

Summary of responses to the consultation 'A New Era for the Waterways', 30th March – 30th June 2011

September 2011

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1. Introduction

Background to proposal

Currently, the Secretary of State for Environment, Food and Rural Affairs is responsible for over 4,000 km of the inland waterway network of England and Wales. The two largest navigation authorities managing this network on behalf of the Secretary of State are British Waterways, and the Environment Agency.

Public ownership, however, limits the network's ability to adapt and innovate. Government believes that the creation of a New Waterways Charity will unlock the full potential of the waterways to thrive in the future; it will enable it to broaden and strengthen its funding, and increase the role of local communities in helping to decide how their local canal or river is run.

What we were seeking views on and why

The consultation invited views on the Government's proposals to place those waterways in England & Wales which are currently owned by the state in trust for the nation through the establishment of a civil society organisation, a New Waterways Charity (NWC).

It consulted on the new charity's objectives and purpose, governance model and operation and how the charity could connect most effectively with the broad range of waterways users. It asked for views on how we can best secure the financial sustainability of the waterways.

The creation of a new charity will place the waterways firmly at the heart of civil society, closer to the communities who use and value them, those who know them best. The aim of the consultation was therefore to assist government in the creation of a new charity which will be, from the beginning, and as far as possible, shaped by these communities and stakeholders.

Transition Trustees' input to this response

In developing this response we have worked closely with the Transition Trustees of the new charity (a list of the Transition Trustees can be found at Annex A). The response has been agreed with the Trustees but indicates those areas which will be agreed with them over the coming months pending further discussions.

2. Summary of responses and the Government response

We received over 350 responses to the consultation. A list of respondents is at Annex B. Names of individual respondents are not listed here for data protection reasons, though many stated an affiliation with one or more of the organisations who had responded to the consultation on behalf of its membership.

In addition we also held a series of consultation workshops with different stakeholder groups throughout the consultation period, including volunteers, civil society organisations, boating organisations, and stakeholders in Wales.

The main points raised by the consultation, and the Government's response to each area, are given below. The approach indicated in this response has been agreed with the Transition Trustees.

A new 'national trust' for the waterways

EA and other navigations

You said: A decisive majority of respondents supported the charity working to include other navigations, including EA navigations in the next Spending Review. Respondents argued that this would facilitate better overall management of the waterways, cost savings and efficiency of administration. Some suggested that the charity's constitution should subsequently be flexible enough to include the new waterways.

The Government's response: The Government re-confirms its commitment to delivering a "national trust for the waterways" that includes the British Waterways and the Environment Agency navigations, with the inclusion of the EA navigations into the new waterways charity in 2015, subject to affordability and the agreement of the NWC Trustees at that time. The decision would be advised by a Government review of the charity's progress and achievements, and the options for transferring the EA navigations, in 2014, i.e. two years after the charity's creation.

On smaller navigations, the charity will be set up in such a way that over time, it may agree to partner or merge with these other navigations if they so wish. As part of its transition to civil society, British Waterways has already agreed to merge with The Waterways Trust.

Trust Obligations

You said: Respondents were equally split between being broadly supportive of the suggested requirements of the Trust Obligations, and those wishing to see substantial amendments.

A very wide range of suggestions for improvement were made, many of which included questions from respondents seeking assurance that certain obligations would be picked up elsewhere if not through the Trust Obligations. The most common suggestions for improvement were: include the obligation to maintain the canals for navigation; explain 'free access to the towpaths'; commit to NWC cooperating with other, local interest groups and communities; and looking ahead to the inclusion of EA navigations, how related obligations could be captured here.

The Government's response: There are various ways in which the public benefits delivered by the new charity will be safeguarded for the future. A framework to illustrate this is set out in Annex C.

The significance of the Trust Obligations is that the Government, as the body transferring the property to the charity, can place restrictions on the use of the property which are binding upon the Trustees. The Government believes that it is appropriate to place such restrictions upon the use of the waterways themselves, including towpaths which run alongside them, where they currently exist. It would not apply to other property being transferred to the charity, such as office buildings and investment property. It would also not apply to any new waterways which the charity may acquire in the future.

The obligations under the Trust Obligations can potentially last in perpetuity. Therefore they need to be constructed very carefully in order to get the balance right between providing ongoing protection of public benefit, and on the other hand not being so prescriptive as to prevent the trustees from operating the charity in a way which is desirable, but unforeseen.

The Government believes that it is therefore not appropriate to use the Trust Obligations to set out all of the things which the Government expects the charity to do, as many things which are of concern to stakeholders will be best decided through the charity's governance arrangements. But the Trust Obligations should instead set out minimum requirements which ought to exist for many years, and potentially in perpetuity.

Therefore the government believes that the Trust Obligations should require the waterways to be held and operated by the charity for the public benefit on behalf of the nation. It should prevent the charity from selling off or giving away any of the waterways; in the event of the charity becoming insolvent, preventing the waterways from being sold off by administrators and the proceeds distributed to creditors and giving Government the right to move the waterways to another charity instead.

The Government also believes it should ensure that the existing towpaths are, as a general principle, freely available for pedestrian access. The Trust Obligations should not prevent the charity from continuing to make reasonable charges including for boating, fishing and use of its waterways; however, the Trust Obligations will, as a general rule, require that there is pedestrian access to the existing towpaths and that that access remains free of charge. Qualifications to this general rule will be strictly limited (i.e. for operational/maintenance purposes and control of access at some tourist sites) and clearly set out in the Trust Obligations.

As the majority of towpaths are not currently public rights of way and access is permitted at British Waterways' discretion, this is a significant new protection.

Access to the towpath for cycling and other leisure pursuits will be a matter of policy for the New Waterways Charity, in line with byelaws in force and any commitments that may be made under the future Funding Agreement with Defra. It is expected that the NWC will take the opportunity to make an early statement of policy about access and leisure on the waterways and their towpaths, building on current good practice by British Waterways. Discussion of access to towpaths in the charitable purposes is set out in Annex D.

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The consultation document also stated that the operation and management of the waterways must take proper account of local social, economic and environmental needs and interests. The Government still considers that these are important and will consider further whether these are best protected through the Trust Obligations.

The final wording of the Trust Obligations will be subject to further discussion and final agreement between Government and the charity's Trustees.

Charitable purposes

You said: The consultation document suggested a list of areas which Government felt should be included in the charitable purposes. The majority of respondents were positive about these suggestions, with many offering suggestions about additional areas to be covered. The most popular areas to include reference to, in addition to those suggested in the consultation document, were: commercial freight, residential boaters, and rural regeneration (as much as urban). The most common suggestions for improvement to the existing list were either to emphasise social purpose/engagement, navigation, partnership working or the importance of maintaining the network as a whole.

The Government's response: As outlined above on the Trust Obligations, there are various ways in which the public benefits delivered by the new charity will be safeguarded for the future. A framework to illustrate this is set out in Annex C.

A revised and enhanced outline of the charitable purposes is at Annex D. These reflect how Government and the Trustees' thinking has developed, and make some specific changes suggested by the consultation responses, for example they now make explicit reference to navigation and use of vessels (the meaning of which includes legitimate residential use), and freight is addressed by a reference to commerce and industry. To note that charitable purposes are designed to be enabling rather than restrictive, so it is not appropriate to detail every desirable activity here, so long as they can be accommodated within the general description as set out in the outline draft.

As the charitable purposes will form part of the legal constitution of the Charity the outline will be further revised in the light of advice from specialist charity lawyers and discussions with the Charity Commission.

