



Appendices to the protocol for the maintenance of flood and coastal risk management assets (England only)

Version 2, 27/01/2014

We are the Environment Agency. We protect and improve the environment and make it a better place for people and wildlife.

We operate at the place where environmental change has its greatest impact on people's lives. We reduce the risks to people and properties from flooding; make sure there is enough water for people and wildlife; protect and improve air, land and water quality and apply the environmental standards within which industry can operate.

Acting to reduce climate change and helping people and wildlife adapt to its consequences are at the heart of all that we do.

We cannot do this alone. We work closely with a wide range of partners including government, business, local authorities, other agencies, civil society groups and the communities we serve.

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Environment Agency
Horizon house, Deanery Road,
Bristol BS1 5AH
Email: enquiries@environment-agency.gov.uk
www.environment-agency.gov.uk

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This document

Note on contents

This document consists of appendices that support the [Protocol for the maintenance of flood and coastal risk management assets \(England only\) - Version 2](http://www.environment-agency.gov.uk/research/policy/135650.aspx) published in October 2013 (<http://www.environment-agency.gov.uk/research/policy/135650.aspx>).

References to assets, landowners and other parties

A flood and coastal risk management (FCRM) asset is a structure or feature that reduces the likelihood or impact of flooding from rivers and the sea, to people, property or infrastructure.

The term 'asset' is used throughout this document to describe all structures and features that we own and maintain for FCRM purposes. It is also used to describe any similar structures or features that we don't own but which we maintain using our statutory powers

In relation to the maintenance and operation of such assets and on matters of general consultation the term 'landowner' should be taken to include tenant or occupier as well as the owner of the land on which the assets are located.

Other affected parties is used to describe anyone else who may be directly affected by us not maintaining or operating particular assets and includes neighbours, other operating authorities, community groups and so on.

Landowner Information

If you are a landowner, tenant or occupier and you are affected by our decision to stop maintenance work on an FCRM asset, please [see our guidance on maintaining FCRM assets information leaflets](http://www.environment-agency.gov.uk/research/policy/135650.aspx) (<http://www.environment-agency.gov.uk/research/policy/135650.aspx>) to help you decide what to do. Copies will be supplied to landowners and other affected parties where appropriate.

Appendix 1: applying the protocol

An initial checklist for when to apply the protocol

Situation	Protocol applicable?
Routine variations in maintenance methods, frequency etc	No
Fully funded Category 1,2 or 3 assets	No
Category 1,2 or 3 assets with short-term funding / prioritisation issues resulting in reduced or deferred work	No
Category 4 assets identified and confirmed	Yes
Category 1,2, or 3 assets of such low priority that funding is unlikely in the long term	Consider option to apply the protocol principles to implement change

Overview of the procedure

Introduction The Environment Agency will follow a three-stage procedure in situations where the current level of flood and coastal risk management maintenance activity is brought into question, and we decide it is probably appropriate to stop maintaining the assets concerned permanently.

The three stages are:

Stage 1 – consultation period

Stage 2 – notice period

Stage 3 – Environment Agency stops maintaining.

What is meant by applying the protocol?

The protocol is not a set of actions or instructions that will be followed in every circumstance but a set of principles that influence our maintenance activities and in particular when significant long-term change is being proposed.

The principles should be applied in a way proportionate to the scale and significance of the change being proposed. This in turn will influence the workload involved and thus the time required to complete and formalise the change.

For example consider the case of the operation and maintenance of a single isolated sluice structure that benefits a single landowner. It should be relatively quick and simple to formalise the discontinuation of our work on this structure particularly if the landowner concerned wishes to continue to undertake the work in the future.

More complex situations involving multiple ownership or major structures may require more consultation, time and work to bring about the intended change. Nevertheless the three stage approach (consultation / notice period / work stops) outlined below applies as a principle in all cases.

3 stage approach

The following table provides an overview of these stages and includes the estimated amount of time each stage will take. The amounts of time suggested for each stage are not fixed, and will change in relation to the circumstances at individual locations.

See also the [stopping maintenance flow chart](#) (Appendix 9).

Summary of Environment Agency procedure table

Stage	Brief Description
1	<p>Consultation period:</p> <p>The Environment Agency identifies a Category Four asset. We contact the owners and occupiers to clarify the situation, and seek the views of people who may be affected by the decision to stop maintaining. This will include discussions regarding a reasonable notice period needed to enable those affected to implement alternative arrangements.</p> <p>The consultation period usually takes a minimum of three months depending upon the numbers of people involved.</p> <p>After a consultation is complete and the decision to stop maintenance is taken the proposal will be included in our planned maintenance programme. This programme will be agreed by the Regional Flood and Coastal Committee (RFCC) annually.</p>
2	<p>Notice period:</p> <p>When appropriate we will serve notices stating the date after which we will stop all maintenance of the particular assets.</p> <p>Landowners and affected parties can challenge our decision. The notice period will normally be a minimum of six months to allow time for any challenges to be made</p>

	<p>and considered but it can be as long as is necessary. We expect that approximately two years notice will be appropriate in many situations.</p> <p>The landowner can also apply for consents and/or other permissions to continue maintenance in the future during this period. This can include any permissions and consents from other organisations where appropriate.</p>
3	<p>Environment Agency stops maintaining:</p> <p>The Environment Agency's maintenance work ceases at the end of the notice period.</p> <p>The landowner and affected parties can still apply for consents and or other permissions to continue maintenance if not already obtained. The landowner or affected parties maintain the asset, once all approvals are in place including any appropriate approvals from other organisations.</p> <p>If the landowner or affected parties do not apply for consents to maintain the asset, we will complete any measures necessary in the interests of public safety and not do any further work.</p>

More details on Stage 1: consultation period

Contacting affected parties

We will contact landowners and affected parties informing them of our intention to stop maintaining the assets.

It is appreciated that those affected would prefer to hear of forthcoming changes at the earliest opportunity. We will aim to consult in situations where we have a reasonable expectation that significant and long term change is appropriate.

Often those contacted will have already been warned of the possibility through the high level planning process such as catchment flood management plans and shoreline management plans.

We will work with landowners and other affected parties to ensure they are fully aware of our intentions, and are given an opportunity to express their views and concerns.

Record keeping

Throughout all consultations, we will keep records of any representations, information or documents that we receive. This will ensure an audit trail and show that our analysis and decision-making is clear. The sharing and disclosure of information will be in accordance with the Data Protection Act 1998.

Information we will provide to landowners

We will provide those directly affected with the information suggested below and we will give them a reasonable time to respond.

