

# A New Era for the Waterways

A consultation on the Government's proposals for moving inland waterways into a new charity in England and Wales



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# Foreword by Richard Benyon, Parliamentary Under-Secretary for Natural Environment and Fisheries

## A New Era for the Waterways



Britain's network of inland waterways is one of its great unsung glories. Largely built in the late 18th and early 19th centuries, this man-made system of canals, canalised rivers and inland ports represents a magnificent feat of human endeavour and ingenuity. It reshaped whole landscapes, created transport links, new towns and villages, pioneered new techniques in civil engineering and made possible the world's first industrial revolution.

Today our inland waterways are treasured for many different reasons unimagined by their original architects. They play a vital role in our leisure, recreation, health and well-being. They are precious habitats for wildlife; attractive places to visit for boaters, anglers, walkers and cyclists; and important heritage sites, with Britain's third largest estate of listed buildings and structures. In recent times our waterways have often provided a catalyst to some of our most impressive urban regeneration.

The Government wants to build on the successes of recent years and unlock the true potential of the network, so that it is valued and enjoyed by even more people both now and in the future. For this reason, in October last year, the Government unveiled its proposal to transfer British Waterways' canals and rivers in England and Wales from a public corporation into a new charity.

Transferring this precious legacy into the care of a new civil society body will create one of the largest charities in the country. It will give waterways' users and the communities that live alongside them a greater involvement in how they are managed, and ultimately improve the long term financial sustainability of the network.

This consultation document sets out a suggested approach for the way forward, and what the charity might look like. We want everybody to have the opportunity to enjoy, value and care for our waterways. We welcome your views on the emerging shape of our proposals.

A handwritten signature in black ink that reads "Richard Benyon". The signature is written in a cursive, slightly slanted style.

**Richard Benyon**

Parliamentary Under-Secretary for Natural Environment and Fisheries



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# Executive Summary

Two centuries ago, private enterprise funded the creation of thousands of miles of canals and river navigations to service the world's first Industrial Revolution. In the twentieth century the Government stepped in to take these waterways over, overseeing their transformation from neglected industrial relics into the bustling recreational waterways we know today.

The waterways network has become a haven for people and wildlife, a valuable open-space for local communities and traffic-free 'green' routes for boaters, walkers, joggers and cyclists. In 2009, over 340 million visits were made to the waterways; an increase of 80 million compared with the previous year.

The Government believes that millions more can enjoy our canals and rivers, if we can liberate their potential to provide multiple benefits, and get all sections of our society actively involved in their future protection and development.

Public ownership, however, limits the network's ability to adapt and innovate. A new model of ownership is needed to unlock the full potential of the waterways to thrive in the future; one that 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.

**The Government therefore proposes 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).**

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, a public corporation, which cares for 2,500 km of canals, 500 km of river navigations, 15 km of docks and many thousands of associated locks, bridges, embankments and aqueducts; and
- The Environment Agency, a non-departmental public body, primarily concerned with flooding, pollution and rivers, which cares for 1,000 km of mainly river navigation.

Government plans for the transition of British Waterways into civil society are already well-developed and more advanced than those for the Environment Agency navigations. The Government therefore proposes a two-phased transfer into NWC with British Waterways moving first, and the Environment Agency's river navigations moving after the next Spending Review, subject to affordability and the agreement of the NWC's Trustees.

The Government believes that the move to civil society will secure the long-term financial sustainability of the waterways. It plans to transfer all of British Waterways' property assets to the charity, as an endowment, and to commit to a long-term funding contract. The charity will also have new opportunities for growing income from voluntary giving, new commercial opportunities, efficiencies, and growth in volunteering.



The proposal also demonstrates the Government's commitment to ensuring waterways users, and the communities that live alongside them, are given greater involvement in how waterways are managed. It aims to empower and encourage more people to bring their expertise and passion to the organisation.

This document sets out a possible governance model for the new charity, which aims to reflect the great diversity of waterways users, and balance the need for a national outlook with a local focus:

- **Local Partnerships** would advise, assist and critically support local management. They would help to develop the local strategy, build partnerships and alliances, and raise funds for local projects. They would ensure that the needs of local people are reflected in the decision-making process, and encourage local people to take more responsibility for the future prosperity of their waterways.
- **The Council** would have a responsibility to provide guidance to the Trustees on their overall performance in fulfilling the NWC's 'charitable purposes'. It would also have the power to appoint or dismiss Trustees. It is envisaged that the Council would have between 35 and 50 members, drawn from the different communities that use or benefit from the waterways, including boaters, canoeists, walkers, anglers, cyclists, heritage, environmental and community groups, as well as chairs of Local Partnerships.
- A small **Board of Trustees**, appointed by the Council, would have ultimate responsibility for everything the charity does and for making sure that the organisation works well to deliver its purpose.

The Government seeks to make these changes through the Public Bodies Bill currently being considered by Parliament. Subject to the passage of the Bill and parliamentary approval of the subsequent Order, the NWC is expected to take over in April 2012.

In this document we invite views on the key elements of the Government's proposals, including:

- What do you think about the charitable purposes of the new charity?
- Do you agree with the proposed governance model for the new charity – and what improvements could you suggest?
- How could people be helped to become more involved and take more responsibility for their local waterways?

The Government expects to publish its response to this consultation in the autumn of 2011.





## Scope

This consultation seeks views on how, in future, the inland waterways in England & Wales that are currently managed on behalf of the Secretary of State for Environment, Food and Rural Affairs, will be run. It sets out the rationale for moving these waterways out of the public sector and into a new civil society organisation, and the principles which will guide the Government in deciding on the way forward.

### This consultation is for:

- people who use the waterways as part of their daily lives or have an interest in them;
- people who do not use the waterways but want to or who could potentially benefit from them;
- people actively involved in the waterways (for example canal societies, boaters, anglers, volunteer groups, British Waterways staff);
- minority groups with an interest in the waterways (for example people from black and minority ethnic groups, disabled people);
- business users of the waterways, including hireboat and commercial operators, boat builders, waterside businesses and businesses with an indirect stake (for example pubs, cafés, hotels, etc);
- national and local government and key national and local stakeholders (for example Local Authorities);
- national and local interest groups (for example wildlife trusts, cycling groups, ramblers, Parish Councils, etc);
- national interest groups such as environmental and recreational non-governmental organisations and industry federations; and
- statutory advisers to Government.







# Chapter 1: Introduction – the waterways today and a vision for the future

- 1.0 **Today our inland waterways are enjoyed and valued by millions of people and provide a range of social, economic and environmental benefits unimagined even twenty years ago. However in order to secure a sustainable future for this national asset, an innovative solution is needed. The Government believes that the creation of a New Waterways Charity presents this opportunity.**
- 1.1 The waterways today are enjoyed by millions of people every year and, while their original function as a freight network has greatly diminished, they have been put to new uses that their builders could never have imagined. The waterways have been transformed from derelict backwaters into thriving corridors for wildlife, people and businesses. Where they once carried coal and timber they now carry holiday boaters; tow-paths now provide recreation for walkers and cyclists. Where they were sometimes toxic, lifeless channels, they are now precious habitats for some of our rarest animals and plants. And where canals were once locked and hidden away behind high walls, they are now open for everyone, and an emblem for the revival of our towns and cities.
- 1.2 Today, over 90% of people<sup>1</sup> regard the waterways as an important national asset delivering a range of social, economic and environmental benefits. The Government believes that millions more can enjoy our canals and rivers, if we can liberate their potential to provide a full range of benefits, and get all sections of society actively involved in their protection and development. If we achieve this, the rewards are clear: from the provision and care of essential natural resources and green infrastructure, to strengthened ecological networks; from increasing health, well-being and recreation, to flourishing waterways tourism; from sustainable transport and renewable energy to increased leisure and access opportunities for local communities and greater social cohesion.
- 1.3 The Government believes that a charity will be better placed than a public body to liberate such benefits and promote the waterways network across all sections of the community: reaching out to young people, finding new constituencies of interest, and generating the sort of widespread and deep commitment that will guarantee the waterways' future prosperity.
- 1.4 In order to ensure this thriving and sustainable future for our waterways, long-term thinking and solutions to current challenges are needed. The first challenge for the waterways today is that of community engagement. Over half of the waterways in England and Wales are cared for by the public body, British Waterways, reporting to Defra. While British Waterways actively engages with stakeholders nationally and locally, and provides leadership for the sector through its membership of the Association of Inland Navigation Authorities, its current governance structure is not designed to encourage wider community ownership and engagement. The Government therefore sees an opportunity to make changes that would encourage more involvement, and at the same time inspire a feeling of greater responsibility on the part of local users.

<sup>1</sup> British Waterways market research – Inland Waterway Visitor Survey 2010.





- 1.5 There is also a need to bring more funding to the waterways in order to sustain the last decades' achievements, and to achieve even more. As our canals and river navigations age, they become ever more costly to maintain. British Waterways manages the third largest collection of listed structures in the country: heritage which requires intensive management and significant funding. At the same time the network is under increasing pressure from other factors that increase costs, including: extremes in weather patterns such as drought and floods; the incursion of invasive species; and the wear and tear that comes with greater public usage.
- 1.6 British Waterways has had admirable success in raising its own commercial income, and its Government grant in England and Wales now represents less than half of its expenditure on maintaining its waterways. However, the constraints of working within a 50-year old governance structure limit the potential for generating significant further sources of income for the waterways. The Government is committed to reducing public expenditure to focus public sector activity only on what must be done in the public sector and cannot be done elsewhere. It is clear that public funding alone is not the answer.



- 1.7 In May 2009 British Waterways revived a debate which began almost half a century ago, about taking its waterways out of the public sector; this idea has gained widespread stakeholder and cross-party support.
- 1.8 This consultation document sets out the Government's vision for how, by empowering waterways users and local communities to have greater involvement in how they are run, our waterways can be funded, protected and further invigorated in the future.





# Chapter 2: A new 'national trust for the waterways'

- 2.1.0 **On 14 October 2010, the Government announced its intention to transfer the powers, duties and assets of British Waterways in England and Wales into a new, independent 'national trust' for the waterways.**
- 2.1.1 The New Waterways Charity (NWC)<sup>2</sup> will protect and care for these assets on behalf of the nation. It will give waterways users, and their local communities, a greater involvement in how the waterways are managed.
- 2.1.2 The proposal will help the waterways to be more financially sustainable, as the new charity will have access to new sources of commercial and private income, and fundraising, including legacies and donations. It will create the opportunity to grow a strong base of volunteers who can help maintain a range of waterways assets, through their knowledge, expertise, passion and commitment.
- 2.1.3 The decision to move the waterways to civil society builds on the good work of British Waterways, the Environment Agency and countless waterways enthusiasts who have worked hard on them over many years, and reflects the Government's confidence in the ability of local communities and interest groups to help make the transfer into civil society a success. The proposal to create a new charity reflects the fact that there are no existing charitable bodies with the expertise and capacity to take on the waterways.
- 2.1.4 The proposal has received widespread stakeholder and political support and there is considerable enthusiasm for a charitable model that ensures the waterways continue to be managed for the public benefit, while attracting additional sources of income and volunteer time. The overall aim is to create a new model of organisation that is better placed to deliver a thriving, sustainable waterway network cherished by a public that shares a deep responsibility for its wellbeing.
- 2.2.0 **Navigations in England and Wales**
- 2.2.1 There are approximately 5,000 km (3,000 miles) of fully navigable inland waterways in England and Wales, about 450 km of which are tidal.
- British Waterways is responsible for about 3,000 km, of which about three quarters are canals.
  - The Environment Agency manages almost 1,000 km, most of which are navigable rivers.
  - The Broads Authority, controls a 200 km river-lake system.
  - The Middle Level Commissioners manage 200 km, most of which have a dual function as drainage channels and navigations.
  - The remainder are managed by a wide range of other bodies, including local authorities, port authorities and charitable trusts. [See map at Annex A]

<sup>2</sup> Working title only – please see Question 29 which asks for your opinion on the best name for the new charity.

### 2.3.0 **Scope of this proposal**

2.3.1 The Government is committed to delivering a “national trust for the waterways” that includes the British Waterways and the Environment Agency navigations. To give the charity the best possible start in the current tight fiscal climate, it wishes to take a phased approach to delivery of this vision: with British Waterways’ canals, rivers, docks and reservoirs in England and Wales transferred into the new civil society body, as soon as parliamentary authority is gained, and the inclusion of the EA navigations into the new waterways charity, after the next Spending Review in 2015, subject to affordability and the agreement of the NWC Trustees.

2.3.2 This phased approach reflects the fact that Government plans for the transition of British Waterways into civil society are already well developed and more advanced than its plans for the Environment Agency navigations. Unlike the British Waterways navigations, where a dowry of commercial property investments can be transferred into the charity to provide additional income to manage the long term liabilities associated with the canal network, the EA navigations are currently dependent solely on an annual public grant. The Government intends to find the additional funding for these liabilities, from the next Spending Review, if affordable, and subject to the agreement of the NWC Trustees. This 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.

### 2.3.3 **Scotland**

2.3.4 This proposal specifically excludes the canals currently managed by British Waterways in Scotland. Inland waterways policy and sponsorship in Scotland are devolved matters and so British Waterways’ activities there are under the oversight and ultimate control of the Scottish Executive. The Scottish Executive has decided that its canals, and British Waterways Scotland, will remain in the public sector.





### 2.3.5 **Other navigations**

2.3.6 There are many other smaller navigations not currently managed by Government. 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.

2.3.7 As part of its transition to civil society, British Waterways is also discussing options for closer collaboration with The Waterways Trust<sup>3</sup>.

## **Question 1: Do you agree that, over time, the charity should work towards including other navigations, including the EA Navigations in the next Spending Review?**

### 2.4.0 **Choice of civil society body**

2.4.1 A variety of legal forms is available for organisations operating within civil society. To assess the most appropriate legal form for a body to take on stewardship of the state-owned inland waterways, a range of criteria was selected.

2.4.2 The Government's conclusion is that the type of body that would be best placed to deliver the advantages of civil society ownership and governance is a **charitable company limited by guarantee**.

2.4.3 A company limited by guarantee is one that does not have share capital or have shareholders and is not normally profit distributing. It is the most common corporate form adopted by medium to large charities [for more information, see Annex B].

### 2.5.0 **Special Trust**

2.5.1 Property can be given to a charity under what is called a "special trust". In this situation, it is 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 Declaration requiring the waterways to be protected and sustainably managed in perpetuity. It is by use of this arrangement that NWC will properly be able to be described as holding the transferred waterways 'in trust on behalf of the nation.'

2.5.2 The Government proposes that the Trust Declaration should require that:

- former state-owned waterways are held and operated for the public benefit 'on behalf of the nation';
- operation and management are to take proper account of local social, economic and environmental needs and interests;
- free access to the towpaths will be protected;
- NWC shall not be prevented by the Trust Declaration from continuing to make reasonable charges including for boating, fishing and use of its waterways, subject to the general objective of retaining free access to the towpaths.

<sup>3</sup> The Waterways Trust is an independent charity which builds partnerships, raises funds and delivers projects around the waterways for the benefit of people. In addition to operating the National Waterways Museum at Ellesmere Port, Gloucester Waterways Museum and the Canal Museum at Stoke Bruerne, The Waterways Trust owns the Rochdale Canal and Millennium Ribble Link.

**Question 2: Do you think that the proposed requirements of the Trust Declaration are the right ones? Are they sufficient/are there others that should be considered?**

- 2.5.3 While the Trust Declaration will just focus on waterways transferred from British Waterways, the NWC constitution will be sufficiently flexible to address wider waterway issues such as future canal restoration or the possible transfer of additional waterways to NWC. This is because the NWC constitution will (within limits) be capable of amendment whereas the Trust Declaration is intended to satisfy the Government's concerns for the future use and maintenance of formerly state-owned waterways in perpetuity.
- 2.6.0 **Charitable purposes**
- 2.6.1 Under charity law trustees are required to develop their policies, direct activities and manage resources so as to further their organisation's **charitable purposes**. The purposes are usually set out in the charity's constitution and trustees are answerable to the Charity Commission and the courts if they act in breach of their constitution or outside their charitable purposes.
- 2.6.2 The purposes of a charitable company can be revised, subject to the approval of a special majority of the company membership and of the Charity Commission.
- 2.6.3 The charitable purposes for NWC (as distinct from those in the Trust Declaration) need to be inclusive and sufficiently broad to cover all the main stakeholder interests, without excessive dilution, and clearly demonstrate they are for public benefit.



## **BOX 2A: The waterways and public benefits**

**Rich in heritage, abundant in wildlife and alive with culture, our inland waterways are vitally important for both people and the environment. The NWC will have an important role to play in safeguarding and enhancing these public benefits, and in helping to engage and empower civil society to take a more active role in their protection.**

### **Heritage**

- British Waterways manages the third largest collection of listed structures in the country, comprising over 2,700 listed buildings, 51 scheduled ancient monuments, over 400 miles of conservation areas and thousands of archaeological sites. The waterways adjoin or pass through 4 World Heritage Sites, 14 historic battlefields and 33 registered historic parks and gardens. In 2009 the Pontcysyllte Aqueduct on the Llangollen Canal was designated as a World Heritage Site by UNESCO.

Over recent years British Waterways has worked in close partnership with heritage organisations, in particular English Heritage and Cadw, to promote the importance of waterway heritage and reduce the numbers of historic buildings at risk. It publishes an annual report<sup>4</sup> on the state of waterway heritage cataloguing progress and highlighting areas of concern.

Today British Waterways employs dedicated heritage experts providing specialist support to the waterway units and central teams.

### **Natural Environment**

- Inland waterways are important wildlife corridors, providing and linking habitats in town and countryside in an increasingly fragmented ecological network<sup>5</sup>. In the 2009 British Waterways Wildlife Survey the public sighted nearly 300 different species of birds, amphibians, reptiles, insects and mammals. The inland waterways network currently includes 65 Sites of Special Scientific Interest and over 1,000 other nature sites.

