

Proposal to withdraw our maintenance responsibility for the mill sluice at Wainford and transfer ownership to a third-party riparian owner

Frequently Asked Questions

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Which structure are we proposing to withdraw our maintenance responsibility for and transfer ownership to a third-party riparian owner?

The structure at Wainford that we are proposing to withdraw our maintenance responsibility for and transfer ownership to a third-party riparian owner is the mill sluice within the curtilage of the mill building located at national grid reference TM3507690085.



Photograph 1: *Environment Agency owned and maintained mill sluice at Wainford Mill.*

The site plans on the Citizen Space webpage show the location of this mill sluice within the mill race. It is behind a high brick wall adjacent to Pirnhow Street and is not visible from the road.

We are not proposing to withdraw our maintenance responsibility for the main Wainford Sluice located at national grid reference TM3497890094 nor are we transferring the rights and responsibilities for this structure to a third-party riparian owner. The Environment Agency will continue to own, operate, and maintain this larger sluice.



Photograph 2: *Environment Agency owned, operated, and maintained Wainford Sluice. We are not proposing to withdraw our maintenance responsibility for this asset nor are we transferring the rights and responsibilities for this structure to a third- party riparian owner.*

Source: River Waveney Control Structures Report

Who currently owns, operates, and maintains this mill sluice?

The mill sluice at Wainford is currently owned and maintained by the Environment Agency. The structure is not currently operated in flood events.

What is the current condition of this mill sluice?

The Environment Agency has a standardised approach to assessing and quantifying the condition of flood and coastal defence assets. Structures are inspected and then rated on a scale from 1 to 5, with 1 being 'very good' and 5 being 'very poor.'

The current condition of the mill sluice at Wainford is described as very poor (grade 5) with severe defects resulting in complete performance failure.

Repairs to this mill sluice have not been prioritised because the defects and overall performance of the structure do not increase flood risk to people and property (i.e. homes and businesses with a postcode).

Why is the Environment Agency considering withdrawing their maintenance responsibility for this structure and transferring ownership to a third-party riparian owner?

Between 2015 and 2020 the Environment Agency planned to spend over £1 billion on maintaining flood risk management assets. This is compared to the £812 million that was spent in the previous five years. This includes spending on maintenance work such as inspecting assets and carrying out repairs.

We recognise the devastating impact that the 2020 flooding had on people, homes, and communities across the River Waveney catchment. As part of our recovery work, we are reviewing how we undertake channel and mill sluice maintenance along this watercourse, and the role that all the structures play in reducing flood risk.

We have permissive powers to carry out flood risk management works on designated main rivers, but no legal obligation to do so. Consequently, we can stop maintaining and operating assets if the cost is judged to outweigh the benefits. Such decisions will be informed, for example, by government policy and assessments of flood risk, funding, or environmental priorities.

We are required to spend flood risk management funding within the financial guidelines set out by Defra and on works that have a demonstrable benefit in reducing flood risk to people and property (i.e. homes and businesses with a postcode). If the mill sluice at Wainford was not currently in place, we would not build a structure in this location to protect people and property from flooding. As a result, continuing to maintain a structure that is not a key asset in managing flood risk does not allow us to focus our resources where they are most needed and spend public money responsibly by investing in those activities that contribute most to reducing the likelihood and consequences of flooding.

In the context of this mill sluice that is associated with managing water levels for the mill, transferring maintenance responsibility and ownership to a third party will allow us to manage flood risk to people and property in Bungay and the surrounding area in the most efficient and effective way.

Many assets in East Anglia are owned, operated, and maintained by third parties without issue. In addition, there are benefits in allowing third party owners to manage structures such as mill sluices where they have the knowledge and financial capital to do so. These benefits include being able to operate the structure in a timely manner during flood events, as well as maintaining and operating the mill sluice to provide a wider range of benefits beyond those associated with flood risk management that the Environment Agency must focus on.

Who is the potential new owner/operator? What do they intend to do with the mill sluice?

It is important to note that we have not withdrawn our maintenance responsibility and/or transferred the rights and responsibilities for this mill sluice already.

We cannot share details of any prospective new owner/operator; however, we have been approached by a riparian owner who has expressed an interest in owning, operating, and maintaining the mill sluice at Wainford. As a result, informal conversations have taken place between the Environment Agency and this prospective new owner/operator. This landowner:

- Owns the land where the structure is located or owns land close to the structure and therefore is on-site and able to operate the mill sluice if required.
- Intends to invest the money required to repair and maintain the structure to the standard that the Environment Agency would expect.
- Intends to maintain the current situation with regards to managing water levels to prevent negative impacts on neighbouring landowners.
- Intends to repair and maintain the structure to improve water quality and for public amenity purposes.

