

**ANNEXE 'A'**

**ENMAINMENT SUB-COMMITTEE**

30th March 2006

**PRESENT:-**

**Labour Group**

Councillors Lauro, Taylor and Whyman M.B.E.

**Conservative Group**

Councillors Bale and Ford.

**APPOINTMENT OF CHAIR**

**RESOLVED:-**

*That Councillor Taylor be appointed Chair of the Enmainment Sub-Committee for the remainder of the Municipal Year.*

**MATTER DELEGATED TO SUB-COMMITTEE**

ES/1. **ENMAINMENT OF CRITICAL ORDINARY WATERCOURSES**

(a) Background Information

A report was presented by the Leisure Services Manager to give background on the enmainment of Critical Ordinary Water Courses (COW's). In July 2005, the Environmental and Development Services Committee determined not to contract back the maintenance of four COW's in South Derbyshire after enmainment by the Environment Agency (EA). A copy of that report was submitted. At a Flood Liaison Group in October 2005, a representative of the EA had indicated that the Agency could not respond as quickly to issues as the local council.

A summary was provided of the key issues about enmainment and contracting back the service. Clarification had also been sought from the representative of the EA to give a context on the comments made at the Flood Liaison Meeting and this was also provided within the report. It was noted that the EA's approach would be strategic and about prevention through regular inspections, routine maintenance and investment in preventative capital works. A quoted example was the allocation of capital funds for an improvement to the Salt Brook. The EA's approach would also place a key emphasis on environmental issues. Whilst the Council's service was responsive, particularly during working hours, it did not have an "out of hours" standby service. It also did not have the staff or financial resources to undertake the necessary preventative work, or the expertise needed for environmental work.

The flood emergencies of November 2000 and the impact this had on local communities were recognised. However, on balance Officers felt that enmainment would improve the overall service offered to the community and enable the Council's existing staff member to concentrate on the

numerous other flooding and land drainage problems that required attention.

A further document was circulated about the transfer of COW's and particularly the information required by the EA, from the local authority if it wished to contract back the service. Financial implications were considered and there would be initial costs of £22,000 associated with contracting back this service. However, it was possible that these costs would be reimbursed. It was also noted that the new arrangements would commence on 1st April 2006 and time was needed to prepare for contacting back this service.

Members' comments were invited. The Leader considered that the report was negative, made a case against enmainment and did not reflect the concerns of local residents. He would have expected a more balanced report. He read extracts of the Flood Liaison Group Minutes about maintenance responsibilities, the powers of the EA to act in default and also a section on the relative levels of service provided by the District Council and the EA. He noted the other issues that the EA had to take into consideration, touched on the concerns raised by a number of those present at the Flood Liaison Meeting and the admission by the EA representative that the service would not be as responsive. The comments made by Mr. Swain of the EA had caused concern to many people. He repeated his disappointment that the report was so negative.

The Council had been responsible for this service area for many years. He questioned the amount of time required to deliver this service and effectively to manage the process, as actual works were sub-contracted. In terms of monitoring, Council Officers did not patrol the watercourses, but responded to public concerns and complaints. The report implied that contracting back would be onerous, costly and time-consuming. If there were logical reasons why it was not possible to contract back the service, he would accept this. He summarised the views expressed by the EA representative, particularly about the responsive service provided by the District Council. He voiced serious concerns that the EA was not represented at this meeting, despite the invitation. He felt the Council should require their attendance at a future meeting. It would also be useful to have information on the Officer time required to deliver this service. He hoped that the Sub-Committee would meet again, to quantify the work required and to discuss with an Environment Agency representative the service that it could deliver.

The Chair confirmed that the view was expressed at Environmental and Development Services that the EA should attend this Sub-Committee meeting. He also touched on the public perception of the service delivered by the District Council.

