

**Update on the Transfer of Responsibilities for Breydon Water  
and the Lower Bure**

Report by Chief Executive and Director of Operations

**Summary:** This report sets out the current position with regard to the transfer of Breydon Water, considers the management implications and sets out the immediate maintenance activity which will be carried out this summer for members' information.

**1 Background**

- 1.1 During its meeting on 7 June 2012, the Committee received a report and made a number of comments on the Breydon Water transfer. Officers have subsequently generated a report for the Broads Authority, taking account of the comments made, setting out the current position with regard to the transfer, considering the management implications and setting out the immediate maintenance activity which will be carried out this summer. A copy of the report to the Broads Authority is included at Appendix 1 for members' information.

Background papers: Nil

Author: John Organ

Date of report: 4 July 2012

Broads Plan Objectives: NA4.1

Appendices: APPENDIX A - Report to Broads Authority on 13 July 2012 –  
"Update on the Transfer of Responsibilities for Breydon Water  
and the Lower Bure"

**Broads Authority**

13 July 2012

Agenda Item No 13

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and the Lower Bure**

Report by Chief Executive and Director of Operations

**Summary:** This report sets out the current position with regard to the transfer of Breydon Water, considers the management implications and sets out the immediate maintenance activity which will be carried out this summer for members' information.

**Recommendations:**

- (i) That, subject to the outcome of the Member Workshop of 12 July discussing spending priorities, to proceed with the immediate maintenance and management issues by authorising officers to:
  - (a) develop a tender and award a contract for the hydraulic/sediment modelling of Breydon Water so that the role of the Turntide Jetty in particular can be assessed;
  - (b) purchase a more appropriate vessel for patrolling Breydon Water and the Lower Bure; and
  - (c) install lay by moorings either side of Breydon Bridge.
- (ii) That the steps being taken by Officers on working closely with water skiers using Breydon Water to assist them in meeting the requirements for water skiing in the Broads as established by the Broads Authority Act 2009 be endorsed.
- (iii) That the timescale set out in paragraph 7.5 for the assessment of waterskiing on Breydon Water following the process set out in the Broads Authority Act 2009 and the legal agreement with British Waterski and the Eastern Rivers Ski Club be endorsed.
- (iv) That officers should exercise discretion in accordance with the Authority's adopted Enforcement Policy in dealing with any breaches of the current arrangements.
- (v) That the view that officers are taking in regard to charges for jet skis transiting the Lower Bure be noted and endorsed.

**1 Background**

- 1.1 At its meeting on 16 March 2012, the Authority resolved, in its confidential session, that in the light of the improved offer from the Great Yarmouth Port

Company and the unanimous support of the Navigation Committee, to accept the terms proposed and proceed with the transfer of the responsibility for navigation in Breydon Water and the Lower Bure setting the Appointed Day as 1 June 2012 in accordance with Section 35 of the Broads Authority Act 2009.

- 1.2 The Broads Authority also resolved that charges for vessels using, moored or navigating the area are levied from June 2012 but that a transition period is given for the Construction Standards requirements, in line with the recommendations of the Boat Safety Management Group, until 1 April 2013.
- 1.3 This represented one of the final major steps in the implementation of the 2009 Broads Authority Act, whose primary focus had been the improvement of public safety on the Broads, and the outcome of negotiations with the Great Yarmouth Port Company over the previous six months.
- 1.4 Following the resolution by the Authority the legal agreement was completed and the appropriate advertisements placed in the London Gazette and Eastern Daily Press. The Port Company insisted that, because of its commercial interests, the matter be treated in confidence until agreement had been reached and formal notice of the transfer had been advertised. The advertisement was placed on 3 May and, at the earliest opportunity, the Authority distributed around 140 letters to boats, boatyards and marinas in the affected area, to provide information directly to those potentially affected by the transfer.
- 1.5 The transfer was completed on 1 June and since that date there have been no significant incidents. This report provides an update on the maintenance of the area which was a key issue for members and on the management of activities where the Navigation Committee has raised concerns, particularly about water skiing.
- 1.6 The background and history relating to waterskiing issues, current management controls and consultation mechanisms is set out in Appendix 1 for members' information.