The waterways also provide over 1 million megalitres of water each year for a variety of uses including agriculture, irrigation, water supply, industrial and power generation purposes.

Balanced with the needs of the natural environment, the waterways are a growing source of renewable energy, through the development of hydropower schemes at river weirs. There is also potential to make more use of waterways as a sustainable means of cooling urban areas.

Canals and canalised rivers also have an important role in flood defence.

<sup>4</sup> <http://www.britishwaterways.co.uk/media/documents/State-Of-The-Waterways-Heritage-Report-2008-09.pdf> .

<sup>5</sup> 'Making Space for Nature' (Lawton 2010) stated: 'Ecological networks have become widely recognised as an effective response to conserve wildlife in environments that have become fragmented by human activities.'

## Access

- The restoration and improvement of inland waterways can contribute to improved local landscapes, provide increased local access opportunities, and contribute to local economies.

In 2009, over 340 million visits were made to the waterways; an increase of 80 million compared with the previous year. The network currently provides opportunities for both recreation and sustainable forms of transport. It provides green and tranquil space even in highly urbanised environments, as somewhere to retreat from the bustle of city life and off-road routes to work and shops. In rural areas it provides places for a relaxing walk or cycle ride with the family, or for a challenging longer walk.

Health and wellbeing benefits associated with proximity to the natural environment and physical activity have often been cited<sup>6</sup>, and there are indications that the presence of waterways close to where people live can actually increase physical activity<sup>7</sup>.

Waterways tourism also helps the economy and offers a range of benefits to local communities. Tourism is the 5th largest industry in the UK supporting 1.5 million jobs. One of the aims of the government's new tourism strategy is to grow tourism by 3.5% over the next ten years and to deliver up to 150,000 new jobs and waterways tourism will play an important part in this.

2.6.4 The Government believes that the key charitable purposes of the NWC as set out in its constitution need to encompass the following objectives:

- the stewardship of inland waterways for the public benefit including:
  - their efficient operation and management;
  - preserving and enhancing their availability for navigation;
  - facilitating a broad range of other recreational and leisure uses for public health and well-being, including safeguarding free public access to towpaths;
  - conserving and enhancing their built and natural heritage, including wildlife habitats;
  - sustainable use and management of natural resources, which take account of climate change;
  - use of the waterways as an educational resource (including museums);
- the restoration of waterways; and
- regeneration of waterways and the adjoining land corridors through which they pass.

2.6.5 The charitable purposes will need to be finally refined and then agreed by the Charity Commission.

**Question 3: Do you agree that the suggested charitable purposes for the NWC are broadly the right ones? Can you think of other necessary requirements?**

<sup>6</sup> National Institute for Health and Clinical Excellence PH8 Jan 08 Physical Activity and the Environment

<sup>7</sup> Surveys of towpath visitors indicate that 62% consider that the presence of the waterway towpath helps increase the amount of physical activity they regularly take.



## 2.7.0 Mission statement, belief and vision

2.7.1 It is from the charitable purposes that the NWC's 'mission statement', 'belief' and 'vision' will flow. While these are not legal documents, they will help to define NWC's objectives and priorities, direct its activities and underpin its fundraising and marketing efforts.

### **BOX 2B: Mission statement**

The 'mission statement' is the long-term, unchanging definition of an organisation's purpose from which all its strategies derive. Once the mission statement has been espoused, it will not change for decades to come.

For a charitable organisation, the mission statement is a simplified version of the charitable purposes, intended to act as a day-to-day prompt for those supporting the charity.

2.7.2 Market research has been carried out on behalf of Defra and British Waterways (<http://www.britishwaterways.co.uk/media/documents/Charitable-Cause-research.pdf>) and has been used to find out what attributes of the waterways appeal to the public. This research, together with consultation with current waterway stakeholders and staff, has been used to inform the draft mission statement, belief and vision below.

2.7.3 The first draft of the mission statement for the NWC is proposed as follows:

**“NWC exists to protect and promote our inland waterway network so that our unique waterway heritage will always be a valued part of local landscapes and communities.”**

2.7.4 Civil society organisations or charities commonly express what they stand for in the form of a 'belief'. The 'belief' stems naturally from the charitable purposes and mission statement – but unlike them can be changed over time – and helps to define the motivation for staff and volunteers. A proposed 'belief' for NWC might be:

**“Our unique waterways belong to us all, and we believe that they should be enjoyed today and protected for tomorrow. Waterways are part of our local communities, history and cultural identity. They refresh the spirit and provide a haven for wildlife and people amid an otherwise fast-paced and pressured world.”**

2.7.5 The mission statement can also be expressed in the form of a 'vision', a simplified, condensed expression which might easily be used in external communications and marketing. The first draft for a vision for NWC is:

**“We want canals and rivers to be enjoyed, valued, used and cared for by everyone.”**

**Question 4: Do you agree with the proposed 'mission statement'? How could it be improved?**

**Question 5: Do you agree with the proposed 'belief' statement? How could it be improved?**

## Question 6: Do you agree with the proposed 'vision' statement? How could it be improved?

### 2.8.0 Key powers and duties

- 2.8.1 The NWC would acquire its powers from two main sources. First it would have most of the statutory powers of British Waterways under which it operates the waterways transferred to them by legislative order. These are called the 'statutory undertaker' powers, many originating under the legislation that enabled the creation of the waterways and to which British Waterways is itself successor. These are explained in more detail below.
- 2.8.2 Secondly, NWC would derive a number of its powers from its charitable constitution. The constitution of a charity, in addition to setting out its charitable purposes also contains its key powers for carrying out its activities. Typical among these for all charities are powers to raise funds in various ways and powers to invest funds and manage the other assets of the charity. The constitution usually sets out the scope of these powers and the extent to which they may be delegated.
- 2.8.3 There will need to be certain specific powers, tailored to the activities of NWC, included in its constitution. An example is a specific power to charge for the use of services and facilities provided by NWC, including use of the waterways by boats. This is important to ensure that the power to charge boat licence fees, for example, is maintained.
- 2.8.4 At present British Waterways is subject to a broad range of legal duties set out in a number of pieces of legislation. These include legal obligations to maintain the waterways in their care; to manage navigation on those waterways; and general commitments to deliver wider environmental objectives in line with, for example, EU legislation. It also has a range of legal powers needed for the proper running of the waterways. These are extremely wide-ranging in nature and include powers such as those to seize vessels which have been involved in illegal activity. Other powers include:
- power to make byelaws (subject to the approval of Ministers) for regulating use of inland navigations or for control of shipping in harbours and docks;
  - a comprehensive regime for being able to enter onto land to enable the carrying out of works to inland waterways for repair, maintenance, alteration, renewal or protection;
  - powers to charge for the registration of pleasure boats;
  - powers to require standards for the construction and equipment of vessels; and
  - powers to require insurance of vessels in respect of third party liabilities.
- 2.8.5 The charity would need to be able to exercise existing statutory powers and duties in order to operate waterways and we expect that most of those powers and duties will transfer to NWC.
- 2.8.6 New legislation is needed to bring about these transfers. The Public Bodies Bill, which is currently being debated in Parliament, is the chosen vehicle. It would authorise the Government to transfer powers and duties to the new charity by way of a Ministerial Order. It would also allow the powers and duties to be modified if the transfer to the charity makes that appropriate. This Order would be subject to public consultation, debated in, and approved by, Parliament before it came into force.
- 2.8.7 In anticipation of this, work is currently underway to identify which of British Waterways' current legal powers and duties would be needed by the new charity, and whether any

modifications to them would be necessary to reflect the fact that the new charity would be accountable to people who use the waterways. The Government would then draft an Order transferring the appropriate powers and duties to the new charity.

- 2.8.8 The transfer of powers and duties would take effect on the charity's "vesting day" in April 2012, that is the day upon which it assumes ownership of, and responsibility for, the waterways.
- 2.8.9 As these proposals only concern British Waterways in England and Wales, it will need to retain the powers and duties needed to operate in Scotland. It will make sense to modify the way it operates to reflect its new role as a Scotland-only body. If this requires a further modification to British Waterways' legal powers and duties then this would likely be contained in the same Order.
- 2.8.10 The Order cannot be presented to Parliament for approval before the Public Bodies Bill has been passed and entered into force. The Government expects that the latter is likely to be by Autumn 2011.
- 2.8.11 The Government expects to consult further on the contents of the order before it is presented to Parliament for approval, later in 2011.

**Question 7: Do you agree that the New Waterways Charity should enjoy the same powers and be subject to similar legal duties to maintain the waterways as British Waterways currently is?**

**2.9.0 Transfer of the waterways and other property**

- 2.9.1 British Waterways owns a significant amount of property, both land and moveable property. This includes the waterways themselves and all of the infrastructure which goes with them, including bridges, aqueducts, locks and towpaths [See Box 4B]. It also includes offices and moveable property including equipment, boats and other vehicles.
- 2.9.2 In addition it owns a portfolio of non-operational property which is not directly related to the running of the waterways, but which is used to generate income to help to fund them.
- 2.9.3 An important part of the rationale for establishing the new waterways charity is to allow it to take on ownership and responsibility for the waterways and all of its associated infrastructure. The Government considers that all of the property which British Waterways currently holds is necessary for it to carry out the task of running the waterways, either directly (for the operation of the network) or indirectly (through producing commercial income to fund it).  
**The Government has therefore concluded that all of British Waterways' property interests will be transferred across to the New Waterways Charity<sup>8</sup> other than those that will be retained by British Waterways Scotland.**
- 2.9.4 It is intended that the Public Bodies Bill, subject to Parliamentary approval, will also allow the Government to create a transfer scheme to enable it to move the property and assets to the new charity. A transfer scheme provides a legal vehicle to enable a bulk transfer of a broad description of property. The Government intends to use a transfer scheme to move all of the property and other rights and liabilities (such as contracts) from British Waterways into the new charity. A transfer scheme will need to be laid before Parliament, after the Public Bodies Bill receives Royal Assent.

<sup>8</sup> Subject to the agreement of NWC's trustees.





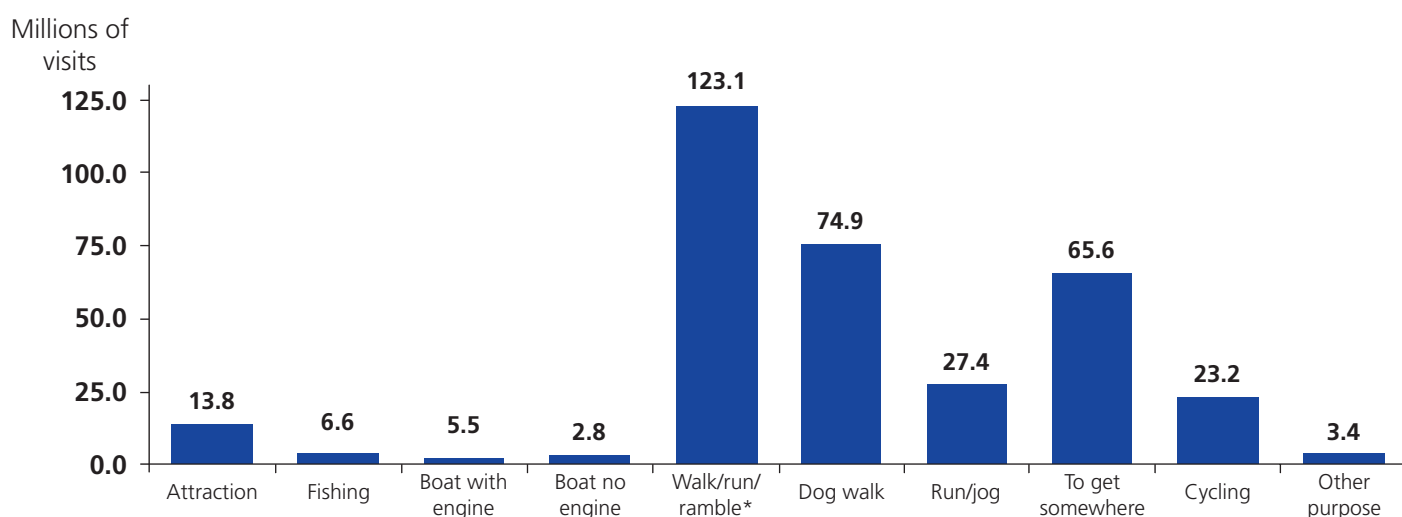
# Chapter 3: Engaging people in the new charity

3.1.0 **The transfer of the waterways from the public sector into a new charitable body will give people the opportunity to have a greater say in the running of their local canal or river.**

3.1.1 The Government believes that it can best nurture the spirit of cooperation by devolving power, assets, money and knowledge to those best placed to find the best solutions to local needs: elected local representatives, frontline public service professionals, social enterprises, charities, co-operatives, community groups, neighbourhoods and individuals. The Government wants to empower civil society to take greater responsibility for the delivery of the services that matter to them.

3.1.2 Over half of the UK population lives within five miles of a canal or river and, while the inland waterways are an important cultural and heritage asset for the nation, it is as a local resource that they are most valued. Local people know them best and local people hold the key to their future. Research in the report 'Valuing Waterways' (Environment Agency, April 2010) shows that communities living close to a waterway make greater use of inland waterways for recreation than the general public, with almost three-quarters (73%) making use of inland water in this way (59% for the general public).

## BOX 3A: Visits to BW Waterways by activity 2009



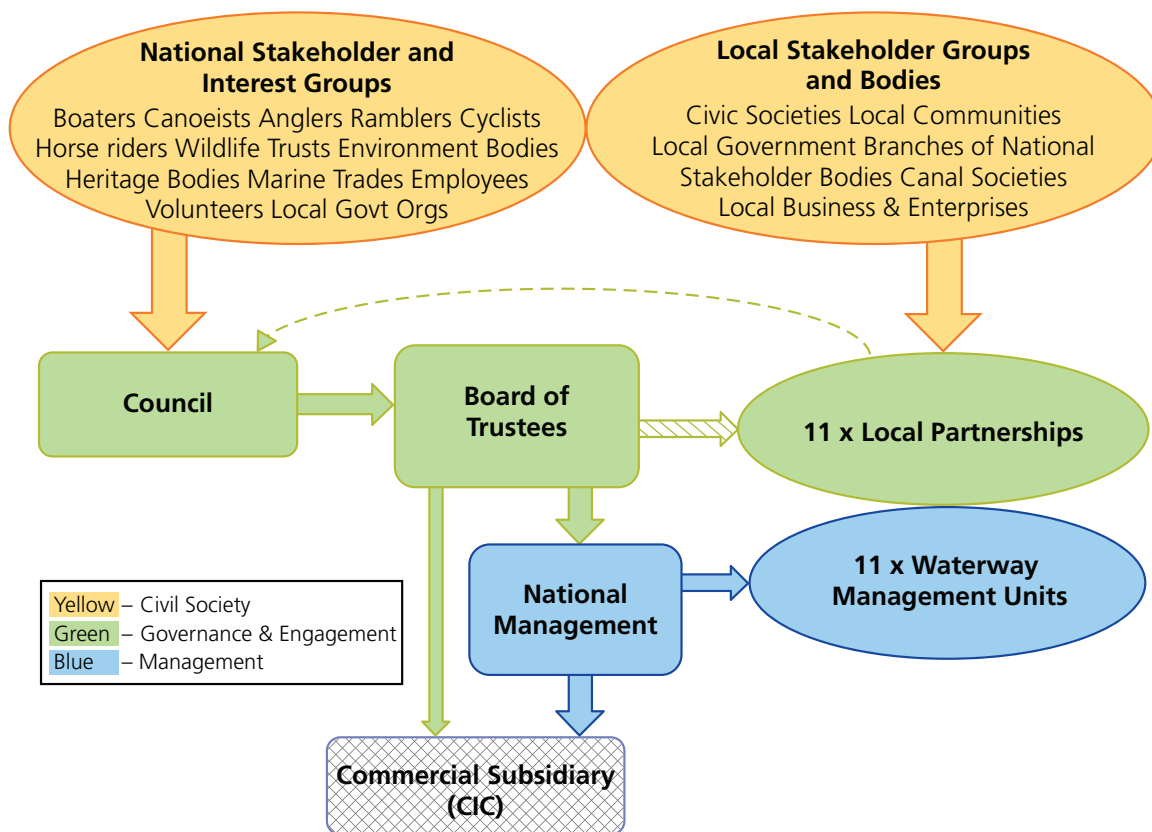
- 3.1.3 The transfer of the waterways from the public sector into a new charitable body will give people the opportunity to have a greater say in the running of their local canal or river, and increase the level of public and volunteer participation in the waterways. The new charity will be more relevant, accessible, and responsive to local needs and priorities.
- 3.1.4 At the same time, it must be noted that our waterways run through many different communities, and do not fit neatly within administrative boundaries. Many of those who use the waterways for recreational purposes (e.g. canal boating holidays) may well explore and travel through different waterways and will be attracted by what facilities and landscape the network can offer as a whole. One of the challenges of the new charity will be to accommodate the need for locally driven action and participation, with a coordinated approach that transcends these boundaries.
- 3.1.5 Any growth in a local approach to managing the waterways must also take into account the fact that the network makes up a significant part of the nation's historic infrastructure, supporting land drainage, access and utilities which require professional and expert management. The Government's vision for the New Waterways Charity is to ensure that it has the necessary expertise to maintain and improve these significant attributes while also being more responsive and inclusive in harnessing the undoubted enthusiasm, knowledge and energy of local communities.
- 3.2.0 **Proposed governance of the new charity**
- 3.2.1 Governance is about both the structure and processes of the governing body, how it is populated and held accountable, and the functions that senior and other managers perform to support it.
- 3.2.2 In the public sector, accountability is ultimately to Ministers and Parliament. For a civil society body, the role of Government and Ministers in governance needs to be replaced by other arrangements. Charitable status provides for certain public accountability requirements, for example charities are required to produce an annual report and accounts, which are the primary means through which trustees report on their stewardship of their charity and show public accountability. In addition, charities are overseen for their compliance with charity law by the independent regulator, the Charity Commission for England & Wales ([www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)).
- 3.2.3 Important contributors to the organisation's performance will be the design of governance structures, coupled with the skills and capabilities of the Trustees and their ability to work with both other parts of the governance framework and the organisation's workforce, paid and volunteer.
- 3.2.4 As highlighted above, in the case of the waterways the key challenge is to have a governance framework that promotes a national outlook with local focus, and accommodates a great diversity of stakeholders.
- 3.2.5 Waterways have diverse users and it is important for each to understand how their interests are represented through the charity's governance structure. There are many users (eg walkers



and cyclists) who may have little interest in the operation of the waterways themselves, whereas smaller groups (eg boaters, anglers and canoeists) take an active and direct interest. Some users pay directly; others do not. All of these interests need to be taken into account.

