REPORT TO:	**ENVIRONMENTAL & DEVELOPMENT SERVICES**	**AGENDA ITEM:** 7
DATE OF MEETING:	**7th JULY 2005**	**CATEGORY: DELEGATED**
REPORT FROM:	**DIRECTOR OF COMMUNITY SERVICES**	**OPEN**
MEMBERS' CONTACT POINT:	**CHRIS MASON EXT. 5794 CHRIS PAYNE EXT 5756**	**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 To reject the option to contract back the maintenance of Critical Ordinary Watercourses (COWs).

1.2 To provide as much support as practically possible to assist the Environment Agency (EA) in their assumption of maintenance responsibility for these areas.

2.0 **Purpose of Report**

2.1 To update Members on progress with enmainment (EAs word for transferring responsibility) and provide evidence for the recommendation to reject the option to contract back.

3.0 **Executive Summary**

3.1 Following a Government review, it is intended to give overall responsibility for COWs to one agency, the EA This is to remove the inconsistencies in levels of service that it is felt exist nationally. There is an option for Operating Authorities (OAs) to contract back the service for a period of 2 years, under strict guidelines provided by the EA. After 2 years the service could be transferred to another organisation (you could envisage a scenario where economies of scale make this more likely than unlikely to happen). To date the overriding response from other OAs is that the proposals will undoubtedly improve the level of service to the customer and free up time to allow OAs to deal with flooding problems on none COWs. To prepare us to make the case for contracting back would involve a considerable management input and, to meet the ongoing requirements of the EA, would require in the region of £22,400 per annum. The EA have indicated that even if OAs don't contract back they will still be required to continue to provide the current levels of social and liaison services that occur during flooding emergencies.

3.0 **Detail**

Introduction

4.1 At the meeting of this Committee on 13th November 2003 Members considered a report on proposals for the EA to enmain the District's four COW's. These are located at Hatton, Shardlow, Willington & Stanton.

4.2 The meeting resolved to establish a task & finish working group to consider the issues in greater detail and then report back its findings to the service committee (EDS/46 refers).

4.3 The Working Group met on one occasion but the programme and process of enmainment were revised so the Group's work was put in abeyance. These matters have now been resolved and officers are now in a position to present an up to date report for consideration. Given that the composition of service committees changed at Annual Council in May 2005 and the membership of working groups ceased at this time it is felt more appropriate to report back to Committee rather than attempt to reconstitute the working group. The Authority is required to provide a response to the EA by August 2005, so it is also important that Members reconsider the matter as soon as practicably possible.

Background

4.4 Members will recall that the background to enmainment was a major review of the funding of Flood & Coastal Defence Works following the floods of November 2000. One of the key outcomes of the review was to give the EA statutory powers for all watercourses that present the greatest flood risk. It was felt that over 500 separate OAs dealt with flood risk management in an uncoordinated, piecemeal way. Giving the EA overall responsibility, it was felt, would remove this inconsistency and offer a holistic approach to flood defence

Revisions since report of 13th November 2003

4.5 Within the enmainment process there is an option for OAs to contract back for a 2-year period (originally 3-years). After this the work would go out to open tender. This in itself creates a great deal of uncertainty in that OAs could gear themselves up for contracting back and then find they lose the work in 2-years time anyway.

4.6 Since the initial notice to OAs the EA have revised their programme with the four COWs in this District now due to be enmained by 31st March 2006. As identified above the EA require a decision from this Council by August 2005 to enable the necessary hand over work to take place.

4.7 Among the reasons for slippage in the original programme were concerns of some OAs about the draft contract provided by the EA if OAs wanted to continue maintaining their COWs. This new Memorandum of Understanding (MOU), while in many ways encapsulating best practice, places a great deal more responsibility on OAs than currently exists.

Resource impact of contracting back

4.8 While difficult to quantify exactly , contracting back from the EA would require greater staff capacity than currently exists (one Engineering Technician at present). It is likely that because of the intermittent and technical nature of the work , particularly the specialist conservation / ecology input, that this would require the use

of consultants rather than directly employed staff.

4.9 One of the main areas where there would be an impact on existing resources is the EA's requirement to have staff on standby. Currently, there is no standby rota in place for flooding emergencies. On average there are approximately four such events over a 12-month period, some of which can last up to 7 days (cost issues identified in 'Financial Implications').

Feedback from others

4.10 The feedback from other Derbyshire authorities is that none are likely to take up the option of contracting back the service. They regard the MOU as unbalanced in the EA's favour and exhibiting little trust towards OAs. Another guide to how this is being viewed by other authorities is that of the nine involved in Phase B of the process none have indicated a desire to contract back. Contact has been made with one of the Derbyshire authorities involved in this phase and they have indicated that the main reason for this is the additional staff and financial resources required to meet the EA's requirements. They also expressed the view that the public should receive an enhanced level of service from the EA in respect of flood defence, as this is their area of expertise.

4.11 In late April 2005 officers met with staff from the EA, primarily to clarify a number of points regarding the enmainment process. In terms of the EA's resources to meet their responsibilities, they confirmed that they were going through a major restructuring to accommodate the additional workload enmainment would place on them. They also emphasised that even with enmainment authorities would still be required to undertake their traditional social impact / liaison role in relation to flood emergencies (provision of sand bags etc.). This would also include liaison with Derbyshire County Council for implementing their flood contingency plans. They also clarified that even if the Authority did opt to contract back overall responsibility for COWs would rest with the EA

Hatton Salt Brook & other COWs

4.12 Members will be aware that we are currently in the process of undertaking substantial flood alleviation works on the above COW. At present maintenance responsibility for this rests with the individual landowners (riparian) on whose land the brook passes. A key element in compensation negotiations with these landowners is future responsibility for maintaining the COW. It is an important bargaining point if we can assure them that someone else will take responsibility for maintaining the enhanced COW. The EA, after some negotiation, have indicated that they are prepared to accept responsibility for maintaining the COW at Hatton from March 2006.

4.13 Enmainment would also clearly be advantageous for the on going management of Shardlow Dyke. At present, responsibility for flood defence in the village is confusing

5.0 Financial Implications

5.1 This Council received £50,636 last year for flooding work as part of the Formula Spending Share (FSS) calculation. A percentage of this finance (likely to be capped at 75%) will be paid to the EA as part of the enmainment of our COWs. It is understood that this money will be used to pay us if we contract back

5.2 The cost of meeting the requirements of the EA if we did contract back would be in the region of £22,400 per annum. A breakdown of how these costs have been calculated is attached at Annexe A.

5.3 Enmainment would remove the need for annual bidding for capital resources to improve COWs. (Stanton and Hatton watercourses have recently had money from this source). With enmainment this would become the responsibility of the EA.

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 concern of Members, expressed when enmainment was first discussed in November 2003, was that the service to the community would not be less than that currently provided. Evidence highlighted in the report is that the service is likely to be enhanced rather than diminished. While there is an option for the Council to contract back the maintenance of COWs this would require resources that don't currently exist to both implement the regime required by the EA and keep it functioning. The Council would still retain its central liaison role in flood emergencies and enmainment would free up resources to concentrate on other flooding & land drainage problems. On balance there does not appear to be any overriding practical, financial or technical reasons to opt to contract back the maintenance of COWs.

8.0 Background Papers

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