

Report to the Cabinet

Report reference: C-025-2014/15
Date of meeting: 6 October 2014



Portfolio: Environment

Subject: Delegation of powers from Essex County Council to the Council under the Flood and Water Management Act 2010 under a revised agreement.

Responsible Officer: Qasim (Kim) Durrani (01992 564055).
Susan Stranders (01992 564197).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) To enter into an agreement with Essex County Council to accept delegation of the powers and duties under sections 23, 24, 25 of the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010, for the consenting of works to and the enforcement of, ordinary watercourses; and

(2) Subject to the above that the agreement is based on the terms of a revised Letter of Understanding, due to Essex County Council's proposal to change the payment structure to the Council for carrying out the work.

Executive Summary:

The Council has been exercising certain powers of the Land Drainage Act 1991 (LDA) (as amended), on behalf of Essex County Council (ECC), since April 2012 through a Letter of Understanding (LoU). Cabinet agreed on 22 July 2013 (C-016-2013/14) to enter into an agreement on the basis that ECC supplemented the cost to the Council for carrying out aspects of the work set out in the LoU.

The agreement was never finalised by ECC. In April 2014, ECC notified the Council that it wished to change the terms of the original LoU by withdrawing all supplements. Discussions have been held with ECC and a revised level of supplement has been proposed. Approval is sought by Cabinet to accept the delegation of powers based on these revised terms.

Reasons for Proposed Decision:

To ensure that the Council retains the necessary powers to optimise the control of works to ordinary watercourses within the district in order to minimise flood risk.

Other Options for Action:

Not to accept the delegated powers and let ECC exercise the relevant powers.

Report:

1. On 22 July 2013 Cabinet agreed (C-016-2013/14) for the Council to enter into an agreement with ECC to accept delegated authority to exercise the powers and duties under sections 23, 24, 25 of the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010 (FWMA) and to charge for certain land drainage consents.
2. This agreement was to be based on the terms of a LoU (31 July 2012) that agreed to supplement the Council for carrying out work relating to the issuing of land drainage consents and the investigation of related complaints, on ECC's behalf. The costs of any further 'formal' enforcement were to be met by ECC. In simple terms, the costs due to the Council for the consenting and complaint work was based on the number of cases dealt with by the Council compared to the predicted number of cases, at that time, across Essex. The agreement was never finalised by ECC.
3. In April 2014, ECC informed the Council that it was unable to proceed along the original terms of the LoU as it could not justify the potential maximum spend. Of note is that the actual number of cases across Essex has been substantially more than originally predicted. At that time, ECC stated that in the interest of streamlining the consent process and continuing with the high level of service that the Council delivers that there was no objection to the powers being delegated but that all the costs were to be met by the Council.
4. Discussions have taken place with ECC who has subsequently proposed to supplement the Council for the work based on a flat proportion of an engineer's salary as against payment for the actual number of cases dealt with by the Council. Based on the average number of cases dealt with by the Council over the last two years this will result in slightly less income being generated through the agreement.
5. Epping Forest is the only council within Essex which has its own Land Drainage Byelaws. In principle, most of the type of work that is covered in the relevant sections of the Land Drainage Act, and subject to the proposed delegation arrangement with ECC, is also contained within the Council's own Byelaws. This means that there is a natural overlap with much of the work that will be carried out under delegated authority from ECC. Before the implementation of the FWMA the Council carried out the majority of this work through an informal agreement with the Environment Agency (EA); with no associated charging regime and with no income being generated.
6. It should be noted that the FWMA has introduced a huge amount of work for Local Authorities, ECC in our case, and changes the way in which historic flood risk management duties have been carried out. The working arrangements between ECC and the Council will need to be assessed and reviewed on a regular basis. It is considered that by taking on this delegated role a more streamline service will be delivered to the public, who will otherwise have to apply to both ECC and the Council for land drainage consent to do certain works. It is also strongly considered that this will allow the Council to maximise control over flood risk assets within the District and reduce flood risk.
7. ECC has stated that due to the number of land drainage complaints/cases that they are receiving that they are unable to do the work to the same standard that is currently being delivered by the Council. If the Council does not accept the proposed delegated role and ECC is left to exercise the powers, then it is very likely that many land drainage complaints within the district will not be investigated. In addition, ECC has stated that it will only investigate and carry out site visits where there is imminent risk to properties of internal

flooding. This approach and level of service is not one that the Council has historically accepted, given the flood risk history of the district and for the reasons set out in this report it is recommended that the Council should accept the delegated role under the revised terms, with the aim to conclude an agreement within six month of the decision.

