CAERPHILLY COUNTY BOROUGH COUNCIL

Land Drainage Byelaws 2018

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CAERPHILLY COUNTY BOROUGH COUNCIL ("the Council") under and by virtue of the powers and authority vested in them by section 66 of the Land Drainage Act 1991, do hereby make the following Byelaws which are considered necessary for one or more of the following purposes:

a) securing the efficient working of a drainage system in the Council's area,

b) regulating the effects on the environment in the Council's area of a drainage system,

c) securing the effectiveness of flood risk management work within the meaning of section 14A of that Act, or

d) securing the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).

Chapter I - Administrative

1. Citation and commencement

These Byelaws have been approved by the Cabinet Secretary for Environment and Rural Affairs Lesley Griffiths and may be cited as the Caerphilly County Borough Council Land Drainage Byelaws 2018 and they shall commence on 2018.

2. Application of Byelaws

These Byelaws apply to ordinary watercourses situated within the area in Wales of the local authority making these byelaws.

3. Definition and Interpretation

In these byelaws, unless defined below or the context otherwise requires, the terms and expressions to which meanings are assigned by the Water Resources Act 1991, the Land Drainage Act 1991, the Environment (Wales) Act 2016 and the Interpretation Act 1978 shall have the same meanings in these byelaws.

In these byelaws:

The expressions **"bank", "drainage", "drainage body", "Internal Drainage Board", "land", "local authority", "ordinary watercourse"** have the same meaning as defined in the Land Drainage Act 1991.

"the Act" means the Land Drainage Act 1991

"Animal" means any animal including birds, any horse, cattle, sheep, deer, goat, swine, goose or poultry; but excluding fish and human beings;

"Byelaws distance" means any land lying landward within the following distances measuring horizontally from any watercourse bank:

(i) if it includes a wall or embankment 8 metres from its landward extent; or

(ii) in other cases 8 metres from the top of the watercourse bank; or

(iii) any land lying 8 metres horizontally from the outer perimeter of a culvert measured from the widest part of the culvert.

''Building or structure'' means any structure or erection, and any part of a building so defined, but does not include plant or machinery comprised in a building; It also includes a fence, post, pylon, wall, wharf, bridge, loading stage, piling, groyne, pontoon, revetment, and an engine or any mechanical contrivance; any formwork, falsework, scaffold or other structure designed or used to provide support or means of access during construction work, and any reference to a structure includes part of a structure.

''Consent of the authority'' means the prior written agreement, either by email or formal documentation, of any person authorised on behalf of the local authority, and which may include any conditions/restrictions as deemed necessary by the local authority.

"Culvert" means an enclosed channel pipe or conduit for the carrying of a watercourse and any other structure forming part of a culvert including headwall, outlet and trash screen.

"Embankment" means a natural or artificial mound or other raised defence.

"Flood Defence works " means tidal, fluvial or pluvial flood defence structures and works including walls, gates, embankments or bypasses constructed or used for these purposes as well as man-made or natural sand dunes and earth retaining structures or structures constructed or used as a defence against inundation of any land by raising water levels.

''Flood warning system'' means any apparatus used by the Authority for obtaining or providing information in relation to and warnings of flood.

"Land liable to flooding" means all land over which watercourse water flows in times of flood, including areas where that water is stored in times of flood.

"Nets" includes:

(a) a stake net, bag net or keep net;

(b) any net secured by anchors and any net, or other implement for taking fish, fixed to the soil or made stationary in any other way;

(c) any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for fish, and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary.

"**Occupier**" means any tenant, licensee or other person either in occupation of any land or entitled to its occupation.

"**Objects or matters**" means natural or man-made liquid or solid matters or objects or materials including trees, roots of trees, branches, timber, tins, bottles, boxes, tyres, bricks, stones, soil, wire, rubbish.

"Owner" means the owner of a legal estate, and when the owner is not in immediate occupation shall include an occupier.

"Person" includes where appropriate, reference to more than one person, including a body of persons corporate or non-corporate.

"Sea defence" means any artificial or natural defence against sea water or tidal water including natural or artificial high ground (including sand dunes and cliffs) and any works constructed or used as a defence against inundation of any land by sea or tidal waters, or for securing adequate watercourse outfalls provided it shall not include any sea defence works

which are vested in or under the control of a Coast Protection Authority, a local authority or any Navigation Harbour or Conservancy Authority.

"Tidal control works" means any floodgate, lock, sluice or other structure or appliance provided or constructed for the purpose of defence against sea or tidal water.