We will explain (where applicable):

- the reasons for the proposal to stop, including a brief explanation of the economic case which demonstrates why we consider future maintenance to be uneconomic or unlikely to be funded
- the estimated remaining life of the asset
- the current condition (visual inspection) of the asset
- details of the routine maintenance work we currently do or what we recommend should be done in the future
- the date we expect to stop maintaining the asset
- our intentions regarding repairs in the event of an unexpected failure of the asset due to, for example, exceptional storm damage
- an outline of what we may or may not do during a notice period and thereafter
- what possible future restrictions, if any, there may be to someone continuing to maintain the asset, including details of any statutory consents and approvals required for maintenance or modification of the asset
- that we can jointly carry out a visual inspection of the asset(s) with them to help them to decide on future management options
- whether the works historically required a Marine and Coastal Access Act 2009 (MCAA) licence. (This legislation consolidated and replaced previous statutory controls under the Food and Environment Protection Act (FEPA) and Coastal Protection Act 1949 (CPA).)

- contact details for a single and local point of contact in the Environment Agency on this consultation
- contact details for the local Area team who can provide further advice on consenting matters in the future when we stop maintenance
- the implications for any associated structures or features such as the maintenance of an access track or bridge
- other known and relevant factors that may be site specific.

Information we will seek from landowners

We will ask landowners:

- to state that they own the land or are a tenant
- whether they wish to maintain the assets themselves
- if they understand the function and benefits that the assets provide
- what impact any changes will have on their use of the land if we stop maintaining the assets
- what they regard as a reasonable notice period in order for them to make alternative arrangements
- if there are any other issues and concerns they may have.

Decision confirmed

We will include our proposal to stop maintenance at the location concerned in the regional programme submitted to the Regional Flood and Coastal Committee for approval.

This programme will be agreed by the Regional Flood and Coastal Committee (RFCC) annually.

More details on Stage 2: the notice period

The notice period

We will inform people directly affected by the decision to stop maintaining an asset (as identified in Stage 1) in writing and we will give them a reasonable period of notice.

Notice period length

The period of notice will be reasonable and take into account the particular circumstances of landowners and interested parties and the factors listed below. The notice period will therefore vary in length, but will be a minimum of six months and could normally be 24 months. Longer periods may be appropriate in some instances.

There may, however, be exceptional circumstances where we can not provide reasonable notice, such as if assets fail unexpectedly and it would be uneconomic or unaffordable for us to repair them. We will inform those affected that if the assets failed under such circumstances we will not repair them or carry out further maintenance.

Factors we will use to determine notice period length

When we determine the length of a notice period we will consider:

- the views and needs of the landowners and affected parties
- the overall condition of the asset at the time of stopping maintenance
- the scale and cost of maintenance essential to ensure the integrity of the asset
- the expected remaining life of the assets
- an adequate period to enable landowners and affected parties time to consider and make alternative arrangements
- multiple ownership issues and tenancy arrangements
- a reasonable time to allow for flood proofing of buildings
- time for the landowner and affected parties to consider the implications of our decision to stop maintenance and to question and challenge the decision
- the need for landowners and affected parties to obtain any necessary consents, approvals or permissions to continue maintenance or to seek alternative funding if appropriate
- the current land management practices including crop rotation, growing seasons and any landowner contractual arrangements. Unless there are other overriding factors a notice period of one growing season is considered reasonable
- the proposed stop date because the landowner and affected parties may be restricted from maintenance due to seasonal farming practices such as ploughing or harvesting
- any need for the Environment Agency to undertake works necessary in order to leave the site compliant with health and safety legislation requirements prior to stopping maintenance.

This is not an exhaustive list and there may be other factors that warrant an increased notice period.

In all cases the time period will be reasonable for the circumstances.

If the notice period is particularly long, any initial decision relating to an action many years in the future will need to be subject to review before final implementation. For example, it is possible that what is assessed as uneconomic now could be economic in the future when a similar assessment is made and where factors have changed.

Challenges and appeals

Landowners and affected parties may wish to challenge the decision to stop maintaining an asset on receipt of a formal notice. There is no right of appeal set out in law but see [Challenging decisions and appeals](#) in Appendix 3 for further information.

Our tasks during the notice period

During the notice period:

- We will continue to routinely maintain and operate the asset throughout the notice period. This may include routine beach management where necessary (for example, where shingle banks are routinely replaced).
- We may need to undertake works to leave the site safe. Such works may extend to creating new alternative assets if economically justifiable, but we will not do works that lower the standard of the existing flood defences.
- We do not aim to change our maintenance practices during the period of notice. For example we will not significantly change the frequency or the extent of any maintenance work.
- We will not significantly improve the condition of assets either immediately before, or during the notice period. We have no obligation to improve the condition of an asset to any particular standard over and above its condition at the time that a decision is taken that we will stop maintaining it.
- We will not deliberately worsen the condition of an asset during the notice period by reducing our level of maintenance. However, we may not be able to justify major repairs to Category Four assets during the notice period, if it becomes clear that such repair works are uneconomic and unsustainable (see below).

Major damage to category four assets during the notice period

An asset classed as Category Four may suffer major damage during the notice period. If we are unable to justify any repair, the asset may be left in the state of failure or damage and no further maintenance or repair works done, provided there is no public safety risk

Landowners and affected parties will be informed before the beginning of the notice period that this will be our position should the situation arise. If it does arise, we will offer landowners and affected parties the opportunity to carry out repairs themselves, either as emergency works or subject to necessary approvals in less urgent circumstances (see also Appendix 2 regarding consents).

More details on Stage 3: the Environment Agency stops maintaining

Asset condition at end of notice period

We will aim for the condition of an asset at the end of the notice period to be consistent with its condition at the start of the notice period, provided any repairs necessary during the notice period can be justified. (See major damage to category four assets during the notice period.)

All our maintenance stops

During and before the end of the notice period we will hand over copies of any relevant technical or operational information that we may have for the asset (See also [Contingency plans & emergencies](#) in Appendix 2). Our maintenance and operational work on the assets will then cease but our regulatory role will continue.

In some exceptional cases we may continue with a reduced level of maintenance. This may include measures to maintain site security and manage public safety risks in situations where the landowner does not wish to maintain the assets and we have generally stopped operating and maintaining the site. This will be particularly important for sites with mechanical and electrical equipment such as pumping stations, sluice gates, penstocks and trash screens. Removing the equipment and buildings may be the best long term solution in these cases. The Construction, Design and Management Regulations, together with occupiers' liability issues will need to be considered in these instances.

Appendix 2: options, consents and permissions

Important ! The content of this appendix applies only to works affecting Main River and coastal assets for which the Environment Agency has legal powers and responsibilities. Some of the good practice principles and recommendations are likely to be appropriate for ordinary watercourses but responsibility for such watercourses rests with the appropriate local authority or internal drainage board.