Why are other riparian owners or public bodies not being given the opportunity to purchase this mill sluice?

Other riparian owners have not been given the opportunity to purchase the mill sluice because the Environment Agency is not required to sell this structure on the open market. This is because there is no right of public access to the structure.

On this basis, we are permitted to engage with specific riparian owners under Environment Agency/government spending rules and transfer maintenance responsibility/ownership to the individual(s) who are best placed to manage the asset in the interest of other landowners, which includes safeguarding the interests of the community with regards to water level management. This cannot be guaranteed if a structure is sold on the open market.

What is the monetary value of this mill sluice?

We are in the early stages of a government-led process and therefore the mill sluice has not been valued yet. This will be completed in due course; however, we will not be sharing the value of the structure with members of the public. This is because the valuation is part of an internal process that will enable us to assess the viability of our proposal.

How, although the mill sluice is primarily used to manage water levels, is it not a key asset in managing flood risk?

The numerous sluices along the River Waveney were originally constructed to maintain upstream water levels for the mills and for agricultural purposes. This was particularly important in the summer months with lower rainfall resulting in lower flow in the channel. Today, this water level management provides other benefits including landscape aesthetics as well as recreational opportunities through activities such as canoeing.

As a result, the mill sluice at Wainford is considered a water level management structure because it is located in the mill race and was specifically used to control the

flow of water to the mill. The main sluice now re-routes most of the river flow around the mill complex.

In addition, this mill sluice was never built to protect properties from flooding. Given the location and size of this structure, it does not hold back sufficient water when closed to reduce flood risk to people and property downstream, nor does it allow sufficient water to flow downstream when fully opened to reduce flood risk upstream.

Is there any modelling in place that supports the idea that this mill sluice is not a key asset in managing flood risk?

In 2012 a report was commissioned to model the influence of removing several structures along the River Waveney. This was done to help develop our understanding of how these structures impact flood risk.

The structures were modelled as removed because at the time, this was seen as the scenario that could have the greatest impact on flood risk to people and property.

The findings from this modelling report for the structures at Wainford, Wortwell and Hoxne can be found at the bottom of our web page in the summary modelling reports. If the water levels and flood extents do not change significantly when a structure is modelled as removed, this shows that the structure does not provide additional protection to people and property when compared to the natural river channel and is therefore not a key asset in managing flood risk to people and property. **This is the case for the structures modelled at these three locations.**

We have recently updated our hydraulic modelling for the River Waveney catchment to include flood extents and water levels for a variety of flooding scenarios, as well as structure removal. We are looking to share this modelling here once the final report is available.

The outputs from this most up-to-date modelling will be used to re-assess the viability of our proposal and ensure that clear guidance is provided to any owner/owner/operator if the process goes ahead.

But the 2012 modelling report for Wainford does not include the mill sluice that you are proposing to withdraw your maintenance responsibility for and transfer to a third-party riparian owner.

Whilst the mill sluice that we are proposing to withdraw our maintenance responsibility for and transfer ownership to a third party riparian owner was not included in this modelling, if the removal of the larger structures at Wainford (i.e. the main sluice and fixed weir) makes little difference to modelled water levels and flood extent, it is highly unlikely that a much smaller structure is going to affect water levels and flood extent to the point where it is a key asset in managing flood risk.

In addition, most of the flow is re-routed through the larger structures during times of normal flow, or across the floodplain when the structures are drowned out during flood events.

Could the operation of the mill sluice by a new owner or a failure to maintain it increase flood risk?

The mill sluice at Wainford is currently locked and not operated, even in flood conditions. This situation had no bearing on the impacts of the flooding in December 2020, which was the second largest fluvial event on record and was the result of the River Waveney catchment receiving 50mm of rainfall in 18 hours, and a total of 71mm in 96 hours. Even if this gate was open, this would not have alleviated flooding at Wainford and immediately upstream in Bungay and Ditchingham Dam.

However, we recognise that mill sluices have the potential to cause small-scale, localised flooding and therefore we are running several additional modelling scenarios for this mill sluice to simulate flood extents and water levels if this structure was closed. This would simulate what would happen if any new owner/operator neglected their responsibilities of opening the structure, particularly during smaller flood events.

The outputs from these modelling runs will be used to re-assess the viability of our proposal and ensure that clear guidance is provided to any owner/operator if the process goes ahead.

What legal obligations are in place to protect people and property from flooding?