## **2. Maintenance Works**

- 2.1 Breydon Water is one of the most difficult areas for the novice hirer to negotiate, and ensuring that it is well maintained is a high priority. As previously agreed, the Authority will be completing a number of maintenance works in the area as a matter of urgency (as set out in Appendix 2). A recent site inspection confirmed that there are a number of channel markers which need to be installed to reduce the potential for grounding as a result of 'corner cutting' and discussions are currently ongoing with contractors to determine availability to undertake the works.
- 2.2 Additionally, the Authority will be replacing the bridge gauge boards to ensure a consistent approach to signage, providing both imperial and metric gauges at each board, and advance boards to each bridge. This work should be completed by mid July, in advance of the major school holiday. Additionally,

- the feasibility of providing advance gauge boards at Berney Arms and Burgh Castle is also being investigated.
- 2.3 At its meeting in January the Authority also resolved to investigate the options for modelling the flows and sediment transport in the area to better understand the system and the role Turntide Jetty plays. Officers are developing the specification for completing a bathymetric survey, and are developing the scope of the study to consider the role that Turntide Jetty and additional structures such as the NRA training wall also play in the system, and the implications of maintenance, replacement or removal on the system.
- 2.4 The Boating Safety Management Group has also previously recommended extending the Ranger Service to cover a five day patrol during the winter period, and provision for this has been made in the budget and a suitable vessel for winter use on Breydon Water is being investigated.
- 2.5 Demasting moorings either side of Breydon Bridge have historically been provided, firstly by timber dolphins and more recently by steel posts with jug handles. However, due to deterioration these are no longer considered suitable and are not often used. Additionally, there has been a desire to create layby moorings on the downstream side of Breydon Bridge which could also serve as a safe mooring for vessels waiting for the tide to drop before navigating the Bure bridges. This suggestion was supported in the recent boat owners survey as a priority. It is therefore suggested that the feasibility of creating a run of moorings in this reach is investigated.
- 2.6 The Navigation Committee was consulted on the priorities for additional expenditure and It was noted that, whilst a case could be made for all the items on the list, there was particular support from the Committee for both the new moorings and the acquisition of a new launch for Breydon Water.

### **3 The Management of Activities on Breydon Water**

- 3.1 The Broads Authority Act 2009 at Section 35 (2) applies all the existing relevant byelaws to Breydon Water and the Lower Bure as from the Appointed Day. This gives the Authority the ability to manage the area consistently with the rules which apply across the rest of the navigation, and will restrict some of the activity which has previously taken place in the area.
- 3.2 However, it should be noted that the Great Yarmouth Port Authority byelaws are now disappplied, and therefore Breydon Water and the Lower Bure are not covered by a speed limit, as these are all geographically defined within the Speed Limit Byelaws 1992. It is anticipated that initially most circumstances can be managed by Navigation Byelaw 10, "Vessels to be navigated with care".
- 3.3 The new provisions specifically include the following restrictions:
- Section 26 of the Broads Authority Act precludes the use of any part of the navigation area being used for waterskiing and wakeboarding unless designated by the Authority. The Waterski

Review Panel considered the position in relation to Breydon Water at its first meeting in August 2009 and determined that it would not be appropriate to consider any possible designation until the transfer was concluded, so waterskiing in Breydon Water is not currently permitted.

- Personal watercraft (jetskis) which are regulated under Byelaw 23 of the Registration byelaws. Their use is also prohibited in the navigation area except in any designated areas. The Authority has previously resolved not to designate any such areas, although a trial of jet ski racing took place once on Oulton Broad as part of the power boat racing agreement.
- The use of ringos (inflatable's towed by a Light Sports or water ski vessel) is a grey area, previously prevented under the Speed Limit Byelaws but which would now need to be considered under the Care and Caution byelaw, or possibly through the application of a Special Direction. However, they are clearly not allowed to be towed by water ski vessels as it is defined as forbidden under the legal agreement. Any use of these craft in Breydon Water and the Lower Bure is therefore currently an offence.

