

CRITICAL ORDINARY WATERCOURSES, CONTRACTING BACK AGREEMENT








Summary of Purpose and Recommendations:

This report seeks Member approval to:

- (i) accept the contracting-back agreement on offer from the Environment Agency, subject to the satisfactory conclusion of final negotiations, and
- (ii) carry out watercourse maintenance in the Eastleigh area, provided that there is a sound business case for doing so.

Cost to Council: See Financial Issues in report **Within existing budget?** See Financial Issues

Contribution to Corporate Plan (Minor/Moderate/Major/Neutral):

	+		-		+		-
	Mod			Priorities			
	Mod			Clean Streets and Public Space		Neut	
		Neut		Crime and Disorder	Mod		
		Neut		Housing		Neut	
	Mod			Managing our Finances	Mod		

Comments on Impacts on Corporate Objectives and Priorities:

Accepting the contracting-back agreement offered by the Environment Agency will allow the Council to work with the Agency to maintain and improve critical ordinary watercourses in the District for a period of two years following the transfer of legal powers over these watercourses to the Agency in April 2006, thereby helping to fulfil the Council's aim of reducing flood risk. Working with Eastleigh B.C. would help to fulfil the Council's aim to work with partners and would fit well with the Gershon recommendations for local authority procurement.



Organisation of excellence



Working with public and partners



Economic well being



Social well being



Environmental well being

CABINET: 6 APRIL 2005

CRITICAL ORDINARY WATERCOURSES, CONTRACTING BACK AGREEMENT

1. INTRODUCTION

- 1.1 The Council exercises discretionary powers under the Land Drainage Act to ensure that critical ordinary watercourses (COWs) within the District are properly maintained. However, some local authorities have never exercised their powers leading to large variations in maintenance standards across the country.
- 1.2 In order to reduce flood risk the Government has, therefore, decided to re-classify COWs as main rivers (enmainment) and to transfer powers to the Environment Agency. The Agency's Southern Region has offered the Council an opportunity to maintain the newly enmainned COWs for a period of two years.

2. PURPOSE OF THIS REPORT

- 2.1 This report seeks Member approval to:
 - accept the contracting-back agreement on offer, subject to the satisfactory conclusion of final negotiations, and
 - to carry out watercourse maintenance in the Eastleigh area, provided that there is a sound business case for doing so.

3. BACKGROUND

- 3.1 The Water Resources Act gives the Environment Agency powers to deal with main rivers. The Land Drainage Act gives local authorities powers to deal with all other watercourses. This includes critical ordinary watercourses, or COWs, which are the ones most likely to cause flooding. In both cases powers are permissive as, under common law, the responsibility for maintaining watercourses lies with the landowner.
- 3.2 The Agency actively maintains main rivers, whoever owns them. Local authorities, generally, use their powers to ensure that landowners undertake maintenance, but there is a wide variation in the standards achieved. Some authorities, like NFDC, actively exercise their powers, but others do nothing at all. To secure a nationally consistent standard of flood protection, and thereby reduce flood risk, the Government has decided that all COWs will be reclassified as main rivers (enmainned), giving the Environment Agency powers to maintain them.

- 3.3 The New Forest COWs will be enmained in two stages. Those that form tributaries of the River Avon will transfer to the South Wessex region of the Agency in April 2005. Transfer of the remaining COWs, falling within the Agency's Southern Region, will be delayed until April 2006 to allow the Council to complete two flood alleviation schemes that are currently in progress.
- 3.4 Local authorities with suitable resources have the opportunity to enter into a contracting-back agreement with the Environment Agency to maintain the newly enmained COWs for a period of two years. The decision whether to offer an agreement rests with the Agency. Because NFDC's land drainage service is held in high regard, both locally and nationally, the Council is one of only three authorities in Hampshire to be offered a contracting-back agreement. (see (4.1 below).
- 3.5 In total, 85km of COWs will be enmained but the Council will retain its permissive powers over about 2300 km of non-critical watercourse.