Mission statement, belief and vision

You said: Many respondents questioned the need for a mission statement, belief and vision, asking if one statement would suffice. Most interest was centred around the mission statement. The most common suggestions for improvement were to reference navigation, local communities living on & around the waterways, or current users and uses of the waterways to make it more 'alive' and relevant.

A range of suggestions were made in order to improve the 'belief' statement, the most popular being a greater emphasis on: the 'national', not just the 'local'; people and communities; and navigation. There was more general support for the 'vision' statement, but again most common suggestions for improvement were more reference to/emphasis on navigation and local communities.

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In summary, for each of these statements, navigation and communities/people emerged as the two key areas where respondents felt there should be greater emphasis. Other suggestions for all of the above included greater emphasis on: natural environment, access, freight, transport, and to reflect the charitable purposes.

The Government's response: The Government has shared these detailed suggestions with the Trustees for their consideration and is content for the Trustees to develop these statements over the coming months.

Powers and Duties

You said: Most respondents agreed that the new charity should have the same powers and similar legal duties to maintain the waterways as British Waterways. However, a number of respondents felt that they needed more detail about the legislation involved before they could offer their full support to this proposal. A few responses considered that specific legislation should be updated or modernised; others were concerned about the cost of compliance.

The Government's response: Alongside this Government Response, we have published a further consultation on the content of the Transfer Order which will transfer the functions of British Waterways to the new charity. This consultation provides further information about the legislation which currently relates to British Waterways, the functions we propose to transfer, and where we feel amendments to the legislation are necessary, and invites comments on the proposals. The consultation will close on 24th October 2011.

As before, there are various ways in which the public benefits delivered by the new charity will be safeguarded for the future. A framework to illustrate this is set out in Annex C.

Engaging people in the new charity

The consultation raised a number of questions on the subject of governance and engaging people in the new charity. The approach indicated by the Government Response to this section has been agreed with the Transition Trustees.

Local Partnerships

You said: A majority of responses were concerned with Local Partnerships – both in terms of membership and their role at a local and national level. Many respondents questioned the geographical area covered by the Partnerships and suggested that truly ‘local’ engagement would need to happen at a smaller scale. At the same time however, the strategic role of these Partnerships was clearly acknowledged by respondents as being important – many stated the need to demonstrate how the partnerships would be genuinely effective at a national level.

Another clearly expressed view was that, although some guidelines would be helpful, it was important not to be overly prescriptive at this stage, to allow Local Partnerships some flexibility to develop in a way that was appropriate to their own particular contexts. Finally, another clear theme arising from the responses was that funds raised by the Local Partnerships should be allowed to remain locally, to be spent on locally-identified projects – whilst at the same time ensuring that the quality of the network as a whole was maintained.

In terms of who should sit on the Partnerships, many said that these should not be dominated by any one interest group, and a range of suggestions included local authorities, business, boating/navigation interests, environmental/wildlife groups, walkers, joggers, cyclists, local canal societies, volunteering representatives, freight representatives, heritage experts, local NWC staff and live-aboard boaters. But, as stated earlier, many felt that the membership of each Local Partnership may be different in different areas and should not be pre-decided.

The Government’s response: We recognise that the ‘Local Partnerships’ cover larger areas than implied by their name. Whilst we considered an approach which could follow political boundaries, we propose that an approach which can reflect the existing waterways management unit structure in British Waterways will best enable them to be strategically effective in the new charity (and in the development of waterways business plans, for example). At the same time we recognise that the new charity must have genuine engagement at a local level. Therefore we propose to re-name these as ‘Waterways Partnerships’ to reflect their strategic role and size, but will expect each Partnership to develop a ‘localism strategy’, which will commit the Partnerships to facilitating local engagement, working with a range of locally based partners throughout the area covered by the Partnership, and holding at least one open public meeting each year. The current plan of the Trustees is for 13 Partnerships: 11 based on waterway management boundaries, one for museums and one All-Wales Partnership (further described later). Over time, and learning from experience, the charity may wish to make changes to these arrangements and this proposal will not prevent the Partnerships from evolving into the future.

We agree that the Waterways Partnerships should be allowed flexibility to reflect their localities, and this is particularly important when it comes to membership. To this end, we will not specify a ‘core membership’, but would suggest wide representation from: local authorities, business, boating/navigation, environment, heritage, towpath users (walkers, joggers, anglers, cyclists),

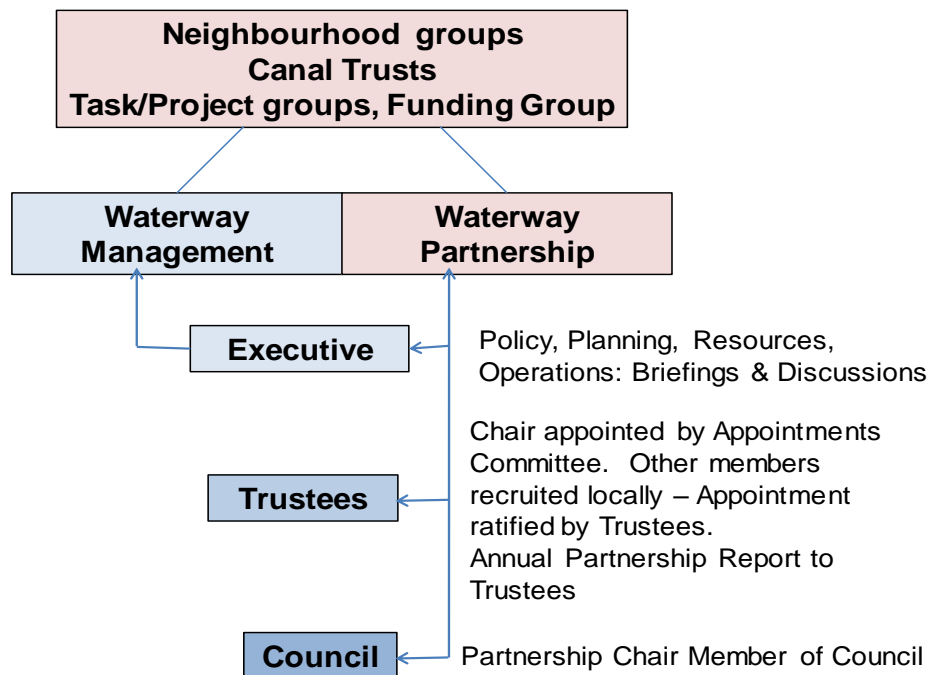
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volunteering representatives, and local canal societies. The most important thing is that there is a fair and broad representation from a range of interests, without any one dominating interest group.

Regarding the Chairs of the Partnerships, these will initially be appointed by the new Transition Appointments Committee (membership set out in Annex C), and thereafter – once the Council is in place – by the permanent Appointments Committee, which will be a joint committee of the Council and the Trustees. These posts would be filled through open competition and would be publicly advertised in local media. Other membership of the Partnerships would be recruited by the Chair (with local assistance) but subject to ratification by the Trustees. The Trustees and the Transition Appointments Committee will by the end of September publish the timetable and process for the appointment of all the Chairs to the Waterway Partnerships. It is anticipated that at least half of the appointments will have been made by December 2012, with the remainder being appointed no later than March 2012.

We agree that funds raised by the Partnerships should remain at this level, to be spent on locally-agreed priorities. However, it is clear that people care about both their local waterway, and the network as a whole. Therefore it is important to ensure that a distinction is drawn between these funds and general fundraising by the NWC up and down the country, which would contribute to national funds.

