

Breckland Council

Land drainage

A guide to responsibilities



This leaflet has been prepared by Breckland Council and explains riparian ownership and gives advice and information regarding the rights and responsibilities of property and land owners towards land drainage.

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Introduction

Norfolk County Council are now the Lead Local Flood Authority and have the power to enforce the Land Drainage Act 1991. The role is fulfilled by the Flood and Water Management Team. Follow this link for further information

http://www.norfolk.gov.uk/environment/flood_and_water_management/index.htm

For problems relating to nuisance from smell in connection with watercourses, ditches and ponds, Environmental Health may be able to act under Section 259 of the Public Health Act 1936.

Land drainage is a complex area of responsibility but basically it deals with natural water flows in open and covered watercourses. The following should help in understanding some of the terms used.

- ⊙ Natural water flow does not include water from gutter down pipes or water run off from improvements such as brick weave drives, concreted or paved areas.
- ⊙ An ordinary watercourse is a river, stream, ditch, drain and passage through which water flows (other than a public sewer) but which does not form part of a main river.
- ⊙ A watercourse, usually a larger stream or river may be designated a main river because of the overall effect of that watercourse on the drainage system for that whole area. This term does not necessarily reflect the actual size of the watercourse, they can be quite small. They are designated by DEFRA (Department for Environment Food and Rural Affairs) and are shown on maps held by the Environment Agency.
- ⊙ Watercourses that have been piped are known as culverted watercourses or culverts.

Explaining riparian ownership

Responsibility for the maintenance of many watercourses rests with the landowners or property owners who have watercourses passing through or adjacent to their land. In a small number of instances, the Internal Drainage Board has responsibility for the maintenance of watercourses.

These riparian rights are not absolute and you may need to obtain consent for work from Norfolk County Council's Water Management Team.

Before starting any work on or adjacent to a watercourse, you must submit plans of what you propose to Norfolk County Council Flood and Water Management Team **water.management@norfolk.gov.uk** to determine whether you require their consent and/or planning permission. Environment issues, including flood risk, wildlife conservation, fisheries and the reshaping of the watercourse and landscape, must all be considered.

If your property is adjacent to a watercourse of any description, as a riparian land owner you should be maintaining it regularly.

Much of Breckland has problems with inadequate drainage and regular maintenance will have the benefit of reducing the risk of flood at times of wet weather.

The Environment Agency has additional responsibilities with regards to maintenance and flood defence works of main rivers to reduce the impact of flooding.

Your rights:

- ⊙ You may own land up to the centre of the watercourse. (Check on your deeds or with your neighbours.)
- ⊙ You have the right to receive flow of water in its natural state, without undue interference in quality or quantity.
- ⊙ You have the right to protect your property from flooding, and your land from erosion.
- ⊙ You have the right to fish in your watercourse, although this must be by legal methods and with an Environment Agency rod licence.
- ⊙ You can abstract a maximum of 20 cubic metres per day of water for the domestic purposes of your own household or for agricultural use, (excluding spray irrigation), from a watercourse at a point that directly adjoins your land without a licence from the Environment Agency. Most other types of abstraction will require a licence from the Environment Agency.

These rights are modified by your duty of care to other riparian landowners, the rest of the community and to the environment. In other words, you must not do anything that harms or affects others.

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 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 even if it did not originate from your land.
Watercourses 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 are responsible for protecting your property from seepage through natural or manmade banks. Where such seepage threatens the structural integrity of a flood defence, it may become the concern of the Environment Agency.
- ⊙ You may be responsible for maintaining a culvert that connects a ditch on your property to another ditch where the culvert passes under the highway. The exceptions to this are where Norfolk County Council (NCC) have adopted the culvert or have listed it as one of their assets. Information on instructing contractors to carry out repair or replacement of private culverts which pass under the highway can be obtained from NCC **www.highways@norfolk.gov.uk**. The cost of any works carried out on private culverts are the liability of the riparian owner, not NCC.

