

## **Report to the Cabinet**

**Report reference: C/136/2005-06.**

**Date of meeting: 10 April 2006.**



**Epping Forest  
District Council**

**Portfolio: Civil Engineering and Maintenance.**

**Subject: Transfer of Critical Ordinary Watercourses (COWs).**

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### **Recommendations:**

**(1) That, in respect of the Memorandum of Understanding, the outcome of discussions with the Environment Agency be noted; and**

**(2) That, given the arrangements under the Memorandum of Understanding are cost neutral to the Council, the Head of Environmental Services be authorised to sign the Memorandum of Understanding.**

### **Report:**

1. At the meeting of the Cabinet held on 14 November 2005, the Head of Environmental Services was authorised to sign the Memorandum of Understanding (MOU) on the basis that the contracting back arrangement was cost neutral to the Council and subject to the Head of Legal, Estates and Administration agreeing the wording of the Memorandum of Understanding.
2. The Head of Legal, Estates and Administration was concerned that the use of the words 'contracting back arrangements' in the Cabinet Minute did not fully describe the provisions of the Memorandum of Understanding, which is expressly stated by the Environment Agency not to be a contract, due to the fact that a contract implies that the provisions are binding on the parties and may be enforced.
3. In order to address the Council's concerns the Environment Agency (EA) have been requested to formally clarify the limit of the Council's authority in terms of instructing or undertaking works required by the EA, the former clarification is attached. As the ability of the Council to instruct or undertake works on behalf of the EA is conditional on the prior formal consent of the EA being obtained, the Council's exposure to risk is manageable and subject to rigid control. The EA have developed the MOU as a non-confrontational document structured to act as a generic framework against which all local authorities wishing to 'contract back' are required to enter into. Given these assurances the Head of Legal Services is now content with the arrangements.
4. The Cabinet will recall that an integral part of the 'contracting back' arrangement was the ability to have in place a dedicated engineering resource at senior engineer level. However, subsequent discussions with the EA have resulted in an agreement whereby the EA will undertake via their own consultancy framework all intrusive and non-intrusive inspections of enclosed (culverted) critical ordinary watercourses. This results in the Council being able to undertake all works required by the EA from existing resources, supported by engaging agency or temporary engineering resources, as the demand dictates. This will be kept under review during the first year of the agreement.

5. As prior approval by the EA for any works undertaken by the Council under the MOU must be obtained, all the costs incurred by the Council will be met by the EA, therefore the cost neutral requirement for 'contracting back'.

**Options considered and rejected:**

6. The following options have been considered and rejected for the reasons set down:

*(i) Transfer responsibility for flood risk management within the District to the Agency and not participate further (i.e. reject any contracting back of management):*

EFDC has a high level of interest in flood risk management as many of its residents are protected by Flood Alleviation Schemes (North Weald, Loughton and Thornwood) and attempts are currently being made to progress schemes for residents in Waltham Abbey. To completely reject future involvement would clearly signify a lack of interest on the part of the Council, and might lead to dramatic deterioration in the level of service offered to its residents. It would also contradict the findings of Best Value service review and of previous resolution of the Council including its current flood Defence Policy and Best Value Performance Plan.

*(2) To oppose the proposed short term "streamlining option" of making the EA responsible for critical ordinary watercourses (critical ordinary watercourses):*

At a national level authorities do not exercise their discretionary powers for management of ordinary watercourses. The Council in its November 2002 decision accepted the option set out in the initial consultation to transfer the responsibility for critical ordinary watercourses to the EA, whilst calling for contracting back of maintenance of the same.

**Consultation undertaken:**

7. The Environment Agency, Legal Services, Financial Services, Planning Services.

**Resource Implications:**

**Budget Provision:** Proposals are cost neutral.

**Personnel:** Resourced from the existing Engineering Services establishment supplemented by temporary or agency staff as necessary.

**Land:** Nil effect immediately but ultimately could lead to negotiations with the Agency over flood defence assets and associated land (purchased by CPO) at North Weald, Loughton and Thornwood.

**Community Plan/BVPP reference:** BVPP Issues – "Trying to reduce the amount of flooding in the district"; "In partnership with the EA, to review areas of the district subject to flooding and try to provide affordable and effective solutions".

**Relevant statutory powers:** Powers to CPO land if pursuing discretionary powers to implement flood alleviation schemes in relation to ordinary watercourses under Land Drainage Acts 1991 and 1994. If the critical ordinary watercourses transfer to the EA then such discretionary powers would be lost. However if the Council continues to be the riparian owner then it would have a duty to carry out its duties and responsibilities imposed by statute.

**Background papers:** As attached.

**Environmental/Human Rights/Crime and Disorder Act Implications:** N/A.

**Key Decision Reference (if required):** Will advise when reference numbers allocated.