

Leicester  
City Council

**WARDS AFFECTED**  
**All Wards**

**Cabinet**

**26<sup>th</sup> September 2005**

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**TRANSFER OF MANAGEMENT OF CRITICAL ORDINARY WATERCOURSES TO  
THE ENVIRONMENT AGENCY**

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**Report of the Service Director, Highways and Transportation**

**1. Purpose of Report**

- 1.1 To inform Cabinet of the proposed transfer of the management of the flood defence of high risk areas of flooding (known as Critical Ordinary Watercourses – COWs) in the City to the Environment Agency (EA) and the possible implications for the City Council.

**2. Summary**

- 2.1 The Environment Agency under its powers in the Water Industry Act 1991 will take over the management of the COWs and the ownership of some related assets from the 1<sup>st</sup> April 2006 under a process known as Enmainment. The Council has no choice on the proposed transfer and this report details the implications of this action for the City Council. The Environment Agency is keen to contract back the operational maintenance of the COWs to the City Council (City Highways Group).

**3. Recommendations**

- 3.1 Cabinet are recommended to be aware of the implications of the proposed transfer to the Environment Agency of the management of the flood defence of high risk areas of flooding (known as Critical Ordinary Watercourses) in the City.

**4. Financial & Legal Implications**

*4.1 Financial Implications*

- 4.1.1 The 2005/6 revenue budget for all watercourse maintenance in the City is £143,500. Watercourse Maintenance is funded through the Formula Spending Share (FSS) and therefore the FSS allocation will be reduced to reflect the transfer of responsibilities. The details are not yet known. The transfer of this function may result in other financial savings to the Council through its revenue and capital budgets. The total saving will be unclear until negotiations are completed.

Paresh Radia , Finance, Regeneration and Culture Ext 6507.

*4.2 Legal Implications*

- 4.2.1 The EA has powers under the Water Industry Act 1991 to take over the management of the COWs in the City under Enmainment. The City Council

will retain its responsibilities as owner of land adjacent to the Critical Ordinary Watercourses.

Susan Metson, Legal Services Ext 6349

**5. Report Author**

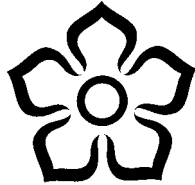
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**DECISION STATUS**

<b>Key Decision</b>	No
<b>Reason</b>	N/A
<b>Appeared in Forward Plan</b>	N/A
<b>Executive or Council Decision</b>	Executive (Cabinet):



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**SUPPORTING INFORMATION**

**1. Report**

1.1 The Environment Agency (EA) on behalf of Department of the Environment, Food and Rural Affairs (DEFRA) is using its legal permissive powers under section 108(1) of the Water Industry Act 1991 to take over the responsibility for the management of the flood defence of high flooding areas (known as Critical Ordinary Watercourses (COWs) from the City Council. The Council has no choice on the proposed transfer. This process is known as Enmainment and will also include the transfer of some related assets. Leicester is included in the third and last tranche of Enmainments in the country. The EA is currently responsible for the flood defence of main rivers. Enmainment will bring benefits from efficiencies of scale, improved flood defence expertise and allow flood defence to be managed more strategically.

1.2 This report has been brought to Cabinet as officers and the EA acknowledge that the transfer of management and related assets of the COWs is an important issue for the City Council. The major implications of the transfer are that:

- The EA will manage any flooding incident on the COWs after April 1<sup>st</sup> 2006.
- The EA will fund any capital works on the COWs after April 1<sup>st</sup> 2006.

However it must be stressed that Enmainment of these watercourses will not take away the City Council's responsibility as owners of land on or adjacent to the watercourses or the responsibilities of other land owners through whose land watercourses run. These responsibilities are known as riparian responsibilities.

1.3 The COWs that will transfer comprise natural watercourses, open culverts and enclosed culverts and are detailed in the plan in Appendix 1. The current

operational responsibilities for watercourses of the City Council are detailed in Appendix 2. As well as the watercourses themselves, the COW infrastructure also comprises of a number of grids, access points, ramps, steps, gates, walls and fences which form part of the watercourse infrastructure. However, as the Council's expertise in these matters is now limited and the apparatus is ageing, it might therefore be considered an appropriate time to lose some of this function and its burden of costs. The asset transfer process can be broken down into three main elements of which only one or two elements may apply for a given asset: -

- Transfer of the asset itself (i.e. ownership of the structure).
- Transfer of responsibility for maintenance of the structure.
- Transfer of land associated with the structure

Some assets on these watercourses may well be subject to lengthy negotiation because of the reluctance of either party to accept responsibility for them and these typically may be such items as underground culverts.

- 1.4 As a result of the investigation of the COWs assets held by the Council, 4 flood storage areas have been designated as reservoirs under the Reservoirs Act. The EA is willing to pay for this and future years' inspections of these flood storage areas by a Panel Engineer as part of their future responsibilities. The flood storage areas are:
  - Bushby Brook – Dakyn Road Storage Area.
  - Saffron Brook – Storage Area
  - Braunstone Brook – Braunstone Park
  - Knighton Park – Storage Area.
- 1.5 The Enmainment procedures are similar to those the Council experienced when transferring the Sewerage Agency to the Water Authority. There would be no capital payments or compensation for the assets transferred as the asset transfers relate to a re-assigning of statutory responsibilities by the Government. However the EA would accept the entire cost and responsibilities for repairs, maintenance and operations of COWs in the future. The City Council and the EA will also need to consider access arrangements and existing and required easements for installation of equipment.
- 1.6 The riparian owner issues will still remain with the owners of the land through which the COWs run, e.g. overgrown trees damaging other people properties, litter, fly-tipping, graffiti etc. The EA will only act if there is a flood defence issue such as a potential blockage to the free flow of water in the COWs.
- 1.7 The EA have indicated that they wish to contract back with the City Council (City Highways) for the maintenance and operations (not the management) of the COWs over the period April 2006 to April 2008 in a contract to be agreed. They have not yet decided how the operational management will be carried out after April 2008. Previous experience has shown that operations previously contracted back from the Highways and Sewerage Agencies can create confusion for the public and the Council not recovering the true cost of the service. However, a contract back arrangement would give the Authority an opportunity to provide the same level of service and service provision would

benefit from the local knowledge and a local response. In addition, under Enmainment the Council would still have to retain the responsibilities for the non-critical watercourses and continue to be involved in any general flooding emergencies. Initial discussions have shown that there is general agreement between and EA about the way forward for the contracting back of the maintenance and operations of the COWs.