Frequently asked questions:

Who is responsible for the ditch which runs across the bottom of my garden?

Unless it is known to be owned by others, a ditch which borders your property becomes your responsibility as a riparian landowner and you have a responsibility for maintaining it. Even if you have a fence along the bottom of your garden, in front of the ditch, then you are still the riparian landowner. The responsibility of ownership is shared 50:50 with the landowner on the other side of the ditch unless deeds show otherwise.

What if the ditch is between my property and a park or other leisure area?

If the ditch borders your property then you are the riparian landowner. If the land on the other side of the ditch is council owned then you share the responsibility with the council unless either party can prove otherwise.

There is a watercourse on my land, can I fill it in or pipe it?

No, not without permission from the Flood and Water Management Team at Norfolk County Council.

Why won't the Council keep the ditch clear that runs between my property and the adopted highway?

Unless the ditch was constructed for the specific purpose of draining the highway then it remains the responsibility of the riparian owner.

How important can the ditch be, it rarely has water in it?

Even if the ditch is often dry the responsibility of maintenance still applies. The ditch may form an important function in holding water in times of flood.

How is the maintenance of watercourses enforced?

The Land Drainage Act 1991 places responsibility for maintaining water flows in watercourses on landowners. Under the Act it gives the Norfolk County Council powers to serve a notice on landowners to ensure works are carried out to maintain a flow.

How can I find out if I live in a flood risk area?

The Environment Agency will be able to tell you.

Flooding

As in many areas, Breckland has experienced flooding and often people know they live in a flood risk area. In some areas, where the risk of flooding is from rivers and the sea, the Environment Agency supply up to date flood warning information.

Unfortunately, other types of flooding, such as sudden flash floods caused by heavy rain, cannot be forecast.

The first responsibility for protection of property lies with the owner or occupier of that property. It is important that owners/occupiers living near a watercourse ensure they are prepared for the possibility of flooding in advance of periods of bad weather. These preparations could include some of the readily available DIY flood protection equipment, sandbags, door kits, etc. stored ready for use.

Please note it is you and not the local authority who is obliged to protect your property.

Where a riparian owner refuses to maintain a ditch and flooding occurs, it may become a civil matter between the parties involved.

Breckland Council has a limited ability to assist at times of emergency but may be able to offer some protection from the immediate threat of flooding to living accommodation only (not sheds, garages or driveways). It has a small number of sandbags but is restricted by its resources and other demands on its work force. You should not, therefore, rely on your local council to provide sandbags when flooding occurs. Norfolk County Council Water Management Team may be able to carry out inspections/investigations as to the cause of flooding and advise on actions which may help resolve or reduce the risk of future flooding.

Maintenance suggestions:

Watercourses should be kept free of rubbish and other debris as well as garden refuse, such as grass cuttings. They should also be kept clear of excessive undergrowth, tree roots, etc. that grows within the watercourse. Cut material from any clearance work should be deposited clear of the watercourse or disposed of to avoid re-entry.

In the case of culverted (piped) watercourses, blockages within the pipe or at an inlet can cause flooding problems. These blockages can be minimised by regular inspection and the removal of debris. Culvert inlets often have protective grills to prevent debris entering the pipe and so cause blockages. These should be cleared regularly, especially during periods of heavy rainfall when debris can accumulate very quickly.

Useful contact details:

Breckland Council	Tel: 01362 656870 Website: www.breckland.gov.uk
Environment Agency	Tel: 08708 506 506 Website: www.environment-agency.gov.uk
Anglian Water	Tel: 08457 145 145 Website: www.anglianwater.co.uk
Norfolk Council Highways	Tel: 0344 800 8009 Website: www.highways@norfolk.gov.uk
Norfolk County Council Water Management Team	Tel: 0344 800 8009 Website: www.norfolk.gov.uk/watermanagement
Internal Drainage Board	Tel: 0208 399 7350 website: www.ada.org.uk



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