- 3.2.6 The Government is also committed to devolving greater powers to local areas and so it is important that elected local authorities, a large proportion of which include waterways in their areas, will have the opportunity to have some representation within the governance of the new body.
- 3.2.7 The proposed governance structure is to be built from the 'bottom up' and made up of three core constituents: Local Partnerships to influence local decisions; a national Council of representatives and; a Board of Trustees. An indicative structure is illustrated in [Box 3B].

**BOX 3B: Proposed Governance Structure**



**Question 8: Do you agree with the proposed governance model for the new charity? What improvements could be made?**

**3.3.0 Local Partnerships**

- 3.3.1 The Government proposes that a Local Partnership should be established for each waterway management area, bringing together the local management of the waterways with wider regional stakeholders to advise, assist and critically support local management. It is proposed that there will be an All Wales Partnership that will span both management units in Wales.

- 3.3.2 The local Waterway Manager and Chair of the Partnership would work closely together to harness the knowledge, skills expertise and wider connections of the Partnership to support and develop waterway planning, management and operations for the benefit of everyone interested in the waterway – users, the community, local business, environment and heritage interests.
- 3.3.3 The establishment of local partnerships for the waterways would ensure that the needs of local people and stakeholders are properly represented in the decision-making process. They would encourage local people to take more responsibility for the future prosperity of their waterways.
- 3.3.4 **Local Partnership Activities**
- 3.3.5 The Partnership would determine its programme of activity for any one year, working with the Waterway Manager to meet local needs and to exploit local opportunities. The following is a short list of actions (for illustration purposes only) that a Partnership might take in a hypothetical year, working closely with the local management team.
- Agree a 10-year vision for the waterway which is compatible with the national vision
  - Endorse the budget and 3-year business plan for the waterway before this is submitted for incorporation into the Trust's wider business plan
  - Understand in-year performance against budget and act to support on any emerging issues
  - Endorse and act to support local policy decisions
  - Endorse and monitor customer service standards
  - Work with the management team to develop an outreach programme to encourage youth-led volunteering and waterway-based activity
  - Agree with the Waterway Manager a programme to develop local business sponsorship and act to implement
  - Champion the waterway in political briefings with local politicians
  - Champion volunteering on the waterway and act to extend the reach of volunteer recruitment
  - Work with interested user groups to develop and run an annual waterway festival event.
- 3.3.6 The Partnerships' capacity to forge productive relationships and approaches will be key to their success in, for example:
- encouraging innovation and fresh insights into how the waterways are managed and relate to local priorities;
  - opening-up new funding and sponsorship;
  - promoting a broad spectrum of volunteering in all areas of waterway management;
  - engaging with waterway users, young people and new audiences.

- 3.3.7 In all its activities, the Partnership would need to work closely with the local management team, nurturing and valuing the skills they bring while also, where appropriate, encouraging a culture that is welcoming of change, participation and new ways of working.
- 3.3.8 The Partnership would work with the NWC management team on every aspect of waterway management including:
- helping to develop the local strategy for the waterway, to be approved by the Trustees and formally adopted by management;
  - endorsing the three yearly waterways business plans in their area and advising on resource allocation;
  - working in partnership with the local executive management to ensure the waterways work in the interests of the local economy and communities;
  - supporting management in developing partnerships and alliances;
  - understanding and articulating local views and needs (from the wide stakeholder/user base of the New Waterways Charity), and helping management reflect these in the way it manages the business;
  - acting to bring more resource to the waterways; and
  - supporting management in representing the work of NWC locally.
- 3.3.9 While local partnerships will be able to take part in and contribute to campaigns affecting the waterways nationally, they will also be able to take leadership in matters specific to their local waterway – for example, planning and raising funds for local projects [see National Trust case study below].

### **Question 9: Should funds raised locally by the Local Partnerships be spent on local priorities? Why?**

#### **BOX 3C: Case study: The National Trust – Financing our future**

To make every penny count, NT believes that more spending decisions should be made at its individual properties. It has recently launched a new Property Finance Scheme which devolves budgets for short-term spending and smaller projects to frontline managers. There are incentives for properties to build up their own reserves through exceeding performance targets. A new facility allows them to borrow money from the Trust at competitive rates to carry out major schemes.

The commercial success of NT's shops and restaurants reflects radical new thinking, including bold local and seasonal pilot projects at properties such as Fountains Abbey in North Yorkshire and Sheffield Park Garden in East Sussex. Each property's food and retail offer aims to be distinctive, reflecting its spirit of place. Volunteer enterprise is flourishing: the second-hand bookshop at Blickling Hall in Norwich funded the re-seeding of Tower Park, and access improvements at Little Moreton Hall in Cheshire were funded by its thriving supporter group.



### 3.3.10 **Local Partnership Membership**

3.3.11 The Partnership would have between 8 and 12 members. The Waterway Manager could be an ex officio member of the Partnership.

3.3.12 The selection of the Chair would be made by the Appointments Committee (described later) following an open invitation and transparent process. Other nominations for appointments to the Local Partnership are proposed to be made through a locally based, open and transparent process; proposed appointments would then need to be formally endorsed by the Trustees.

3.3.13 The duty of all members of the Partnership would be to act in the best interests of the waterway rather than to represent any particular interests or causes. All members would be local, credible and knowledgeable in their area of expertise.

**Question 10: Who do you think should be encouraged to sit on Local Partnerships?  
How should the nominations panel be constituted; who are the essential parties?**

**Question 11: Is between 8 and 12 the right size for a Local Partnership?**



### 3.3.14 **Local Committees**

3.3.15 The Partnership would decide if it wanted to establish any permanent or time-limited sub-committees, to consider specific cross-cutting issues. These could be chosen from a list of possible subjects, agreed at a national level.

3.3.16 All would work under the advisory remit of the Partnership. Their formal role will be to recommend actions to the Partnership but they would have appropriate working arrangements with the local management team to fulfil their function to best effect. All positions would be un-remunerated, but agreed expenses may be reimbursed from the resources of the local waterway.

### **Question 12: Which are the particular subjects or activities you think may require the attention of a specific sub-committee of a Local Partnership?**

### 3.3.17 **Local Partnerships' Conduct and Management of Business**

3.3.18 It is proposed that meetings be held no less than four times per year. The quorum for the Partnership could be 5 members.

3.3.19 At least once a year the Partnership would hold an Open Meeting which will be widely publicised to reach a broad range of groups – including users, community groups, local businesses, voluntary groups, heritage and environment groups. At this meeting the Management team would present a review of their actions over the previous period, an overview of their plans for the forthcoming year, with adequate time made available for questions to the Partnership and Management Team.

3.3.20 Working with the Chair, the local waterway management team would provide the secretariat for the meetings of the Partnership and Committees.

### 3.3.21 **Role of the Chair**

3.3.22 The Chair would be the ambassador for the Partnership. He/she would represent the Partnership in a number of forums including: the charity's Council, (where he/she would be an *ex officio* member); at business meetings of the charity, when required and; in chairing local groups such as the waterway user groups. In all these, his/her authority would be drawn from considered views of the Partnership and the policies and approaches agreed at their business meetings.

### **Question 13: How best can the New Waterways Charity strike the right balance between local needs and the needs of the waterways network as a whole?**

### **Question 14: How could the charity encourage effective working between different communities and partnerships who share the same waterway?**

### **BOX 3D: Case study: Local Pilot on the Kennet & Avon Canal**

The Kennet & Avon Canal, which celebrated its bicentenary last year, is in some ways a perfect illustration of the history of the inland waterways over the last century. Almost lost through lack of investment after the Second World War, the canal was reopened through the efforts of volunteers from the Kennet Avon Canal Trust (KACT) in the 1960s and later underwent a major HLF-funded restoration, spearheaded by a partnership between KACT, British Waterways and local authorities. The canal is today one of the most popular leisure waterways in the country and home to some of our rarest wildlife. The canal enjoys very active support from KACT volunteers and additional local authority funding, in recognition of its importance to the local economy.

In 2010, building on the success of the original restoration partnership, British Waterways and KACT set about establishing a new 'partnership board' to trial a new way of working on the waterway. Over the last six months the partners have been holding discussions with a broad range of local interest groups, advertising for volunteers and bringing together local experts, enthusiasts and key stakeholders, including boaters, businessmen, engineers, environmentalists and council officers.

Following a workshop meeting in February 2011 to debate key issues and priorities facing the Kennet & Avon Canal it was agreed to draw together a pilot board of 10-12 individuals, drawn from local volunteers, local authority staff and British Waterways' management, supplemented by a larger advisory committee.

The Kennet & Avon pilot board has been made possible through a close working relationship between British Waterways and the KACT and has led to further canal pilots being developed by British Waterways in the North West and West Midlands.

It is anticipated that these pilots will form the basis for the proposed 'Local Partnership Boards' of the New Waterways Charity and will radically change the way that local waterways are run. They will create opportunities for local people and stakeholders to work more closely with waterway managers to agree priorities and deliver shared objectives on local canals and rivers.

#### **3.4.0 Volunteers**

- 3.4.1 Volunteers have a particularly important role to play in NWC, from the Trustees, Council and Local Partnership members who will influence the decisions that are made, to those people who simply want to give up some time to help care for their local towpath, help boats through locks or gain work experience while volunteering with specialist ecologists and engineers.
- 3.4.2 The future of waterways depends to a large degree upon local communities recognising their historic, amenity and environmental value, and active participation in the management and maintenance of the waterways can improve a community's understanding and appreciation of this valuable national asset.
- 3.4.3 Waterways have a long tradition of attracting loyal and skilled volunteers. In 2008/9 British Waterways recorded 16,000 volunteer days on its network. By 2020 it predicts a volunteer workforce of over 5,000 regular volunteers, contributing approximately 80,000 volunteer days.



- 3.4.4 Volunteers already get involved in a wide range of activities: from waterway management to maintenance and development. 'Traditional' volunteers working on the bank are still much in evidence and much valued, and they are increasingly joined by experienced and qualified engineers, surveyors and lawyers, who freely devote their time to the waterways. Their involvement in caring for and helping others to enjoy the waterways is vital for the network but can also offer volunteers themselves a range of social, health and well-being benefits [see case study 3E below].
- 3.4.5 The waterways run through a broad cross section of the country and for NWC to succeed it will need to reach out to all sectors of the community. The Government believes NWC will need to develop new ways for local people to become actively involved and to support the growth and development of existing volunteer groups.

### **BOX 3E: Case Study: The National Trust – Public benefits of volunteering**

Within the attractive walled gardens of NT's Gibside estate near Newcastle, budding gardeners of all ages and backgrounds are busy at work. It is obvious that Gibside's allotments aren't just about food, but also community development.

Patients from a secure hospital, a centre for adults with special learning needs, a local charity for people who are socially and economically excluded, four local schools and traditional plot-holders all share the allotment space and work alongside one another to grow food. A garden hub, part potting shed, part learning space, is also somewhere for all the different groups to chat over lunch or a cup of tea.

The public benefits have been huge. The NHS has seen significant clinical benefits for the patients involved. The charities can demonstrate that Gibside is breaking down the sense of isolation behind problems like drug and alcohol abuse. School visits are helping to deliver the science curriculum and healthy schools initiative. All of the groups love growing food and meeting people.

The community food idea is expanding. Volunteers have started running a thriving farmers' market. Gibside recently launched a project called 'Sowing and growing together' which has led to gardening qualifications for people taking part, and also given them experience running a local food cooperative with a local social enterprise partner.

### **BOX 3F: Case Study: Waterways Action Squad**

Launched in 2009 the Waterways Action Squad (WAS) is a volunteering project run by British Waterways and The Waterways Trust with funding from VInspired and Bank of America. Since its inception it has engaged with over 700 volunteers aged between 16 and 25 with activities ranging from hedge-laying, dry stone walling and canal clean-ups to guiding wildlife walks and providing office support.

All the work undertaken by WAS volunteers is planned by volunteers, who work closely with British Waterways staff to plan projects and recruit further volunteers. Involving younger people adds value to existing volunteer work and brings fresh ideas and new audiences to the waterways. At the same time it shows a new generation the benefits of volunteering, gives them useful experience and a great chance to meet new people.

### **BOX 3G: Case Study: Volunteer Lock Keepers**

The lock keeper is an iconic and unique role on the inland waterways and, from 2011, British Waterways will for the first time be opening up the role to volunteers. Volunteer Lock Keepers will assist day visitors at lock flights, engage with passing walkers and cyclists and create links between the waterways and people living and working in their areas.

The new role has grown out of demand from volunteer rangers and British Waterways has received significant interest from members of the public wishing to help out at busy lock flights, such as Stoke Bruerne in Northamptonshire and Foxton in Leicestershire.

**Question 15: In what ways could people be helped to become more involved and take more responsibility for their local waterways? What might the barriers be, and how could they be overcome?**

**Question 16: In what ways could more people be encouraged to volunteer for the waterways? What might the barriers be, and how could they be overcome?**

**Question 17: What would a successful volunteer programme look like? What would it achieve?**

#### **3.5.0 The Council**

- 3.5.1 The Council is guardian of the long term values (purposes) of the charity. It will exercise its main power in appointing or dismissing the Trustees (dismissals would require a special majority of 75%) and exercise other company law member powers such as appointing external auditors and approving annual accounts. It will be responsible, through the joint Appointments Committee, for the appointment or dismissal of the Chairs of Local Partnerships.
- 3.5.2 The Council will not formally determine policy or strategy (that is the task of the Board of Trustees), but will have an important role in helping to shape policy by:
- debating important points of strategy or principle to provide guidance and perspective to the Board of Trustees;
  - raising issues of concern for the Board of Trustees to pursue;
  - being a reference point and sounding board to help the Board of Trustees to develop proposals and policies;
  - acting as the guardian of the long-term values of the charity.
- 3.5.3 The Council would be expected to meet approximately twice a year. The Council would comprise around 35 to 50 individuals serving four-year renewable terms and chaired by the Chairman of the Trustees. Rules about the Council's quorum would need to be established as part of the charity's constitution.

- 3.5.4 A particular feature of NWC compared with many other charities is the very diverse nature of the stakeholder interests in its activities. An important objective for the constitution of NWC will be that the Council has appropriate representation from all those interest areas and that it does not become dominated by just a few.
- 3.5.5 Therefore it is proposed that the constitution of the Council specifies various generic stakeholder 'constituencies' from which the members would be drawn. It would be the task of the Appointments Committee (described later) to identify from time to time appropriate bodies within those specified constituencies to be invited to nominate persons as Council members.

### BOX 3H: Proposed Representation on Council

	Constituency	No. of council members
1.	Private boating	4 – 8
2.	Anglers and other water users – sailors, canoeists, rowers	2 – 3
3.	Towpath users – cyclists, walkers, horse riders	2 – 3
4.	Boating business	3 – 4
5.	Built heritage	2 – 3
6.	Environment / conservation	2 – 3
7.	Local government	2 – 4
8.	Other statutory users	2 – 3
9.	Local board chairs	11
10.	Employees	3 – 4
11.	Co-options	3 – 5
<b>12.</b>	<b>TOTAL</b>	<b>36 – 51</b>

### BOX 3I: Membership or Representation

Many charities such as the National Trust and RSPB are substantially **membership** based organisations. Subscribing membership brings with it commitment, regular engagement and funding from supporters. In the early days of the new charity, however, the Government believes that the focus should be on securing fair **representation** from the wide range of different users and communities who benefit from the waterways, but currently have very different levels of awareness and engagement in their protection and development.

The charity will be able to decide if it wishes to move towards a greater element of direct membership, once it has established a broad, solid base of engagement with a representative range of waterways communities.



**Question 18: Do you agree that the new charity should initially focus on securing fair representation, and move towards a greater element of direct membership over time?**

- 3.5.6 It is important that each Council member should engage effectively across their own organisation, and act as a bridge between it and the charity. Once a stakeholder body or group is invited to nominate a person as a council member it would be up to that body to decide how to select the person – whether by election amongst its members, appointment by its governing body or as an *ex officio* role of an existing officer (e.g. its Chairman).
- 3.5.7 Exceptions to the above would apply in some cases e.g. council members drawn from employees of NWC would be expected to be elected from amongst the whole workforce. The provision for co-option is to enable the Appointments Committee to select a small minority of members of the Council to enable it to fill any perceived gaps in skill or knowledge or to ensure an appropriate balance in terms of age, gender, race, etc.
- 3.5.8 In summary the proposed composition of the Council would be:
- 11 Local Partnership chairs as ex-officio members (i.e. as chair of a Local Partnership they have the right to sit on the Council)
  - 22 to 35 members nominated or elected by stakeholder bodies (boat owners, towpath users, anglers, boating/tourism/leisure business, local government, employees, etc.)
  - 3 to 5 co-opted members selected by the Appointments Committee to ensure appropriate balance of skills, age, gender, race, etc.
- 3.5.9 **Direct Elections to Council**
- 3.5.10 Many charities have direct elections to their governance bodies from a subscribing membership. As a brand new charity NWC does not have an established database of individual users covering all its areas of activity from which such a subscribing membership population could be built. As its fund-raising activities grow and develop it is likely that appropriate databases will be built up which could, in time, be seen to be representative of a broad range of its users. It is anticipated therefore that as NWC matures provision will have to be made under the NWC constitution for a proportion of the Council to be directly elected, and for that proportion to grow over time.
- 3.5.11 In one category of usage there is an existing user database, namely boat licence fee payers. Notwithstanding the importance of retaining a structure for the Council that is representative of all stakeholder users, the Government thinks there is a good argument for the provision of some positions on the Council for members directly elected by all boat licence fee payers. The number of such directly elected members could grow over time as other user databases are developed – e.g. from databases of regular givers or other supporters such as volunteers, etc.
- 3.5.12 As an initial step, of the suggested maximum of 8 seats for private boaters, 4 could be filled by nominations from boating organisations and 4 could be directly elected by licence fee-payers. It must not be forgotten that in many cases members nominated by user bodies may well have been elected by members of those bodies in the first place.