"Vegetation" means trees, willows, shrubs, weeds, grasses, reeds, rushes or other vegetation growths;

"Vessel" means any ship, boat, or any other waterborne craft, including hovercraft and any remains of any vessel.

"Watercourse" means any river, stream, ditch, channel or other passage through which water flows including the channel of any watercourse that is for the time being dry but excluding public sewers within the meaning of the Water Industry Act 1991.

"Watercourse bank" means any bank, wall, revetment or embankment adjoining or confining any watercourse from the top to the bottom of the sloping or upright part.

"Watercourse bed" means land forming any part of a watercourse over which water normally flows.

"Water control structure" means a structure or appliance for introducing water into any watercourse and for controlling or regulating or affecting flow, and includes any sluice, slacker, floodgate, lock, weir, pump or pumping machinery;

4. Causing or knowingly permitting

Where by or under these byelaws the doing of any act is prohibited or restricted the same prohibition or restriction shall extend to causing or knowingly permitting the act or restriction to be done.

Chapter II - Control of introduction of water and increase in flow or volume or water

5. Control of the introduction of water, altering flow and volume of water

(1) Without prejudice to sections 23 and 25 of the Land Drainage Act 1991 no person shall without the consent of the local authority take any action to:

(a) stop up any watercourse; or
(b) divert; or
(c) impede; or
(d) alter

the level of or direction of the flow of water in, into or out of any watercourse.

(2) In this byelaw 'alter' includes creating or extending a watercourse and introducing water which directly or indirectly increases the flow or volume of water in any watercourse within the local authority's area.

(3) In this byelaw impede includes blocking off or infilling of any watercourse channel, and obstruction of any arch of any bridge or causeway designed of, or which permits the passage of water in any watercourse or land liable to flooding.

6. Interference with sluices, flood and tidal defences

(1) No person shall without consent of the local authority operate or interfere with any sluice, flood gate, flood or tidal defence or other water control structure or appliance or flood warning or monitoring system used for controlling, regulating or monitoring the flow of water in, into or out of an ordinary watercourse.

(2) In this byelaw "interfere" includes removing, damaging or disturbing materials forming part of a flood or tidal defence.

7. Operation of watercourse or tidal control works

Any person having control of

(a) any sluice or flood gate; or
(b) any water control structure or appliance for controlling or regulating or affecting the flow of water in, into or out of a watercourse

shall use and maintain such structure or appliance in a proper state of repair and efficiency with a view to:

(a) the prevention of flooding or of any shortage in the flow or supply of water and
(b) the efficient working of the drainage system in the area of the (local authority/ internal drainage board)

8. Tidal Outfalls

No person shall place or abandon upon the foreshore any object or matter or vegetation which, whether immediately or as a result of subsequent tidal action, may

(a) impede or be likely to impede the flow of water through the sluices, flood gate, or outfall pipes through the tidal banks or through the watercourses on such foreshore; or
(b) impede or be likely to impede the operation of such sluices, flood gate, or outfall pipes; or
(c) cause or be likely to cause damage to such sluices, flood gate, or outfall pipes.

Chapter III - Potential to cause impediment or obstruction to flow

9. Maintenance of land liable to flooding and watercourse banks

(1) No person shall without the consent of the local authority plant any tree, deposit or store objects or matters, light a fire or interfere with a watercourse bed or bank within the byelaw distance in such a manner as is likely to:

(a) cause flooding,
(b) impede the flow, or
(c) cause or be likely to cause damage to, or
(d) endanger the stability of, or
(e) affect the efficiency of

a culvert, watercourse bank, watercourse control work, flood defence, tidal control work or sea defence.

(2) In this byelaw:

"interfere" includes to dredge, remove, damage or disturb materials forming part of a flood or tidal defence or of a watercourse bank or bed; and to make any excavation or do anything in, to or upon any land like to damage a watercourse bank or bed.

"light a fire" includes committing any action liable to cause any fire to be lit on any land adjoining any watercourse where such action is liable to set on fire any peat land forming the banks of the watercourse or any vegetation growing on land forming the banks of the watercourse.

"store objects or matters" includes depositing or stacking or keeping objects and solid or liquid matters including vegetation and vegetation cuttings.

"objects" include vessels.