- 3.4 At the Authority's Annual Public Meeting on 18 May 2012 questions were raised by members of the public about the arrangements for undertaking activities such as water skiing following the transfer of responsibilities. Officers responded indicating that water skiing was not permitted on Breydon Water with effect from 1 June and that the intention was to carry out a site based risk assessment over the winter. It became apparent that whilst aware of the safety arrangements on the rivers, the questioner was unaware of the effect of the transition on his activities, although he had received a copy of the letter distributed by Rangers.
- 3.5 Following the public meeting, officers of the Authority redoubled their efforts to do what they could to handle transitional arrangements for those who have habitually used Breydon up until now in a sensitive and appropriate manner, while having proper regard to the safety of all users of the Broads. Officers have spoken directly to a number of individuals including a boatyard owner, a fisherman, a jet skier and three water skiers and are in discussion with affected individuals to explain the necessary process and seek to identify ways in which the impacts can be reduced or mitigated, including facilitating the permit application process. A press release was agreed with the Eastern Rivers Ski Club to clarify the position regarding water skiing (See Appendix 3).
- 3.6 The Authority is in consequence in the process of establishing a Breydon Water and Lower Bure User group meeting, which will provide a forum for all interested parties to discuss matters relevant to the management of the area. A verbal update will be given.
- 3.7 These matters were considered by the Navigation Committee at its last meeting, and concerns expressed about the impact of the transfer on water skiers in the area. During the lead up to the transfer of Breydon and the Lower Bure into the Authority's navigation area on 1 June, Broads Authority and

Navigation Committee members had not been specifically alerted to the restrictions which would come immediately into force and they did not therefore consider the potential impact of these changes on current users. It was noted that the Authority has already agreed a generic risk assessment for waterskiing activity, and has a series of agreed mitigation/ control measures in place for the ten zones currently designated. Members of the Navigation Committee expressed concern about the immediate restriction on water skiing but, having understood the legal difficulties around any temporary arrangements, supported the proposal that officers proceed with the site specific risk assessment of waterskiing on Breydon Water and urgently consider its designation and that officers would also work closely with any skiers known to be directly affected so that they had a full understanding of the Authority's position and the action it was taking.

3.8 Following the Navigation Committee meeting officers also examined whether it would be possible to come to an early view on the designation of a water ski zone – possibly a temporary one - on Breydon Water. This would require the Authority to set aside the legal agreement with the Eastern Rivers Ski club and British Waterski, requiring their agreement to do so. Even if this agreement were forthcoming, full compliance with the 2009 Act requires the Authority to undertake a period of public consultation and to consider any objections so it is likely that the earliest a designation could be achieved would be in late September 2012. Legal advice is clear that there is a process which the Authority must follow before any designation of a waterski zone can occur, and that any attempt, however well-intentioned, to short circuit this even temporarily potentially prejudices a properly taken (and final) decision, and could be seen as a clear breach of the designation requirements of the 2009 Act.

3.9 In accordance with the agreed process, a draft site specific risk assessment of waterskiing on Breydon Water was carried out on 21 June 2012, completed by the Head of Safety Management, Chairman of the Waterski Review Panel, Eastern Rivers Ski Club and a local water skier. This will be discussed alongside a consideration of the potential to zone the area as part of the Review Panel deliberations which has been arranged for 31 July 2012, and whose recommendations will also be considered by the Boating Safety Management Group at its next meeting on 4 September 2012.