**Question 19: Do you agree with the proposed make up of the Council? Which interests should be represented?**

**Question 20: Should a proportion of the Council be directly elected? If so, who should be entitled to vote?**

### 3.6.0 **Board of Trustees**

- 3.6.1 The Board of Trustees would be the governing body of the charity. The Trustees are ultimately legally responsible for directing the affairs of the charity, and ensuring that it is solvent, well-run, and delivering its charitable purposes<sup>9</sup>. The Trustees will appoint the management, set policy and strategy and approve business plans. They will also appoint Local Partnerships members (but not Chairs).
- 3.6.2 The Trustees would comprise between 8 and 12 people and would normally be expected to serve up to two three-year terms and retire in rotation.
- 3.6.3 Trustees would be appointed by the Council, with the assistance of Appointments Committee, purely on the basis of merit. This is in order to ensure that NWC is able to attract the highest calibre of individuals with the broadest range of skills, experience and expertise. Once the new charity is established, all Trustee vacancies will be openly advertised.
- 3.6.4 While Trustees are accountable to and appointed by the Council of representatives, they would not themselves be 'representatives'. This is to ensure that they are able to exercise independent judgement in order to support the delivery of the charitable purposes.
- 3.6.5 We would not expect Trustees to be paid, but reasonable expenses refunded.
- 3.6.6 The Trustees would appoint the Chairman, subject to ratification by the Council.
- 3.6.7 Trustees will not be members of Council (other than the Chairman of the Trustees in his or her capacity as chair of the Council) but would normally be entitled to attend its meetings.
- 3.6.8 The Board of Trustees would probably meet at least 6 times a year with subcommittees covering topics such as audit, remuneration, fundraising and infrastructure meeting as necessary.

### 3.7.0 **Specialist/Sub-Committees**

- 3.7.1 There will need to be a number of specialist committees or sub-committees within the governance structure of NWC at a national level. Some of these may be committees of the Council, some of the Board of Trustees, and some joint committees. To ensure flexibility committee arrangements will not be specified in the constitution of NWC but will be left for the Council or the Board of Trustees to determine from time to time.

<sup>9</sup> They would also be the company directors, with responsibilities under company law.

### 3.7.2 **Appointments Committee**

- 3.7.3 The one exception will be the Appointments Committee which will have an important role under the NWC constitution. This is proposed to be a joint committee of the Council and the Board of Trustees with equal representation (of at least two) from each, with an external independent Chair.
- 3.7.4 The key roles of the Appointments Committee are, through an open and transparent process, to:
- identify appropriate stakeholder bodies or groups within the generically defined stakeholder constituencies that will be invited to nominate persons to serve as members of the Council. Where some constituencies comprise many organisations of similar size in greater number than the available positions on the Council, the Appointments Committee will have to decide whether to have a system of rotating invitations, or to invite joint nominations, or whether to have a competitive selection procedure from a number of nominations.
  - identify and recommend persons to co-opt to the Council in order to promote a suitable balance of knowledge, experience, and representative qualities.
  - manage a recruitment process for positions on the Board of Trustees that will result in recommendations for appointment being given by the Committee to the Council. The Council will however always have the power to reject candidates recommended by the Appointments Committee.
  - appoint the Chairs of Local Partnerships who will become members of the Council on such appointment by virtue of their 'office'.
- 3.7.5 The reason for the joint nature of the Appointments Committee is that both the Council and the Board of Trustees have an equal interest in securing that appointments to the various governance bodies of NWC are of the most suitable people in terms of the skills knowledge and experience they bring to the various roles.
- 3.7.6 Trustees will have a fuller experience and knowledge of the activities of NWC from their direct oversight of its management and activities. Also they have a direct interest in securing the most appropriate appointments given their ultimate responsibility under charity law for the vision, mission and management of NWC.
- 3.7.7 Members of Council will bring the wider perspective of its representative membership to the tasks of the Committee and seek to ensure that candidates for the various appointments include those capable of providing the necessary oversight and constructive challenge that many of the governance positions require.

**Question 21: Should the independent chair of the Appointments Committee be chosen by Committee members or the Council? What skills would they need?**



### 3.7.7 Scrutiny Committees

3.7.8 To enable effective accountability of the Board to the Council, the Council must have the means to enquire into the outcomes of its activities as the key governance body, i.e. the overall effectiveness of NWC in furthering its charitable objectives. The Board of Trustees will, as with any Board of a large or medium sized corporate body, have an Audit Committee and a Remuneration Committee (to oversee senior management remuneration). It will be for the Council to decide on precise arrangements, but it may also choose to have some specialist Committees and/or working parties on key topics such as Finance, Infrastructure, Heritage and Environment. These committees would essentially be there to assist the Board in its oversight of the management of NWC.

**Question 22: Are there other topics that you consider would benefit from council scrutiny committees?**



### 3.7.9 **Joint Committees**

- 3.7.10 There may be opportunities for some joint committees, or at least joint membership of committees, where tasks are aligned and resources can be effectively combined. A possible example is the Audit Committee of the Board of Trustees and the Finance Committee of the Council. Whilst audit includes enquiry at a level of detail that would not normally concern the Council, and the Finance Committee of Council may wish to consider strategic financial issues more within the remit of the Board of Trustees rather than its Audit Committee, some common membership may well aid the levels of understanding and flows of information.
- 3.7.11 The management of NWC will benefit from being able to draw upon specialist advice and expertise from outside the organisation, particularly in the case of more detailed technical issues as opposed to matters of governance. The management of BW currently has meetings with specialist committees on navigation and waterway heritage and we would expect such arrangements to be continued by NWC. It is quite possible that such technical advisory committees might include some members of the Council with personal interests in those specialist fields but Council membership would not be a requirement for membership of those advisory committees. Members would be invited on the basis of the expertise they can bring, as is the case for the committees currently advising BW management.

### 3.8.0 **Trading Subsidiary – A Community Interest Company**

- 3.8.1 A significant and very important source of revenue for NWC will be the various commercial activities that will be 'inherited' from British Waterways, the major element of which is the endowment property portfolio but which also includes investments in British Waterways Marinas Limited and a number of joint ventures.
- 3.8.2 While a charity is able to hold investments, as a general rule it cannot engage in trading activities with a view to a profit. That is why many charities have trading or 'enterprise' subsidiaries outside its own charitable 'envelope' but which gift their profits to the charity.
- 3.8.3 NWC will need to do the same in respect of its trading activities. It is therefore proposed that a 100% subsidiary of NWC will be set up for that purpose. It is also proposed that it be set up as a Community Interest Company (CIC). A CIC is generally set up as a standard limited company but with some extra 'bolted on' community interest provisions. They are designed to be bodies that can run as enterprises without the restrictions of charity law, but with the community interest as the ultimate goal.
- 3.8.4 This is put into effect in by the following safeguards. First a CIC is subject to an 'asset lock' which means that, in general, it can only distribute any profits or other surpluses generated from its activities to a charity or another CIC. Second a CIC must pass the 'Community Interest Test'. For this purpose the CIC must prepare a community interest statement specifying the public or community interests it is seeking to further and to report annually on that.



- 3.8.5 Aside from the safeguards provided by CIC status (which to some extent would also be provided by charitable ownership in any event), registration of NWC's trading subsidiary as a CIC is a very visible and important symbolic statement of its purpose.
- 3.8.6 There are significant management and governance advantages to move many of the avowedly commercial activities into the CIC subsidiary whether or not strictly required by charity law. This will ensure that the governance and management of these activities can be undertaken by people with the necessary commercial experience and expertise. For tax reasons, ownership of investment assets will probably need to remain with NWC, but their management still undertaken by the CIC under an investment management service agreement. The assets under the management of the CIC will be significant: £450m or more. To ensure the CIC subsidiary provides the much needed revenues to NWC it must have an appropriately skilled board of directors and management.
- 3.8.7 The CIC will not be independent of NWC; it will be a 100% owned subsidiary and NWC will control the membership of its Board. This is likely to include some NWC Trustees but will also include people recruited from the commercial sector for their expertise. To obtain the right expertise it is possible that directors of the CIC may be remunerated.

**Question 23: Are there any other activities of British Waterways that would be best placed in the CIC?**





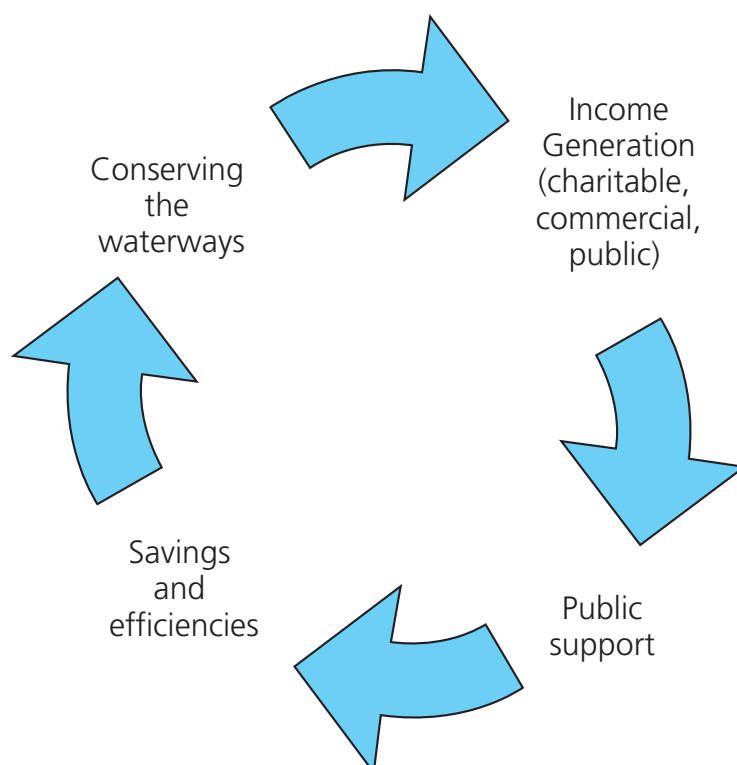




# Chapter 4: Creating a sustainable future for our waterways

- 4.1.0 **The search for a sustainable model for the future of the inland waterways has been the single most important issue for the network since before the Second World War.**
- 4.1.1 The collapse in freight traffic earlier in the 20th century left most canals struggling to find a purpose and starved of investment. It was only their development as an amenity and, later, a catalyst for regeneration, which secured their survival.
- 4.1.2 Today there is no question that the waterways are a precious part of our built and natural environment, or that they make a significant contribution to the wealth and wellbeing of the nation. However, they still require many millions of pounds of subsidy each year to survive. Although British Waterways has had admirable success in reducing its dependence on state support, the increasing costs of maintaining the network exceed the income it is currently able to raise as a public corporation. The current model for managing the waterways is unsustainable.
- 4.1.3 Securing a sustainable and resilient future for the waterways goes to the heart of the Government's plans to establish NWC. The long-term survival of the waterways and the benefits they create for society depend to a large degree on an interlinked and sustainable business model comprising: well-cared for waterways; well-used waterways; greater public support and engagement and; increased generation of income and savings and efficiencies.

## BOX 4A: Sustainable business model



## 4.2.0 Conserving the Waterways

4.2.1 The infrastructure of the inland waterways is made up of an extraordinary collection of channels, embankments, docks, locks, bridges, reservoirs, aqueducts and other structures (see Box 4B). While some of these are brand new, most date back many years.

### **BOX 4B: British Waterways (England & Wales) in numbers**

- 2,528 km Canals
- 550 km Rivers
- 15 km Docks
- 187 km Feeders
- 1,566 Locks
- 55 Tunnels
- 3,000 Bridges
- 364 Aqueducts
- 92 Reservoirs covered by the Reservoirs Act
- 80 Pumping Stations
- 1000+ Water monitoring points
- 97 Safety and Flood Gates
- 5,361 Gate Leaves
- 4,000+km Vegetation Boundary
- 65 SSSI's
- 560 km Conservation Areas
- 2,664 Listed Buildings
- 43 Scheduled Ancient Monuments
- 4 World Heritage Sites

4.2.2 Maintaining the waterways is a complex and demanding business, which requires: a thorough knowledge of the infrastructure and its condition; an understanding of the risks and consequences of failure to any part of the infrastructure and; a management system which can allocate resources effectively. These demands require specialist and professional management.

4.2.3 British Waterways has in place an 'asset management system' which puts the safety of the public at its core. The British Waterways management system, which builds on many decades of experience in managing the waterways, provides an important legacy for the new waterways charity and strong assurance for future Trustees.

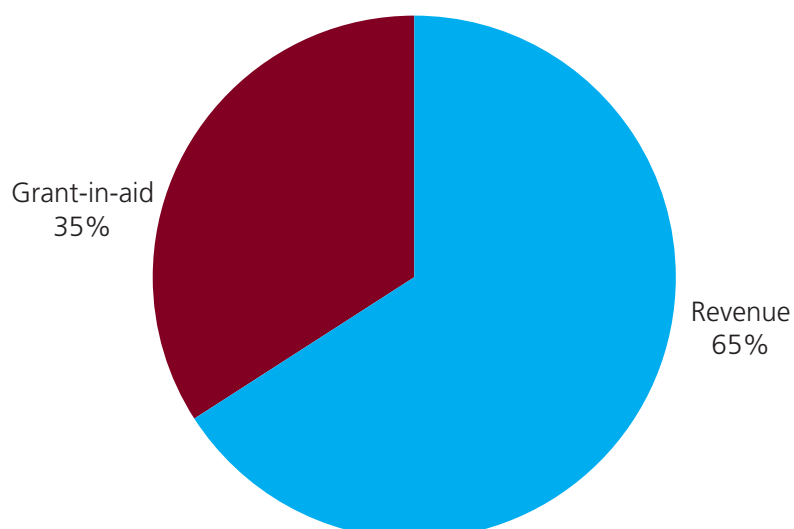
#### **BOX 4C: Asset Management**

British Waterways classifies its structures as Principal and non-Principal Assets. Principal Assets are defined as those whose failure would lead to severe disruption or have serious health and safety consequences for customers, neighbours or businesses (such as an embankment or reservoir). Non-Principal Assets are structures performing an important function in the operation of the navigations (such as a wall or towpath), but with a lesser consequence if they fail. British Waterways has approximately 11,000 Principal Assets and 15,000 non-Principal Assets.

Principal Assets are graded according to both their condition and the consequences of their failure to public safety, with those in worst condition prioritised. Over the last decade British Waterways has reduced the percentage of structures in the poorest two conditions ('D' and 'E') from 31% to 19%. In 2008 it was agreed that British Waterways would hold the proportion of structures in the worst two conditions at no more than 22%. Clearly the higher the proportion of structures in poor condition the larger the overall risk and continuing total funding shortages mean the state of the general infrastructure is deteriorating.

- 4.2.4 A clear challenge going forward, therefore, is to find a new sustainable business model for the waterways which secures the long-term condition of the infrastructure.
- 4.3.0 **Income generation**
- 4.3.1 Securing adequate funding for the waterways is vital if they are to have anything like a long-term future. The Government believes that the creation of a new charity will encourage even greater entrepreneurialism, giving greater independence to the waterways and better value for money for the taxpayer.
- 4.3.2 British Waterways funds its activities through three main sources of income: commercial income; government funding; and grants from other organisations. The ratio of these fluctuates each year and Pie Chart 4D sets out the revenue split for 2009/2010. All of these income sources are important for the funding of the waterways.

#### **BOX 4D – Total revenue: England and Wales, 2009/10 £169m**



### 4.3.3 Commercial Income

4.3.4 British Waterways has had tremendous success over recent years in growing its earned income. Commercial revenues derive from a wide variety of sources and over the last decade have increased by 96%<sup>10</sup> (from £43.1 to £84.5m). Chart 4E illustrates the main sources of commercial income for 2009/10.

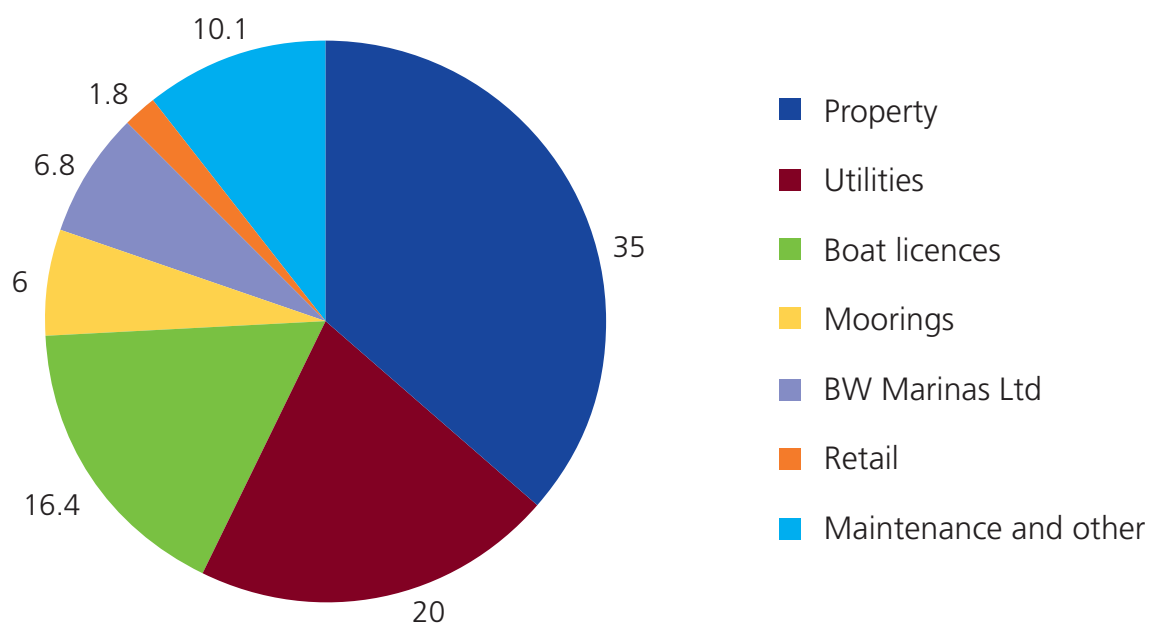
4.3.5 Traditional sources of revenue come from the licensing of boats and moorings. British Waterways now licenses a record 35,000 boats on its system and has been active in the development of new moorings and marinas and marketing marina investment opportunities to the private sector. Boating income represents approximately 17% of revenue in England and Wales (£29.2m).