The rights and responsibilities of a riparian owner have been established in common law for many years.

Whilst all riparian owners have the right to protect their property from flooding, they must accept flood flows through their land, even if these are caused by inadequate capacity downstream. In addition, a landowner has no duty in common law to improve the drainage capacity of a watercourse they own and therefore in the context of this mill sluice, any new owner cannot operate the structure in such a way as to protect their own property from flooding whilst also increasing flood risk to other peoples' property.

In addition, any new owner/operator of this mill sluice would need to fulfil their land drainage byelaw obligations. Of particular importance here is that all landowners owe each other a 'measured duty of care' to do what is reasonable to see that hazards - such as flooding - caused or exacerbated by the condition of their land do not harm their neighbours. If anyone suffers loss or damage because a riparian owner has changed or neglected a structure, then those affected can take civil action against them.

Other legislation, such as the Environmental Permitting (England and Wales) Regulations 2016, exists to ensure that landowners do not interfere with the

structures on their land and increase flood risk to themselves and others without also risking civil or criminal consequences.

As a result, the Anglian Region Land Drainage and Sea Defence Byelaws, which are enforced in accordance with the Water Resources Act 1991, and the Environmental Permitting (England and Wales) Regulations 2016 are in place to ensure that any new owner/operator manages the structure in such a way whereby it does not increase flood risk to other people and properties.

Further information on riparian ownership can be found here:
<https://www.gov.uk/guidance/owning-a-watercourse>.

Any new owner/operator will be made aware of their riparian rights and responsibilities along with their legal obligations under the legislation detailed above if the process goes ahead.

What measures are in place to ensure that any new owner/operator manages water levels in the public interest?

Whilst the mill sluice at Wainford is not a key asset in managing flood risk, we do recognise that it is important in terms of managing water levels, particularly for agricultural purposes.

Once again, the rights and responsibilities that govern riparian landownership are crucial here. For example, a riparian owner must let water flow through their land without any obstruction or diversion which affects the rights of others. Others have the right to receive water in its natural quantity and quality and therefore this means that water should not be taken out of a watercourse if it could lead to a lack of water for those who need it downstream. These rights and responsibilities apply to all riparian owners and therefore whilst any new owner/operator could manage water levels differently to how they have been managed in the past, they cannot do so in such a way that negatively impacts others.

Whilst some landowners would rather see water levels controlled by an independent body such as the Environment Agency, there are measures in place to ensure that future water level management does not negatively impact landowners if a small number of mill sluices are transferred to private owners.

The informal conversations that have taken place between the Environment Agency and the prospective new owner indicate that they wish to maintain the current situation with regards to water levels to prevent negative impacts on neighbouring landowners.

In addition, the comments we have received from members of the public will allow us to understand the specific impacts that a change in water level could have on other landowners and river users. This feedback will be shared with any potential new owner/operator prior to the transfer of rights and responsibilities to ensure that they understand how the operation of the structure could impact other riparian owners.

Lastly, any new owner/operator will be made aware of their riparian rights and responsibilities along with their legal obligations under the Anglian Region Land Drainage and Sea Defence Byelaws, which are enforced in accordance with the Water Resources Act 1991, and the Environmental Permitting (England and Wales) Regulations 2016 if the process goes ahead.

Did the sluices in Bungay and the surrounding area contribute to the flooding in December 2020?

The mill sluice at Wainford is currently locked and not operated, even in flood conditions. This situation had no bearing on the impacts of the flooding in December 2020, which was the second largest fluvial event on record and was the result of the River Waveney catchment receiving 50mm of rainfall in 18 hours, and a total of 71mm in 96 hours. Even if this gate was open, this would not have alleviated flooding at Wainford and immediately upstream in Bungay and Ditchingham Dam.

The vast majority of the other Environment Agency owned and maintained sluices functioned as expected during the December 2020 flood event. At the time, the Flood Warning Duty Officer was able to confirm that at Ellingham and Wainford, the main sluice gates were opening on the 23rd December and were fully open from the 24th until the 28th December. However, in the aftermath of the flood event we became aware of a fault with the Bungay Sluice. The transducer which determines the water levels was submerged, resulting in the gates operating independently of the river levels and closing for 16 hours on the 24th December.

Field Team members were on the ground every day throughout the flood event, conducting “river runs” to monitor the river, flood plain and sluices. However, access to the river banks proved difficult in many places, as the river had overtopped and filled the surrounding flood plain. As a result, we had no early indication that there was a fault with the gate, and only became aware of the problem after the event.