3.10 As set out in the Act and legal agreement with waterskiing bodies, further consultation required includes:

Broads Forum	4 October 2012
Navigation Committee	11 October 2012
Broads Authority	23 November 2012
Consultation with Natural England, any residential occupiers and other affected bodies together with a public notice (minimum of 28 days)	
Determination by the Broads Authority	18 January 2012
Start of new zone (if agreed)	April 2013

- 3.11 As noted in Section 3.3 above, waterskiing and use of jet skis on Breydon Water is currently an offence. The Breydon Ranger Team is also recording these activities, and to date there has been no waterskiing or jetski transit witnessed by either the Rangers during their patrols or staff on Breydon Bridge, which is staffed from 6.00am to sunset.
- 3.12 The Authority has adopted an enforcement policy approach which generally takes a sequential method of providing advice, then giving a warning before pursuing any prosecution, and the Broads Authority adopted Enforcement Policy is provided at Appendix 4. This means that any skiers on Breydon Water will generally be spoken to in the first instance by Rangers, and the permit application process will be explained to them along with the alternative zones. Any repeat offences will be considered on a case by case basis prior to any further action.
- 3.13 It is proposed that the next meeting of the Boating Safety Management Group on 4 September 2012 should after consideration of waterskiing on Breydon Water also review personal watercraft, ringos and kitesurfing which are all activities which have occurred on Breydon Water in the past, as well as completing the necessary risk assessment of punting in order to ensure that the Hazard Review addresses each possible new activity in the Broads Authority's area, and identifies any necessary risk control measures such as further regulation or site specific mitigation measures.
- 3.14 With regard to use of personal water craft, officers have identified that transit of the Lower Bure into the Haven and out to sea could be facilitated via a passage toll, which does not require registration of the craft. The cost of a passage toll is currently £10.60 and is described in the Schedule of Tolls as applicable to vessels making a single, one way journey through the Authority's navigation area from a starting point outside the navigation area to a finishing point also outside the navigation area and the journey must be finished in a single day. This allows vessels entering from Great Yarmouth or Lowestoft harbours to make passage to a private dyke or mooring place outside the navigation area without payment of a short visit or annual toll and is relevant in the example of a jet ski as they are not kept in the navigation area but are slipped for each transit. Officers are of the view that it would be appropriate to introduce a single payment of £10.60 for the return journey as it is completed within a single day.

#### **4 Future Management Options**

- 4.1 The Broads Authority Act 2009 sets out the processes required for the Broads Authority to introduce any new form of regulation such as General Directions to regulate speed in the area, and additionally the consultation processes in respect of waterskiing and wakeboarding are also set out in a legal agreement with British Waterski and Eastern Rivers Ski Club as previously detailed.
- 4.2 The Broads Authority, under its adopted Safety Management System, has an agreed process for considering any new marine activities in order to update the Hazard Review, and to undertake risk assessments in order to categorise

the activity and determine whether the risk level is As Low As Reasonably Practicable (ALARP). Waterskiing activities have already been considered through this process, and the Authority has agreed a position which confirms that waterskiing can be considered ALARP providing the risk control measures are all adopted and in place. These risk control measures have all been incorporated into the Waterski permit conditions.

- 4.3 Alongside consideration of the safety implications for any of these activities, and as part of making any decisions about the management of the area, the Broads Authority must also have regard to the protection given to Breydon Water as a protected wildlife site and its designated as such under both UK and International legislation (as a Site of Special Scientific Interest and Special Protection Area and Ramsar site) and be supported by the necessary environmental information such as required Appropriate Assessment under the EU Habitats Directive. Natural England's remit is to advise on these designations and the implications for activities on this site, and it is proposed that the Authority establish an early dialogue in order to scope out any Appropriate Assessment which may be required. Similarly, any future maintenance activities will require Natural England consent. This process could be simplified if a Waterspace Management Plan was developed for the area with partners and agreed, to include identification of routine maintenance activities.

## **5 Conclusion**

- 5.1 Taking account of the background information, legal advice and issues outlined above, it is therefore concluded that the Authority needs to adopt a proportionate and measured stance to the restrictions placed on high speed use of Breydon Water by a small number of individuals. This means working closely with water skiers using Breydon Water to assist them in meeting the requirements for water skiing in the Broads as established by the Broads Authority Act 2009, and exercising discretion in accordance with the Authority's adopted Enforcement Policy in dealing with any breaches of the current arrangements, whilst at the same time progressing the review and consideration of designating Breydon Water as a water ski zone, in accordance with the timetable and process as set out in Section 3.10 and 4.3 Further work is also required to consider the wider pattern of maintenance, use and activities in the area, as part of the development of a strategic management plan for the area.



