

Legality of Closed Broads
Report by Director of Operations

Summary: This report sets out the current position in relation to status of broads water bodies for members information. Member's views are sought in respect of any further action to be taken.

1 Background

- 1.1 Further to previous discussion in respect of the rights of navigation in Broads waterways, it was agreed that a report be prepared for the Navigation Committee to provide background information.

2 Previous Legal Advice

- 2.1 Since the establishment of the Broads Authority there have been a number of occasions where the public rights of navigation have been questioned.
- 2.2 The Authority's advice, received from the Broads Authority Solicitor and reported to the Navigation Committee in 1992 is set out below:

"Generally speaking, there is a public right of navigation over all rivers which are tidal (i.e. subject to the ebb and flow of ordinary or mean tides and including those waters not only where there is a horizontal ebb and flow but also where there is a vertical rise and fall caused by the ordinary sea tide). However, the public right of navigation does not extend automatically to waterways which are not tidal or (it seems) to artificially created inland waters such as the Broads, even though they may be tidal.

This distinction rests on ownership and in particular on the fact that the bed of the tidal rivers belongs, or used to belong, to the Crown. This is not the case with non-tidal rivers or artificially created water areas such as Broads, where a public right of navigation can be established only by a) long usage, b) Act of Parliament or c) express dedication by the owner of the soil of the waterway."

- 2.3 The Solicitor also provided further advice in 1993 to expand on the potential of accruing rights through long usage.

"In respect of establishing rights through usage, here the legal position is by no means clear, but the cases suggest that a public right of navigation may arise in one of the following ways:

- i) *By long user. However, there is a difficulty in applying this principle to the Broads because, generally speaking, the principle will not apply if rights could not have existed at the legally significant date of 1189. In addition, this general principle is more associated with private, rather than public, rights.*
- ii) *By implied dedication. In this case, an intention to dedicate a waterway for public use may be inferred from the conduct of the owner of the waterway. However, the conduct of the riparian owner must be such as to give rise to the inference that he positively intended to dedicate the waterway as a public navigation, and user by the public will not in itself be sufficient to prove dedication.*

Consequently, and whilst I recognise that most Broads are tidal, I believe that, on the assumption that they were originally (and remain) in private ownership, they (and other artificially created inland waters) are only subject to a public right of navigation if such rights have been created by a) b) or c) above.”

2.4 This advice was also provided to the Norfolk and Suffolk Yachting Association in 1994.

2.4 Additionally, the Broads Authority also sought Counsel’s opinion in respect of rights of navigation when considering a project to close a wherry dyke off Oulton Dyke. The advice received corresponded with that set out above, and recommended that because of the complexity in these cases, each site would need to be investigated individually prior to considering any challenge.

3 Strategic Review of Broads

3.1 Appendix 1 sets out a schedule of water bodies in the Broads, and identifies their accepted status over the last 25 years and before.

3.2 It can be seen that there are 12 Broads accepted as public, with two additional agreements which have been established to provide access to Bridge Broad and Hoveton Little Broad.

4 Next Steps

4.1 There are five private broad’s identified where no access is permitted. These are either in private ownership or owned by conservation organisations.

4.2 Members’ views are sought as to whether any further action should be taken.

Background papers: None

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Broads Plan Objectives: None
Appendices: APPENDIX 1 – Schedule of Broads

APPENDIX 1

Schedule of Broads

River	Broad	Status
Bure	Nortons	Private, agreement for 4 guided canoe trails per year
	Belaugh	Private, agreement for 1 guided canoe trail per year
	Bridge	Private, Leased by BA to allow access
	Daisy	Private, access to private properties
	Wroxham	Private, access permitted 364 days
	Hoveton Great/ Hudsons Bay	Private
	Salhouse Little (Lily)	Private
	Salhouse	Public
	Decoy	Private
	Hoveton Little (Blackhorse) Pound End	Private, access permitted summer only Private
	Burntfen	Unconnected
	Cockshoot	Unconnected, Dammed off in 1982
	Ranworth Inner	Private
	Malthouse	Public
	Sotshole	Unconnected
	South Walsham Inner	Private, access permitted but no mooring/mud weighting
	South Walsham Outer	Public
	Upton Great& Upton Little	Unconnected
	Mautby Decoy	Unconnected
Ant	Sutton	Public, channel only
	Barton	Public
	Catfield	Unconnected
	Cromes	Unconnected
	Alderfen	Unconnected
Thurne	Calthorpe	Unconnected
	Horsey Mere	Public
	Blackfleet	Unconnected
	Hickling/Heigham Sound	Public
	Martham North and South	Private, navigation channel between Broads
	Womack Water	Public
Trinities	Oremsby/Rollesby/Ormesby Little /Filby/Little	Unconnected
Yare	Surlingham	Public, small craft only
	Brundall Inner/ Outer	Unconnected/ private
	Bargate	Public
	Strumpshaw	Unconnected, dammed off in 1978
	Wheatfen	Private
	Rockland	Public
	Buckenham and Hassingham	Unconnected
Chet	Hardley Flood	Unconnected
Waveney	Barnby	Unconnected
	Oulton	Public
	Flixton Decoy	Unconnected
	Fritton Lake	Unconnected