4.3.6 Some further funding comes directly from anglers. British Waterways licenses stretches of the canals and off-line reservoirs for angling and raised £0.7m from angling in 2009/10.

4.3.7 Over recent years British Waterways has developed more innovative revenue streams the largest of which have been property and utilities, which accounted for £55m in 2009/10.

4.3.8 Over the past decade British Waterways' property team has generated over £250m of revenue profits towards the costs of waterway maintenance and a further £200m of capital to reserves. This success has been recognised by Government as a significant contributor to reducing British Waterways' reliance on government funding.

### BOX 4E – Commercial income 2009/10 £96.1m



<sup>10</sup> Includes commercial income from property, leisure and utilities  
(Source: <http://www.britishwaterways.co.uk/about-us/company-information/annual-report-and-accounts>)



- 4.3.9 Government will transfer British Waterways' portfolio of non-operational properties (i.e. those not required for the operation of the waterways) to the NWC as an endowment. The transfer of the assets and the income they provide to help maintain the waterways will be vital to the viability of a civil society body, and recognises the significant liabilities which the charity will be taking over from Government.
- 4.3.10 The charity will wholly own a non-charitable subsidiary within which commercial income-generating assets will sit, and which will pass its profits to the charity [for more see Chapter 3 under 'Community Interest Company'].
- 4.3.11 British Waterways has also been successful in developing new income streams through utilities. These include wayleaves from electricity, gas and telecoms companies wishing to use or cross its land, to developing wind and hydro power schemes. It also raises income from water sales supplying, for example, half of Bristol's drinking water via the Gloucester & Sharpness Ship Canal.
- 4.3.12 British Waterways has further interests in marinas, pubs, retail outlets and car parks on its waterways.



#### **BOX 4F: Hydropower**

The UK currently generates 1.3% of its electricity from hydro-electric schemes. In 2007/8 the UK employed 4,800 people in this sector; based upon forecast growth in domestic market value, this should rise to 6,000 in 2014/15.

Hydropower schemes not only generate renewable electricity for use on site or for export to the grid, but also generate income from Feed-in-tariffs (FITs) for the total amount of electricity generated. FITs offer an income from the generation of renewable electricity and an additional income from the export of renewable electricity to local consumers.

British Waterways, with its partners, intends to develop 35 "run of the river" low head hydropower schemes with private sector partners. The plants range in size from 100kw to 2,200kw. Permit conditions typically include a number of safeguards to protect the environment and local communities, for example requiring fish passes and ensuring flood risk is not increased.

The NWC will be able to receive an income from these hydro-electricity plants based upon a percentage of the gross income which the site provides. The gross income includes the sale of the electricity to the national grid, together with any renewable energy credits. By 2015/16 it is estimated that the NWC could receive an income in excess of £0.5 million each year.

#### **4.3.13 Contribution of Commercial Waterways**

- 4.3.14 Moving freight traffic off the roads and onto the water can produce significant public benefits. Congestion on our roads can be reduced; air quality can be improved; and carbon emissions can be reduced. Freight transport by water can be cleaner than transport by road as moving goods by water can be more fuel efficient, leading to CO<sub>2</sub> emissions that can be one-quarter the level of road transport.<sup>11</sup>
- 4.3.15 The Government supports the shift of freight from road to water, where it is practical and economically and environmentally sustainable to do so. However, today the use of the inland waterway system for the movement of freight accounts for less than 1% of total freight movements. In addition, British Waterways' income from freight traffic on their commercial waterways during 2008/09 was £215,000 and in 2009/10 was £131,000, whereas the direct costs incurred have been £607,000 each year.
- 4.3.16 **The Government believes that the statutory commitments under the Transport Act 1968 to maintain waterways for freight traffic may be unaffordable as currently constituted.** This is because the current regime imposes duties to dredge channel dimensions based on historic traffic that in most cases has disappeared. The cost of maintaining all of the commercial waterways to the required standard will not be affordable for the new waterways charity. The issue therefore needs to be resolved before the new charity is created.

<sup>11</sup> Tyndall Centre for Climate Change

4.3.17 The Government believes that there needs to be a proper balance between ensuring there will be no unacceptable burdens on the new charity from the outset while also enabling freight activity where it is economically and environmentally sustainable to do so. The Government does not therefore believe the status quo is acceptable. It will discuss with commercial operators how to minimise and mitigate potential, adverse, impacts from any changes. As a first step, the Government wishes to build up the evidence base for a detailed Impact Assessment before finalising proposals for further public consultation. A range of possible options under consideration are detailed in Annex C.

**Question 24: Government policy is to support the movement of freight on inland waterways, where it is economically sustainable. Do you agree the status quo is no longer an option? Which of the five options [in Annex C] do you prefer? What other options should we consider?**

#### 4.3.18 **Grants from other organisations**

- 4.3.19 One of the largest injections of cash into the waterways over the last decade has been through grants from other organisations. The best examples have been the large lottery supported restorations which have enabled the largest canal building and restoration programme since the early 19th century. But there have been many smaller projects funded in partnership with, for example, local authorities.
- 4.3.20 Over the last 10 years British Waterways has attracted over £300m of grant funding to deliver local projects (excluding grant from Defra and Scottish Government). Working with its partners, including the Heritage Lottery Fund, it has added over 200 miles of working waterways to the inland waterways' network, including the Rochdale Canal, Huddersfield Narrow Canal, Millennium Ribble Link, Anderton Boat Lift, Liverpool Link and Kennet & Avon Canal.
- 4.3.21 Other important sources of income have come from public bodies including local authorities, the European Union and organisations such Transport for London for projects ranging from towpath enhancements to education and interpretation initiatives.
- 4.3.22 Future income from these sources will depend to a large extent on local needs. However, as an independent charity, NWC will be even better placed to form local alliances and funding partnerships with public, private and charitable organisations to access new grants from other organisations.

#### **BOX 4G: Case Study – Pennine Canal Restoration**

The Rochdale and Huddersfield Narrow Canals form two trans-Pennine water links between Greater Manchester and West Yorkshire. Following a period of decline and abandonment both were restored to navigation in 2001-02 thanks to a funding package of around £56 million, from sources including local authorities and the National Lottery. Eight years after the canals' restoration British Waterways commissioned an independent study looking at the economic impact of the canals. This concluded that the canals had increased economic activity in the area by an annual £18m, supporting 500 full time equivalent jobs and were delivering the equivalent of over £5m each year in welfare benefits, such as recreation, health, volunteering, education and training. These benefits are supported by an additional 2 million visits to the canals and their towpaths each year.

The restoration of these canals has further helped to kick-start wider regeneration projects through the larger urban areas that they pass, and created focal points for local regeneration strategies and master-planning documents.

#### **4.3.23 Government Contract**

- 4.3.24 Currently British Waterways receives an annual grant-in-aid for its waterways in England and Wales from the Government, via Defra. Government policy has been for British Waterways to become more self-sufficient, through generation of commercial income, so whereas 15 years ago the Government grant accounted for 75% of British Waterways' income, today it is just 40%.
- 4.3.25 The Government believes that the waterways will continue to require some level of public funding for the foreseeable future. It has committed to replacing the current annual grant with a long-term **Funding Agreement or Contract**. This will give both the Government and the new waterways charity greater certainty over future funding and a clearer relationship based on agreed outcomes.
- 4.3.26 As part of the Spending Review settlement, the Government announced funding for British Waterways in England and Wales of £41.5m for 2011/12 and £39m for the following three years. The Government has made a commitment to maintain funding at the 2014/15 level for the new charity going forward until 2022/23 inclusive (covering the next two SR periods; not index linked). The length and terms of a long term funding contract will be subject to negotiation with the Transition Trustees.
- 4.3.27 A key purpose of the Funding Agreement will be to safeguard the public benefits currently delivered by the waterways and to recognise that the long-term liability for their upkeep will be transferred from Government to the New Waterways Charity. In each case this benefits the new charity and represents good value for money for the taxpayer.
- 4.3.28 Government recognises that the overall financial position of NWC has to be sufficient for the incoming Trustees of the charity to meet their statutory obligations and ensure that NWC is a going concern. The Government is therefore considering whether each of the obligations that currently apply to British Waterways would be appropriate and manageable for the NWC [for example, see above the statutory commitment to provide for commercial freight].



#### 4.3.29 **Stewardship Score**

4.3.30 The Stewardship Score is an indicator agreed with Defra, which is intended to provide an outcome measure of the overall state and functionality of the waterways and the public benefit delivered. In 2009 a baseline of 100 was established using methodology validated by Deloitte and data collected by British Waterways in 2008/09 for waterways condition and user benefit. This was then compared with further data collected in 2009/10 to provide a score at March 2010 which indicated an overall improvement of 7% both in the waterways condition and its serviceability. Information on the components of the score are shown in the table below<sup>12</sup>.

#### **BOX 4H: Network Stewardship Score 2009/10**

• <b>Asset Condition</b>	<b>Up 6%</b>
• <b>Heritage Compliance</b>	<b>Up 3%</b>
• <b>SSSI's</b>	<b>No significant change – 0%</b>
• <b>Asset Serviceability</b>	<b>Up 3%</b>
• <b>Lock Gate Ease of Use</b>	<b>Down 2%</b>
• <b>Towpath Condition</b>	<b>As 2008/09 data</b>
• <b>Bank Protection Condition</b>	<b>As 2008/09 data</b>
• <b>Channel Compliance</b>	<b>Up 2%</b>
• <b>Unplanned Closures</b>	<b>Down 25%</b>
• <b>Customer Incidents</b>	<b>Down 42%</b>
• <b>Employee Incidents</b>	<b>Up 2%</b>
• <b>Towpath Visitors</b>	<b>Up 16%</b>
• <b>Boat Licenses</b>	<b>Up 4%</b>
• <b>Customer Experience</b>	<b>Up 1%</b>
• <b>Waterways Condition Index</b>	<b>Up 7%</b>
• <b>User Benefit Index</b>	<b>Up 7%</b>

**Question 25: What measures of the effectiveness of NWC's use of public funds (through the Government Funding Contract) would be appropriate?**

#### 4.3.31 **Charitable Income**

4.3.32 The waterways have long benefitted from charitable income raised by national organisations such as The Waterways Trust and the Inland Waterways Association, and local groups such as the Kennet & Avon Canal Trust. Market research indicates that people would be willing to support the waterways through, for example, voluntary giving [see below under 'Public Support'].

<sup>12</sup> Data on towpath and bank protection condition will be available in 2011 when the score will be updated and then reported on annually.

4.3.33 However the waterways' current public sector status is a barrier to raising direct income from charitable sources; the Government believes that a transfer of the waterways into civil society will create new opportunities for the waterways to attract charitable income.

#### **BOX 4I: Charitable Income**

Charitable income could be raised from a variety of sources:

- Fundraising from sources such as regular donors or legacies could be worth £8.5m net after 10 years with c.130,000 regular donors taking part;
- NWC could raise an additional £2.5m per annum through borrowing against its property assets;
- Volunteer support for work and projects which are currently unaffordable could amount to over £2.5m per annum derived from up to 80,000 volunteer days by 2020.

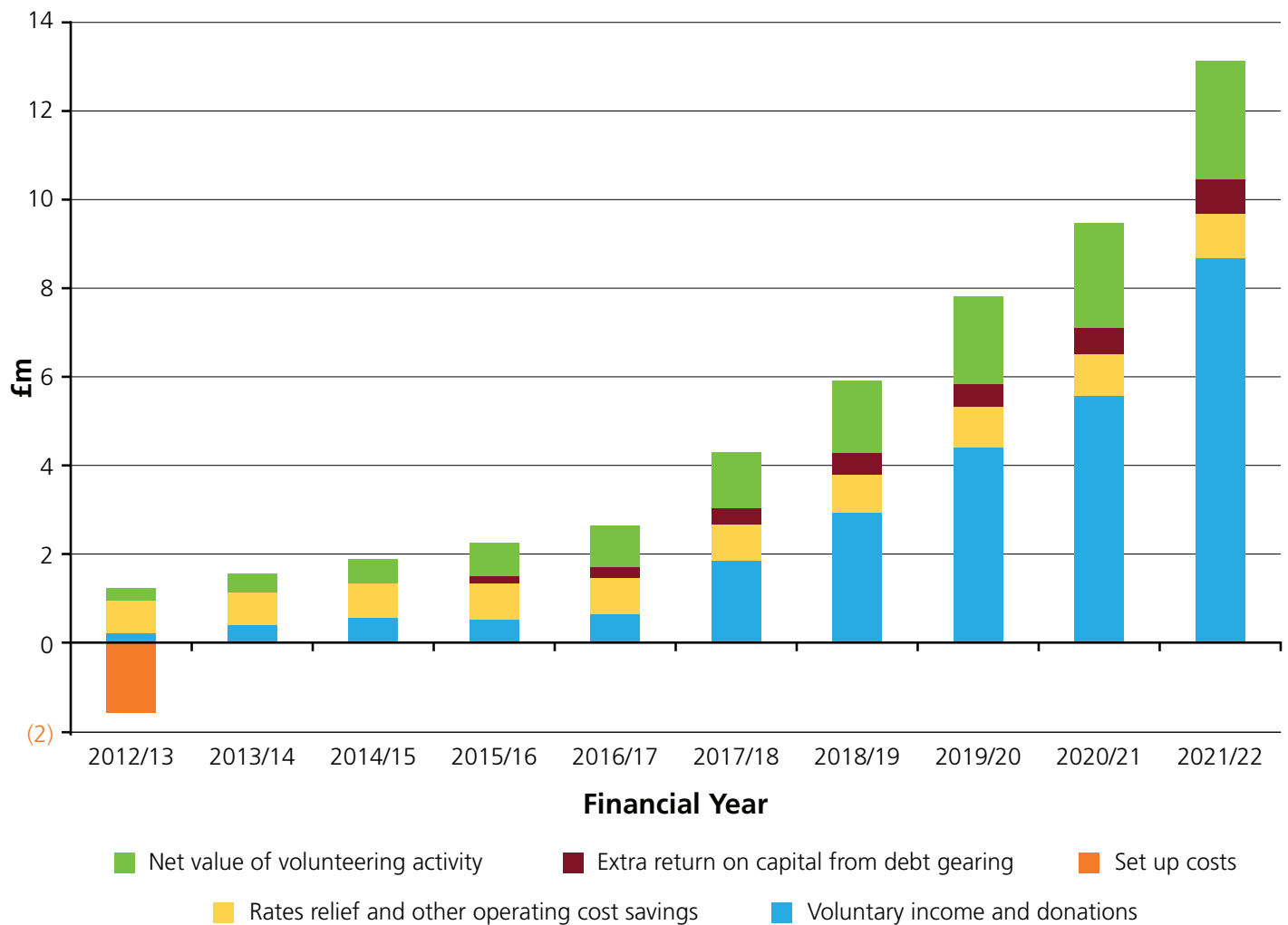
These potential sources could, over 10 years, generate in excess of £13m per annum of additional income. Charitable donation and volunteering activity on this scale would rank NWC as a medium-sized charity by 2021/22.

**Source:** British Waterways



4.3.34 Government also believes that transferring the waterways into civil society will encourage waterways supporters to become more actively involved in their operation and upkeep. There are many ways that people could give their time to support the waterways directly, many of which could help to deliver efficiencies, allowing the main income streams to be strategically deployed.

**BOX 4J : NWC – illustration of additional income**



**Question 26: Are there other areas where you think NWC could increase:**

- Its commercial income
- Its voluntary income
- Its third party income?

#### 4.4.0 **Public support**

- 4.4.1 The Government firmly believes that the continued usage and enjoyment of our waterways, by the many and not just the few, is fundamental to the future success of NWC.
- 4.4.2 However NWC will need to strengthen engagement with its range of users in order for this usage and enjoyment to translate into active support, whether this is in volunteering time, participation in local decisions, or donating. NWC will need to clearly communicate its charitable purpose and cause [See Chapter 2]. It will also need to generate much wider awareness of the benefits the waterways provide and their need for support.
- 4.4.3 A first step to creating this awareness will be to incorporate all the elements of NWC's mission statement into a clear, recognisable and compelling brand.
- 4.4.4 NWC will need to vigorously promote itself and the waterway cause – through public relations, marketing and digital tools. For example, NWC may consider the use of social networking sites to engage more young people in the waterways. For example, one decision for the Trustees will be whether NWC should appoint a high-profile Patron and/or ambassadors. These would not sit within the charity's governance but would have an important role to play in establishing the profile of the new charity, supporting its charitable aims and fundraising activities.
- #### 4.4.5 **Encouraging social action**
- 4.4.6 Research commissioned for Defra and British Waterways in 2010 indicates that the general public are very likely to donate to the NWC. Combined with all methods of charitable giving it is estimated that, within its first decade and with sufficient promotion, the charity has the ability to raise up to an additional £13m per year. This will require some investment in the early years and in anticipation of the creation of the new charity, British Waterways is in the process of recruiting a small in-house fundraising team.
- 4.4.7 Increasing the numbers of people volunteering on the waterways must be at the heart of the NWC ethos, and an important part of securing a financially sustainable future for the waterways. Volunteering is highly valuable for charities, but volunteers also gain valuable experience, skills and even friendships [see page 31].