On national influence, in addition to the Partnership Chairs having a seat on the Council, we propose that there is at least an annual meeting of the Partnership Chairs with the Trustees, and the Chairs meeting as a group as often as they wish. Partnership Chairs will also be able to make informal approaches to any of the Trustees at any time. We also propose that the New Waterways Charity will hold an annual meeting, to which all members of the Partnerships will be invited. An illustration of the governance model, indicating the routes of influence and communication, is set out below.



BOX 1: Waterways Partnerships – relationships and roles

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Sub-committees of Partnerships will not be prescribed and will be a matter for the Partnerships themselves to decide upon.

The Council

You said: A majority of respondents agreed with the proposal to initially focus on securing fair representation on the Council, to ensure that a broad range of stakeholders were represented and that no single interest group was able to dominate. Most respondents agreed that a proportion of the Council should be directly elected at some stage, though opinion was equally split between those who wanted to see this arrangement operating from the charity's inception, and those who felt this should only become part of the process at a later date, for example once a Supporters' membership scheme had been put in place.

Most respondents were also generally content with the suggested representation on the Council, subject to some tweaking – for example, some felt that residential boaters should be considered as a separate group from recreational boaters. In terms of size, some felt that the Council was too big to be effective, and others stated that 50 should be a maximum number.

A range of topics were suggested for Council committees, including navigation, freight, heritage, residential boaters, and the natural environment.

The Government's response: We propose that fair representation is prioritised for the first composition of the Council, with a view to progressing to 50% of the Council being elected, over time. We envisage that different constituencies would each elect their own representative (s). Any election process is dependent on a database of electors (and 'electoral roll') being available for the relevant constituencies. For some constituencies a database is available now and we propose that from the outset the private boating constituency have direct elections based on the license holder database. The Council member representing employees can also be an elected representative from the outset. As other databases are developed, the seats on the Council for those representatives can be changed to directly elected positions once the necessary database is in place and of a sufficient size.

On the question of size, we propose that initially there is a maximum of 35 members of the Council, with scope for this to grow to a maximum of 50 in the future (for example, in the proposed event of EA navigations joining the charity, but also to increase the number of elected seats).

The outline make-up of the proposed Council is shown in the box below. The Trustees and Transition Appointments Committee will publish before the end of September 2011 fuller details of the constituencies to be represented on Council, the proposals for election and nomination, the organisations who will be asked to put forward nominations and generally the process and timescale to enable the first Council to meet in March 2012.

Regarding Council committees (described as 'scrutiny committees' in the consultation), we now propose that rather than standing committees, a more flexible arrangement be provided for topical, time limited committees (as decided by the Council), to advise the Council on issues of interest or importance of the time.

In addition, a range of specialist advisory committees that mainly engage with management, as currently practised by BW, will be retained. These include topics such as navigation and

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heritage. Members of the Council with expertise in these areas might helpfully participate in these advisory committees.

BOX 2: NWC Council Membership

NWC Council Membership

Constituency	Initial no. of Council Members		
	Elected	Nominated	Total
1. Private Boating	4	1	5
2. Boating Business	2		2
3. Volunteers		(1)*	1
4. Other Supporters - Walkers, Anglers, Cyclists, Neighbours, Donors etc		(4)*	4
5. Employees	1		1
6. Historic Environment		2	2
7. Natural Environment		2	2
8. Local Government		2	2
9. Local Partnership Chairs (inc Museums & All-Wales partnership)			13 Ex officio
10. Co-options		3	3
Initial Total			35

* To convert to elected member once electoral roll database developed

Notes

- A. Initial number of Council members is 35 with scope to expand to up to 50 members maximum. Distribution of seats between constituencies to be reviewed after first three years and thereafter as necessary but at least once every 7 years.
- B. Constituencies in **bold** (1-5) either begin as elective or convert to elective as electoral roll database for each constituency is developed and minimum threshold of constituency electors reached. See below for further detail re each constituency.
- C. Intention is to progress to 50% of Council members being directly elected in aggregate by the constituencies in **bold** with additional seats being created as necessary in addition to nominated seats being converted to elected. Progress to be monitored as part of reviews in A above.

Appointments Committee

You said: The preferred method for appointing the Chair of the Appointments Committee was by the Council. Respondents felt most strongly that this Chair should have knowledge of the waterways, among other qualities such as impartiality and excellent communication skills.

The Government's response: We do not think it necessary to prescribe that there be an independent chair of the Appointments Committee but nor should it be ruled out. We agree that any Chair of the Appointments Committee must be impartial, though do not believe this should exclude either a member of the Council or of the Trustees from holding the position. We propose that the membership of the Committee must always be equally balanced in terms of membership from the Trustees and the Council but subject to that we believe the Committee should decide upon its own Chairing arrangements.

Wales

You said: While there was general support for the idea of an all-Wales Partnership, there was also a feeling that Wales needed stronger representation in the charity's governance structure, and a clear identity within the new charity. Some suggested that Wales should have its own governance arrangements, with an all-Wales Board reporting to the national Board. Another suggestion was that a proportion of the Council should be reserved for Welsh representatives.

The Government's response: We propose that in addition to the management unit based Waterways Partnerships covering waterways in Wales, there should be a separate All-Wales Partnership, with representation from associated bodies with a Welsh remit. This Partnership would maintain a close relationship with the Welsh Assembly Government. The members of the All-Wales Partnership would also be members of the management unit based Waterway Partnerships that include waterways in Wales. The Chair of the All-Wales Partnership would have a seat on the charity's Council.

Public (Supporters') membership of the new charity

You said: While a majority of respondents were concerned to secure fair representation over membership, most also agreed that an element of direct membership, possibly linked to electing Council members, should be introduced at some stage: either from inception or over time (as outlined above).

The Government's response: As previously stated we propose that the Council should be set up with some directly elected seats where practical, but with a view to progressing eventually to 50% elected representatives made up from a variety of constituencies. The table above identifies the constituencies from which the council will be created. It further identifies the constituencies that will immediately elect representatives; those that will over time elect representatives; and those that are likely always to nominate representatives.

The progression to more elected seats should be more driven by growth in the size of the 'electoral roll' databases for the relevant constituencies rather than a strict timetable but nevertheless the structure of the Council and method of selection for seats should be subject to a review within the first three years of the Charity and thereafter as needed but at least once in every seven years.

The Trustees do not plan to have a membership for fundraising purposes. They will seek voluntary giving through a variety of channels but a formal membership will not be one of them. This does not preclude growth of the supporters' constituency to provide for more elected seats on the Council. This is an issue which can be reviewed when all the constituencies are reviewed in three years time.

Volunteering and engagement

You said: A large number of respondents felt that it was an important role of Local (or 'Waterways') Partnerships to engage local communities and to facilitate effective working between different interest and community groups in their areas. Many stated that this could be achieved through securing fair and balanced representation on the Partnerships themselves, as stated above.

Many respondents suggested that when it came to engagement and recruiting volunteers, the new charity should work to engage as far as possible with existing local schemes and campaigns, as opposed to 'competing' for the same audience. For the volunteer programme to be a success, respondents also felt that it would be essential for the new charity to invest appropriately in professionally trained volunteer coordinators. The charity should offer genuine breadth of opportunity and different roles, be as inclusive as possible and ensure that volunteers were rewarded for their efforts – in terms of recognition, and being genuinely valued and consulted. Flexibility was also essential, with a combination of regular and adhoc opportunities, and minimal bureaucracy.

The Government's response: The important role of the Partnerships in driving local engagement is noted and confirmed in our response above (see under Local Partnerships). The Waterway Partnership will act as an umbrella body for the whole Partnership area, facilitating and promoting specific engagement projects at a very local level. Further work will be needed by the new charity to decide on the best ways of achieving this, but a major challenge will be to widen the source of volunteers beyond the core of waterways supporters. There will need to be an inclusive and flexible approach which aspires to engage the broadest possible cross-section of society.