(b) Legal Implications

The Sub-Committee then focused on the legal issues associated with enmainment. Councillor Lauro commented that the EA had approached district councils, to see if they were willing to contract back the service due to their own resource difficulties. He questioned why the contract terms were so onerous and whether there was scope for negotiation. The Leisure Services Manager expressed the view that the two-year period for

contracting back the service was designed to give the EA some breathing space to be better prepared for assuming full control of the work. It was expected that more local authorities would have taken up the option, but the onerous terms had resulted in a lack of take-up. Councillor Lauro questioned whether the EA would be prepared to negotiate if it was aware that the District Council was minded to take on this responsibility. Officers replied that this agreement had been circulated to some 200 authorities within the Midlands area and it was unlikely that they would be prepared to negotiate the contract terms with an individual local authority. The Engineering Technician gave further background on this issue.

Councillor Bale commented that when reading the document circulated, he felt the Officer view was correct and the service should be delivered by the EA. He acknowledged the points raised by the Leader, particularly the importance of local residents' views. He was also mindful that the service could be contracted back for a two-year period. He noted the resource implications, but questioned whether a service could be delivered on a sub-contract basis, as discussed. He was aware that Hatton had been afforded "priority status" by the EA, but would like to know more about what this meant.

Councillor Ford felt that the service should be delivered by the EA. He spoke about the Council's duty of care to its residents and highlighted issues within the Officer's report about the ability of the District Council to deliver the service.

Officers were invited to comment on the legal issues. The Leisure Services Manager accepted the comments raised by Members about service issues, but reminded them of the concerns raised by the Legal Section on the onerous terms within the contract. The Chair asked about cover arrangements and the Officer confirmed that under the contract, the Council would be required to provide 24-hour cover and have plant available on standby for emergencies. It was stressed that the Council only had one member of staff for this service area at present. The Chair asked, from experience, how often such cover was required. This was an unknown, as flooding could occur at any time, or there might be no further problems for a number of years. The Chair made a comparison to emergency planning arrangements. It was hard to assess the number of calls for service for the COW's as compared to the other watercourses in the District. However, over the winter months there was typically one emergency request for sandbags each month.

Councillor Lauro repeated that the conditions from the EA were onerous, but they wanted district councils to contract back the service, to give them time to prepare for this function. It was noted that the new arrangements would commence on 1st April 2006 and the Chair questioned the implications if this matter was not determined within the next two days. The EA was not certain about arrangements for South Derbyshire. In line with Members' previous instructions the EA had been advised of the decision not to contract back this service. However, discussions had taken place recently with the EA on the feasibility of reversing this decision and contracting back the service.

The Leader then referred to the legal document circulated. He felt this had been drafted to give weight to the argument not to contract back the service and gave a number of examples to demonstrate this. He felt the document was subjective and wished to receive a balanced, objective report to enable Members to make a fully informed decision. He would like this report to be in a format that was easy to digest to show the requirements on the Council if it chose to contract back the service. There needed to be actual facts, statistics and detail to enable Members to reach this informed decision. If the EA determined it was too late to reverse the Council's decision, that would have to be accepted. Ultimately, a report would be submitted to the Flood Liaison Group to advise that forum of the decision reached and the reasons for the decision. It was also necessary to assess the cost of delivering the service and to determine the costs that the EA would fund.

The Chair was surprised by the legal report and would have expected the Legal Officer to be present to discuss it. He requested that a Legal Officer attend the next Sub-Committee Meeting. He also requested that the EA send a representative to the next Meeting of the Sub-Committee to discuss this issue further and he expected that the EA should engage in this process.

Members considered that this issue should be pursued to determine whether the Council could deliver the service or to give the public reasons why it could not. Councillor Ford was concerned that advice from Officers was not being accepted. The Leader disagreed, explaining the need for a factual report. There was no knowledge of the Officer time spent on this area and he confirmed that he was not taking issue with the advice provided. Members had a scrutiny role on behalf of the community and personally he felt he could not arrive at a view at this time or yet report back to the Flood Liaison Group on this matter.