Resource Implications:

Income generated under the original LoU based on the number of cases dealt with for 2012/13 was £12,100 and for 2013/14 was £15,300. Under the revised terms of the LoU a flat rate income of £9,975 will be received.

It is currently considered that the work can be carried out within existing staffing resources. A full assessment of the quantity and type of work and the impact on resources will need to be reviewed periodically. However, at this time it is considered that any additional staffing resources that may be required (through overtime etc) will be covered by the payments received from ECC.

As either party is able to terminate the agreement any income received cannot be considered as a permanent source of revenue. Therefore, this amount cannot be relied on to offset the existing Continuing Service Budget allocation. Previously the Council was carrying out the majority of the work on behalf of the EA with no financial recompense.

Legal and Governance Implications:

Local Government Act 1972 (section 101)
The Flood and Water Management Act 2010
Land Drainage Act 1991
Public Health Act 1936
Council's Land Drainage Byelaws

Safer, Cleaner and Greener Implications:

Efficient and effective management of watercourses and flood risk is in accordance with the Council's Safer, Cleaner, Greener strategy.

The proposed delegation will ensure the continued higher level of flood risk management service to the residents of the District.

Consultation Undertaken:

Legal Services

Background Papers:

ENV-002-2012/2013, C-016 -2013/14.

Risk Management:

By taking on this delegated function there is a small risk to the council if it was found to be negligent in exercising the powers. However, this risk is considered to be no greater than the risk to the Council in exercising any of its other statutory powers. If there is a complex case then the matter and proposed works will be agreed with ECC which should further minimise the risk.

Flooding is listed as a predominant risk in the Council's Emergency Planning Local Risk

Register. The ability to control and monitor the majority of works being carried out on ordinary watercourses within the district and to be able to take the necessary enforcement action, demonstrates that the Council is committed to minimising flood risk.

The inability to implement the requirements of the FWMA and the potential increase of risk of flooding to people, properties and land if the Council loses the local ability to control and monitor the condition of watercourses and other flood risk assets, are itemised in the Risk Matrix in the Neighbourhood Directorate's Business Plan 2014/2015. It is considered that if the Council continues to exercise the amended powers under sections 23, 24 and 25 of the LDA, under delegated power from ECC, then there will be no need to revise the Risk Matrix.

If the delegation is not accepted our residents will have to make two separate applications, which could result in inconsistency of services provided given ECC has stated that they are unable to deliver the work to the same standard the Council affords. Therefore some applications and complaints that strictly fall within the remit of the LDA will not be investigated by the Council. It is considered that overtime this will have the affect of increasing flood risk within the district. By working with ECC in this way we build a partnership approach, flood risk management will be maximised and a much better service given to our residents.

Due Regard Record



Name of policy or activity:

What this record is for: By law the Council must, in the course of its service delivery and decision making, think about and see if it can eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. This active consideration is known as, 'paying due regard', and it must be recorded as evidence. We pay due regard by undertaking equality analysis and using what we learn through this analysis in our service delivery and decision making. The purpose of this form is as a log of evidence of due regard.

When do I use this record? Every time you complete equality analysis on a policy or activity this record must be updated. Due regard must be paid, and therefore equality analysis undertaken, at 'formative stages' of policies and activities including proposed changes to or withdrawal of services. This record must be included as an appendix to any report to decision making bodies. Agenda Planning Groups will not accept any report which does not include evidence of due regard being paid via completion of an Equality Analysis Report.

How do I use this record: When you next undertake equality analysis open a Due Regard Record. Use it to record a summary of your analysis, including the reason for the analysis, the evidence considered, what the evidence told you about the protected groups, and the key findings from the analysis. This will be key information from Steps 1-7 of the Equality Analysis process set out in the Toolkit, and your Equality Analysis Report. This Due Regard Record is Step 8 of that process.

Date / Name	Summary of equality analysis
	The subject of this report is about exercising delegated powers under flood and land drainage legislation. Whilst the issues themselves may have public health and environmental consequences, there are no issues with respect to the elimination of unlawful discrimination, advance equality of opportunity and fostering good relations with respect the personal characteristics protected by equality law.