Options for landowners

Options There are several options open to the landowners and affected parties after the Environment Agency has decided to stop working on their flood or coastal risk management assets. These include the following but there may be others.

Landowners and affected parties can consider:

- maintaining the asset in its current form themselves
- working with others to maintain the asset. (For example owners could set up legal partnerships or consortiums or simple neighbourly arrangements. In some circumstances creating a new internal drainage board may be feasible)
- maintaining the asset and seeking to improve it
- doing nothing, which will result in the asset deteriorating over time
- removing the asset or making alternative arrangements to reduce flood risk such as flood proofing individual buildings
- combining any of the above with a change to how the affected land is used
- contacting Natural England regarding the possibility of an environmental stewardship scheme for affected land.

We will be happy to discuss these issues with the landowners and affected parties, offer some advice on practical ways for them to maintain the assets themselves and advise on any consents or permissions they may need. However, it will be a matter for the landowners and affected parties to decide what they do next and what action is best for them.

When will the changes take place? Before we stop maintenance we will try to ensure that landowners and affected parties know and understand why we are making changes and when the change will take place. We will provide them with detailed information as listed in [Appendix 1](#).

Can owners challenge our decision? We will always consult the landowners and affected parties as part of the procedure set out in [Appendix 1](#). We will be pleased to receive, discuss and seek to address any issues of concern raised but there is no formal right of appeal against our decision to stop maintenance. (See also [Appendix 3](#))

Seek further advice We recommend that landowners get independent legal advice.

FCRM consents needed for maintenance work

Why are consents necessary?

Although we may be stopping maintenance at a particular site we still have responsibilities as a regulator. Both our primary legislation and our byelaw regulations remain in force, and we will regulate to protect the wider public interest. Landowners and affected parties should consult our Area teams about site specific consenting matters, and we will advise on how to contact our local team who can provide further advice.

The generic term 'maintenance' covers a very broad range of activities. Some will require our consent and some will not. Landowners and affected parties are advised to ask us first before completing an application for consent so as to avoid confusion and unnecessary applications.

We will need to consult Natural England when dealing with an application for our byelaw consent where an asset impacts upon a designated wildlife site.

If a landowner or affected party wishes to change the shape or height of the asset, then this may be classified as improvement or development (see also [Where landowner wishes to change or improve](#)).

Examples of maintenance work

Examples of work that could be classed by the Environment Agency as maintenance include:

- managing vegetation and removing trees;
- removal of debris and rubbish from channels;
- replacing block-work or small scale repairs to damaged bank revetments such as timber piling, gabion baskets or stonework;
- raising a low part of an embankment or wall to the level of the adjacent bank or wall (see 'about raising defences' below);
- repairing slips or erosion of an earth embankment;
- repairs to footpaths on top of banks;
- repairing and maintaining pumping station buildings, intake screens and pumping equipment;
- maintaining and repairing sluice doors, hinges, seals, and so on;
- maintenance of the outfalls of minor ditches, field drains and associated outfall structures.

Desilting (dredging)

The term 'dredging' can be interpreted in different ways in terms of the methods used, the scale of the operations involved and their impact on the environment. This can lead to confusion and misunderstandings about what can be regarded as channel maintenance. The Environment Agency uses the term desilting to mean only the removal of accumulations of fine silt and sediment to restore a channel to its natural capacity and not the deepening or widening of a watercourse channel.

Currently, all types of dredging or desilting activities require our prior consent. However, we recognise the key role that landowners play in working with the Environment Agency to mitigate flood risk by ensuring the watercourse channels on their land are sustainably managed and maintained. We are therefore looking to develop an approach to reduce the red tape surrounding certain desilting activities, whilst not compromising on the environment.

About raising defences

The maintenance of raised defences can include reinstating low parts of a defence caused, for example, by erosion or other damage. Reinstatement to the level of the adjacent defence or to the highest level of the defence at the time of handover will normally be allowed under a maintenance consent. This consent will be subject to the length over which this can occur being agreed with the local Environment Agency team which needs to be satisfied that the interests of other parties are not unreasonably affected by the work.

Proposals to change the area of land occupied by an asset, its overall level or the material from which it is made may be classed as improvement or development work rather than maintenance. The raising of defences above the highest point for substantial lengths will require consent for development and possibly local authority planning approval (see [Where landowner wishes to change or improve](#) below).

Determining if consent required

If landowners wish to undertake any maintenance on flood and coastal risk management assets, they will first need to ask us if they need consent for the work they want to do. If they do need consent, then we will advise them what is involved. This is also explained below.

Some maintenance work may be exempt from an Environment Agency byelaw consent.

When can consent applications be made?

The landowner may apply to us at any time for consent to do work that may affect the flood risk at any river or coastal location. We will deal with such applications for consent on a case by case basis.

How much does an application for consent cost?

Applications for consent for maintenance of sea defence assets where our byelaws apply are free.

Inland, our consent is required to erect or repair any structures in, over or under a main river under Section 109 of the Water Resources Act 1991. We charge a fee of £50 per application. Work on assets set back from the channel may only need byelaw consent, which would be free.

A consent for work on a defence structure which is set back from the river would not incur a fee, but consent for work on a defence which formed part of the river bank or involved work within the river channel would.

Please note that the scale of fees described here may be subject to review and revision in the future.

Application for consent

If landowners and affected parties need to make a formal application for consent they will have to fill in an application form.

When we receive an application, consents take a maximum of two months to be decided. If we do not make a decision within two months, then our consent is deemed to be granted.

Consent will normally be granted

We will normally grant consent where the proposal is to continue with the maintenance work previously done by the Environment Agency, or which had previously been consented. Some examples of what we regard as maintenance work are given above (see [Examples of maintenance work](#)).

However, we must consider all consent applications in accordance with any relevant legislation applicable at the time of determination of a consent. This may result in a consent being granted subject to reasonable conditions or in exceptional circumstances the refusal of a consent.

See also [Consent time spans, reviews and renewals](#) below.

Appeals if consent refused

There is an appeal process in the event of there being any dispute regarding the refusal of a consent. See [Appendix 3](#) for details.

Consent time spans, reviews and renewals

We will consider giving consents for maintenance up to a maximum of five years. After this time, the owner will need to apply for a new consent. The period covered by a consent will be determined locally.

We are likely to renew a consent unless there is, for example, a change in Government policy or legislation. However, we will base any decision on the consent on the implications of any proposed works at the time the application is made.

Other consents and permissions

Important to note

The topics covered in the remainder of Appendix 2 may only be relevant under specific circumstances and do not apply in the majority of situations. The list of topics covered here should not be regarded as an exhaustive list.