Community Interest Company

You said: Many respondents felt that there were unlikely to be any other activities best placed in the CIC. However, the most popular suggestions for inclusion were: freight, utilities, property, the development of hydro-electric power schemes and merchandising. Some respondents queried why a CIC was needed, and suggested that alternative trading routes should be considered. Others said the charity should be careful not to become too focussed on its commercial profit. Several commented that remunerated positions should be kept to a minimum.

The Government's response: The Government considers this to be a matter for the Trustees to decide upon. The Trustees understand that the charity must not be dominated by its commercial dealings but at the same time are conscious that the majority of its income will come from these activities and should therefore be closely overseen by the Trustees.

Creating a sustainable future for our waterways

Commercial freight

You said: The majority of respondents agreed that the current position was not tenable, and that change was needed. The most popular Option favoured was Option 2: i.e. no changes to current classification or BW's maintenance duties for commercial waterways, but an amendment to the Transport Act 1968 in relation to the Secretary of State's power of determination, to include additional obligations on the Secretary of State to take into account the charity's representations on affordability.

The Government's response: In light of the responses the Government intends to proceed with Option 2. The Transfer Order under the Public Bodies Bill will be used to amend the Transport Act 1968 to introduce an obligation for the Secretary of State to take into account the New Waterways Charity's (NWC) representations on the affordability of any proposed changes to the classification or maintenance of its waterways. The Government would expect that any application for a change would be supported by a comprehensive cost benefit analysis from the NWC.

For any change to the classification or maintenance of a commercial or cruising waterway, the application for a navigation order would remain subject to public consultation as laid down in Schedule 13 of the Transport Act 1968. That involves consulting with those operating or desiring to operate commercial freight vessels. Notices of the application would be published in the London Gazette, the relevant local press and advertised by notices displayed on the relevant waterway. Any interested party would still be able to write to the Secretary of State if they object. It will remain obligatory for the Secretary of State to hold a public inquiry in certain circumstances including if an objection is made by a commercial waterway which has been used to a significant extent is to be re-classified and an objection from a body representing a substantial number of people using the waterway is not withdrawn.

Linked to this change the Government also proposes to amend sections 104 and 105 of the Transport Act 1968 to give the NWC an enhanced 'statutory proposer' role in relation to ministerial orders on classification and maintenance of its waterways. This issue is covered in the consultation exercise published alongside this Government response.

Government funding contract

You said: Most suggestions for measuring the charity's use of public funds revolved around measuring progress against the core activities of NWC, and a majority of these suggested indicators were included in the existing Stewardship Score. A number of respondents explicitly supported the use of the Stewardship Score; several stating that it would be useful to have some continuity with the way in which BW's performance was measured. The most commonly suggested indicators were: asset condition, customer satisfaction and enjoyment, navigation, access and the environment. On the environment, many respondents suggested that specific indicators on, for example, litter or water quality should be included as well as SSSI condition.

A few suggestions were made as alternatives to, or running in parallel with, the Stewardship score indicators. These included: an independent audit; membership numbers and/or volunteer numbers; the charity's success in raising additional funds; comparing the charity's performance

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with other charities using a standard performance mechanism where one existed. Many made the general point that there should be clear and transparent scrutiny of the use of public funds by Government.

The Government's response: The Government is keen to ensure that the new charity is accountable for the range of public benefits it delivers with public funds. The government funding contract will be negotiated in autumn 2011, and clear methods of measuring public benefits delivered – such as the Stewardship score – will form a part of the discussions.

There are various ways in which the public benefits delivered by the new charity will be safeguarded for the future. A framework to illustrate this is set out in Annex C.

Income and efficiencies

You said: A wide range of suggestions were made about how the new charity could increase its income. In terms of commercial income, the most popular suggestions were through membership schemes, and more effective development/use of tourist opportunities: including heritage properties, retail and catering, holiday accommodation and leasing pleasure boat sites. The development of renewable energy schemes was another common suggestion, primarily hydro-electric generation.

Many respondents suggested that more non-paying users of the waterways could be encouraged to donate time and money through effective publicity and information campaigns. Another suggestion was to encourage corporate sponsorship of stretches of canal. Also, several respondents felt that Local Authorities could contribute more to the waterways, for example the maintenance of footpaths. Several respondents felt that the prediction of charitable income overall was too optimistic; others requested that safeguards be put in place to ensure any rises in license fees were not excessive.

On efficiencies, the most common suggestions were to review remuneration of senior staff, make more effective use of volunteers, prioritise preventative maintenance, and minimise re-branding costs.

The Government's response: Government considers that it will be for the Trustees to work with the executive of the charity to grow its income from all available sources and to make efficiencies in line with the normal business practices already pursued by British Waterways. However, one of the benefits of moving out of the public sector will be that it should enable and encourage more innovation and diversity in the way the new charity grows its income.

Over the coming months the Transition Trustees will be preparing NWC's first 3 year business plan which will include any proposals to develop new income streams and further efficiencies.

Impact Assessment

You said: The majority of respondents did not comment on the Impact Assessment. Of those who did, some stated that sufficient, inflation-proofed and secure Government funding was essential to ensure that the network would not continue to deteriorate; others felt that the projections of voluntary income were optimistic in the light of the current economic climate. There was some recognition that Government funding was restrained by the overall fiscal

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position and, as noted in the previous section above, there were also suggestions in this context for other ways to increase income. Others stated that voluntary labour would not be as effective as paid staff and were concerned that the IA suggested that the one could directly replace the other.

The Government's response: The purpose of the Impact Assessment was to provide the Government's broad assessment of the benefits and costs of transferring the British Waterways network in England and Wales to a national charity, compared with a scenario in which the network remained within the public sector. It draws upon projections of the additional income that the charity might secure, but does not attempt to provide a business plan for the charity nor a detailed analysis of the financial sustainability of the network. The Government however remains committed to a sustainable future for the waterways and ensuring that the charity has the best possible start. The Government funding contract will be negotiated with the charity's Transition Trustees, in the autumn.

On charitable income, BW's original charitable income projections, although based on market research conducted during the recession, remain hypothetical and the Impact Assessment recognises this by assuming, in its central case, that only 75% of these projections are realised. It also adopts an even more pessimistic 50% achievement in its sensitivity analysis. The key conclusion in the Impact Assessment, is that, in social cost-benefit terms, the charity will always bring a better outcome, other things being equal, than retention of the network in the public sector.

The valuation of greater use of volunteers in the IA is not intended to imply direct substitution of paid staff. Volunteers will enable the charity to do more and it is this 'added value' which has been captured here.

A revised and final version of the IA will be published later in the autumn, following the negotiations between Government and the Transition Trustees on the government funding contract.

The transition to civil society

Name of the charity

You said: The most popular name of those suggested in the consultation document was 'National Waterways Trust', with the support of a third of respondents. The next two most popular from the suggested list were 'Waterways Trust' and 'Waterways Trust for England and Wales'.

A large number of responses suggested alternative names. These included keeping the name 'British Waterways', or amending it to 'British Waterways Trust', and also commonly, 'National Waterways'. In general respondents felt that 'national' and 'trust' had positive connotations re: The National Trust; though others said there was a need for clear distinction and identity.

Several argued that 'national' or 'British' should not be used in the title, mainly because Scotland is not included in the new body. Others requested that the charity would have a different name in Wales.

