

## **2024 01 08 West Yorkshire Local Authority (WYLA) Natural Flood Management (NFM) – Ordinary Water Consent (OWC) Workshop**

### **Challenges and Panel Questions and Answers:**

The general consensus was that activities within the “channel” of ordinary watercourses require ordinary watercourse consents (OWC). It was less clear if all authorities had the same view of activities adjacent to watercourses, and how it applied to more remote locations such as non-mapped watercourses.

Leeds City Council has additional byelaws (including a buffer around watercourses) for determining OWCs in addition to Schedule 23 of Land Drainage Act. Currently all the other West Yorkshire local authorities’ (LAs) implementation of OWCs are determined by the legislation. However, as the pre-workshop questionnaire demonstrated each LA is currently processing OWCs in different ways which can make it challenging for delivery partners working across administrative borders on larger programmes of work.

A question was raised about charging principles: a £50 charge for OWCs is being interpreted in different ways (from individual measures to multiple measures); it does not cover cost recovery for the local authority, is £50 enough? How do you put in place an equitable charging mechanism for third sector, community-based organisations and public and private sector organisations delivering NFM?

Environmental Permitting Regulations (EPR administered by the Environment Agency) may, in rare cases, apply to NFM works. The operator of the works should satisfy themselves with any permitting requirements of works that are considered EPR Activities. In most cases local authorities will be capable of assessing NFM interventions against the risk criteria without EA involvement. Where in doubt, or for works such a mass tree planting in floodplains in/near urban areas), contact the Environment Agency for further advice. It is unlikely that a permit will be required for works to an ordinary watercourse or when a consent (land drainage and/or planning permission) is in place for the NFM intervention.

One area of current NFM consenting procedure that could be of most benefit to landowner applicants and delivery partners is making the application form consistent with associated guidance across the five LAs.

Stroud District Council are looking to eventually pre-consent or derogate from consent large sections of OWC on a risk mapping basis. They are also flagging interventions and methods that they are not willing to consent.

## **Discussion Tables**

### **A Risk Based Approach**

The West Yorkshire local authorities are adopting a common-sense approach to OWCs for NFM – however there is no guidance to define what that approach is, or how it would be consistently applied between authorities.

LAs felt it was difficult to specify lower risk interventions and risk legal challenges including S19 flood risk investigations, if information was not recorded from consents.

Questions were asked whether the regulations would allow a risk-based approach to be produced.

A tabular matrix of risk might be helpful:

- Status of watercourse/size (including type, e.g. ephemeral, not mapped)
- Locations of sensitive receptors
- Types of intervention
- Consequence of failures
- Construction
- Size

It was considered there was nothing wrong with Local Authorities having different approaches, topographies and hence risk are different. LA consenting officers do currently meet, but the conversation is usually about other matters.

The WY LAs currently have different approaches to timescales with processing OWCs, some apply this based on when payment is received, whilst others start when an application is received.

If pre-application discussions are replaced with guidance then this may have a negative impact on delivery of NFM. Being able to speak to applicants can enable the conversations to happen that help with delivery.

Primary recommendation: Ask project developers and landowners to have a pre-application discussion – in most cases consents may not be required. This could be done either by email or phone.

### **Local Authority Resources**

Risk: Insufficient internal resources to process consents – some local authorities cannot buy in support currently. Could this result in a local authority failure or legal challenges?

Most of the West Yorkshire LAs currently have capacity, though resourcing in general is a common problem. Consenting numbers for NFM are currently very low for most authorities,

approaches to site visits differ and a risk-based approach means that OWC consents are often not required. Calderdale are currently processing the most OWCs in West Yorkshire for NFM 30-50/year and using a bought in service which speeds up responses but with limited local knowledge, and the long-term sustainability of the approach is not clear.

- A pre-consent/exemption list would be helpful re: risk-based approach.
- Would pre-consenting of areas of land (Stroud approach) for West Yorkshire be a possibility, including mapping culverts?
- Interest in having shared guidance for OWCs for NFM for West Yorkshire.
- Possible pool of experts for West Yorkshire from LAs and other organisations – could the Yorkshire NFM Community of Practice be used to field questions/issues around OWCs?
- Schedule 3 for SUDs will have impact on teams resourcing – is this an opportunity to look at this together with NFM-OWCs? Leeds are already looking at capacity requirements for the team on back of Schedule 3.
- Links to planning capacity: What measures need planning permission? Is there an issue about the consistency of approach on treating all schemes (internal and external) in the same way, ie: needing planning permission or is it ok to have council led schemes with no planning requirements – permissive powers?

## Information for Partners

- Clarity and consistency is really important
  - some terms are used interchangeably such as ordinary watercourse consent and land drainage consent, this can be confusing for landowners.
  - the names for interventions are also not always consistent: leaky dams, leaky wood structures etc. It would help to use the same language, the best choice for this is probably mirroring what is used in the CIRIA manual.
- Guidance
  - the feeling was that clear guidance is more beneficial than training because guidance can be picked up by anyone whereas training is for a small group of people who often go on to different jobs and the knowledge is lost.
  - a checklist for measures that definitely won't need OWC could be produced. For interventions that might need OWC it might be useful to have a matrix including info on size of watercourse, size of intervention and topography/location. This could be difficult to do though.
  - any guidance would need to include information on maintenance and who is responsible (landowners).
- Application form
  - currently focussed towards engineered interventions. For NFM/NBS a simpler form could be produced, or clear guidance is needed on which sections don't need to be filled out.
  - discussed the possibility of example application forms showing the level of detail, drawings, maps etc expected. Some were in favour of this some weren't, due to there being no such thing as a "typical" example.

- Website
  - should have all relevant information for OWC applications and be easy to find/access

### **Potential Next Steps for West Yorkshire FLIP:**

- Focus on pre- application conversation between landowners and delivery partners and local authority.
- A pre-consent checklist/exemption of measures that would not need OWC consent.
- Shared guidance for LAs (more useful than training) include looking at approach to planning.
- Risk Matrix of indicators re: topography/measure type/ scale/consequence
- Application form specific to NFM/NBS