Natural England consent

Natural England must be consulted if any proposed works are likely to affect a legally designated site such as special protection areas (SPA), special areas of conservation (SAC), wetlands of international importance (Ramsar sites) or sites of special scientific interest (SSSI), because there may be ecological harm as a result of the work.

If a landowner also has to get consent from the Environment Agency, they only need to make a single application.

We have a duty to formally contact Natural England for advice before considering an application that may impact on a protected area. Therefore, if we receive an application for a byelaw consent affecting a site in or adjacent to a statutory protected area (for example, a SAC, SPA, Ramsar site or SSSI), we will consult with Natural England on the application. Details of the consultation with Natural England will be made available to applicants on request.

Landowners only need to contact Natural England directly if:

- they don't need consent from the Environment Agency
- they don't receive a response to a consent application from the Environment Agency within two months
- proposed works may affect particular plant or animal species that are protected by law (such as water voles or badgers)

Landowners are free at any time to consult Natural England if they need additional advice on natural environment issues or have a query on the natural environment implications of the consent process.

Waste exemption certificate

A waste exemption certificate is required from the Environment Agency if any waste material is to be used in maintaining or constructing flood defences by landowners. This will be dealt with as part of the consents process where the landowner provides us with enough information for us to make an assessment. Where the type of maintenance work is as [mentioned above](#), and does not use waste material, it is unlikely that a waste exemption certificate would be required.

If in doubt about whether the regulations apply, the applicant should discuss a particular material or activity with us.

(See [Appendix 4](#) for further details.)

Environmental impact assessment (EIA) Environment Agency maintenance work does not normally require a formal environmental impact assessment (EIA). Where a landowner continues with the type of maintenance work previously done by the Environment Agency there will normally be no need for an EIA. (See Appendix 4 for further details.)

Option to create habitat If landowners do not wish to continue maintaining an existing river or sea defence system, they could apply to Natural England to see whether agri-environment payments to create floodplain wetland or intertidal habitat are available.

See also [Appendix 4](#).

Where landowner wishes to change or improve

Planning permission may be required

Proposals to rebuild or replace or to change the footprint, overall level or composition of a flood defence asset are not classed as maintenance.

Local authority planning permission (in addition to consents from the Environment Agency and Natural England), may be required where a landowner wishes to change or improve an asset. This is known as development.

Examples of change or improvement works that may constitute development and thus require planning permission are:

- raising the overall level of a defence structure
- widening a defence structure or
- changing the shape or the composition (material) of a defence structure.

Landowners and affected parties must always check with their local planning authority when considering development to determine at an early stage whether or not planning permission is required and whether an Environmental Impact Assessment will be needed.

Contingency plans and emergencies

Emergency works and consents

The landowner can do emergency repairs when there is an immediate risk of failure and property or life is at risk from imminent flooding. The owner must inform us retrospectively in writing if emergency work has been done, as soon as possible after the event. Provided the works had been done appropriately and are generally in accordance with consent requirements, we will take no further action.

Emergency works do not remove the need for landowners to comply with waste regulations or other legislation.

Such work, if it involves work below mean high water spring tide levels, may also require a retrospective application for a [Marine and Coastal Access act 2009 \(MCAA\) licence](#).

Where a landowner has not complied with any of the above, it is possible that the landowner may be required to replace or re-do the works to comply with legislation. We may take enforcement action to make sure the works are completed.

Contingency plans

Where appropriate, particularly in situations involving mechanical and electrical assets and for larger structures involving routine operation, the Environment Agency will hand over any existing operating and contingency plans at the end of the notice period.

The majority of river channels and fixed assets we maintain are not covered by site specific contingency plans because it is considered that our general emergency response arrangements are sufficient to manage the risks associated with them.

Anyone responsible for the future maintenance of assets after the notice period has expired will be encouraged to consider the need for a contingency plan in the event of unplanned problems with the assets. The Environment Agency is unable to enter into any firm commitment to assist if assets fail beyond the context of its overall emergency response during flood incidents.

Appendix 3: financial compensation and other legal Issues

Legal liabilities of landowners

Owners should seek legal advice Some assets that are situated on a piece of land will also provide flood risk protection to neighbouring land. Landowners should always seek independent legal advice regarding their responsibilities to their neighbours and other affected parties in relation to any flood defence assets that they maintain on their land.

Multiple ownership

Where there is more than one owner involved. Assets such as pumping stations, flood defence walls and embankments often involve more than one land owner. Where the Environment Agency is no longer able to justify maintaining an asset, the future integrity of the asset will depend on all of the owners being prepared to maintain their part of the asset.

For example if a flood bank is on land owned by several different landowners, each landowner will need to maintain their own part of the asset, ideally to a common standard. In the event of any one owner being unable or unprepared to maintain their section, the whole defence will cease to function over time unless alternative arrangements can be made to maintain that section.

Before we stop maintenance we will consult all of the landowners individually. Wherever possible we will try to transfer a complete and working asset to multiple ownerships.

In some situations it would be sensible for owners to seek legal agreements or consider setting up consortiums to manage such multiple ownership assets on their behalf. Elsewhere, it may be necessary for principal beneficiaries to seek their own local arrangements to make sure the asset is maintained. This may, for example, involve an owner being prepared to maintain something on behalf of his/her neighbours.

Where neighbours gain benefit from assets The law is unclear about situations where neighbours benefit from an asset that they neither own nor maintain because it is not on their land. A landowner who is willing to maintain an asset primarily for his own benefit may consider that neighbours who also benefit should contribute to the maintenance costs. This is a matter for the individuals concerned and their legal representatives.

We will seek to highlight this kind of issue or uncertainty before and during the notice period.

Compensation

Financial compensation We are advised that if we cease to exercise a permissive power to maintain something it is not grounds for someone to claim compensation. Therefore we consider that financial compensation is not appropriate in situations where we have adopted the formal procedure set out in this document.

A case for compensation may arise if a landowner were unreasonably refused consent to maintain their own defence.

Financial compensation may also be appropriate for those affected by managed realignment schemes carried out by the Environment Agency.

We will consider any claims for compensation made against us on their own merits and they will be referred to our local legal team for consideration.

Legal transfer of assets Where we have a legal duty to maintain an asset that is uneconomic, then we will consider transferring the liability by agreement to a third party. In such cases we will consider paying maintenance costs to the third party for an agreed period.

If the legal duty to maintain is only a consequence of the Reservoirs Safety Act, then we may sell or transfer the assets to another operator. See also [Reservoirs](#).

Partnering and contributions

Partnering and contributions Sometimes we will consider either receiving external contributions towards our maintenance work or contributing to work done by others. We will assess and justify such matters in accordance with our external partnership funding guidance. (See [Environment Agency - Partnership funding](#))

Public footpaths and rights-of-way

Public footpaths and right-of-ways We will take rights-of-way into account from the earliest planning stages to ensure that public access is maintained.

