
REPORT TO:	ENVIRONMENTAL & DEVELOPMENT SERVICES	AGENDA ITEM: 7
DATE OF MEETING:	13 NOVEMBER 2003	CATEGORY: DELEGATED
REPORT FROM:	DEPUTY CHIEF EXECUTIVE	OPEN
MEMBERS' CONTACT POINT:	CHRISTOPHER PAYNE EXT 5756	DOC: s:\cent_serviccommittee reports\environmental & development\13 nov 03\critical ordinary watercourses - ea enmainment.doc
SUBJECT:	CRITICAL ORDINARY WATER-COURSES - ENVIRONMENT AGENCY ENMAINMENT	REF:
WARD(S) AFFECTED:	NEWHALL & STANTON, WILLINGTON & FINDERN, HATTON, SHARDLOW & GREAT WILNE	TERMS OF REFERENCE: EDS01

1.0 Recommendations

1.1 The Council is recommended to:

- a) Reject the option to contract back the maintenance of Critical Ordinary Watercourses (COWs).
- b) To use our best endeavours to transfer the named COWs in phase 1 of the Environment Agency's (EA's) programme.

2.0 Purpose of Report

2.1 To inform Members of proposals regarding the transfer of management and maintenance responsibilities (enmainment is the EA's word for this) for specific COWs to the EA's control.

3.0 Detail

Background

- 3.1 The watercourses in South Derbyshire that fall within the categorisation of COWs and are to be enmained are identified in Annexe A. Currently the management and maintenance of these watercourses is the responsibility of this Council. To put things in context, Members should be aware that while these watercourses are critical they only represent a small proportion of the watercourses in the District. The Council would still retain responsibility for managing and maintaining other watercourses, many of which are the cause of localised flooding.
- 3.2 Primarily, against the background of the severe November 2000 floods, the Government reviewed the funding of Flood and Coastal Defence works. The outcome of this review was announced on 12th March 2003. These outcomes included giving the EA statutory powers for all watercourses that present the greatest flood risk. The EA already have responsibility for all main rivers but under this review they assume responsibility for a Schedule of Watercourses, currently the responsibility of Operating Authorities (including this Council).

- 3.3 The transfer of COW's will be achieved through the Water Resources Act (1991) Section 108 which empowers the EA to submit a scheme for enmainment to the appropriate Minister.
- 3.4 The EA has programmed the transfer of COW's nationally over the next three years with those uncontested local authority maintained watercourses to be concluded in the early spring of 2004. **(Need to review this clause to identify how transfer will be scheduled.)**
- 3.5 The EA will accept the entire cost for future maintenance and management for the COWs enmained.

Options

- 3.6 The EA has, however, identified two possible options for the future management of these COWs for existing operating authorities to consider. These are:
- To not contract back responsibility for the four COWs thereby giving the EA responsibility for them.
 - To contract back responsibility for the four COWs through the EA 'Operating Authority's Agreement'.

Way Forward

- 3.7 The Advantages and Disadvantages of each option are identified in detail in Annexe B. On balance, mainly because of the increased resources and integrated approach the EA should bring to the new arrangements, it is considered that the best option is to not contract back these COWs
- 3.8 This view is supported by the Derbyshire Local Authorities Land Drainage Officers. At the group's meeting in August 03 it was identified that 70% of Authorities did not wish to contract back responsibilities for COWs; 30% said they would contract back if the EA amended their 'Operating Authority's Agreement' (see Legal Implications).

4.0 Financial Implications

- 4.1 If the four watercourses in question are controlled by the EA they would:
- No longer impinge on the existing Flood Protection and Land Drainage budgets, so releasing money for other essential works throughout the District.
 - No longer need any funding through the Council's annual bidding round for capital resources. (Stanton and Hatton watercourses have recently had money from this source).

Members should be aware that we have a current grant application to the Department of Environment Food and Rural Affairs (DEFRA) for flood alleviation works at Hatton and a flood wall at Stanton.

If the Authority has DEFRA approval for the schemes then the watercourse will not be enmained by the EA until the scheme has been completed. If DEFRA approval has not been gained by April 2004, the schemes will transfer into the EA capital programme and will be constructed by them following liason with DEFRA .

5.0 Legal Implications

- 5.1 If Members decided to take the view that responsibility for the maintenance of these COWs should be contracted back to this Council, then a legal agreement would have to be signed with the EA.. Legal Services have considered a draft agreement and their view is that this is extremely onerous and favours the EA., for example the EA could make any claim against us through default clauses defined by them and without consultation. We could request amendments to the Agreement to suit us but there is no guarantee that the EA would accommodate them because it is a standard document.

6.0 Community Implications

- 6.1 If SDDC do not contract back COW maintenance, the EA's resources are likely to give a more comprehensive service to residents.

7.0 Conclusions

- 7.1 The overall concern is to ensure that a level of service is no less than that presently enjoyed by the residents of South Derbyshire. This point has been made clear to the EA who have in turn agreed that the service will be up to the standard demanded in the stringent maintenance agreement that contracting back operating Authorities would have to adhere to.
- 7.2 The EA will have more resources than SDDC to put into maintenance of these COWs which must be of benefit to the wider community (including businesses). The small SDDC budget for Land Drainage and Flood Protection works could then be prioritised to the vast majority of other watercourses within the District, which would still remain the responsibility of this Council

8.0 Background Papers

- 1/8/03 Operating Authority's Agreement Volumes I, II and III (Draft Version) - Environment Agency