The Government's response: The Government and Trustees recognise that the name of the charity must accurately represent its scope. Furthermore, in addition to the word 'waterways' (well understood by enthusiasts), consideration also needs to be given to words more familiar to the wider public (including 'canal' and 'river') if the name is to have the widest possible appeal.

It is recognised that the Welsh name for the charity needs to be one that resonates in that language and is not necessarily a straightforward translation of the English name.

Further work is being carried out by the Transition Trustees on the name and branding for the charity.

3. The Way Forward

Following this consultation the Government re-confirms its commitment to delivering a “national trust for the waterways” that includes British Waterways and the Environment Agency navigations. The creation of a new waterways charity will place the waterways firmly at the heart of civil society, closer to the communities who use and value them, those who know them best.

Over the coming months, Government will continue to work closely with the Transition Trustees of the new charity.

Next steps:

- Alongside this Government Response, we have published a further consultation on the content of the Transfer Order which will transfer the functions of British Waterways to the new charity. This consultation provides further information about the legislation which currently relates to British Waterways, the functions we propose to transfer, and where we feel amendments to the legislation are necessary, and invites comments on the proposals. The consultation will close on 24th October 2011.
- By the end of September 2011, the Trustees and the Transition Appointments Committee will publish the timetable and process for the appointment of all the Chairs to the Waterway Partnerships. It is anticipated that at least half of the appointments will have been made by December 2012, with the remainder being appointed no later than March 2012.
- Also by the end of September 2011, the Trustees and Transition Appointments Committee will publish fuller details of the constituencies to be represented on Council, the proposals for election and nomination, the organisations who will be asked to put forward nominations and generally the process and timescale to enable the first Council to meet in March 2012.
- Over the coming months the Transition Trustees will be preparing NWC’s first 3 year business plan which will include any proposals to develop new income streams and further efficiencies. They will also be discussing the charitable purposes outlined in this document with specialist charity lawyers and the Charity Commission.
- A revised and final version of the Impact Assessment, which accompanied the March consultation, will be published later in the autumn, following the negotiations between Government and the Transition Trustees on the Government Funding Contract.

The Trust and Government Funding Contract will be subject to negotiation and final agreement between Government and the Transition Trustees, in autumn 2011.

Further announcements will be made in due course.

Annexes

Annex A – Transition Trustees and Transition Appointments Committee

Transition Trustees

The Transition Trustees of the new charity are:

- Tony Hales, current Chair of BW (Chair of Transition Trustees)
- Nigel Hugill, BW Board member
- John Bridgeman, BW Board member
- Lynne Berry, Chief Executive, former CEO of WRVS
- Jane Cotton, Human Resources Director and Deputy Chief Executive, Oxfam
- John Dodwell, former General Secretary, IWA and former Chair, CBOA
- Tom Franklin, Chief Executive, Ramblers
- Simon Thurley, Chief Executive, English Heritage.

Transition Trustees are not public appointments but the appointments process was undertaken in line with OCPA (Office of the Commissioner for Public Appointments) best practice and all appointments were made on merit. Transition Trustees are expected to devote three to four days per month to their role during the transition period until British Waterways' duties, functions and assets are transferred to the new charity. Following that it is anticipated their time is likely to reduce to two days a month. There will be no remuneration, Transition Trustees will be entitled to claim reasonable expenses related to their duties.

Further information about the Transition Trustees can be found at:

www.britishwaterways.co.uk/home.

Transition Appointments Committee

The members of the transition appointments committee are:

- Roger Clarke (Chair), previously member of the Independent Advisory Panel on First Appointments and Transition
- Dinah Nichols, previously member of the Independent Advisory Panel on First Appointments and Transition
- Tom Franklin, Transition Trustee
- Lynne Berry, Transition Trustee

Annex B – List of respondents

Abbots Langley Parish Council
Airedale Barge Co Ltd.
Anglian (Central) Transitional Regional Flood and Coastal Committee
Angling Trust
Angling Trust Thames Region Forum
Aqueducts – Friends of the World Heritage Site
Ashby Canal Trust
Association of Drainage Authorities
Association of Inland Navigation Authorities
Association of Pleasure Craft Operators
Association of Thames Yacht Clubs
Association of Waterways Cruising Clubs
Barge Consult
Basingstoke Canal Authority
Bath & North East Somerset Council
Birmingham and the Black Country Biodiversity Partnership
Birmingham City Council
Black Mountain Activities
Brentford Waterside Forum & Brentford Community Council
British Chambers of Commerce
British Marine Federation
British Ports Association
British Waterways Advisory Forum
Bruce Trust
BTCV
Cadw
Caldon & Uttoxeter Canals Trust
Campaign for the Protection of Rural Wales (CPRW)
Canals In Hackney Users' Group
Canoe England
Canoe Wales
CASW Wales
Chair of The Southern canals association
Cheshire West and Chester Council
City of Stoke-on-Trent
Commercial Boat Operators Association
Conservators of the River Cam
Cotswold Canals Trust
Countryside Council for Wales
Crowther & Towns Ltd.
DBA - The Barge Association
Denbighshire County Council

Department for Environment, Food and Rural Affairs

Derby and Derbyshire Local Access Forum
Derbyshire County Council
Dorset & Somerset Canal Society
Dudley Canal Trust
East Anglia Waterways Association
East Riding of Yorkshire Council
Eastern Region Rowing Council of British Rowing
Ecumenical Partnership - Diocese of St Albans
Ellesmere Town Council
English Heritage
Environment Agency
Ernest V Waddington Ltd
Frampton on Severn Parish Council
Freight Afloat Consultants
Freight Transport Association
Friends of Regent's Canal
Friends of Slough Canal
Frodsham Town Council
Gloucester Harbour Trustees
GOBA
Greater London Authority
GreenSpace
Heritage Lottery Fund
Historic Narrow Boat Owners Club
Historic Towns Forum
Huddersfield Canal Society
Institute of Historic Building Conservation
Institution of Civil Engineers
IWA
IWAC
Joint Local Access Forum for Bath and North East Somerset, Bristol City and South Gloucestershire
Keep Britain Tidy
Kennet & Avon Canal Trust
Kidlington Parish Council
Lancaster Canal Trust
Leeds & Liverpool Canal Society
Leeds City Council
Leicestershire County Council
Little Leigh Parish Council
Locality
London Boaters
London Braille Ltd
London Forum of Amenity & Civic Societies
Melksham Town council

Department for Environment, Food and Rural Affairs

Milton Keynes Play Association
Mineral Products Association
Mon, Brecon & Abergavenny Canals Regeneration Steering Group
Monmouthshire, Brecon and Abergavenny Canals Trust Ltd
Montgomery Waterway Restoration Trust
Moulton Parish Council
NABO
National Bargee Travellers Association
National Community Boats Association
National Historic Ships
National Trust
Natural England
Neath Canal
Newport City Council
Norfolk & Suffolk Boating Association
North Riding Branch of the Inland Waterways Association (IWA)
North Yorkshire County Council
Northern Canals Association
Nottinghamshire County Council
Open Spaces Society
Outdoor Swimming Society
Paddlers International
Peak District's National Park Authority
Phoenix Canal Carriers
Pontypridd Canal Conservation Group
Port of London Authority
Ramblers
Residential Boat Owners Association
River and Lake Swimming Association
River Thames Society
River Users Group – Sandford to Cleeve
Rose Narrowboats Ltd
Rotherham Borough Council
Royal Commission on the Ancient and Historical Monuments of Wales
RYA
Sandwell Local Access Forum
Save Our Waterways
Scarborough Borough Council
Shropshire Union Canal Society
Social Enterprise Coalition
Somerset County Council
Somersetshire Coal Canal Society
South Northamptonshire Council
South West Wales Integrated Transport Consortium
Staffordshire & Worcester canal Society