Officers explained the difficulty in interpreting the EA's technical guidance documents. It would be hard to assess the actual costs involved and he needed to be clear on what Members were asking him to provide. Members clarified that the further report should give facts or evidence on the ability to deliver this service. The legal opinion submitted gave no factual information and it appeared that Officers did not want to contract back the service. In moving to the recommendations, the Leader stressed the partnership approach between Members and Officers in running the Council. Members had a role to protect the community and to act in scrutinising Officers, which is why they had challenged the report's recommendations.

**RESOLVED:-**

- (1) That a further Meeting of the Enmainment Sub-Committee be arranged.***
- (2) That a senior representative of the Environment Agency be invited to attend that Meeting, together with the Council's Legal Adviser.***
- (3) That Officers submit a quantified report in an easily digestible format, including the facts and costs associated with contracting***

***back the service and how the District Council could deliver that service.***

S. TAYLOR

CHAIR

The Meeting terminated at 6.10 p.m.

**ANNEXE 'B'**

**ENMAINMENT SUB-COMMITTEE**

4th May 2006

**PRESENT:-**

**Labour Group**

Councillor Taylor (Chair) and Councillor Whyman M.B.E.

**Conservative Group**

Councillors Bale and Ford.

**APOLOGY**

An Apology for absence from the Meeting was received from Councillor Lauro (Labour Group).

ES/2. **MINUTES**

The Open Minutes of the Enmainment Sub-Committee held on 30th March 2006 were taken as read, approved as a true record and signed by the Chair.

**MATTER DELEGATED TO SUB-COMMITTEE**

ES/3. **ENMAINMENT OF CRITICAL ORDINARY WATERCOURSES**

The Chair welcomed Peter Coxhill of the Environment Agency (EA) to the Meeting. Mr Coxhill was a Strategic and Development Planning Team Leader for the EA and previously had been the regional co-ordinator for the enmainment programme.

In response to a question, Mr Coxhill advised that he had not had the opportunity to read the documentation circulated to the Sub-Committee. He explained the EA's position and the background to enmainment, stemming from a review in 2003. The EA became responsible for Critical Ordinary Watercourses (COWs) that posed the greatest flooding risk. He outlined the process undertaken to identify COWs in South Derbyshire. The EA had proposed terms for contracting the service back to local authorities. Following an internal process a 2-year maximum timeframe had been agreed for contracting back, but DEFRA was asking that this be revisited, as a more flexible approach was desired. There had been a three-phase approach to enmainment and South Derbyshire was included in the last phase, which came into effect on 1st April 2006. He referred to the District Council's decision last year not to contract back the service and the subsequent discussions that had taken place. He outlined the problems that had been experienced for those authorities which had contracted back the service and the transition had not gone as smoothly as expected. Some authorities had sought changes to the standard National Memorandum of Understanding (MOU), but the EA was resisting this. Mr Coxhill gave examples of the authorities that were contracting back the service, but there had not been as many as expected.

The Leisure Services Manager gave an update on the work undertaken since the first Sub-Committee Meeting. A further report was submitted and in reviewing this document the Officer referred particularly to independent consultancy advice received from Mr. Eric Fletcher. There had been a further examination of the implications of contracting back the service and alterations to the original report were highlighted. Officers had looked at the work required to contract back maintenance responsibilities. In terms of costs, there were a number of variables, but an estimate of the maximum cost was £40,000. The consultant had provided assurances on the way that the EA delivered this service elsewhere. The District Council would remain involved if it so wished, in the supply of sandbags in times of emergency. In conclusion, Officers remained of the opinion that the Council should not contract back this service and suggested close monitoring of the EA's performance.

The Principal Legal Officer was invited to present the legal opinion submitted previously, but she expressed a preference to respond to Members' questions.

Councillor Whyman M.B.E. submitted a number of questions to Mr. Coxhill. He asked if Mr Coxhill was aware of the works required on COWs in South Derbyshire. Whilst he had not got a definitive knowledge for the whole District, Mr. Coxhill he had a better understanding of those works required for the Upper Trent Area. Reference was also made to the fluvial strategy.