If there is a right-of-way on or over an asset it should not directly prevent the Environment Agency from no longer maintaining that asset if we consider it uneconomic. We have no legal responsibility to maintain an asset in order to preserve a public right-of-way. However, we may have, or enter in to local agreements to do so.

We will take public safety and other legal responsibilities, as well as improving public access into account. We may have to consider diverting or closing footpaths if they pose an unacceptable risk to the public.

Variations in legal obligations

Landowners should already know that their legal obligations relating to public access vary depending on both the status of a footpath and ownership of the land. The Environment Agency will work with the appropriate highway authority and landowners to clarify such legal obligations before stopping maintenance.

Human rights**Defra guidance**

We will not unreasonably refuse consent for a landowner to maintain a flood defence asset. We are advised that if we decide to stop exercising our permissive powers (and stop maintaining such assets on the grounds that the activity is not cost-effective), it is unlikely to be construed as a deprivation of a human right.

Challenging decisions and appeals**Challenging a decision to stop maintenance**

A landowner or anyone else directly affected by the decision to stop maintenance may seek to challenge the decision, particularly if they think that the decision has failed to correctly assess the facts. There is no special appeal process set out in law against a decision to stop maintenance because our powers are permissive not mandatory. However, there is a general right of appeal against any of our decisions.

If anyone wishes to make a complaint regarding our decision to stop works they should first contact us and our officers will be pleased to receive, discuss and seek to address any concerns. If they wish to further challenge the decision they should write to the Regional Director who will carry out a review, consult the regional flood and coastal committee for its views and then confirm whether the decision is correct or needs to be changed.

If the situation still remains unsatisfactory from the complainant's perspective, they will be advised to consider contacting the Local Government Ombudsman or to seek independent legal advice.

The ombudsman is an independent arbitrator that looks at complaints about the way we handle complaints or what we have to say. It is a free service.

Contact details for the ombudsman are included in Appendix 7.

**Appeals
against a
decision to
refuse
consent for
works**

There is a formal appeals process set out in law that relates to refusal of consents or the imposition of unreasonable conditions.

Consents relating to maintenance work by landowners will normally be considered in relation to either Section 109 of the Water Resources Act 1991 or local byelaws.

Currently the individual regional flood and coastal committees have separate local byelaws which were originally termed Land Drainage Byelaws or Flood Defence Byelaws.

Copies of the relevant byelaws are available on request from local Environment Agency offices. Equivalent new byelaws (which will apply to the whole of England), are being drafted but are not yet in operation.

The appeals mechanisms, whether under primary legislation or byelaws, are set out in the legislation. In each case the process begins with the applicant formally telling the Environment Agency that they wish to appeal. In all situations formal appeals are referred to an independent arbitrator.

Appendix 4: protecting the environment

Waste

Waste disposal and exemptions

Landowners who take on work previously done by the Environment Agency must comply with waste legislation. Some maintenance work can produce waste, such as dredged materials and rubbish from removing blockages. Waste is categorised as hazardous or non-hazardous. Typical non-hazardous materials include trees, vegetation, shopping trolleys, mattresses and building masonry. Typical hazardous materials include white goods, vehicles, chemical drums, car batteries and asbestos sheets.

Landowners will usually need a licence from the Environment Agency to recover or dispose of waste, but some waste activities for farmers are exempt provided they are registered with us as exemptions. Examples can include:

depositing small volumes of uncontaminated material along the banks at the point where the dredging takes place;

spreading cut vegetation and plant matter at the place of production.

More information about waste exemptions, types of waste, moving waste, and responsibilities is available from the local Environment Agency Office, from our National Customer Contact Centre, or from our [web site](#).

Marine and Coastal Access Act 2009

Under the Marine and Coastal Access Act 2009 (MCAA) many activities involving a deposit or removal of a substance or object at sea or in tidal waters may require a marine licence,

These licences are available from the [Marine Management Organisation \(MMO\)](#).

For example, a licence may be required for works on flood defence assets that are tidal and below mean high water spring tides, although maintenance of existing flood and coastal risk management assets is normally exempt. However, such exemption does not apply to works which are regarded as development and are subject to the planning system.

We have no special exemptions and we will advise the landowner where any of our previously undertaken maintenance work has required a licence from MMO.

We will advise landowners to check with the [Marine Management Organisation \(MMO\)](#), if they need further clarification.

Environmental Impact Assessment

Environmental impact assessment (EIA)

Environment Agency maintenance work does not normally require a formal environmental impact assessment (EIA). However, where stopping maintenance is being considered we will consider the possible environmental impact of such change in consultation with our local advisors and Natural England where appropriate.

Where we stop and a landowner continues with the same type of maintenance work, there will be no need in most situations for a further EIA. The landowner should verify the need for any EIA with the local Environment Agency office or Natural England before changing the maintenance work particularly in environmentally sensitive locations (such as sites of special scientific interest),

If improvement or development is proposed that requires planning permission, then an EIA may be required by the planning authority.

Coastal squeeze

Sea levels are rising and ‘squeezing’ coastal habitats against man-made flood defences. This is threatening some important habitats, particularly in southern England. In developing shoreline management plans and strategies, we will identify and incorporate into the plans any measures that are required to address coastal ‘squeeze’. There is no expectation that the landowner would need to ‘allow’ the sea wall to fail so as to create new habitats to offset coastal squeeze where we propose discontinuing maintenance on economic or affordability grounds. Environment Agency funded projects to offset coastal squeeze will take into account whether or not the landowner intends to maintain the assets following handover at the end of the notice period. If the landowner subsequently decides to discontinue maintenance at some point in the future, the habitat implications will need to be considered at that time.

Option to create inter-tidal habitat

If landowners do not wish to continue maintaining a sea defence, they could apply to Natural England to see whether agri-environment payments to create inter-tidal habitat are available.

Managed realignment

Managed realignment is where we provide a new defence structure inland from an existing defence and then breach or remove the old defence, allowing sea flooding of the land between the two. (Note: no new inland defence is needed if realignment is to naturally rising land.)

Ceasing to exercise our permissive powers and stopping maintenance is a different process from managed realignment. The difference is that where we just stop we will normally leave a defence that is ‘working’ and the landowner can continue to use and maintain it. However where we realign, we will make the old defence ineffective, allowing affected landowners to claim compensation.

Archaeology

Archaeology and heritage assets

We have a legal duty to have regard for the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering, artistic or historic interest. [Reference: Environment Act 1995 Section 7(1) c]. We must fully take into account such factors in any decision to stop maintaining a defence.