10. Building of structures, pipes, etc. on land liable to flooding

(1) No person shall without the consent of the local authority:

(a) erect or construct any building or structure

(i) in, on, under or over any watercourse or in or on any bank of a watercourse;

(ii) within the byelaws distance;

(iii) on any watercourse control work, flood defence, tidal control work or sea defence; or

(iv) over any part of a culvert, or within the byelaws distance on either side of it; or

(b) make or cut any excavation or any tunnel or any drain, culvert or other passage for water in, into or out of any watercourse or in or through any bank of any watercourse;

in such a manner or for such length of time as to cause damage to the watercourse bed or banks; or obstruct the flow of water in, into or out of such watercourse.

(2) This byelaw does not apply to any temporary work executed in an emergency.

(3) In this byelaw:

"Emergency" means causing immediate danger to life or property.

11. Repairs to buildings and structures

The person having control of any building, fence or structure in, on, under or over any watercourse, culvert, watercourse bank, flood defence works, tidal control works, tidal or sea defence shall maintain such building, fence or structure in a proper state of repair and efficiency with a view to preventing such building, fence or structure from:

(a) impeding the flow of water in into or out of any watercourse;
(b) damaging any watercourse bank, flood protection works, tidal control works or sea defence; or
(c) creating danger or obstruction to the carrying out of flood defence works by the (local authority/internal drainage board)

Chapter IV - Ensuring the condition of the banks of a watercourse

12. Vegetation

The owner or occupier of any land through which any watercourse flows or on which any sea defence is situated or any adjoining land over which the local authority needs access to get to such land shall maintain all vegetation situated within the byelaws distance and shall remove such vegetation from the watercourse or bank immediately after such cutting so that it does not impede the flow of the watercourse.

13. Driving of animals and vehicles

No person shall use or drive any cart or vehicle of any kind on, over or along any bank of a watercourse control work, flood protection work, tidal control work, or sea defence in such manner as to cause damage to such bank, control work, flood protection work, tidal control work, or sea defence.

14. Damage by grazing animals

No person shall graze, keep or water any animal on any watercourse, watercourse bed or bank, flood protection work or sea defence without:

(a) taking all such steps as are necessary to prevent the watercourse, the watercourse bed or bank, flood protection work or sea defence from being damaged by such use and
(b) reporting to the local authority any damage caused to the watercourse, the watercourse bed or bank, flood protection work or sea defence by the grazing,

keeping or watering of animals, as soon as practicable following the occurrence of such damage.

Chapter V – Incidental provisions

15. Control of animals

The owner or occupier of any land through which any watercourse flows or on which any sea defence is situated or any adjoining land over which the local authority needs access to get to such land to carry out any work or inspection, shall ensure that, during the progress of any work or any inspection animals on such land are kept under proper control and supervision or, if such control and supervision is not possible, are not kept on such land.

16. Interference with local authority's functions

No person shall interfere with:

(a) access required to any land by the local authority or of their agents to carry out their flood management functions; or
(b) the carrying out of their functions.

Chapter VI – Exemptions

17. Emergency works

These Byelaws shall not apply to any work executed in an emergency but a person executing any work so excepted shall, as soon as practicable, inform the local authority in writing of the execution and of the circumstances in which it was executed and comply with any reasonable directions the local authority may give with regard thereto.

18. General Permitted Developments

These byelaws shall not apply to any development by a drainage body in, on or under any watercourse or land drainage works and required in connection with the improvement, maintenance or repair of that watercourse or those works.

19. Ladders and scaffold towers

(1) These Byelaws shall not apply to any work requiring the temporary erection and use of ladders and scaffold towers ("equipment").

(2) For the purposes of this paragraph, the specific conditions are—

(a) the suitability of river conditions is reviewed by the operator each working day;
(b) the equipment is erected on each working day on which it is required; and
(c) the equipment is removed at the end of each working day and is stored outside the river and its banks.

Chapter VII – Miscellaneous

20. Penalty

By section 66(6) of the Act every person who acts in contravention of, or fails to comply with, any of the foregoing Byelaws, is liable on summary conviction in respect of each offence to a fine not exceeding the amount prescribed from time to time for level 5 (£5,000) on the standard scale referred to in section 37 of the Criminal Justice Act 1982 and a further fine not exceeding forty pounds for every day on which the contravention or failure is continued after conviction.

By section 66(7) of the Act if any person acts in contravention of, or fails to comply with any of these Byelaws the Council may without prejudice to any proceedings under section 66(6) of the Act take such action as may be necessary to remedy the effect of the contravention or failure and may recover the expenses reasonably incurred by it in doing so from the person in default.

The Common Seal of CAERPHILLY }
COUNTY BOROUGH COUNCIL was }
Hereunto affixed on the }
day of 3rd September 2018 }
in the presence of: }

.....

Authorised Signatory