Department for Environment, Food and Rural Affairs

Steam Boat Association of Great Britain
Stoke-on-Trent Boat Club
Stourbridge Navigation Trust Ltd
Stroud Valleys Canal Company – SVCC
Surrey and Hampshire Canal Society
Surrey County Council and Hampshire County Council
Sustrans
Swansea Canal Society
Tees River Users Trust Ltd
Tees Wheelyboats Club
Thames User Group
The Barge Association
The Company of Proprietors of the Stroudwater Navigation
The Crown Estate
The Hoseasons Group
The National Association of Local Councils
The Railway and Canal Historical Society
The Waterways Project @ CIVA
The Waterways Trust
The Wey & Arun Canal Trust (WACT)
Thornhill Bridge Community Gardeners
Unison
Unite
Valley Parishes Alliance
Vulcan Owners Association
Wakefield district local access forum
Wales Tourism Alliance
Waterways Ombudsman Committee
Welsh Local Government Association
Welsh Valleys Regional Park
West Midlands Metropolitan Area Canals Partnership
Wildlife Trusts
Wilts and Berks Canal Trust
Wiltshire Council
Worn Again
Wrexham County Borough Council
Wynns Group

Annex C – Securing public benefits table

There are various ways in which the public benefits delivered by the new charity will be safeguarded for the future. A framework to illustrate this is set out below. This table is meant to be illustrative and provides examples, rather than a complete list, of the ways in which these public benefits will be protected through various and complementary means: statute law, Trust Obligations, charitable purposes and funding contract.

	Statute Law (example)	Trust Obligations	NWC charitable purposes	Government Funding Contract
Public access	BW Act 1995	Will require the waterways to be held and operated by the charity for the public benefit on behalf of the nation. With additional specific obligations around free pedestrian access to the towpaths and preventing the waterways from being sold or given away.	A charitable purpose	A key purpose of the funding agreement will be to safeguard the public benefits currently delivered by the waterways. It will specify agreed outcomes by which the charity will be measured for its effective use of public funds.
Navigation	Transport Act 1968		A charitable purpose	
Environment	BW Act 1995		A charitable purpose	
Flood alleviation and land drainage	Land Drainage Acts; EA regulation		Covered by general charitable purposes	
Heritage	BW Act 1995		A charitable purpose	
Infrastructure management	Reservoirs Act 1975			
Public engagement			A charitable purpose	
Regeneration		A charitable purpose		
Financial propriety	Charities Act			Public funds for specified purposes only and subject to audit. Monitoring of value for money a funding condition

Statute law - The Public Bodies Bill currently before Parliament would provide the necessary powers to transfer functions from British Waterways to NWC, and, assuming successful passage of that Bill, the Government would propose to use those powers to make an Order that transferred functions and made consequential provision

Trust Obligations - Property can be given to a charity under what is called a “special trust”. The person giving the property who determines the purposes for which the property is used by the charity. The Government intends to transfer waterways to the charity subject to a special trust, which will be set out in a Trust Obligations

NWC charitable purposes - Under charity law trustees are required to develop their policies, direct activities and manage resources so as to further their organisation’s charitable purposes, which are usually set out in the charity’s constitution. Trustees are answerable to the Charity Commission and the courts if they act in breach of their constitution or outside their charitable purposes

Government Funding Contract - The Government has committed to replacing the current annual grant to British Waterways with a long-term Funding Agreement or Contract, which will be negotiated with the charity’s Trustees in autumn 2011.

Government believes that the transfer of the waterways to civil society will enhance public benefits currently delivered, through greater direct involvement of waterways users and local communities in shaping how the waterways are managed.

Annex D – Revised draft charitable purposes (subject to further revision)

The purposes of [NWC] are:

- To hold in trust or own and to operate and manage Inland Waterways for public benefit, use and enjoyment including (but not by way of limitation):
 - for navigation and other use of vessels
 - for public access on foot and for recreation and other leisure-time pursuits of the public in the interests of their health and social welfare; and
 - for the improvement of commerce and industry generally.
- To protect and conserve for public benefit sites, objects and buildings of archaeological, architectural, engineering or historic interest on, in the vicinity of or otherwise associated with Inland Waterways.
- To further for public benefit the conservation regeneration and enhancement of the natural environment and the landscape of the Inland Waterways.
- To promote facilitate undertake and assist for public benefit the restoration and improvement of Inland Waterways (whether or not held in trust owned managed or operated by it) and the regeneration, enhancement and enjoyment of the localities and communities through which they pass.
- To promote and facilitate for public benefit awareness, learning and education about Inland Waterways, their history, development, use and operation by all appropriate means including without limitation the provision of museums.

Interpretation

“Inland Waterway” includes any river, canal, inland navigation, feeder channel, reservoir, dock, basin or harbour (in any case whether or not tidal or artificial) together with any associated land and works (including paths) and land formerly used for all such purposes.

Core Powers

In furtherance of these purposes, but not further or otherwise [NWC] shall have power:

- To accept a transfer of any of the property, assets, undertaking, functions, responsibilities of the British Waterways Board; of any other navigation authority, harbour authority or conservancy authority; and of any other person undertaking similar activities or functions or activities or functions that can conveniently be combined with such activities and functions.
- To act as trustee of any trust comprising real or personal estate and which, in the opinion of [NWC] is calculated to further the aims and objects of [NWC] and as such trustee carry out such trusts on the terms and conditions imposed in the instrument creating the same.

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- To make reasonable charges for the use of the Inland Waterways it owns operates or manages (including use by any ship or boat), and for the use of any services and facilities (including land set aside for specific purposes).
- [Powers of investment]
- [Powers to raise funds etc]
- [Many other specified incidental powers, possibly including certain overseas activities conducive or complementary to the above objects]
- To do all such other lawful things as are incidental to or conducive to the attainment of the above purposes, including (subject to compliance with the Charities Acts) any things that the British Waterways Board had power to do at any time before the date of this instrument.