At the point when the gates were closing, the water had already overtopped the banks and was on the flood plain adjacent to the sluice, meaning any flows impeded by the gates closing were minor due to the volume of water already bypassing this structure. As a result, we believe the gate closure would have had a limited impact further upstream in Ditchingham Dam and the Bridge Street area of Bungay where we have received reports of internal flooding to properties.

The transducer has been replaced and raised to try and ensure that the structure functions as designed in the future. In addition, we are currently updating our flood risk model of the River Waveney and we will use it to help improve our understanding of how the operation of Bungay Sluice might impact flood flows.

The numerous sluices along the River Waveney were constructed to maintain upstream water levels for the mills and for agricultural purposes. Today, this water level management provides other benefits including landscape aesthetics and recreational opportunities through activities such as canoeing. However, with these benefits come risks associated with the automated sluices not functioning correctly during a flood event.

Whilst modelling outputs show that these main sluices serve little flood risk management benefit and we wouldn't build these structures now to protect people and properties from flooding, removing these assets could fundamentally change the water levels in the river with potential impacts on landscape aesthetics, agriculture, and amenity use. As a result, maintaining the current status quo with regards to water levels comes with the risk that the automated sluices may not function as designed.

How does this proposal reassure households affected by the flooding last winter and worried about future flooding?

We recognise the devastating impact that the flooding in December 2020 had on people, homes, and communities along the River Waveney.

Since the flood event last winter, we have been undertaking recovery work to restore assets, review internal procedures and processes, engage with communities and partners, and continue our staff training.

Our proposal to withdraw our maintenance responsibility for the mill sluice at Wainford forms part of this work. On the basis that this structure is not a key asset in managing flood risk, withdrawing our maintenance responsibility, and transferring ownership to a third party will allow us to focus our resources where they are most needed and spend public money effectively by investing in those activities that contribute most to reducing flood risk to people and property.

What else is the Environment Agency doing in response to the flooding last winter?

A briefing document that explains what we have been doing and the future work we have planned was distributed to the communities of Bungay, Ditchingham Dam, Earsham and Wainford in December 2021.

This briefing document can be found at the bottom of the Citizen Space web page and includes a factsheet on the Bungay and Surrounding Area Flood Risk Management Project along with a FAQ document that covers flood warnings, incident management, property flood resilience (PFR), channel maintenance and riparian owner rights and responsibilities.

How is this proposal logical when our climate is changing and more extreme weather events and resultant flooding are predicted in the future?

The Environment Agency is already driving efforts to protect and prepare the nation for the effects of climate change, delivering on its commitment to better protect 300,000 homes from flooding since 2015. It is preparing to deliver the Government's record £5.2 billion investment in new flood and coastal defences up to 2027 and implementing the Flood and Coastal Erosion Risk Management Strategy to protect and prepare homes and businesses from flooding and coastal change. This will help to create more climate resilient places.

Alongside this, we will continue to maintain current defences, work with nature to slow the flow of flood water, protect communities from flooding through our flood warning system and respond with the emergency services when flooding does occur. However, continuing to spend taxpayers' money on maintaining structures that are not key assets in managing flood risk does not allow us to focus our resources where they are most needed and spend public money responsibly by investing in those activities that contribute most to reducing flood risk.

If the mill sluice at Wainford was not currently in place, we would not be utilising any part of the £5.2 billion in investment to build a structure in this location to protect people and property from flooding. As a result, continuing to maintain this mill sluice will not allow us to adapt to climate change in an effective way, or provide the resilience that individuals and communities are seeking.

What knowledge, experience and training would the new owner/operator need to operate and maintain the mill sluice?

If the withdrawal of maintenance and transfer of ownership takes place, the new owner/operator will be provided with a comprehensive pack of information detailing how the mill sluice should be operated; recommendations for current and future maintenance; the modelling outputs currently available and any potential impacts on other riparian owners that could result from the mismanagement of the structure.

Would any new owner/operator have to maintain and operate the mill sluice in a particular way?

Any riparian owner who owns a mill sluice is legally obliged to maintain and operate the structure properly. If anyone suffers loss or damage because the structure has been changed or neglected, civil action can be brought against them.

Details on how to maintain and operate the structure will be provided in the comprehensive pack of information detailed above.

Can any new owner/operator remove the mill sluice once in their ownership?

The Environment Agency will not be removing any part of the structure as part of any transfer of ownership if the process goes ahead.

Any new owner/operator could remove the mill sluice in the future; however, they have a legal obligation to notify the Environment Agency if they wish to do so.

Under the Environmental Permitting (England and Wales) Regulations 2016, the prior consent of the Environment Agency is required for any proposed works, in, under, over or within 8 metres of a designated fluvial main river.