The Environment Agency's National Environmental Assessment Service (NEAS) will be involved at the earliest opportunity where withdrawal is being considered. In consultation with English Heritage, and local government archaeological officers, NEAS archaeologists will define the relative importance of known heritage assets within the area affected by the proposal. This will normally be a desk based assessment and where any national heritage assets are at risk, further site investigation works may be appropriate.

The [Protocol for the care of Government Historic Estate 2009](#) reflects the Government's desire to lead by example in terms of care for its heritage assets (such as listed buildings, conservation areas, historic buildings, structures, burial sites and landscapes).

Designated structures and features

Flood and Water Management Act 2010

By definition any structures and features designated under Schedule 1 of the Flood and Water Management Act 2010 will not have been maintained previously by the Environment Agency and as such are outside the scope of this protocol.

The legal status of structures or features designated by another designating authority is not affected by the Environment Agency discontinuing the maintenance of other structures and features in the vicinity.

Protected wildlife sites and species

General nature conservation queries

We recommend that all landowners contact Natural England to seek further advice on any general nature conservation issues or duties that they may have as landowners that relate to designated sites or legally protected species, but which do not directly relate to flooding.

Habitats and Birds Directives (assets protecting international sites)

We will fulfil our obligations and comply with the requirements of the European Habitats and Birds Directives and the Conservation of Habitats and Species Regulations 2010.

Our asset maintenance guidance statement, How we review the maintenance of flood risk management assets, defines four categories of FCRM assets. Category 2 relates to those assets associated with internationally protected environmental features. This means that we will continue to maintain assets that protect internationally designated sites where it is appropriate to do so in accordance with advice provided by Natural England. These include special protection areas (SPAs), special areas of conservation (SACs), and Ramsar sites.

We will seek to conserve designated SPAs and SACs in situ, where it is sustainable to do so. Where it is not sustainable to do so, we will consult Natural England, Defra, and other interested parties to explore other options.

SSSIs and other conservation and wildlife sites

Category 2 only covers internationally designated sites and not UK national or local designations. Assets that support the management of a Site of Special Scientific Interest (SSSI) fall into category 3 unless there is an economic case for continued maintenance in which case they will be covered by category 1. We will aim to maintain for the time being any category 3 assets that support the management of a SSSI, and determine the longer term future of these assets through detailed local studies and in consultation with Natural England.

There may be some sites where discontinuing or reducing maintenance to assets relating to SSSIs can be implemented as part of a sustainable, long term solution for the SSSI that maintains its conservation value. For example, Natural England may advise that natural coastal processes should be allowed to operate on a SSSI, even if it results in a change to the conservation interests of the site.

On rivers that are SSSIs the river restoration plan may identify the desirability of reducing maintenance or removing assets so as to restore the natural functioning of the river and floodplain. In such circumstances such changes would be subject to appropriate consultation and agreement with landowners and Natural England.

There will be some locally designated sites such as Local Nature Reserves that are protected by assets that fall into category 4. In such cases the application of the protocol needs to be preceded by consultation with the interested parties including Natural England and the relevant local authorities.

Water Framework Directive

We will implement our asset maintenance policy guidance in such a way that supports our goals of an improved natural environment as part of our compliance with the Water Framework Directive.

Landowners will normally still be given the opportunity to maintain an asset that we have previously maintained even if the watercourse is one of good ecological potential and removing the asset would improve the ecological status of the watercourse.

We would only cease maintenance and deny the landowner the right to maintain the assets as part of a specific project where our objective is to improve the ecological status of a watercourse in order to comply with legislation.

Appendix 5: other issues and guidance

Reservoirs

Reservoirs The Environment Agency will give special consideration to the abandonment or transfer of any assets subject to the requirements of the [Reservoirs Act 1975](#). This is most likely to be an issue relating to some existing flood storage areas created by combinations of defence embankments.

If we cannot justify maintaining the reservoir and simple transfer to another undertaker is not possible, we will consider:

a managed realignment scheme to use a single line of defence for any vulnerable property and thus 'elimination' of the reservoir created by the combination of existing banks;

a reduction in the volume of water retained by reducing the height of the existing defences so that the Reservoir Act no longer applies;

a scheme involving removing some structures so that large volumes of water are no longer retained artificially and providing flood protection measures for individual properties;

allowing the landowner to maintain the reservoir on our behalf but at the landowner's expense.

Culverts

Culverts Culverts by their very nature can present additional challenges, both in terms of maintaining the flow through them and maintaining their structural integrity. However, the respective roles and responsibilities of the Environment Agency and the asset owner are no different in principle for a culvert than for an open channel.

A culverted watercourse remains the responsibility of the riparian owner (the owner of the land immediately above the culvert where the watercourse is buried) unless there is a legal arrangement which specifically varies this.

The ownership of a culverted watercourse is different from that of buried public sewers or other utility services which are normally owned by others.

Who should maintain a culvert?

Currently many riparian owners may be unaware of their legal responsibilities for culverts, or in some cases they may be unaware that there is a culvert beneath their property. However, neither of these factors change the legal position.

The Environment Agency has permissive powers to maintain both the flow through a main river culvert, and to maintain the structure itself. Nevertheless, responsibility for both of these still rests in law with the riparian owners.

Where there is sufficient economic, environmental or other justification we can undertake routine maintenance in terms of both the flow and the structure. Consequently, there are some culverts on main rivers that we do not own, but that we maintain (note that there are also culverts on main rivers not owned by us which we leave for third parties to maintain).

If owner fails to maintain a culvert

We will take reasonable measures to persuade riparian owners to always fulfil their responsibilities and repair their structures. We normally intervene only where there is a clear flood risk and it is economic or environmentally necessary. The only exception to this would be where there is an overriding public safety interest or other overriding justification for doing so, and funds are available and approved. This includes replacements, repairs and de-silting works on main rivers.

If we do works in such circumstances, we will make it clear to all concerned that our actions are short term only and that we are not accepting any liability for any future needs.

If we cannot justify works and the owners are unable

If we have reached the conclusion that we cannot do anything then the matter must rest with the individual(s), unless there is an overriding public safety issue.

Pumping stations and internal drainage boards (IDBs)

Pumping stations

We maintain pumping stations to control water levels for several reasons including:

- flood and coastal risk management
- environment and habitat management (water level management plans)
- agricultural land drainage purposes
- navigation

In the event of us no longer being able to justify running and maintaining a pumping station, we may wish to decommission it. We might consider the following options:

- giving landowners an opportunity to take over the maintenance of the pumping station. This may involve individual landowners or a consortium of beneficiaries and will be subject to European State Aid and UK Treasury rules concerning sale and transfer of assets if we own any of the assets.
- transferring the asset to another operating authority, such as the local authority or internal drainage board (IDB). This may involve a change of status of the watercourse, or the creation of a new IDB if this is appropriate. It will also be subject to compliance with European State Aid and UK Treasury rules concerning sale and transfer of assets.
- closing the pumping station, decommissioning and sale or disposal.

