonment Watercourse Policy

### **4.2 New Watercourse Adoption**

Where a developer intends to cut a new watercourse to serve the development, the Board may consider adoption where there is a benefit to multiple occupancies and/or landowners. Depending on the costs the Board will incur in maintaining the watercourse/s over its lifetime, the adoption may be subject to a commuted maintenance and liability fee. This will be determined on a case by case basis. For more information please refer to the Board's Adoption & Abandonment Watercourse Policy.

### **4.3 Pumping Station Adoption**

Where private pumping stations are built to serve a development or parcel of land and there is a benefit to multiple occupancies and/or landowners, the Board may consider adoption. Depending on the costs the Board will incur in maintaining the pumping station/s over its lifetime, the adoption may be subject to a commuted maintenance and liability fee. This will be determined on a case by case basis.

### **4.4 Water Level Control Structures**

Where water level control structures are built to serve a development or parcel of land and there is a benefit to multiple occupancies and/or landowners, the Board may consider adoption. Depending on the costs the Board will incur in maintaining the structure/s over its lifetime, the adoption may be subject to a commuted maintenance and liability fee. This will be determined on a case by case basis.

### **4.5 SUDS Adoption**

The Board do not adopt sustainable drainage systems; however, the Board may consider the adoption of certain features such as attenuation ponds where there is a benefit to multiple occupancies and/or landowners. Depending on the costs the Board will incur in maintaining the feature/s over its lifetime, the adoption may be subject to a commuted maintenance and liability fee. This will be determined on a case by case basis.

### **4.6 Bonds**

Where consent is granted to build structures such as angling platforms, moorings and similar structures on land owned by the Board. This bond is a sum amount relative to the complexity of the structure's construction, this bond will cover the cost of the structure's removal should the applicant sell or leave the property without its removal and the Board is left with this burden.

#### **4.7 Wayleave**

Where any access, right of way, or works are proposed across land owned by the board, a one off wayleave payment to the Board will be due. This payment will be irrespective of who is responsible for the future maintenance. The Board will pass on all costs associated with this to the applicant.

#### **4.8 Legal Agreements**

In certain circumstances for more complex arrangements between the Board and the applicant, legal agreements may need to be drawn up. The legally binding agreement would be a written document that identifies the parties' roles and responsibilities. The Board will pass on all costs associated with this to the applicant.