If any new owner/operator wanted to alter, remove, or replace the structure, we would not approve or consent to work that would increase flood risk, even if the works are structurally sound.

Legislation (such as the Environmental Permitting (England and Wales) Regulations 2016) exists to control what can happen to structures such as mill sluices. This is designed to ensure that landowners do not interfere with structures and increase flood risk to themselves and others without also risking civil or criminal consequences.

Will any new owner/operator take out appropriate insurances to protect the environment, as well as other people and property from flooding?

There will be no absolute requirement for any new owner/operator to take out public liability insurance. However, they may choose to take out appropriate insurance. This will be informed by, for example, the outputs from the soon to be completed flood risk modelling, as well as the potential impacts that have been shared by other riparian owners and interested parties as part of the stakeholder engagement process.

Who will be legally responsible for any damages, losses or repairs that may result from flooding?

Any riparian owner who owns a mill sluice is legally obliged to maintain and operate the structure properly. If anyone suffers loss or damage because the structure has been changed or neglected, civil action can be brought against them.

This is because all landowners owe each other a 'measured duty of care' to do what is reasonable to see that hazards - such as flooding - caused or exacerbated by the condition of their land do not harm their neighbours.

Whilst we appreciate that some riparian owners would prefer the risk to be managed by the Environment Agency rather than rely on taking civil action against the person who owns, operates, and maintains a particular mill sluice, we are not funded to provide a co-ordinated approach to operating all the structures. In addition, we can no longer continue to maintain structures that serve little flood risk management benefit, and we can stop maintaining and operating structures if the cost is judged to outweigh the benefits.

Any new owner/operator will be made aware of their riparian rights and responsibilities along with their legal obligations under the Anglian Region Land Drainage and Sea Defence Byelaws, which are enforced in accordance with the Water Resources Act 1991, and Environmental Permitting (England and Wales) Regulations 2016 if the process goes ahead.

Will the Environment Agency be retaining any oversight of the condition, maintenance, and operation of this mill sluice?

We routinely inspect both Environment Agency and third-party assets, and repairs are prioritised where there is threat to lives and livelihoods.

When inspecting third party assets, we focus on high-consequence flood defences because they contribute to managing flood risk in a location where the consequence on people and property of an asset failing is high.

On the basis that the mill sluice at Wainford is not a key asset in managing flood risk, we have no plans to continue to inspect the structure in the future if ownership is transferred to a third party.

Any new owner/operator may choose to employ an agent or nominate another person to operate the structure when they are not on-site.

What measures are in place to mitigate any negative impacts on the environment?

The mill sluice at Wainford is not located at a designated site for protected species, habitats, or conservation and therefore if we withdraw from maintaining this structure and transfer ownership to a third party then we do not envisage that our proposal will result in negative environmental impacts. However, if any new owner/operator does not carry out their responsibilities with regards to protecting the environment then they could be liable for any damages, either intentionally or unintentionally, and face legal action.

All riparian owners have a right to receive water in its natural quantity and quality. This means that they must let water flow through their land without polluting the watercourse, leading to negative environmental impacts, and affecting the rights of other landowners. In the context of this mill sluice, any new owner/operator cannot maintain or operate the structure in such a way that could lead to pollution of the watercourse.

In addition, any new owner/operator must not use a mill sluice to create an obstruction, either temporary or permanent, that would stop fish and eels passing freely. In addition, they have a legal obligation to notify the Environment Agency if they would like to alter a structure that acts as an obstruction to a watercourse. Under the Eel Regulations, in some cases it may be an offence if any new owner/operator does not notify us.

If any new owner/operator wanted to alter or replace the structure, as part of the permitting process they may be required to include a fish or eel pass when the structure is rebuilt or refurbished to any extent. We will not approve or consent to work that would harm the environment, even if the works are structurally sound.

Withdrawing our maintenance responsibility and transferring ownership to a third party may create environmental opportunities. For example, by investing in this mill sluice so that it is fully operation and regularly maintained, a new owner/operator may improve water quality in the vicinity of the structure by preventing the build-up of stagnant water.

If the Environment Agency is not looking to maintain mill sluices along this watercourse, why are landowners paying rates?

The rates that landowners pay are not necessarily invested in that area to manage flood risk. We invest in flood risk management works where the risk is highest, wherever it is across the country. Funding is allocated consistently across the country, and we target national investment to reduce the risks of flooding to as many people as possible, and to get the best outcome for every pound we spend. We work with local partners to consider local needs and opportunities when deciding where to invest.