NOTES on the draft charitable purposes

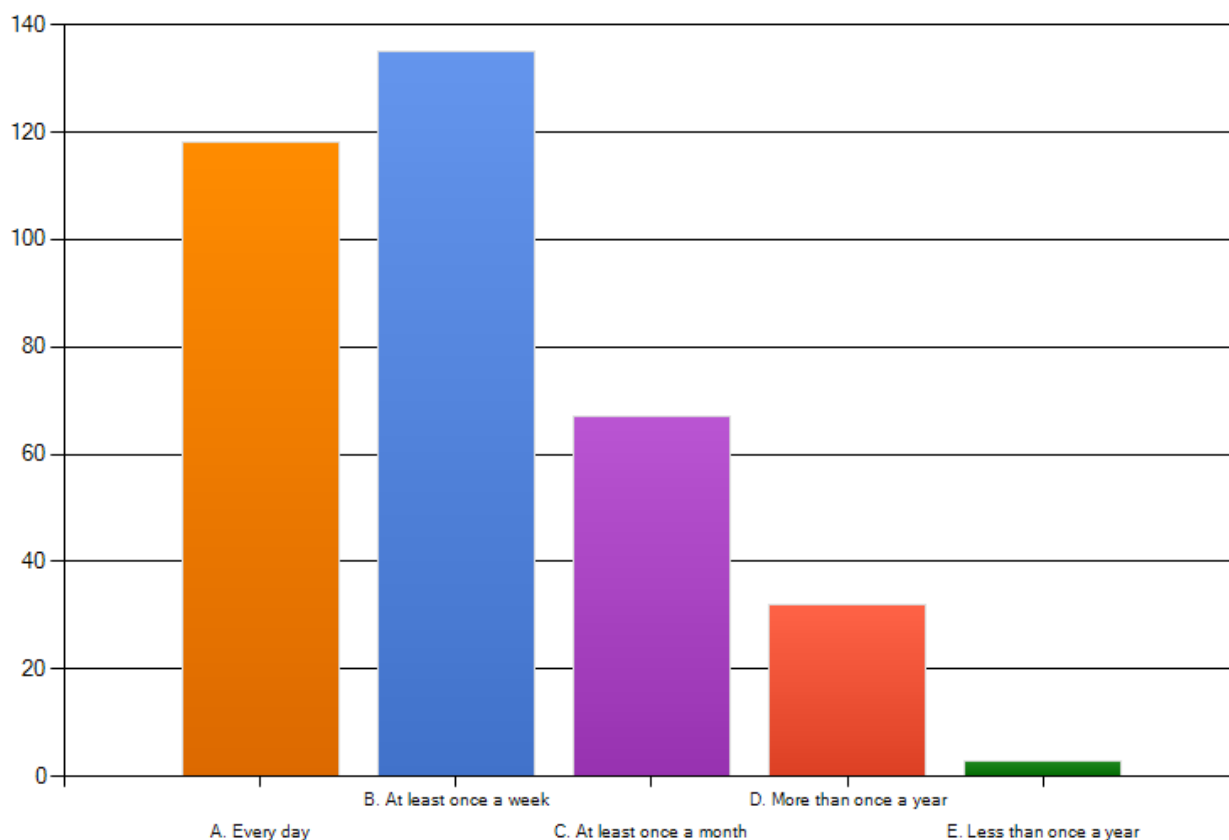
1. Charitable purposes are intended to be permissive: they define in general terms the objectives that the charity may legitimately pursue. A charity does not have to pursue all of its charitable purposes, but it cannot act outside those purposes.
2. Unlike the draft originally proposed in the consultation document, this draft set of objectives does not specifically include reference to safeguarding free public access to the towpath, but grants the NWC power to “own and to operate and manage Inland Waterways for public benefit, use and enjoyment...for public access on foot and for recreation and other leisure-time pursuits of the public in the interests of their health and social welfare”. **Free pedestrian access to the towpaths transferred from BW to the NWC will be protected through the Trust Obligations** (see further the discussion on the Trust Obligations).
3. The reasons why we are proposing this change are as follows. The charitable purposes must be flexible enough to allow the NWC, in time, to become owners and managers of assets not currently owned and managed by BW (e.g. the transfer of navigations that were not nationalised in 1948). The NWC may wish to raise income on towpaths that it acquires from such transfers or that it manages on behalf of third parties. In some cases, it is possible that future transfers will be subject to Trusts that differ from the Trust Obligations under which the Government proposes to transfer BW’s operational assets to the NWC. **This change to the charitable purposes has no effect on the Government’s declared intention of protecting free access to the towpaths that will be transferred out of state control.**
4. It is intended that the reference to “recreation and other leisure-time pursuits” will allow the charity to provide for access to its towpaths for cyclists and other recreational users. It is expected that the NWC will take the opportunity to make an early statement of policy about access and leisure on the waterways and their towpaths, building on current good practice by British Waterways. Such a statement would, e.g., deal with the promotion of cycling and partnerships to improve the cycling environment.
5. The reference to “the improvement of commerce and industry generally” includes commercial freight.
6. The reference to “navigation and *other use of vessels*” includes legitimate residential use.

Annex E – Response to online questionnaire

Alongside the main consultation, Defra also ran a quick questionnaire to encourage more responses from the general public. We received 354 responses in total. A summary of responses is shown below.

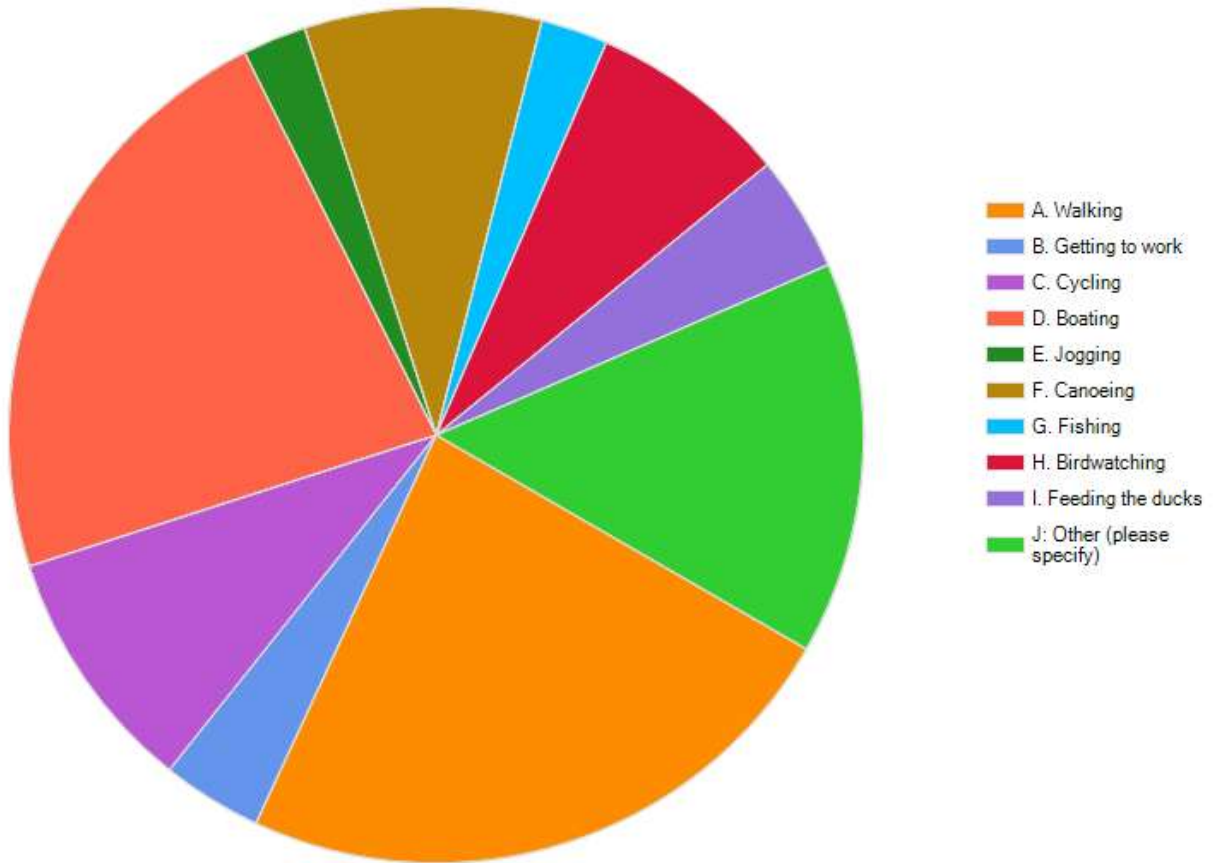
Question 1

How often do you visit the waterways? (this could be your local waterway, or another part of the waterways network)



Question 2

When you visit the waterways, what are the main reasons for your visit? (you may tick more than one)