Further advice is given below.

Sale or transfer of the pumping station

If the pumping station is owned and operated by us, we will consider selling or transferring the assets. Sale or transfer is possible, but the refurbishment and ongoing maintenance of pumping stations can be very expensive for individual owners.

Sale or transfer of assets may involve other interested parties and may need to be subject to conditions, particularly if the operating regime is subject to any existing legal constraints. For example, there may be a need to maintain specific water levels for specific purposes set out in legislation or an agreed water level management plan.

There may be health and safety issues to resolve and we may also need to encourage changes to operating practices to reduce carbon consumption from pumping activities.

Transfer of assets to an internal drainage board (IDB) if within an IDB district or to a local authority may also be appropriate.

New internal drainage boards (IDBs)?

The continuing maintenance and operation of assets like pumping stations can be too expensive for individuals to undertake. The landowners and communities affected may therefore wish to consider whether a new IDB should be created. However, it is only in some circumstances that creating a new IDB is likely to be feasible.

Individual landowners can not just set up an IDB but a community group or a local authority may choose to consider forming an IDB in some circumstances: for example, following identification of land or property that is at increased risk of flooding or damage, or is not reaching its full potential due to significant water level or drainage issues.

A judgement then needs to be made (initially by the Regional Flood and Coastal Committee (RFCC) as the first stage of the process) as to whether these issues might be alleviated by a new locally-run and managed IDB.

Before such a judgement can be made, the promoters of the proposal must undertake feasibility work. It will be a matter for the community or local land drainage group to work with local authorities and the wider community to develop, identify research, fund and compile the information required for submission to the Environment Agency.

This information will then be forwarded to the RFCC. It must include consideration and quantification of options to show that an IDB is viable and cost-effective, and has the general agreement of land and property owners and statutory authorities who would be affected by the proposal. In particular, the local authorities need to agree to contribute towards the IDB costs.

Further detailed guidance on the legal process for setting up and managing a new IDB has been jointly developed by the Association of Drainage Authorities (ADA) and the Environment Agency. Read and download [Establishing new Internal Drainage Boards – guidance](https://publications.environment-agency.gov.uk/ms/SqOPk) for more information (https://publications.environment-agency.gov.uk/ms/SqOPk)

Appendix 6: glossary

Table of technical terms This table explains some of the terms used in this protocol and which we would use in future discussions with landowners and other affected parties.

<i>Term</i>	<i>Meaning</i>
Benefits	<p>The value placed on the reduced likelihood of flooding provided by FCRM assets.</p> <p>Benefits are assessed from the flood damage that is avoided as a result of flood risk management works to reduce the frequency or impact of flooding on property and economic activity, or a combination of both.</p> <p>Agricultural benefits are based on the damage averted on agricultural land from either saturated soils or surface flooding. They are assessed using different scenarios:</p> <ul style="list-style-type: none"> • permanent loss of agricultural or horticultural land (write off values); • one-off damages from infrequent flooding; • permanent reduction in the value of agricultural output.
Benefit–cost ratio	The ratio of the present value of benefits to the present value of the costs.
Breach	Major structural failure of a raised defence during times of flood.
Catchment	The area of land drained by a river.
Coastal squeeze	The process where the coastal habitats are ‘squeezed’ between a fixed landward boundary (artificial or not) and the rising sea level, resulting in a reduced area of inter-tidal habitat. The term is mostly applied to eroding salt marshes but can be used to describe the loss of other coastal habitats.
Coastal cell	A specified length of coast, taking account of natural coastal processes.
Costs	See whole-life costs.
Development	‘Building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.’ (Reference: Town and Country Planning Act 1990)
Economic appraisal	An appraisal that takes into account a wide range of costs and benefits valued in money terms.
Economic case	A business case that considers all costs and benefits over a period of up to 100 years (the asset life) in accordance with Treasury guidance. A benefit / cost analysis based on discounted present day values compares different options.
Flood and coastal risk	Activities to reduce the risks (likelihood and consequences) of flooding from

management (FCRM)	rivers and the sea to people, property and the natural environment.
FCRM system	A group of flood and coastal risk management assets that, as a whole, contribute to managing the flood risk to a location.
Fluvial	Relating to rivers and their flows.
Landowner	The owner of land on which maintained FCRM assets are physically located. In relation to the maintenance and operation of such assets and on matters of general consultation the term 'landowner' should be taken to include tenant or occupier as well as the owner of the land.
Maintenance (of flood and coastal risk management assets)	Maintenance means routine works to keep an asset in good working order. The type and scale of routine maintenance works have to be considered on a site by site basis. Anybody in doubt if works count as maintenance or development should check with us before work begins. For more information read the Examples of maintenance work and About raising defences sections in this document.
Managed re-alignment	A process to establish a new defence line (often set back from the existing position), to improve the long-term sustainability of the defence, or help to achieve other aims such as habitat creation.
Notice period	The time period after we write to landowners and affected parties to confirm our decision to stop maintenance and up to the point when all Environment Agency funded maintenance stops.
Private defences	Flood defences built and maintained by landowners that are not part of an Environment Agency system and which have not been subject to any maintenance or modification by the Environment Agency or its predecessor organisations since 1930.
Residual life of assets	The remaining time until an asset is likely to fail or no longer meet the requirements for minimum acceptable performance.
Residual risk	The risk that remains after risk management and mitigation. May include, for example, risk of severe storms or unforeseen hazards.
Sea	The coast up to the high water mark including the waters of many channels, creeks, and estuaries
Strategic approach	Any process or part of a process done comprehensively but not in any detail.
Sustainable development	'Sustainable development is development that meets the needs of the present without compromising the needs of future generations to meet their own needs.' (Reference: Brundtland report 1987).
System asset management plan (SAMP)	SAMPs are tactical plans to manage assets that form individual flood risk management systems. SAMPs sit below SMPs, CFMPs, River Basin Management Plans or high level strategies, and they are localised and

	detailed.
Unaffordable	Work is unaffordable when it is economically justified but the priority for the work is too low to attract the funding that is available. Affordability varies according to the amount of available funding.
Uneconomic	When something is not economically viable.
Whole-life costs	Whole life costs are assessed by considering the maintenance costs together with rebuilding costs based on the asset's residual life and anticipated deterioration in the future.