4. CONTRACTING-BACK ARRANGEMENTS

- 4.1 The Agency's Southern Region has offered the Council a contracting-back agreement for two years, starting in April 2006. However, the South Wessex Region is not prepared to offer a similar agreement because the New Forest COWs form only a small part of the Avon river system, most of which lies outside the District. The Southern Region area is considerably larger than the South Wessex area, accounting for about 75% of the District.
- 4.2 The terms and conditions of contracting-back are set out in a Memorandum of Understanding (MoU) that enables local authorities to carry out works on new main rivers as agents for the Environment Agency. The MoU establishes a formal basis for agreement that is intended to be binding but not to be enforced by the Courts. The Agency intends that the agreement will operate for two years with an option for termination by either party with reasonable notice.
- 4.3 Work under the agreement will be carried out on a cost plus basis in accordance with comprehensive technical guidance provided by the Environment Agency. The Council's Head of Legal Services has checked the MoU and, in principle, is happy with it, but will be consulted again when the Council and the Agency have agreed the remaining financial and technical details that have to be written into the agreement.

5. POTENTIAL PARTNERSHIP WORKING

- 5.1 Eastleigh Borough Council doesn't have the necessary in-house resources to contract-back watercourse maintenance but is interested in forming a partnership with NFDC to do so. The Environment Agency has agreed, in principle, that an agreement could be drawn up giving Eastleigh a contract management role within its area but providing for NFDC to undertake the actual maintenance works.

- 5.2 Eastleigh's engineers are currently working on a proposal for consideration by the Agency and NFDC. If this demonstrates clear benefits, such as economies of scale or flexible deployment of operatives, it may be in the Council's interests to work with Eastleigh B.C., particularly in view of the Gershon recommendations. However, until further details are available and the Agency has given final approval the Council can't make a decision.

6. HUMAN RESOURCE IMPLICATIONS

- 6.1 Contracting-back is concerned solely with watercourse maintenance. It does not include the COWs related flood investigations, enforcement and capital works, currently undertaken by the Council's land drainage engineers, which will transfer to the Environment Agency following enmainment. However, it does require asset inspections, surveying and reporting, programme planning, site supervision, safety inspections and environmental impact assessment. In broad terms this new contract management work will balance the work lost and help to maintain the Engineering Group's land drainage workload until April 2008. It is important to note that the land drainage team is largely responsible for coordinating flood response.
- 6.2 Watercourse maintenance would provide new work for the Council's Grounds Maintenance team, as it requires trimming of stream banks, vegetation control, aquatic weed cutting, tree management and debris clearance. Discussions with Steve Jones, the Council's Grounds Maintenance Manager have shown that current grounds maintenance work is largely seasonal. Most of the work is carried out between April and August, during which period five seasonal workers are employed to supplement the permanent crews working in the New Forest area, and a further 11 in Test Valley.
- 6.3 In accordance with the Environment Agency's technical guidance contracted-back watercourse maintenance should be carried out between August and March, due to environmental constraints and the need to ensure that proper flows are maintained during the wettest part of the year. To deal with the additional work created by contracting-back four of the seasonal workers would be made full-time in order to create two crews dedicated to watercourse maintenance in the New Forest area during the autumn and winter. Work in the Eastleigh area could be accommodated by creating two dedicated crews from the Test Valley seasonal workers.
- 6.4 The Environment Agency envisages that the contracting-back arrangement will last for two years but there may be an opportunity to extend it if the Council is delivering an efficient and cost effective service. However, to avoid a redundancy situation the new full-time crews would only be offered a two year contract, ending in March 2008. Steve Jones considers that creating additional full-time crews would benefit the grounds maintenance service as a whole because annual recruitment and training of seasonal workers is both expensive and time consuming, and the best workers are not generally attracted by seasonal work.

- 6.5 Water course maintenance should also provide additional work for the Engineering Works team, who currently carry out a certain amount of desilting and repair work. The new programme would require the clearance and removal of blockages, channel regrading, installation of erosion protection and bank repairs. In addition to routine maintenance, the Environment Agency will fund watercourse improvement works up to a total value of £25,000 per year, which the Engineering Works team would carry out.