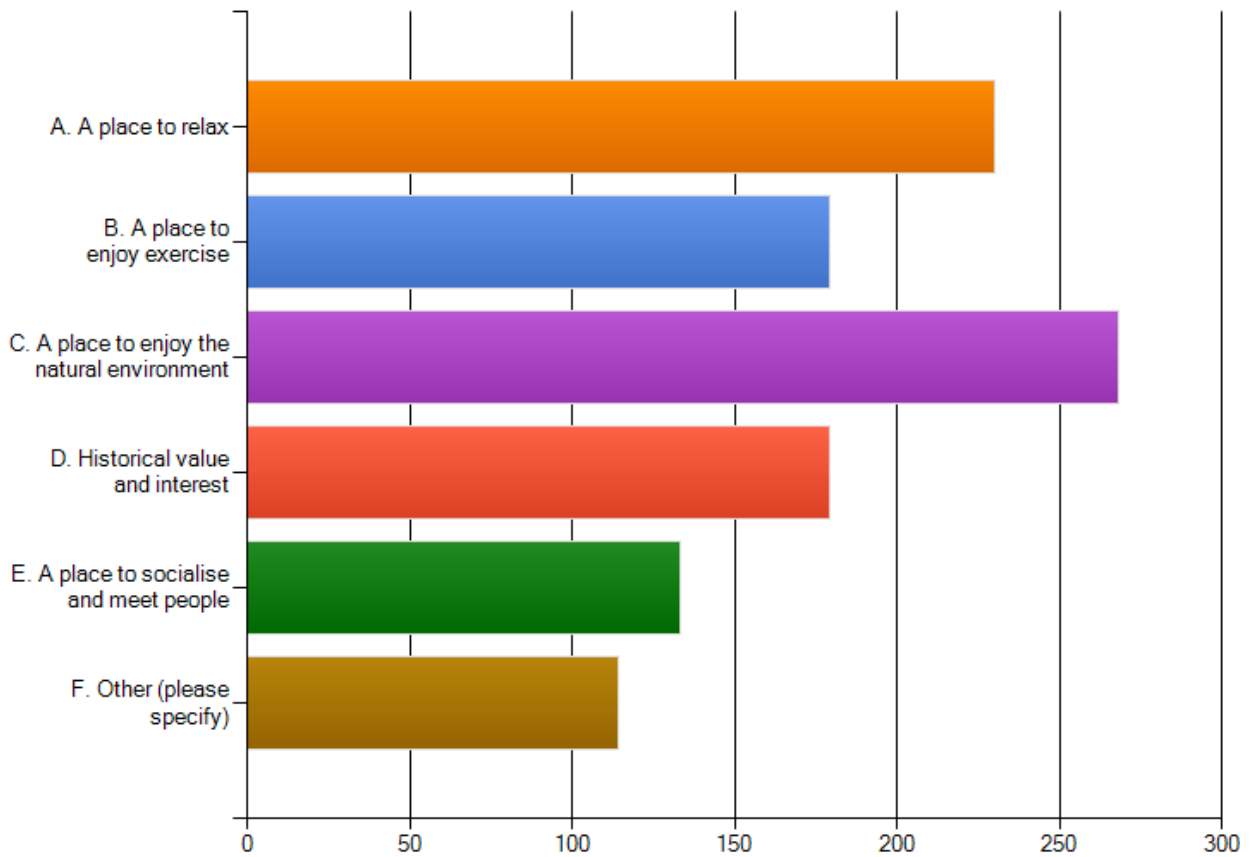
Question 3

What would encourage you to get more involved in looking after your local waterways?
[most common answers in order of popularity]

- 1) More and better publicity about local projects
- 2) Time
- 3) Greater accessibility/clearer ways of engaging with the charity at a local level

Question 4

The waterways provide lots of different benefits for people and the environment. Which of the benefits provided by the waterways are most valuable to you?

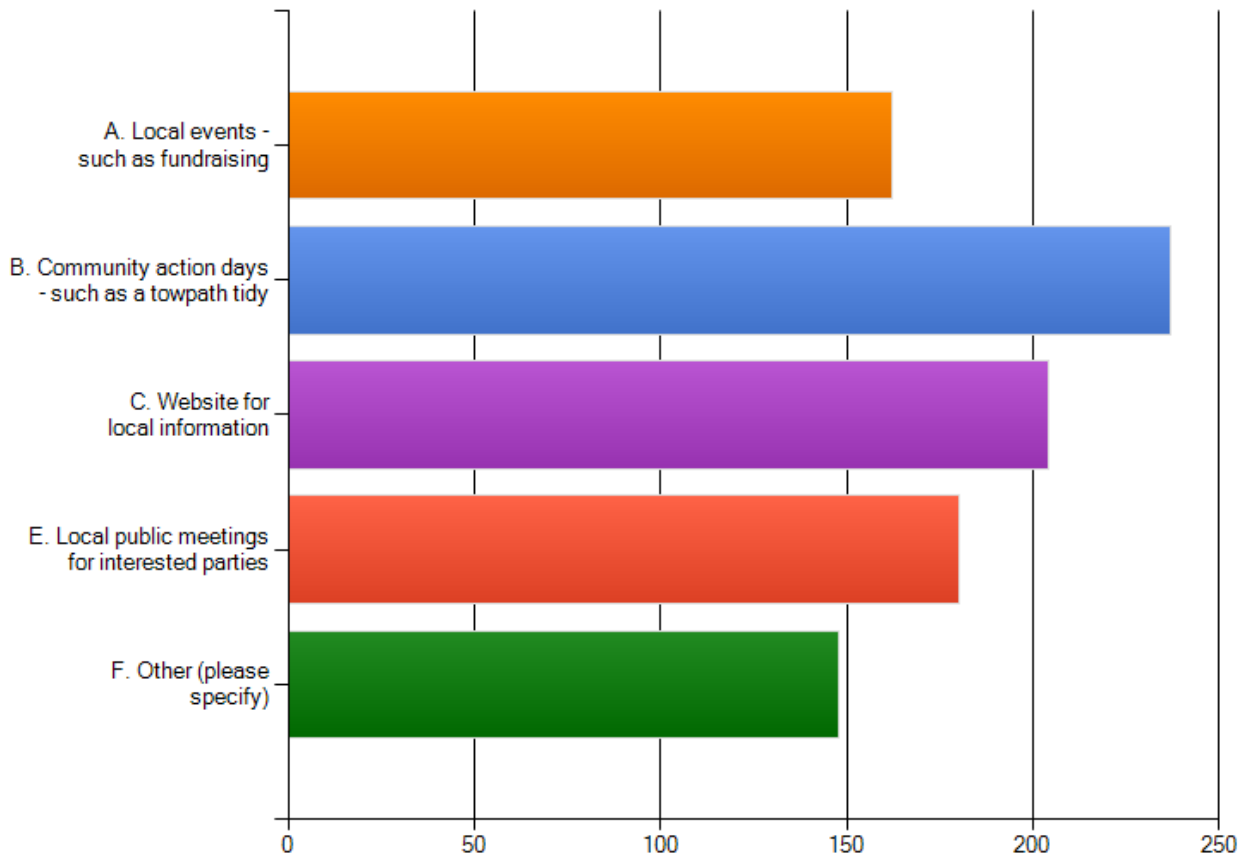


Under 'other' the most popular 'benefits' listed were:

- 1) A place to live
- 2) Meeting people/the local communities
- 3) Boating

Question 5

How could the new charity encourage different communities and interest groups to work together to protect the waterways, at a local level?



Under 'other' the most common suggestions were:

- 1) Being as inclusive as possible in its approach, in particular involving local communities who live on the waterways
- 2) Protecting and improving access
- 3) Effective publicity