Background papers:	Legal Agreement with the Port Authority Legal Agreement with the Skiers – British Water Ski and Eastern Rivers Ski Club Broads Authority Act 2009
Author:	Trudi Wakelin
Date of report:	19 June 2012
Broads Plan Objectives:	NA4.1
Appendices:	APPENDIX 1 - Background note – History of Waterskiing in the Broads APPENDIX 2 – Maintenance Schedule APPENDIX 3 - Press Release May 2012 APPENDIX 4 - Enforcement Policy

## Waterskiing on the Broads

- 1.1 Waterskiing has long been a contentious issue in the Broads (and in the Lake District National Park where a speed limit effectively bans the sport from Lake Windermere), with Byelaws being introduced in 1978 by the Great Yarmouth Port and Haven Commissioners which restricted skiing to the ten river zones (the Haven Byelaws 1997 ban waterskiing in the Haven). These were reconfirmed by the Broads Authority in 1992, which then set up an independent working group to undertake a major study into water skiing in the Broads in 1994 - 1996, including investigations into;

- Boat wash and bank erosion,
- Noise assessment
- Topographic and vegetation survey
- Public opinion survey
- Disturbance to wildlife
- Potential alternative water ski sites in Norfolk and Suffolk.

- 1.2 The recommendations of this report were reported to the Broads Authority which took a decision in 1998 that waterskiing was an inappropriate activity in the Broads and should therefore be banned. Further investigations were initiated to look at the likely costs of the legal process and risks of a Public Inquiry. A working group was also set up to look into possible alternative locations for waterskiing, although this resulted in no reasonable alternatives being identified. In the interim, skiing continued under the control of the Speed Limit Byelaws.

- 1.3 The independent Formal Safety Assessment carried out in 2003 under the Port Marine Safety Code also identified the risks associated with water skiing as being 'intolerable' which prompted further action to consider how the risks could be reduced.

- 1.4 After further study and detailed consideration this decision was reversed in 2003, instead introducing a voluntary code of practice which could then be monitored and evaluated. The measurement measures which were introduced included:

- Membership of Eastern Rivers Ski Club
- Adherence to the Byelaws (including wash and no jumping)
- Boat drivers to have British Waterski Boat Drivers Award
- Compulsory third party insurance.

The requirement for a permit with conditions covering these criteria was introduced from 1<sup>st</sup> April 2004, and a three year trial period agreed.

- 1.5 In 2005/6/7 a review of the voluntary management regime was conducted which determined that the measures were appropriate and proportionate to the risks, and that the Authority would therefore seek the necessary powers through the development of the Private Bill, to be able to regularise the scheme as mandatory requirements. Also during the 2005 review, as part of

the Authority's requirements under the Port Marine Safety Code site specific risk assessments were undertaken to identify any issues of concern, including at Breydon Water.

- 1.6 Development of the provisions of the Private Bill was undertaken in 2006-07, with a legal agreement signed with British Waterski and Eastern Rivers Ski Club in February 2007. At meetings in June 2007 the Broads Forum and the Navigation Committee were consulted on the outcome of the three-year fundamental review of water skiing on the Broads. Part of this agreement details the establishment of a stakeholder panel, which was brought together to undertake this review. The membership of the Panel was as follows.
- Independent Chair appointed by the Broads Authority (Ian White)
  - Broads Authority Member (Anthony Coe)
  - British Water Ski (Barry Odell)
  - Broads Society (Dr Martin George)
  - Eastern Rivers Ski Club (Julian Barnwell)
  - Eastern Sports Council now Sport England East (Gareth Turnbull)
  - Norfolk and Suffolk Boating Association (Phil Ollier)
  - RSPB (Tim Strudwick)
  - Royal Yachting Association (Mike Evans).
- 1.7 Whilst at both meetings several members expressed the opinion that waterskiing and wakeboarding were not appropriate activities for the Broads, it was recognised that the Panel had reached a consensus and that the findings were supported. At the subsequent Broads Authority meeting it was resolved that:
- waterskiing be allowed to continue on the Broads subject to the agreed management measures; and
  - that officers be authorised to take such steps to progress the implementation of the resolution in advance of achieving Royal Assent of the Broads Bill.