7. FINANCIAL IMPLICATIONS

- 7.1 Excluding capital financing costs, the land drainage budget totals £283,730 for 2004/05, of which £107,260, or 40% of the budget, will be spent on COWs.
- 7.2 As COW's are transferred to the Environment Agency, the Government reduces the level of Revenue Support Grant (RSG) payable to Local Authorities. It was originally anticipated that this would be carried out on an Authority specific basis, but for 05/6 RSG has been reduced marginally (£4k for NFDC) for all Authorities providing a land drainage service, irrespective of whether they transferred responsibility for COW's in 04/5 or not. The methodology for transfers in 05/6 is not yet known.
- 7.3 Any decision to accept or reject the contracting back agreement offer will have no impact on RSG. The Environment Agency will pay for all work carried out under the contracting-back agreement on a cost plus basis. Financial information is currently being exchanged between the Council and the Agency to determine the cost multipliers which, when agreed, would be written into the contracting-back agreement. Preliminary estimates made by the Council and the Agency indicate that the first year's maintenance programme (April 2006 to March 2007), which will be fully financed by the Agency, totals £200,000. The benefits to the Council of contracting back are that expertise will be retained inhouse and a contribution will be received towards the Council's oncosts, such as support service and corporate running costs.
- 7.4 Until Eastleigh Borough Council's proposals have been finalised it is difficult to quantify their financial implications for NFDC, but any commitment to work in partnership with Eastleigh would have to be based on a sound business case.
- 7.5 The Council has also recently been notified that the Government is considering changing the methodology for calculating future RSG payable on all land drainage services. There is concern that the Council may lose RSG in the region of £140k currently received in relation to non-critical watercourses, which are not being transferred to the Environment Agency. It is understood that this may impact on 06/7 RSG.

8. ENVIRONMENTAL AND CRIME & DISORDER IMPLICATIONS

- 8.1 Enmainment of COWs will result in significantly greater expenditure on pro-active watercourse maintenance, which should result in substantially reduced flood risks. If the Council accepts the contracting-back agreement it will be in a strong position to influence where and how the extra money is spent during the two year term of the agreement.

9. CONCLUSIONS

- 9.1 All critical ordinary watercourses in England and Wales are being re-classified as main rivers and powers to deal with them are being transferred to the Environment Agency as part of a Government initiative to improve watercourse maintenance, and thereby reduce flood risk.
- 9.2 New Forest District contains 85 km of COWs and a further 2300km of non-critical watercourses, and is split between two Environment Agency regions. COWs in the South Wessex region will be enmained in April 2005 and those in Southern region in April 2006.
- 9.3 The Southern Region of the Environment Agency is offering the Council an opportunity to contract-back maintenance of newly enmained COWs for a period of two years from April 2006. Payment would be on a cost-plus basis, with the estimated value of work being £200,000 per year. Contracting-back would support the Land Drainage team in its current form and provide additional work for the Grounds Maintenance and Engineering Works teams until April 2008.
- 9.4 There is a possibility that NFDC could form a partnership with Eastleigh B.C. to carry out contracted-back watercourse maintenance in the Eastleigh area, but it would have to be based on a sound business case.
- 9.5 The Council will lose Revenue Support Grant as COW's transfer to the Environment Agency, although the level and timing of this loss cannot be calculated with any accuracy, as current methodology is not linked to when individual Authorities transfer. Contracting-back would have no effect on RSG calculations, although any decision to do so should be taken in the knowledge that future changes in RSG methodology may impact on RSG received for non-COWS, at which point Members may wish to review the level of provision on the overall land drainage service.

10. PORTFOLIO HOLDER COMMENTS

The Portfolio for Environment supports the recommendations subject to the satisfactory conclusion of negotiations with the Environment Agency and the dialogue with Eastleigh Borough Council related to partnership arrangements being based on sound business examination.

11. RECOMMENDATIONS

11.1 It is recommended that Members should:

11.1.1 Approve the signing of a Memorandum of Understanding with the Southern Region of the Environment Agency, subject to the Head of Legal and Democratic Services being satisfied as to its content, for the Council to undertake maintenance work on new main rivers for a period of two years, from April 2006 to March 2008, subject to the Environment Portfolio Holder and the Director of Commercial Services, in consultation with the Director of Resources, being satisfied as to the outcome of final negotiations.

11.1.2 Approve the formation of a partnering arrangement with Eastleigh Borough Council to carry out maintenance work on new main rivers within Eastleigh, provided that Environment Agency approves the arrangement and subject to the Environment Portfolio Holder and the Director of Commercial Services being satisfied that a sound business case exists for doing so and the Head of Legal and Democratic Services being satisfied as to the content of any partnering agreement.

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Background Papers:

Memorandum of Understanding
for Work on Main River