

Appendix C1: Context:

Do you need a Voluntary Negotiated Access Agreement?

Tidal waters are normally owned by the Crown, and as such the general public has a presumed common law right to use them for navigation. This means access agreements are not necessary on tidal sections of rivers, estuaries or indeed the sea itself. A river is usually considered to be tidal to the point where it is affected by an ordinary or average tide. Ordnance survey maps may have the 'Normal Tidal Limit' marked as NTL but more often a bridge or other local feature may be considered the NTL. It is up to individual canoeists to ascertain this information, canoeing above the NTL without an access agreement in situ may constitute trespass.

A public right of navigation exists on some non-tidal rivers, while access agreements or other arrangements may already be in operation on all or part of the river under consideration. Thus, before commencing any work, paddlers should contact the British Canoe Union to establish what, if any, access rights or agreements are already in operation.

Types of agreements suitable for specific types of owner

If there are no known rights or arrangements, a negotiated canoe access agreement will be required before canoeing can commence.

Private Householders

The main issue for individual householders is privacy and potential trespass. Most householders are prepared to allow touring canoeists to pass along their section of river, provided they follow a code of conduct and do not wish to access or egress the river across their land. In contrast, fewer householders are willing to allow intensive play use on their stretch of the river, particularly if there are public liability concerns. If the land along the river is a communal plot owned by several householders, it is necessary to speak with all interested parties. Householders tend to make quick and final decisions, which means that the approach from the paddlers has to be well planned and executed to ensure the greatest chance of success.

Farmers

Farmers have particular concerns about the use to which their land is put and are generally reticent about allowing access across their land to reach the water. Their main areas of concern tend to be the disturbance of grazing stock. Like householders, farmers tend to make quick and final decisions.

Small Businesses

Often these are run by single persons or a family, and contacting them is usually straightforward. Many are unaware of their riparian rights and thus tend to assume that canoeing is an accepted activity on the river.

Property Developers

Usually property developers are uninterested or unaware of their riparian rights and therefore no objections are forthcoming when the issue of canoeing is raised. If in some cases the properties on the site have been sold leasehold it is necessary to contact the freeholder; estate agents are usually willing to pass on correspondence.

Large businesses.

Locating the correct person to speak with can often be the major problem in larger businesses. It is often the case that any legal disposal of an interest in land – even the minor licence required for a canoe agreement – requires Board approval. To be successful at this level, it will often be necessary to establish a ‘commercial’ proposition. This could be about positive public relations, or it could be about the potential for income generation through parking and ancillary facilities. Time must therefore be allowed to make the contacts and build the case for canoeing. Even after a positive board decision, additional time must be allowed for the company’s legal and financial team to undertake a process of due diligence, during which the full potential impact of the scheme on the business is assessed. As a result of this process, some businesses may only be willing to deal with clubs that are prepared to indemnify them against any third party claims or losses.

Sports or Recreational Clubs

Often discussing access with sporting clubs such as football or rugby clubs is relatively easy as they generally also wish to increase sports participation and opportunities. It may well be that some clubs would be willing to share changing facilities or car parks, as well as access or egress points. In other types of clubs - such as golf clubs - the situation is often very different. These types of clubs tend to be concerned about potential trespass, vandalism and third party liabilities, but they are also interested in the potential benefits afforded by additional sporting activity taking place on their property.

Local Authorities

Often the local authority is the owner of considerable land holdings alongside a river, particularly in urban areas. The main problem with dealing with these types of owner is pinpointing the department that has responsibility for such negotiation and often several departments may be involved. These may include any or all of the following: Estates, Legal Services, Valuation and Planning, Environmental Services, Public Rights of Way and Highways. This, coupled with the fact that each local authority will probably have its own organisational structure, makes the process seem daunting initially. However experience has shown that by locating a department which has an interest in promoting the scheme (for example, to increase sports participation in the local area), much useful internal communication and co-operation can be achieved. It may even be that an additional ‘access champion’ can be found from within an authority. It is therefore of great importance to stress the relevance of the scheme to each department in order to gain their full assistance. However, time needs to be allowed for contacting and negotiating with local authorities, since decisions can only

be reached once reports have been generated and discussed by, in most cases, committees. Even where decisions are reached, they often require further ratification, through a process of due diligence similar to that undertaken in large businesses.