Appendix 7: useful contacts

Contacting the Environment Agency If you are directly affected by any decision to discontinue permanently maintenance at a particular location, we will send you contact details for a local representative in the Environment Agency.
At other times please call our National Customer Contact Centre on 03708 506 506 or email enquiries@environment-agency.gov.uk

Alternatively you can write to us at:
Environment Agency Customer Service Centre
Bowbridge Close
Bradmarsh Business Park
Templeborough
Rotherham S60 1BY

Country Land & Business Association (CLA) Country Land & Business Association
16 Belgrave Square
London SW1X 8PQ
Telephone: 0207 235 0511
Email: mail@cla.org.uk Website: www.cla.org.uk

National Farmers' Union (NFU) National Farmers' Union
NFU Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire CV8 2TZ
Telephone: 0870 845 8458 Website: www.nfuonline.com

Natural England Natural England
Head Office
1 East Parade
Sheffield S1 2ET
Telephone: 0114 241 8920
Website: www.naturalengland.org.uk

Consultations from the Environment Agency to Natural England should be sent by email to: consultations@naturalengland.org.uk

Marine Management Organisation (MMO) Marine Management Organisation
PO Box 1275
Newcastle upon Tyne NE99 5BN
Telephone: 0300 123 1032
Email: info@marinemanagement.org.uk
Website: Marine Management Organisation

Local Government Ombudsman (LGO) The Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH
Telephone: 0300 061 0614
Website: www.lgo.org.uk

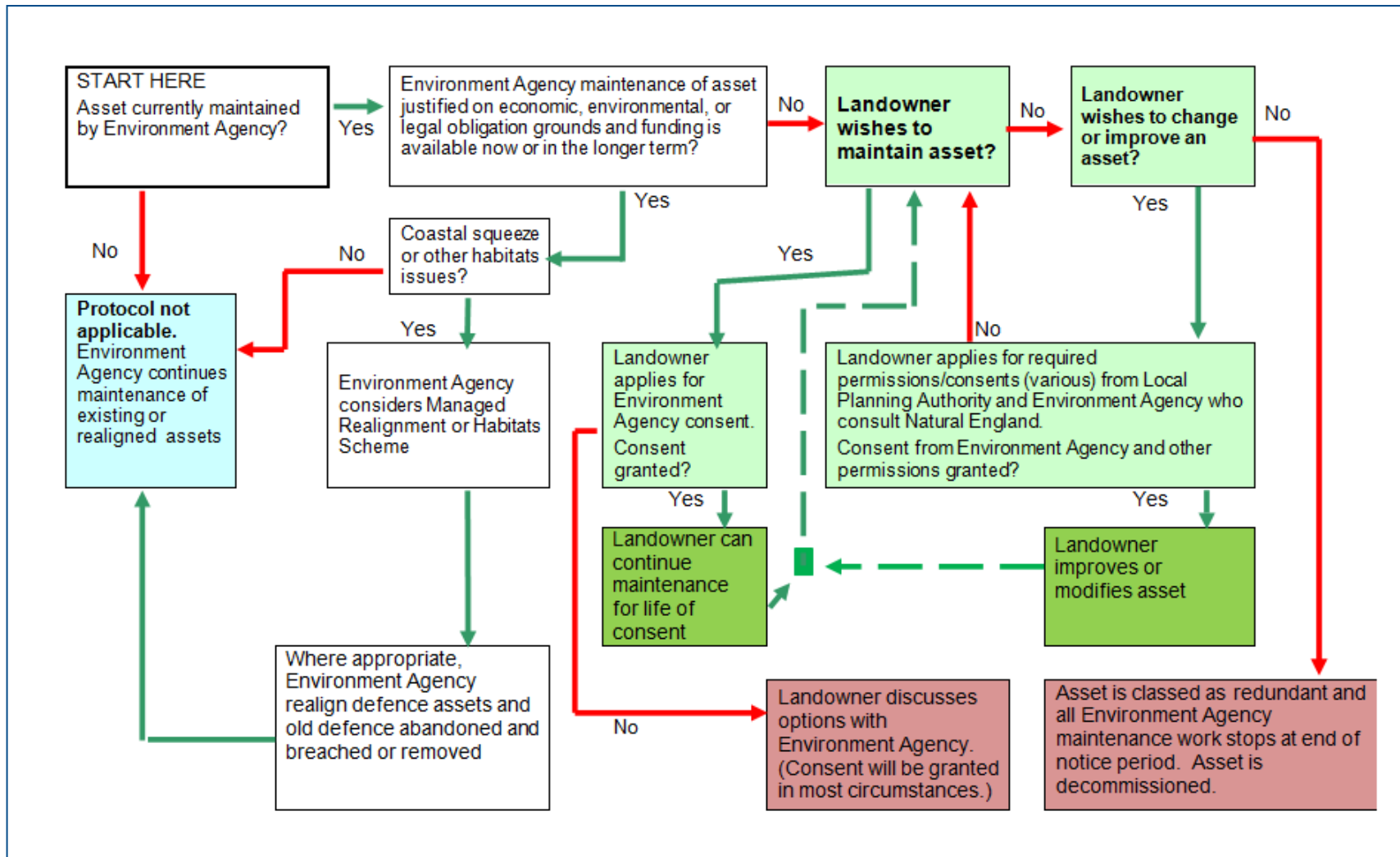
Appendix 8: related documents

Related documents

- [Environment Agency FCRM project appraisal guidance:](http://publications.environment-agency.gov.uk/pdf/GEHO0310BSDB-e-e.pdf)
(<http://publications.environment-agency.gov.uk/pdf/GEHO0310BSDB-e-e.pdf>)
- Environment Agency: How we review the maintenance of flood and coastal risk management assets
- The FCERM National Strategy entitled [Understanding the risks, empowering communities, building resilience: the national flood and coastal erosion risk management strategy for England \(May 2011\)](http://www.official-documents.gov.uk/document/other/9780108510366/9780108510366.asp) (<http://www.official-documents.gov.uk/document/other/9780108510366/9780108510366.asp>)
- Environment Act 1995 s100(1)
- European habitats and birds directive and habitats regulations
- Water Resources Act 1991 s113(1)
- Flood and Water Management Act 2010

Appendix 9: stopping maintenance flowchart

This flowchart illustrates a situation where a single landowner is given the option to take on the maintenance of flood and coastal risk management (FCRM) assets and excludes more complex situations involving other FCRM authorities or other parties.



**Would you like to find out more about us,
or about your environment?**

Then call us on

03708 506 506 (Mon-Fri 8-6)

Calls to 03 numbers cost the same as calls to standard geographic numbers (i.e. numbers beginning with 01 or 02).

email

enquiries@environment-agency.gov.uk

or visit our website

www.environment-agency.gov.uk

incident hotline 0800 80 70 60 (24hrs)

floodline 0845 988 1188



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