The Leader questioned whether the EA would prefer authorities to contract back this service. Whilst the Officer had an open mind on this issue, certain sections of the EA favoured contracting back and he outlined the reasons for this. The Leader then reminded of comments made by Mr Swain of the EA at a Flood Liaison Meeting, regarding the service that would be provided by the EA. He questioned why the MOU was so onerous and referred particularly to requirements for staffing and ensuring the availability of equipment. Mr Coxhill clarified the requirements to provide an emergency response service, but how this was delivered was a matter for each local authority. In pursuing this discussion, it was confirmed that 24 hour cover was required for an emergency responsive service. However, there was not a need for a permanent team. Officers stated the need to have suitably qualified people to provide this emergency cover, but the Leader felt there was not a need for additional permanent staff. The Chair pursued the level of expertise required and Mr Coxhill gave examples of the types of flooding problems caused through trees blocking bridges or debris blocking flood drains. The Principal Legal Officer also touched on this issue. Councillor Bale advised that he had discussed this issue with local farmers, who had dealt with such problems for many years and some were critical of the approach taken by the EA.

The Leader felt it had been established that cover was required only for emergency situations and there would be a need to discuss emergency planning arrangements. He questioned how onerous it was to do the required periodic reports to the EA for its database. Mr Coxhill agreed that some local authorities had thought this aspect was onerous. He advised that there was a requirement to provide six monthly asset reports on those watercourses at highest risk of flooding and only to report every

12 to 18 months on lower risk watercourses. The Principal Legal Officer had read the MOU and clarified the requirements for reporting on the database. Presently, the Council did not have the required software or the expertise to operate it, let alone to give periodic reports. The Leader replied that there was a need for further work to determine the actual cost. He quoted from a report that there was no guarantee of sufficient funding. He questioned whether the EA expected local authorities to subsidise this service and Mr Coxhill confirmed this was not the case. There was a contractor relationship and an approach should be made to the EA annually to agree the programme of works and funding for it. He explained the actual position for South Derbyshire this year. There was a discussion about the process for approval of expenditure on maintenance projects and capital schemes. Mr Coxhill explained that to date all proposals submitted by local authorities had received funding, because of the extra resources provided by DEFRA. He informed that funding availability had been reduced over the last year.

The Leader questioned the future arrangements following the initial two year period for contracting back the service. A tendering process would take place at that time and local authorities could submit a bid. The EA would appoint future contracts based on price and the quality of service delivered. District Councils that chose to contract back the service had an "opt out" clause if they wished to relinquish the arrangement before the two-year period had expired.

Councillor Ford pursued the funding issues. He asked whether the District Council would be expected to meet any budget shortfalls if unforeseen works were required. Mr Coxhill replied that a budget would be provided at the start of each year. It would be a matter for the District Council if it chose to undertake additional works.

To provide a context, the Leisure Services Manager reminded that there was only one member of staff to undertake this function. From the work undertaken to date it had been estimated that to prepare for contracting back could cost up to £40,000. Mr Coxhill accepted that these costs would cause the EA some difficulties, as the whole budget for South Derbyshire for the current year was £41,000. Councillor Bale also questioned whether South Derbyshire had the resources to submit work programmes. Whilst Mr. Payne provided an excellent responsive service, his current duties permitted little time for submitting work programmes. The Leader was mindful that South Derbyshire had been delivering the service to date and he questioned why additional staff were now needed. The Salt Brook in Hatton was now in an excellent condition following the improvement works undertaken. He was struggling to understand how the role had become more difficult. Further discussion took place about the inspection regime. Formal asset inspections would be required at a frequency of 6 months for those watercourses most at risk of flooding. However, Mr Coxhill accepted that more frequent inspections might be required operationally.

The Chair asked how the EA would deliver this aspect of the service. Approximately £2,000 had been set aside for each of the COWs for such inspection work. The Principal Legal Officer clarified that the MOU prescribed the numbers of staff and equipment required. The Leisure Services Manager felt that the funding allocation by the EA for



inspections was significant. The Director of Community Services felt that the key funding issue was the cost of up to £40,000 to prepare for contracting back the service. There was only £41,000 of funding available from the EA, which was earmarked for actual works.