#### **BOX 4K: Case study: The National Trust – the added value of volunteers**

NT sees volunteering increasingly as the leading edge of community involvement – learning how to tap into local know-how, creativity and enterprise.

NT's 61,000 volunteers help the Trust to connect to local communities up and down the country and to reach new audiences. NT calculates that volunteers contributed 3.5 million hours in 2009/10 – which equates to an estimated value of £29.2 million. Volunteers enable the Trust to do things it wouldn't have the time to do otherwise. Volunteers challenge, guide us and help the Trust to make sure it is relevant. Many properties, such as Scotney Castle in Kent or Attingham Park in Shropshire, are promoting a more dynamic engagement, with an emphasis on skills development, team self-management and community as well as individual volunteering. To strengthen the role and profile of its volunteers, NT has also introduced voluntary volunteer managers.



#### **BOX 4L: Waterway Adoption**

In 2010 British Waterways established new waterway adoption schemes in order to enable local community groups and businesses to get more involved in the running of their local waterway. The scheme, which has now been taken up in 14 locations, allows those local people and companies who use their waterways the most to influence what happens on them through regular, sustained activity.

In Birmingham, for example, employees from HFC Bank have spent a year looking after a 600m stretch of the Birmingham & Fazeley Canal. Many of the staff members now play an active role in painting lock gates, managing vegetation and removing litter and graffiti. The volunteers have taken real ownership and pride in their waterway and are now planning to develop a community arts project and canal warden scheme.

#### **4.5.0 Savings and Efficiencies**

4.5.1 Business sustainability is not just about generating income, it is also about spending that money wisely and controlling costs. The most obvious and significant costs associated with the inland waterways are those driven by the physical infrastructure described above, but there are a number of external cost drivers.

#### **BOX 4M: External cost drivers**

Managing the waterways involves taking account of a range of external cost drivers which create liabilities for the waterways which cannot easily be passed directly on to the beneficiaries. Some of these costs result from existing legislation and regulation, while others relate to changes in the ways the waterways are used, and they include:

- Changes in and compliance with domestic and EU legislation covering areas such as reservoirs, the environment and health and safety;
- Wear and tear to infrastructure from increased public usage, such as direct use of towpaths by walkers and cyclists;
- Damage to road bridges. British Waterways is at present responsible for thousands of bridges, most of which were designed and built for 18th century traffic, but now have to cope with modern cars, tractors and heavy goods vehicles;
- Historical obligations to maintain certain waterways for the passage of large commercial vessels, even though in most places there has been no commercial traffic for many years or it is much diminished;
- Extreme weather conditions leading to flood and drought damage;
- Managing ecologically important habitats and mitigating the impacts of navigation operations upon them.

4.5.2 Efficiencies in the delivery of infrastructure repair and maintenance are a way of reducing external cost drivers. Further efficiencies are driven through properly prioritising works and planning preventative maintenance.

There are further necessary costs associated with management, administrative support and technical and professional expertise for the purpose of:

- understanding inspecting and maintaining infrastructure;
- maintaining and managing water supply;
- dredging and disposal of dredging waste;
- maintaining reservoirs;
- managing projects and contracts;
- administering and policing craft licensing and mooring;
- managing a development and investment property portfolio;
- ensuring compliance with heritage, safety and environmental legislation;
- tax and accounting compliance;
- publicity, marketing and fundraising;
- managing volunteers.

These will be vital functions for the NWC going forward and Trustees will seek to attract and retain the best people it can afford.

4.5.3 It is anticipated that as a civil society body, NWC will have the opportunity to attract volunteers with specialist expertise in areas such as engineering, fundraising or ecology to do things it needs or wants to do but cannot afford. The creation of Local Partnerships and specialist committees should also help NWC become better able to avoid unnecessary expenditures and identify opportunities for shared costs with local partners.

4.5.4 Internal costs must always be challenged and efficiencies realised to maximise the funding available to be spent on the network itself. British Waterways has successfully reduced its internal costs and driven efficiencies over recent years from streamlining back-office functions to reducing overhead costs. Over the last 2 years British Waterways has made cost savings and efficiencies amounting to £10m per annum and is now working on achieving a further £3m to £5m per annum. Independence from Government will act as a further incentive to waterway management, staff and stakeholders to seek increased efficiencies, with income saved being transferred direct into waterway maintenance and investment.

**Question 27: Are there other areas where you think NWC could save more money/make greater efficiencies?**

#### 4.6.0 **Scenarios for a sustainable business model**

4.6.1 The Government recognises that the creation of a New Waterways Charity must be financially viable and value for money. Financial viability is inextricably linked to the ongoing integrity of the physical infrastructure of the waterways.

4.6.2 A high-level, long-term cost-benefit analysis and assessment of the impact of the charity is set out in the accompanying Impact Assessment (IA). It draws upon British Waterways charitable income projections, economic modelling and other research. The analysis demonstrates that:

- **a charitable model for the waterways always provides greater overall net benefits for society than their retention in public sector.** Under reasonable assumptions, the additional benefits substantially exceed the additional costs.
- net public benefits vary directly with the ability of the charity to raise income.

4.6.3 To structure the analysis and facilitate comparison, the IA considers four scenarios (also called “options” within the IA),

**Scenario 1:** Business as usual, with already committed flat cash grant funding extended beyond 2024. For the cost-benefit analysis, this is the baseline against which other scenarios are compared.

**Scenario 2:** Create charity, assuming baseline grant funding and current projections of charitable income potential.

**Scenario 3:** As 2, but including Environment Agency navigation assets under NWC operation from the beginning. This would help to increase the fundraising base of the new charity.

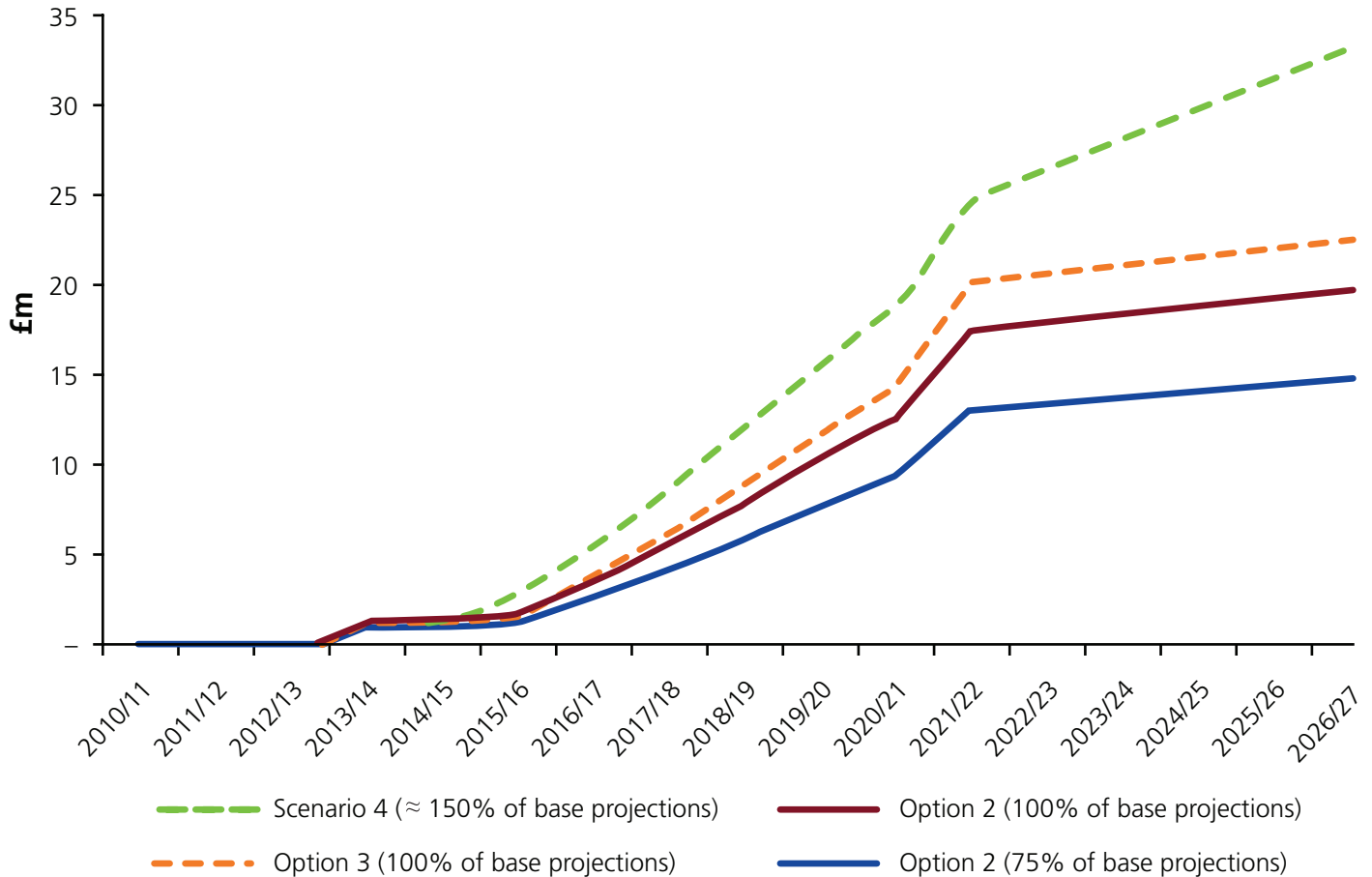
**Scenario 4:** An optimal ‘Benchmark’ scenario in which the new charity exceeds current projections of additional resources by 50%, enabling it to achieve a substantially improving condition profile of assets from 2020.

4.6.4 The chart below shows the range of projections of additional resources that the new charity could generate under the various scenarios.<sup>13</sup> These additional resources are needed to improve the network.

<sup>13</sup> Projections are in cash terms. Projections after 2021 are assumed by British Waterways to rise with inflation. The two projections for Option 2 reflect differing assumptions about the extent to which BW projections of additional charity income are realised. See Impact Assessment for further detail.

**BOX 4N**

**Charity resource projections**

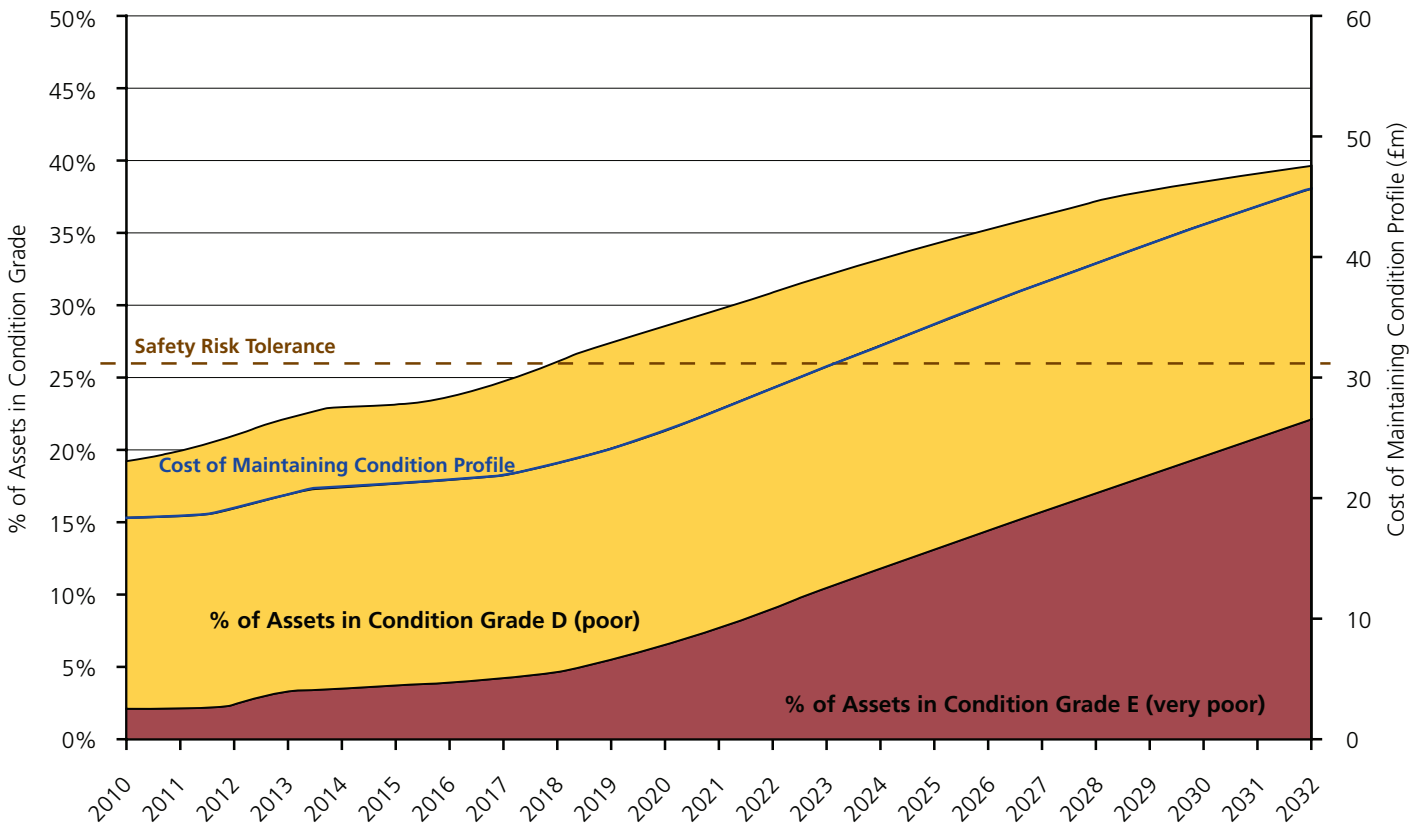


4.6.5 The condition of the infrastructure is a broad indicator of the sustainability of the network. As assets deteriorate these risks increase. The cost of managing that risk also increases the possibility of a downward spiral. Over recent years British Waterways has planned to reduce the percentage of assets in the lowest two grades to 10%, but as a result of tighter fiscal conditions, this has now increased to around 20% and is rising. With business as usual (scenario 1), British Waterways projects that the proportion of its navigation assets in poor (grade D) or very poor condition (grade E) will rise from less than 20% currently to 40% by 2032. (see chart 4O)



## BOX 40

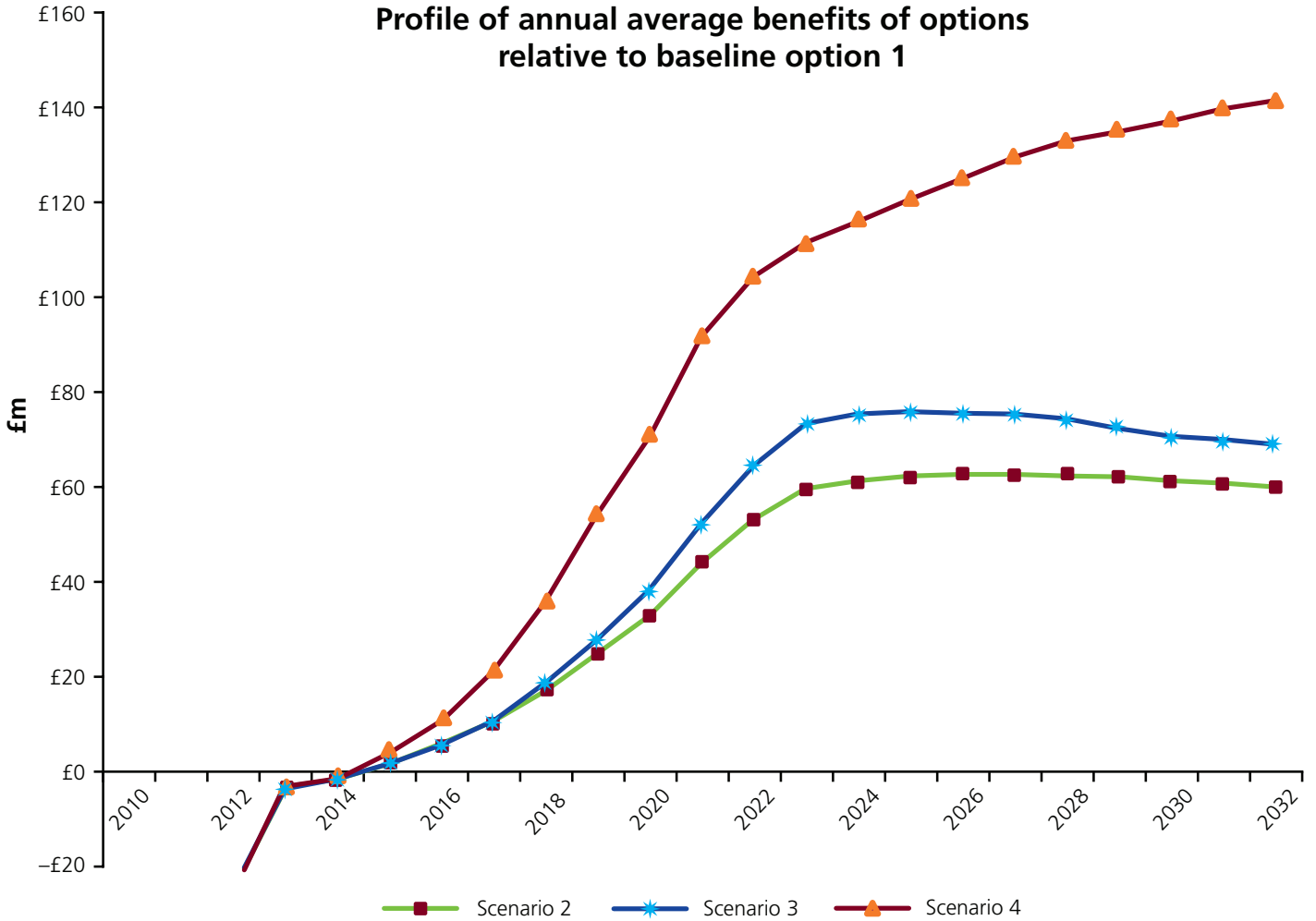
### Condition profile of assets and cost of maintenance under Business as Usual



- 4.6.6 Such a trajectory would create very substantial risks to public safety as well as to the long-term amenity benefits that the waterways bring. As a point of reference, the “safety risk tolerance” line in the chart refers to a threshold past which BW consider that arrears of maintenance and the risks to public safety become critical. Assets in poorer condition are also increasingly costly to maintain and this ultimately affects functionality spend on waterways.
- 4.6.7 In contrast, creating the charity would make it possible to shift these curves down to more sustainable levels, depending upon how much new resource the charity could bring in. For instance, in Scenario 2 in the Impact Assessment, the share of assets in grades D and E could, after initially rising, fall to between 22 and 26% by 2032. In Scenario 4, the share of assets in grades D and E could fall back to 16% by 2032.
- 4.6.8 The benefits of creating the charity and raising funds are also demonstrated in economic welfare terms in the IA. The following chart from the analysis projects the non-market value of recreational benefits under the different scenarios when compared to the business-as-usual baseline. This modelling assumes that the additional funds raised are allocated wholly to improving the amenity benefits of the waterways. The growing gap between scenarios from 2023 reflects the assumption that for Scenarios 2 and 3, the additional charity income stops growing, whereas they continue to grow in the benchmark Scenario 4<sup>14</sup>.