This latter process included multiple consultation opportunities, with stakeholder representative groups, public notices in the press to the public, landowners, District Councils and other statutory bodies.

- 1.8 A Waterski Review Panel was established under the auspices of the 2009 Act in July 2009, whose membership included:

Ian White (in the Chair)	Independent Chair – Appointed by Broads Authority
David Broad	Broads Authority appointed Member
Rachel Tallon	British Waterski
Peter Horsefield	Broads Society
Julian Barnwell	Chairman of the Eastern Rivers Ski Club
Philip Raiswell	Eastern Sports Council (Sport England)
Richard Card	Norfolk & Suffolk Boating Association

Tim Strudwick

RSPB

Phillip Ollier

RYA

- 1.9 The Panel's role is to review and advise the Authority on an appropriate management framework; set out the principles which the Authority would take into account in exercising these powers; and record a common understanding of the definitions of waterskiing and wakeboarding. These arrangements were reported to the Navigation Committee in April 2009 and the Broads Authority in May 2009. It is worth noting that there were no objections raised to this provision throughout the development of the Act, other than from individuals who wished to see waterskiing banned from the Broads altogether. At subsequent meetings of the Panel the membership has been widened to include the Broads Hire Boat Federation and Broads Angling Strategy Group, and most recently agreement has been reached to invite a rowing representative.
- 1.10 At its meeting of 13<sup>th</sup> August 2009 a series of proposals regarding the introduction of waterskiing management measures resulting from the Act, including confirming zones and times, need for permits and permit conditions, were all agreed. Additional actions to develop wake and noise testing, and steering checks on ski boats and zone specific mitigation measures were also discussed and planned. Discussion also covered the possibility of an alternative water area to be used for wakeboarding, with Whitlingham and Breydon Water being suggested. The position with regard to taking on responsibility for Breydon Water was outlined and it was confirmed that, although there was the potential benefit for the sport to be conducted in that area, Breydon also had its own unique risks in the form of channel markers and mud flats. Data on the use of Breydon Water was being collected and a risk assessment would be brought to the next meeting but that if it was considered suitable, and that the transfer which was subject to an Appointed Day provision was agreed by the BA/Port, it could be further considered and the Panel was advised that this could be delay of circa two years.

## **2. Waterskiing on Breydon Water**

- 2.1 At the time of the review of the introduction of waterski management issues resulting from the provisions in the 2009 Act, any decision about implementation of a further zone on Breydon Water was deferred until after the transfer of Breydon into the Authority's navigation area had been finalised. Risk assessments, however, for water skiing undertaken in 2005 had examined the five zones in the Waveney, the five in the Bure, and Breydon Water against seven risk factors: nature of the bank, shelter, bends, fixed hazards, the potential for conflict with other users, the minimum width of run and road access for emergency vehicles. Breydon was identified as the most hazardous partly because of the danger posed by the channel marker posts.
- 2.2 At the meeting of the Water Ski Review Panel in June 2010 a further risk assessment report was considered which included all ten river zones and Breydon Water. After discussion it was agreed that Breydon data should be

removed from the table and not considered further, and the review process which would be required once Breydon became the Authority's responsibility was reiterated to the members.

- 2.3 During the confidential discussions on the transfer of responsibility both in the meetings of the Navigation Committee and the Broads Authority the debates focussed largely on the key matters of improving public safety in the area, and the potential financial and other liabilities arising from the Authority's assumption of responsibility for the numerous structures in the affected area. The issues of management of navigation activities on Breydon Water was touched on in the reports which went to the Navigation Committee in December 2011 and the Broads Authority in January 2012 but was not seen as a key issue as alternative mechanisms were believed to be adequate to manage these matters.