The Sub-Committee gave consideration to the report schedule, which looked at the costs of preparing to contract back the service. The Leader questioned several of the costs reported and stated that any costs incurred would be “one off”. There was also a discussion about the quality of service that would be provided by the District Council as compared to the EA. Officers referred to the technical guidance note which supported the MOU. This gave fairly exacting requirements that the District Council would have to meet in contracting back the service. In response to a question from the Leader, there was a discussion with Mr Coxhill about how prescriptive the guidance was.

Councillor Ford asked whether the EA had models of the areas at risk of flooding. Mr Coxhill replied and referred to the operational alert mechanism in place for major watercourses. Similar arrangements were not yet in place for the enmained COWs, but logically, when rivers were at risk of flooding, adjacent COWs would also be at risk. If the District Council delivered this service, it would receive the flood alerts.

The Leader questioned whether the requirements of the MOU were quite as onerous as Members had been led to believe. He thought this was not the case and felt that further examination was needed. It might have been better to consider the documents from discussions with the EA to determine what they were expecting of the Council in contracting back the service. From discussions with Mr Coxhill he felt better informed. The Chair agreed and thanked Mr Coxhill for his contribution, but still felt that the Sub-Committee was not yet in a position to determine this matter.

The Principal Legal Officer repeated that many local authorities were not happy with the legal agreement and the EA was resisting changes to that standard agreement. She referred also to the technical guidance document and for example, if the District Council did not meet the EA’s requirements, it could act in default and re-charge the Council. It was her responsibility to protect the Council’s interests. She felt this agreement was onerous and could cause the Council to incur additional costs. She recommended strongly that the Council did not contract back the service.

The Leader disagreed with some of the points from the legal report, given the advice provided by Mr Coxhill at this Meeting. He felt there was every reason to examine this issue carefully and would like the opportunity to talk again to the EA, to be clear on the terms of the MOU. He felt the discussion had gone as far as it could at this Meeting. Mr Coxhill questioned the likely decision time-scale, as the point would come where expenditure commenced within South Derbyshire and available budgets would reduce. If the decision was delayed too long, it might not be possible to contract back the service.

Officers questioned why the Council should spend additional resources if the level of service, as prescribed under the MOU would be the same

irrespective of who delivered it. It was felt that no further information could be submitted to Members to help them determine this matter, unless costs were incurred in seeking further consultancy advice. The Leader felt there were many questions still to be answered and the position had changed following the guidance from Mr Coxhill. There was a need for an updated report as the position had changed considerably. Mr Coxhill offered to respond in writing to the points highlighted within the documents. Councillor Ford did not consider that the position had been modified significantly. Members had the Council's legal opinion, consultant advice and advice from Officers, which had not changed his mind. The Leader disagreed and felt there were significant differences that had been pointed out by Mr Coxhill. The Principal Legal Officer questioned whether the Committee wished to receive detailed costings and commented that the EA had its own agenda on this issue.

**RESOLVED:-**

- (1) That a further Meeting of the Sub-Committee takes place.***
- (2) That the information received at this Meeting be assimilated into a report for consideration at the next Sub-Committee Meeting.***
- (3) That a written report be provided by Mr Coxhill, as outlined above.***
- (4) That the opportunity be taken to talk to other people in different forums on this issue.***

S. TAYLOR

CHAIR

The meeting terminated at 4.55 pm

ENMAINMENT SUB-COMMITTEE19th June 2006**PRESENT:-****Labour Group**

Councillors Lauro, Taylor and Whyman M.B.E.

**Conservative Group**

Councillors Bale and Ford.

**APPOINTMENT OF CHAIR****RESOLVED:-**

***That Councillor Taylor be appointed Chair of the Enmainment Sub-Committee for the ensuing year.***

**MINUTES**

The Open Minutes of the Meeting held on 4th May 2006 were taken as read, approved as a true record and signed by the Chair.