<sup>14</sup> Note that these projections are based upon economic modelling and valuation techniques involving a number of assumptions that are set out in the IA. They should be considered to be illustrative of the benefits that additional resources can bring to the charity.

**BOX 4P**



**Question 28: We would welcome any views you have on the analysis in the Impact Assessment and relevant evidence that we could draw upon in finalising the assessment.**











# Chapter 5: The transition to civil society

- 5.0 **The transition to civil society marks a new beginning and identity for the organisation. At the same time, it will need to ensure sufficient continuity with the existing organisation, its approach and the services it provides and which are so important to ensuring continued maintenance of the waterways.**

## **BOX 5A: Next steps for transition**

The steps towards transition to the New Waterway Charity include:

- Setting up the companies which will form the basis of the charity and establishing their governance structure;
- Appointment of the first trustees, council members and local partnerships;
- Agreement between Government and Trustees of the funding contract;
- Application for charitable status;
- Transfer of property from British Waterways to the charity;
- Transfer of staff from British Waterways to the charity;
- Transfer of statutory duties and powers.

## Setting up the companies

- 5.1 We anticipate that the new charity will be made up of a company limited by guarantee, with a wholly owned subsidiary Community Interest Company [as per Chapter 2 and 3 respectively]. We expect to set up these 'shell' companies during 2011 well in advance of British Waterways' property, powers, duties and assets being transferred under the Public Bodies Bill, in 2012. This will allow time to make all the key appointments to the new governance structure before the charity begins operation.

## Directors (Trustees)

- 5.2 The charity's Directors will be responsible for its day-to-day management. When the charity is fully constituted they will be known as the Board of Trustees [see Chapter 3]. The Board of Trustees will need to have a wide variety of backgrounds and experience, ranging from engineering to heritage and property, as well as finance and HR.

## Transition Trustees

- 5.3 The Government believes that it is important for representatives of the charity to be fully involved in the early decisions which will influence its destiny. We therefore intend to appoint the first seven trustees in April 2011, a year before it becomes operational. During transition they will represent the interests of the new charity until all BW's duties, responsibilities and assets have been transferred to it in April 2012. Once the charity is fully functioning, it will need to appoint its own Trustees but we anticipate that at least some or all of the Transition

Trustees will form part of the first Trustee Board, subject to ratification of their appointment by the charity's Council.

- 5.4 To help recruit the Transition Trustees the Government has set up an independent Advisory Panel on First Appointments and Transition. Its members are: Andrew Hind (chair), Dinah Nichols, Roger Clarke and Robin Ritzema [see Annex D]. The panel has been chosen for their expertise in the public and voluntary sector. They will use a transparent, open appointments process and make recommendations to Ministers as to who should be appointed as the Transition Trustees (in effect, the first Directors of the charitable company). The Government is also asking the Advisory Panel to advise on the make up the charity's Council of representatives in terms of the experience and skills required, and to make recommendations about some early appointments.
- 5.5. The Transition Trustees will play an important role even before the charity formally takes over the running of the waterways. For example, prior to the charity's vesting day, they will need to formally accept the transfer of the waterways and the statutory transfer under the Public Bodies Bill, help constitute the new charitable company and satisfy themselves that it is a going concern. Chapter 4 explains more about the charity's business model, and the Transition Trustees will be responsible for negotiating the charity's ongoing funding arrangements with Government.
- 5.6. We would expect to have the Transition Trustees in place from May 2011 onwards.

#### **BOX 5B: The Waterways Ombudsman Scheme**

The Waterways Ombudsman investigates complaints about British Waterways and their subsidiaries. The Ombudsman is independent and impartial, and can make recommendations for action by British Waterways.

This current scheme is contractual, as there is no statutory requirement for British Waterways to have an ombudsman. The Government believes that such a scheme would be of benefit to the new charity, subject to some minor changes to the Rules of the Scheme (currently determined by the British Waterways Board, but in future by the Trustee Board). The key will be that it remains a full member of the British and Irish Ombudsman Association which is the external benchmark of independence.

#### **BOX 5C: Moving forward from the Inland Waterways Advisory Council (IWAC)**

While the Government appreciates the enormous amount of good work undertaken by IWAC and their contribution to thinking about the role of inland waterways in delivering benefits to society, the Government has decided that there is no need for a statutory Arm's Length Body to advise on policy for the inland waterways. The proposal to move British Waterways into civil society in 2012 and to set up a new waterways charity will also mean that for the future the Government will no longer need an organisation to provide advice for policy development. For these reasons the Government has decided to wind down IWAC. The Government and navigation authorities need to engage with stakeholders directly in the design, implementation and management of the new structure.

We anticipate that IWAC's activities will wind down during 2011, pending an order under the Public Bodies Bill, currently being debated in Parliament, to abolish it formally in early 2012.

## Application for charitable status

- 5.7 A formal application will need to be made to the Charity Commission in order for the new body's charitable status to be recognised, and for the charity to be registered. The Government proposes to do this so that charitable status is in place before the new body takes over ownership and responsibility for the waterways.

### **BOX 5D: The Charity Commission**

Whatever their size or purpose, an essential requirement of all charities is that they operate for the public benefit and act independently of government or commercial interests. The Charity Commission registers and regulates charities in England and Wales. It is their job to make sure charities meet their legal requirements and to work with charity trustees to put things right if they go wrong.

Charities receive support from society in many ways and the public have the right to expect charities to be open and accountable. Public trust and confidence in charities is high – the Charity Commission acts to ensure it stays that way.

## Employees

- 5.8 British Waterways has a committed workforce of around 1800 employees with a very broad range of skills, expertise and knowledge, all of whom play an important role in running the waterways. The New Waterways Charity will need to retain that knowledge and skill.
- 5.9 Furthermore all of British Waterways' employees, including the executive management, in England and Wales will be entitled to transfer across to the new charity, following the necessary consultation, under the employment law 'TUPE' regulations.
- 5.10 It is planned that NWC will take over from BW as the principal sponsoring employer of the British Waterways Pension Fund [in respect of England and Wales]. Detailed provisions will have to be prepared and consulted upon with the affected parties, particularly the Pension Trustees and fund members.

## Name of the new charity

- 5.11 NWC's 'charitable cause' will need to be translated into a clear, recognisable and compelling brand. A fundamental element of this brand will be its name. Keeping the name 'British Waterways' is not an option as, in practice, British Waterways will cease to exist in England and Wales from April 2012<sup>15</sup>. The Government is also keen to send out a clear message that NWC will be new and different. The new charity needs a name that best fits all the necessary criteria of attractiveness, recognition and support.

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15 But continue in Scotland.

- 5.12 A shortlist of names derived from suggestions by stakeholders and staff formed the basis of some naming research carried out by British Waterways at the beginning of 2011. It was felt that it was important that any prospective name does 'what it says on the tin' i.e. it shows that the charity is about 'waterways' or 'canals & rivers' and should evoke a feeling amongst the wider public that waterways are a worthy 'cause' (and therefore include the terms 'charity' or 'trust'). Annex F summarises the results of this research.

**Question 29: New Waterways Charity (NWC) is just the working title for the new charity. Which of the following suggestions for the name of the new charity do you prefer, and why?**

- a) National Waterways Trust
- b) Waterways Trust for England and Wales
- c) Waterways Trust
- d) National Canals and Rivers Trust
- e) Canals and Rivers Trust
- f) National Waterways Charity
- g) [your suggestion]?





# Consultation questions and how to respond

## How to respond

6.1 You can respond to the consultation by email – please send your responses to [NWCresponses@defra.gsi.gov.uk](mailto:NWCresponses@defra.gsi.gov.uk).

Or by post – please send your answers and views to:

NWC Consultation Responses  
Inland Waterways Team, Defra  
Area 2D  
Ergon House  
Horseferry Road  
SW1P 4AL

6.2 We welcome your comments on any aspect of our proposals, but it would be helpful if you could focus on the questions we ask. A full list is set out below. There is no need to answer all of them if you do not wish to.

## Body responsible for the Consultation

6.3 Defra

## Duration of the Consultation

6.4 30th March 2011 to 30th June 2011.

## After the consultation

6.5 We will post a summary of answers at [www.defra.gov.uk](http://www.defra.gov.uk) We plan to do this after the end of the consultation, together with an analysis of responses. We are required to release information to comply with the Environmental Information regulations 2004 and Freedom of Information Act 2000. We will not allow any unwarranted breach of confidentiality, nor will we contravene our obligations under the Data Protection Act 1998. Defra will be the Data Controller. Personal data is collected for the purpose of the analysis of the responses to the consultation in order to inform future consideration of waterways policy in England. Please note that we will not treat any confidentiality disclaimer generated by your IT system in e-mail responses as such a request.

- 6.6 It is our intention to share responses to the consultation with the incoming charitable Trustees, to assist them in setting up the new charity and developing its constitution. If you would rather your response was not shared with the Transition Trustees, please let us know.
- 6.7 We plan to publish the Government's response in autumn 2011. Except for those who have asked us not to, we will notify all those who replied and those to whom we sent this consultation when this information is available.

## Compliance with the Code of Practice on Consultation

- 6.8 This consultation complies with the Code.

## Complaints

- 6.9 If you have any comments or complaints about the consultation process (as opposed to comments on this issues that are subject of the consultation) please send them to:

**Consultation Co-ordinator,  
Area 7C Nobel House,  
17 Smith Square,  
London  
SW1P 3JR  
or email [consultation.coordinator@defra.gsi.gov.uk](mailto:consultation.coordinator@defra.gsi.gov.uk)**

## Next steps and additional ways to become involved

- 6.10 Stakeholder events will be organised during the consultation period. Further details will be published on the website as they become available.

**Consultation closes:** 30th June 2011

**Government response to the consultation:** Autumn 2011

# The Consultation Questions

## Chapter 2: A national 'trust' for the waterways

- Question 1: Do you agree that, over time, the charity should work towards including other navigations, including the EA Navigations in the next Spending Review?
- Question 2: Do you think that the proposed requirements of the Trust Declaration are the right ones? Are they sufficient/are there others which should be considered?
- Question 3: Do you agree that the suggested charitable purposes for the NWC are broadly the right ones? Can you think of other necessary requirements?
- Question 4: Do you agree with the proposed 'mission statement'? How could it be improved?
- Question 5: Do you agree with the proposed 'belief' statement? How could it be improved?
- Question 6: Do you agree with the proposed 'vision' statement? How could it be improved?
- Question 7: Do you agree that the New Waterways Charity should enjoy the same powers and be subject to similar legal duties to maintain the waterways as British Waterways currently is?

## Chapter 3: Engaging people in the new charity

- Question 8: Do you agree with the proposed governance model for the new charity? What improvements could be made?
- Question 9: Should funds raised locally by the Local Partnership be spent on local priorities? Why?
- Question 10: Who do you think should be encouraged to sit on Local Partnerships? How should the nominations panel be constituted; who are the essential parties?
- Question 11: Is between 8 and 12 the right size for a Local Partnership?
- Question 12: Which are the particular subjects or activities you think may require the attention of a specific sub-committee of a local partnership?
- Question 13: How best can the New Waterways Charity strike the right balance between local needs and the needs of the waterways network as a whole?
- Question 14: How could the charity encourage effective working between different communities and partnerships who share the same waterway?

- Question 15: In what ways could people be helped to become more involved and take more responsibility for their local waterways? What might the barriers be, and how could they be overcome?
- Question 16: In what ways could more people be encouraged to volunteer for the waterways? What might the barriers be, and how could they be overcome?
- Question 17: What would a successful volunteer programme look like? What would it achieve?
- Question 18: Do you agree that the new charity should initially focus on securing fair representation, and move towards a greater element of direct membership over time?
- Question 19: Do you agree with the proposed make up of the Council? Which interests should be represented?
- Question 20: Should a proportion of the Council be directly elected? If so, who should be entitled to vote?
- Question 21: Should the independent chair of the Appointments Committee be chosen by Committee members or the Council? What skills would they need?
- Question 22: Are there other topics that you consider would benefit from Council scrutiny committees?
- Question 23: Are there any other activities of British Waterways that would be best placed in the CIC?

## Chapter 4: Creating a sustainable future for our waterways

- Question 24: Government policy is to support the movement of freight on inland waterways, where it is economically sustainable. Do you agree that the status quo is no longer an option? Which of the 5 options do you prefer? What other options should we consider?
- Question 25: What measures of the effectiveness of NWC's use of public funds (through the Government Funding Contract) would be appropriate?
- Question 26: Are there other areas where you think NWC could:
- Increase its commercial income
  - Its voluntary income
  - Its third party income?
- Question 27: Are there other areas where you think NWC could save more money/make greater efficiencies?
- Question 28: We would welcome any views you have on the analysis in the Impact Assessment and relevant evidence that we could draw upon in finalising the assessment.



## Chapter 5: The transition to civil society

Question 29: New Waterways Charity (NWC) is just the working title for the new charity. Which of the following suggestions for the name of the new charity do you prefer, and why?

- a) National Waterways Trust
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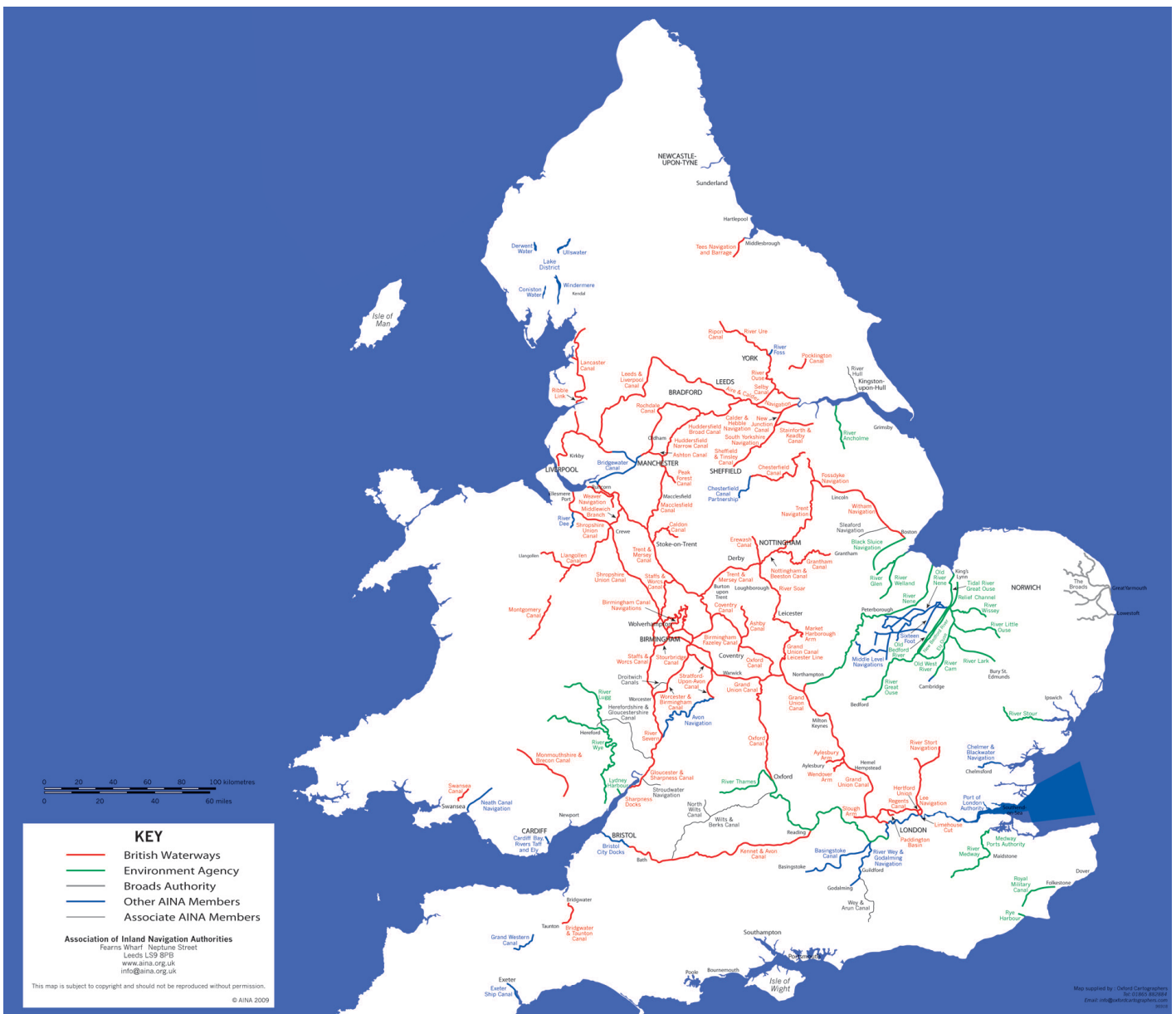
# Annexes

## Annex A – Map of the inland waterways of England and Wales

### AINA WATERWAYS MAP



Association of  
Inland  
Navigation  
Authorities



# Annex B – Table of Legal Forms

	Charitable Trust Company Limited by Guarantee	Community Interest Company Limited by Guarantee	Community Benefit Society	Co-operative Society	Charitable Incorporated Organisation
Mutuality	<b>Scope for Stakeholder/Community governance</b>	High – can be entrenched in constitution	High – required by statute	High – required by statute	High – can be entrenched in constitution
	<b>Open or Representative Membership</b>	Either or blend of both	Normally Representative	Open membership only	Normally representative
	<b>Scope for ‘tailoring’ constitution</b>	High	Medium	Medium	Low
Protection	<b>Safeguarding Social &amp; Community Purpose</b>	High – Firm regulation	High – Firm regulation	Low – duties to members only	High – Firm regulation
	<b>Strength of Asset Lock &amp; Protection of Revenues</b>	High – Regulated by CC	Medium High – Light touch regulation	Medium High – exempt from charity regulation	High
	<b>Regulator of Governance &amp; Accounting Compliance</b>	Charity Commission (CC)	CIC Regulator	FSA	Charity Commission
Value Creation	<b>Donor Appeal</b>	High	Medium	Low	High
	<b>Volunteer Appeal</b>	High	Medium	Low	High
Enterprise	<b>Flexible Legislative &amp; Corporate Framework</b>	Yes	Partial Only	Partial Only	Limited
	<b>Non – charitable trading &amp; enterprise</b>	Yes – via non-charitable subsidiaries (can be CICs)	Yes	Yes – via non-charitable subsidiaries	Yes – via non-charitable subsidiaries (can be CICs)
	<b>Scope for debt financing (off public balance sheet)</b>	Yes	Yes	Yes	Yes
	<b>Scope for Equity Financing</b>	Via non-charitable subsidiaries/JVs only	Via non-CIC subsidiaries only	Not conventional equity	Yes



**The Government believes that the type of body that would be best placed to deliver the advantages of civil society ownership and governance is a charitable company limited by guarantee.**

A company limited by guarantee is one that does not have share capital or have shareholders and is not normally profit distributing. It is the most common corporate form adopted by medium to large charities.

