

## **Report to the Cabinet**

**Report reference: C/039/2007-8.**

**Date of meeting: 3 September 2007.**



**Epping Forest  
District Council**

**Portfolio: Civil Engineering & Maintenance.**

**Subject: Memorandum of Understanding with the Environment Agency.**

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### **Recommendations/Decisions Required:**

- (1) To approve submission of a cost neutral tender bid to the Environment Agency for a two-year Memorandum of Understanding operating from 1 April 2008 to 31 March 2010;**
- (2) To authorise the Head of Environmental Services to invite tender bids for the award of the annual watercourse maintenance contract, for a 5 year rolling partnering type of contract subject to annual performance based renewal; and**
- (3) To note that the Head of Environmental Services will bring the existing contract to an end at an appropriate time if required.**

### **Memorandum of Understanding:**

1. The Cabinet at its meeting on 14 November 2005 authorised the Head of Environmental Services to enter into a Memorandum of Understanding (MoU) with the Environment Agency (EA) for the management of those watercourses and flood defence assets which had been re-designated as main rivers by the Department for Environment, Food and Rural Affairs (DEFRA) on 1 April 2006.
2. However, the DEFRA enforced transfer allowed for the management of these re-designated assets to be contracted back to those local authorities who were deemed capable by the EA of managing and undertaking works and who were willing to continue with previous arrangements. This contracting back was undertaken through the MoU. Full details of the assets covered under the MoU are set out in Appendix 1.
3. The MoU is a legal contract between the Council and the EA. Officer time and costs incurred in performing activities on behalf of the EA are charged back whilst any time or costs incurred in discharging responsibilities as a riparian landowner are borne by the Council. In the first year of operation a sum of £103,964 was spent on behalf of the EA. The full breakdown of cost components is also set out in Appendix 1.
4. The officers of the EA who have direct management responsibility of the current MoU have expressed satisfaction with the performance of the Council. All Key Performance Indicators set in place for the monitoring of the MoU have been met. The EA has therefore requested that the Council consider submitting a tender bid for the award of the next two-year term of the MoU.

### **The Annual Watercourse Maintenance Contract:**

5. The contract for the maintenance of watercourses (AMC) rests with Hugh Pearl (Land Drainage) Ltd. This contract is reaching the end of the period whereby the Head of

Environmental Services can renew it on a rolling basis, and a new tender process is now required for the contract to commence in June 2008.

6. However, the process of bidding for the MoU complicates this procurement process. It is essential that, if Cabinet agree to enter into a new MoU, the costs of the next AMC be fully taken into account in the bid price. To achieve that means that the tender process needs to be brought forwards such that the new AMC price is known ahead of submitting the MoU bid. Given that the new MoU is to commence on 1 April 2008 and the existing AMC does not expire until the end of June 2008, it may become necessary to cancel the existing contract ahead of time i.e. with effect from 1 April 2008. The AMC has been structured to allow this to happen without the Council incurring contract penalties.

7. It is proposed to undertake the procurement process in sufficient time to both:

(a) inform the MoU bid; and

(b) include any increased costs for non MoU watercourses into the 2008/09 budget process.

#### **Statement in Support of Recommended Action:**

8. The MoU is budget neutral for the Council since all the costs incurred through its delivery will be met in full by the EA. If the Council were not to bid then the costs associated with the management of watercourses for which it is the riparian owner may well rise due to the EA commissioning works themselves either directly or through enforcement activity. There would also be a risk of losing key skills, which are essential in maintaining the Council's present land drainage and flood alleviation services to residents. The Council has a number of locations of relatively high flood risk with around 2,500 properties at significant risk of flooding.

9. There are considerable environmental advantages to seeking to maintain the MoU. All of the flood storage reservoirs are managed in close co-operation with Countrycare, the Council's countryside management service. By working in this collaborative manner the Council has created over 9 hectares (22 acres) of prime wetland habitat of major biodiversity value. If the work were to revert directly to the EA there is no guarantee that such a level of collaboration would continue or be developed further. Further details on the benefits of the collaborative efforts in management of these assets are presented in Appendix 2.

10. Whatever the outcome of the MoU, the Council, as a riparian owner, has to maintain a significant length of watercourses. This can only be undertaken satisfactorily by using specialist land drainage management contractors. The contract expires in June 2008 and the authority for the Head of Service to renew on an annual basis has expired. A procurement exercise is therefore required.

#### **Other Options for Action:**

11. In respect of the MoU Cabinet could decide not to bid. However, there are no advantages to this course of action given that a successful bid would be cost neutral. In fact, not bidding or not winning the MoU could have financial implications for the Council, as well as affecting the ability of the Land Drainage Group to effectively deliver its existing key services.

12. A procurement exercise for the AMC is required unless Cabinet decide to extend the Head of Service's current authority to extend.

#### **Consultation Undertaken:**

13. Dr Jeremy Dagley, Conservation Manager at the Corporation of London has expressed satisfaction with the Council's involvement in the management of the Loughton

reservoir (part of a flood alleviation scheme for Loughton). He states that this has led to the establishment and maintenance of an attractive additional open space at this entrance to the Forest, the Council has always been good at communicating proposals for site works, and that in recent years there has been a significant improvement in the management of the pond itself. He would consider the loss of local management of the scheme to be a retrograde step.

### **Resource Implications:**

**Budget Provision:** No additional financial implication to the Council. All costs incurred will be recoverable from the Environment Agency. In the previous year of the MoU the Council has recovered a sum of £103,964 from the EA.

**Personnel:** There are no additional staffing implications and all functions will be managed within the existing staffing resources of the Environmental Services Section.

**Land:** Where the flood alleviation schemes are built on land that belongs to the Council it will remain the riparian owner responsible for maintenance and repair of these assets.

**Council Plan 2006-10/BVPP Reference:** Council Plan Key Performance Indicators: HN4, HN5, HN6, EP3

**Relevant Statutory Powers:** Discretionary powers to implement flood alleviation schemes in relation to ordinary watercourses under Land Drainage Acts 1991 and 1994.

**Background Papers:** Report to Cabinet 10 April 2006: Transfer of critical ordinary watercourses (COWs).

Report to the Cabinet 14 November 2005: Transfer of Critical Ordinary Watercourses and memorandum of Understanding with the Environment Agency.

Report to Cabinet 17 June 2002 (C/029/2002-03): Watercourse maintenance – Partnering contract.

Report to Cabinet 6 February 2006 (C/109/2005-06): Principal Ordinary Watercourses and Flood Defence assets – allocation of funding for remedial works.

Report to Cabinet 6 June 2005 (C/011/2005-06): Partnering Contract for annual watercourse maintenance.

**Environmental/Human Rights Act/Crime and Disorder Act Implications:** Under a range of environmental legislation all land drainage activities must be undertaken so as to minimise damage to existing habitat and maximise opportunities for environmental enhancements.

**Key Decision Reference (if required):** Yes. The decision can affect the quality/quantity of services to people living/working in an area of two or more wards.