**ENMAINMENT OF CRITICAL ORDINARY WATERCOURSES**

The Leisure Services Manager had re-circulated the report presented at the previous Sub-Committee Meeting. This had been updated to include feedback received from Peter Coxhill, the Environment Agency's Strategic & Development Planning Team Leader. The Leisure Services Manager took Members through the report and commented on each of the responses received from Mr Coxhill. He concluded that there was no real disagreement in the findings of the Environment Agency (EA) and the views of Council Officers, but there might be a different slant on the issues. The main issues related to the Memorandum of Understanding and Officers considered there were still too many uncertainties for Officers to recommend the Council contracting back this service.

Councillor Whyman M.B.E. felt the report showed Officers' continued determination that contracting back was not a viable option. He referred to the legal advice provided. It seemed that a corporate view was being taken that the Council should not contract back the service. He would make it his responsibility to monitor very closely the service delivered by the EA. If there were adverse effects from not contracting back, he would take the opportunity in public to raise this issue. Councillor Whyman felt it was his elected duty to comment upon this issue. He had listened again to the presentation and felt there were no relevant positive points. Comment was also made about the emergency response system. The Council had always contracted out this service and it had never had the engineering services, plant, equipment or expertise. He was disappointed at the outcome.

The Chair commented that Members would have opinions on this matter, particularly where they represented Wards that had been affected by flooding. Councillor Lauro felt there had been a thorough investigation and it was difficult to escape from the Officer's conclusions. He felt it was now too late for the Council to contract back the service. He sympathised with the Leader because of the impact of the flooding in 2000 in the Hatton Ward. It was felt that this issue had been taken as far as was possible.

The Leader commented on the presentation by Peter Coxhill. He accepted that Officers had not altered their views on this matter and confirmed that he had not altered his opinion about contracting back the service.

Councillor Ford referred to watercourses in the Willington area. On balance, he still felt that it was safest for the service to be delivered by the EA. Councillor Bale questioned whether there was fear over losing local control. He felt that local knowledge was a key factor, which must be embraced as local people had an immediate knowledge of flooding problems.

The Director of Community Services confirmed that Members made decisions and Officers implemented them. In times of emergency, there was a mutual aid approach. In the 2000 floods, the Council did not wait to be asked for help and he quoted other examples where the District Council had responded to emergency situations. The Chair added that Members and Officers pulled together and had a "can do" approach.

The Leader reminded those present that this issue had been determined at a Meeting of the Environmental and Development Services Committee. When the issue was raised at a subsequent Flood Liaison Meeting, the response from Mark Swain of the EA had caused concern to many of those present. He added that the EA was not present during the 2000 floods. There was appreciation of the District Council's efforts in 2000 and comfort from the approach that it took. It was feedback from the Flood Liaison Meeting that led ultimately to the establishment of the Sub-Committee. The Director of Community Services felt that the EA was better placed to fulfil this role. Through the engineering technician, the Council would also be able to monitor the service delivered.

The Chair summarised that a lot of information had been considered and different views had been expressed. Members would undoubtedly continue to monitor the situation and the importance of this issue to the community had clearly been demonstrated. It was important that Members were updated with developments.

In response to an earlier point from Councillor Lauro, the Leisure Services Manager confirmed that contracting back would be for a period of two years rather than the eighteen months reported. A discussion also took place about the subsequent tendering arrangements and anticipated way forward.

The Leisure Services Manager felt it was important to let the community know about the revised responsibilities. Approval was sought for a press release to inform the public of the transfer of responsibility. The Chair added that the District Council would still be responsible for many

watercourses in South Derbyshire and there was a need to be clear in advising the public. There was also a need to finalise emergency planning arrangements with Derbyshire County Council.

**RESOLVED:-**

***That the resolution made by the Environmental and Development Services Committee at its Meeting on 7th July 2005, not to contract back the service be upheld.***

Note: Councillor Whyman M.B.E. asked it to be recorded that he had voted against this decision. He explained that he would have the duty of reporting to the Flood Liaison Meeting on the decision taken and reasons for the decision.

S. TAYLOR

CHAIR

The meeting terminated at 5.10 pm