The Charity Commission will recognise charitable status if the organisation's 'objects' (corporate purposes) provide public benefit and promote one or more of a broad range of charitable purposes. Charitable status brings with it many advantages, particularly financial (tax benefits, etc.) and reputational (donor and volunteer appeal, etc.). Charitable status also brings responsibilities and legal protections to ensure that assets and funds of the charity are only used to further or support the charity's purposes for the public benefit.

A company limited by guarantee has considerable flexibility over the design of its constitution. Company 'membership' (company 'members' act similarly to shareholders with voting rights, etc.) can be on a representative basis or on an open subscription basis or a mixture of the two. The board of directors of a charitable company limited by guarantee are often described as the 'Trustees'. These elements are explored in further detail below.

An alternative that was considered carefully but eventually rejected is the traditional 'mutual' or co-operative. Co-operatives generally benefit their members rather than the broader public. This works well where the interests of the members are broadly aligned and of relatively narrow focus (e.g. retail co-operative societies or social clubs, etc.) though less so where the delivery of benefit is across a broad range of very diverse, and potentially conflicting, interests. Accordingly, the Government has decided against this option.



# Annex C – Commercial Freight

The use of all of the inland waterway network for the movement of freight accounts for less than 1% of total freight moved.

The Government is committed to reducing UK greenhouse gas emissions by 34% by 2020 in line with the 2008 Climate Change Act. Inland waterways are a small but nevertheless important means to achieve carbon reduction targets through the modal shift of freight from road to water. Some potential additional benefits of using inland waterways are that congestion on our roads can be reduced, air quality can be improved and moving goods by water can be more fuel efficient.

In the right locations and for suitable traffic, inland waterways can compete effectively. Waterways are particularly suitable for the transport of bulk cargoes where origins and destinations are directly accessible by water.

However, there are a number of challenges to the greater use of the inland waterways for freight transport, namely:

- the cost of transporting freight can be greater than moving goods by road;
- even where waterborne freight is cheaper than other alternatives, potential customers have tended to view the cost differential as marginal and not sufficient to merit its use;
- limited knowledge of the opportunities for using the inland waterways for freight by potential customers and commercial operators;
- information on the available services and their costs together with authoritative advice on the waterways options for freight is less accessible than for other modes;
- a shortage of suitably skilled staff and training programmes;
- a shortage of wharves and suitable waterside infrastructure. Most historic wharves are located in areas in inner cities where they cannot be easily be accessed in a way that meets;
- 21st century freight needs. In addition preserving them is increasingly difficult in the face of other pressures, such as waterside housing, development or public space;
- limiting dimensions such as low bridges, may also provide significant barriers.

The Government supports the shift of freight from road to water, where it is practical and economically and environmentally sustainable to do so. It is within this overall context that the NWC will need to view its role in relation to facilitating freight on its waterways.

Currently, three quarters of BW's network is canals. These were generally built in the 1700s and 1800s and have not been redeveloped for modern vessels. As the majority of the network is not suited for modern freight transport, the movement of goods by inland waterways is now largely confined to wider and deeper waterways and to the major estuaries.

BW currently has responsibility for nine "commercial waterways" in England designated by virtue of the 1968 Transport Act (Schedule 12 Part 1) which it is required to maintain in a suitable condition for use by freight carrying vessels. Trends in freight carried on these waterways have changed considerably since the 1960s, with almost 80% of freight now being carried mainly on the Aire and Calder and only limited amounts carried on the Sheffield and South Yorkshire Navigations, the River Trent and River Severn.

Income from freight traffic from the commercial waterways currently in use totalled £346,000 during 2008/09 and 2009/10 and the direct costs incurred for maintenance in the same period were £607,000 for each year. These figures relate to only five of the commercial waterways as the others are not currently used for freight purposes. The statutory duty under the Transport Act 1968 to maintain the commercial waterways has never been based on a cost return basis, as it the maintenance obligation is intrinsically linked to British Waterways' overall responsibility to maintain the entire inland waterways network for all users. However, the shortfall in income will represent a liability for the NWC. The Government recognises that this has to be addressed in a more sustainable way for the NWC while also retaining as much of the commercial waterways network for the potential commercial and environmental benefits they offer.

Five possible options for the future management of the commercial waterways are:

#### **Option 1**

No change.

#### **Option 2**

No changes would be made to the classification of BW's commercial waterways or BW's duties to maintain these waterways, when those duties transfer to the NWC. It would be a matter for the NWC to decide whether to apply to the Secretary of State for an Order under the 1968 Transport Act for any changes.

Given the need to help ensure the charity is not placed in the position of having to subsidise freight operations, the Transport Act 1968 would be amended in relation to the Secretary of State's determination to include additional obligations on the Secretary of State to take into account the charity's representations on affordability. Those representations might therefore include the impact of the resources needed to maintain commercial waterways.

Any application to the Secretary of State for an Order would be subject to consultation and this would provide the opportunity for freight operators or others with an interest to also make representations to the Secretary of State to inform the determination.

#### **Option 3**

A flexible approach whereby the Act would be changed to enable the NWC to have statutory duties to maintain commercial waterways on a priority basis based on current and anticipated potential use. The NWC would be expected to devote a proportion of total income, including Defra's grant-in-aid, to freight expenditure where there is sufficient demand. The benefit of this approach would be that the legal requirement would be less onerous to the charity. The level of the commitment in the funding contract would be a matter for negotiation. The proposed change would be effected by an Order under the 1968 Transport Act, subject to consultation in the normal way.

#### **Option 4**

Current statutory duties would remain unchanged but those waterways where there is little to no freight activity and no prospect of that changing would be no longer be classified as commercial waterways. Waterways likely to be affected would be the River Lee, River Weaver, Sheffield and South Yorkshire Navigations and the Gloucester and Sharpness Canal and lower River Severn in and around Gloucester.

BW's analysis indicates that there has been a dramatic reduction in trade for the Sheffield and South Yorkshire Navigations in response to changes in the local industry. For the Gloucester and Sharpness Canal and lower River Severn there has been no freight traffic for a number of years.

The Aire and Calder is regarded as the premier freight waterway. There is current demand and possibilities for additional traffic in future. The vast majority of any freight expenditure in the future would be allocated to the Aire and Calder for here the trade is greatest. The situation is perhaps similar on the River Severn in The Partings on the approach to Gloucester. All current trade on the Severn is in the upper section which would not be affected by downgrading the Severn south of Tewkesbury. There is no trade on the Gloucester and Sharpness Canal and if the lower Severn changed then it would make sense to include the Gloucester and Sharpness Canal too.

The proposed re-classifications would be effected by an Order under the 1968 Transport Act, subject to consultation in the normal way.

### **Option 5**

Changes would be made to the maintenance requirements in the Transport Act 1968 which apply to commercial waterways based on the dredging to channel dimensions which are now out of date in terms of the freight vessels using the waterways. As a result there would be no proposal to re-classify any of the commercial waterways. The impact will depend on the new dimensions to be chosen – which will be need to be a balance between a sufficient change to reduce the excess dredging liabilities by a meaningful amount whilst minimising as far as possible the impact on the current commercial fleets. This will be done through a survey exercise by BW.

Proposals to change the maintenance requirements as part of a navigation Order would be subject to public consultation.

### **Conclusion**

The Government believes that there needs to be a proper balance between ensuring there will be no unacceptable burdens on the new charity from the outset while also enabling freight activity where it is economically and environmentally sustainable to do so. The Government would like to hear the views of commercial operators on the above options and how any adverse impacts from possible changes to the future management of the commercial waterways could be mitigated. Their views will help to inform the evidence base for an Impact Assessment before finalising our proposals for further public consultation on the commercial waterways later this year.

**Please see Question 24 to tell us your views.**



# Annex D – Advisory Panel Members

- **Roger Clarke** is Chair of Think Global which promotes learning for a just and sustainable world. He also holds positions as the Chair of the Civil Society Advisory Board at Defra, Board member of the Peak District National Park Authority, the Woodland Trust, British Trust for Conservation Volunteers and is a member of the Expert Panel at the Heritage Lottery Fund.
- **Andrew Hind CB** stepped down as Chief Executive of the Charity Commission in August 2010 after six years' service. His previous positions include Chief Operating Officer of the BBC World Service, Deputy Chief Executive at ActionAid and Director of Finance and Corporate Services at Barnado's.
- **Dinah Nichols CB** is a former Director-General for Environment in DETR and Defra, where she was the sponsor for British Waterways. She is currently Chair of the National Forest Company, a non-executive Director of Pennon Group plc and a Trustee of the Land Trust and Keep Britain Tidy. She sits on the Policy Advisory Committee of the Campaign to Protect Rural England.
- **Robin Ritzema** is a an independent consultant and an accredited independent public appointments assessor. Formerly a senior civil servant in the Department of Education, Cabinet Office and elsewhere, he has extensive experience in the fields of education and science policy and management, in the UK and overseas.



# Annex E – List of Organisations invited to respond

- Angling Trust
- Ashby Canal Project
- Associated British Ports
- Association of Inland Navigation Authorities
- Association of National Park Authorities
- Association of Pleasure Craft Operators
- Association of Waterway Cruising Clubs
- Barge Association
- Basingstoke Canal Authority
- Boat Museum Society
- Boating Association
- Bristol Harbour Authority
- British Canoe Union
- British Marine Federation
- British Ports Association
- British Rowing
- British Waterways
- British Waterways Advisory Forum
- Broads Authority
- Business Link
- Campaign to Protect Rural England
- Canal Boat Builders' Association
- Canoe England
- Cardiff Harbour Authority
- Central Council of Physical Recreation
- Chesterfield Canal Partnership
- Commercial Boat Operators Association
- Conservators of the River Cam
- Country Land and Business Association
- Countryside Council for Wales
- Cyclists Touring Clubs

- Driffield Navigation Ltd
- Droitwich Canals Trust Ltd
- East Midlands Development Agency
- East of England Development Agency
- Electric Boat Association
- English Heritage
- Environment Agency
- Environment Trust for Richmond-upon-Thames
- Essex Waterways Ltd
- Fieldfare Trust
- FTA Freight by Water
- Forestry Commission
- Grand Western Canal Country Park
- Great Ouse Boating Association
- HM Prison Service
- Hereford and Gloucestershire Canal Trust
- Heritage Alliance
- Heritage Lottery Fund
- Historic Narrow Boat Owners' Club
- Homes and Communities Agency
- Horse Boating Society
- Hutchison Ports
- Inland Waterways Association
- Inland Waterways Advisory Council
- International Mountain Bike Association
- Local Access Forums
- Local authorities in England and Wales
- Local Government Association
- Manchester Ship Canal Company
- Medway Ports
- Mersey Partnership
- Middle Level Commissioners
- National Association of Boat Owners
- National Community Boats Association
- National Farmers Union

- National Probation Service
- National Trust
- National Trust Wales
- Natural England
- Norfolk and Suffolk Boating Association
- Northern Canals Association
- One North East
- Peel Ports (Liverpool Port and Medway Port)
- Port of London Authority
- Ramblers Association
- Residential Boat Owners Association
- River Thames Society
- Royal Society for the Protection of Birds
- Royal Yachting Association
- Save Our Waterways
- Sleaford Navigation Trust
- Southern Canals Association
- Sport England
- Steam Boat Association of Great Britain
- Stroudwater Navigation
- Sustrans
- Thames User Group
- Town and Country Planning Association
- Towpath Action Group
- United Kingdom Major Ports Group
- Upper Avon Navigation Trust
- Waterways Trust
- Welsh Local Government Association
- Wey and Arun Canal Trust
- Wey Navigations
- Wildlife Trusts
- Wildfowl and Wetlands Trust
- Wiltshire and Berkshire Canal Trust
- Yacht Harbour Association



# Annex F – Name of the new charity – recent research

## Background

- Three separate surveys have been conducted to understand attitudes towards the name for the new waterways charity:
  - Engaged users – Online survey amongst engaged users running from 17th January to the 11th February 2011. Achieved 1086 completed responses. The sample is split for analysis into boat owners (716) and non-boat owners (357).
  - General public – Telephone poll, via BW's existing Inland Waterways Visits Survey (IWVS) managed by independent market research agency BRDC. Representative sample of approx. 1,000 GB adults, running from 16th December 2010 to 15th January 2011.
  - BW people – Online survey running between 17th Jan and 4th Feb 2011. Total of 674 people responded.
- All three surveys were based on two core questions. The first presented respondents with the provisional cause for the charity and then asked people to rate seven potential names as 1. very suitable, 2. fairly suitable or 3. not suitable. The second question in two surveys amongst engaged users and the general public asked respondents to pick the name they thought most suitable. In the survey amongst BW people the second question asked respondents to pick their favourite name, reflecting the closer relationship employees have with the organisation. A final question in the two online surveys provided staff and engaged users the opportunity to give any additional comments about the names and the scores they had given.
- The seven names tested were carefully selected following feedback from informal stakeholder opinions, informal staff research, formal consumer focus groups and informal conversations with 'naming' experts. The list included:
  1. British Waterways
  2. British Waterways Trust
  3. Waterways Trust
  4. National Waterways Trust
  5. Canals and Rivers Trust
  6. National Canals and Rivers Trust
  7. National Waterways Charity

## Results

- The results are very close with 'British Waterways Trust', and secondly 'National Waterways Trust', having the widest appeal across the surveys.
- When asked to pick the most suitable name 'British Waterways' came out top amongst three of the four groups, including amongst the general public. However, comments given in both the engaged user and staff surveys suggest that the main reason people want to keep 'British Waterways' is to save money on re-branding.
- There is a similar weight of comments suggesting many people would prefer a fresh start with a new name (ie not include British Waterways), but as the result show, these people make different decisions about the name they would choose (ie a split vote amongst the other names).
- Whilst the general public were most accepting of all seven names, the engaged users and staff had stronger opinions; well over half the sample in both these two surveys ruled out 'National Waterways Charity' thinking it an unsuitable name.
- The more descriptive names of 'Canals and Rivers Trust' and 'National and Canals and Rivers Trust' were also deemed unsuitable by roughly half of the engaged users and staff. However, these two names had greater popularity amongst the general public, particularly 'National Canals and Rivers Trust'.
- The results from all three surveys are summarised below. Results are colour-coded for ease of identification.

## Summary

	Q1 Suitability of name Three highest scores (% proportion of respondents rating either fairly or very suitable)	Q2 Most suitable or Favourite name Three highest scores (% of respondents saying most suitable name / favourite name)
Engaged users – Boaters	1. British Waterways Trust 65% 2. National Waterways Trust 64% 3. British Waterways 60%	1. British Waterways 33% 2. British Waterways Trust 24% 3. National Waterways Trust 22%
Engaged users – non-boaters	1. British Waterways Trust 70% 2. Waterways Trust 69% 3. British Waterways 64%	1. British Waterways 31% 2. British Waterways Trust 19% 3. National Waterways Trust 20%
BW People	1. National Waterways Trust 78% 2. British Waterways Trust 73% 3. Waterways Trust 72%	1. British Waterways Trust 23% 2. National Waterways Trust 22% 3. British Waterways 19%
General public (IWVS)	1. British Waterways Trust 81% 2. National Waterways Trust 80% 3. British Waterways 76%	1. British Waterways 24% 2. British Waterways Trust 22% 3. National Canals and Rivers Trust 17%

## Next Steps

This research will feed in to on-going work looking at the development of the new charity, including responses to this consultation, before a final decision on name is made by the Trustees later in 2011.