- 1.8 Therefore, officers propose that the City Council through the City Highways Group enters into an agreement with the EA over the operational maintenance and operations of the COWs for the period 2006 to 2008. They feel that the people of Leicester would be best served if this contract back arrangement is set up, the impact on the City Council and residents would be minimized and the authority would still have riparian ownership issues to contend with anyway.
- 1.9 The EA have stated that they are keen to carry out capital works in Leicester as they see Leicester as an opportunity in terms of numbers of properties where they can raise the level of flood defence to the 1 in 100 year standard for a comparatively small capital investment. Officers are currently in discussion with the EA concerning possible future watercourse schemes.

## **2. Timetable**

- 2.1 The EA has programmed the transfer of assets in Leicester for the 31<sup>st</sup> March 2006 and discussions are progressing well on agreeing the provisional details of the watercourses, assets and the funding to transfer from the Council to the Agency. City Highways are currently in discussion with the EA about the contract back work on the watercourses and a signed agreement would be required to be in place by the date of Enmainment.

## **3. Financial and Legal Implications**

### **Financial Implications**

- 3.1 The 2005/6 revenue budget for all watercourse maintenance in the City is £143,500. Watercourse Maintenance is funded through the FSS and therefore the FSS allocation will be reduced to reflect the transfer of responsibilities. The details are not yet known. The transfer of this function may result in other financial savings to the Council through its revenue and capital budgets. The total saving will be unclear until negotiations are completed.

Paresh Radia , Finance, Regeneration and Culture Ext 6507.

### **Legal Implications**

- 3.2 The EA has powers under the Water Industry Act 1991 to take over the management of the COWs in the City under Enmainment. The City Council will retain its responsibilities as owner of land adjacent to the Critical Ordinary Watercourses.

Susan Metson, Legal Services Ext 6349

## **4. Other Implications**

- 4.1 There are currently two members of staff employed by City Highways on watercourse maintenance in the City. There will be implications for these staff after March 2008 if there is no contract back agreement with the EA for the period April 2006 to March 2008. If this situation proves to be the case, the

issue will be dealt with by negotiation with staff and their unions in the normal way prior to March 2008.

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	No		
Policy	Yes	Para 1.1. The Council has no choice on the proposed transfer	
Sustainable and Environmental	Yes	Para 1.1. The transfer will improve the strategic flood defence within the City.	
Crime and Disorder	No		
Human Rights Act	No		
Elderly/People on Low Income	No		

**5. Background Papers – Local Government Act 1972**

- Section 108(1) Water Industry Act 1991

**6. Consultations**

- Environment Agency
- Legal Services
- Sections within the Regeneration and Culture Department.

**7. Risk Assessment Matrix**

	Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/or appropriate)
1	There is no Contract back Agreement with City Highways	Low	Low	The EA will have to make alternative arrangements

**8. Report Author**

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## Appendix 1 – List of COWs

The COWs for enmainment are listed below and are shown on the next page:

Bushby Brook  
 Evington Brook  
 Melton Brook, Melton Overflow Culvert and Channel  
 Saffron Brook  
 Thurnby Brook  
 Willow Brook  
 Braunstone Brook  
 Scraftoft Brook

### Total Lengths of Watercourses:

<u>CATEGORY</u>	<u>LENGTH OPEN CHANNEL</u>	<u>LENGTH NON ENTRY CULVERT</u>	<u>LENGTH CONFINED CULVERT</u>	<u>LENGTH UNCONFINED CULVERT</u>	<u>TOTAL LENGTH</u>
CRITICAL ORDINARY WATERCOURSES	22845	315	6084	1612	30856
SECONDARY NETWORK	2491	895	950	5	4341
TERTIARY NETWORK	6348	7	33	42	6430
UNMAINTAINED NETWORK	3924	13	0	11	3948
<b><u>TOTALS</u></b>	<b><u>35608</u></b>	<b><u>1230</u></b>	<b><u>7067</u></b>	<b><u>1670</u></b>	<b><u>45575</u></b>

## **Appendix 2 – Operational responsibilities of Watercourses**

- Cleaning and inspection, including cutting back vegetation and removal of debris, rubbish and silt.
- Weekly grid inspections, including removal of debris and rubbish.
- Confined culvert inspections and cleaning.
- Inspection and maintenance of flood defence features, e.g. greasing and checking operation of penstocks, tilting gate etc.
- Flood warning telemetry system operation and maintenance.
- Access points – inspect and check security and damage, cut back vegetation and remove rubbish.
- Maintenance of Gates & Fences.
- Silt trap inspection and cleansing.
- Cort Crescent pollution interceptor cleaning and inspection.
- Bath Street waste transfer station – licence renewal and maintenance plus periodic removal of dredgings to landfill site.
- Flooding emergencies. Check grids and monitor water levels and flows. Blockage removal. General flooding alleviation measures across the City, e.g. sandbagging.
- Reactive cleaning, e.g. removal or cutting back of fallen trees or dangerous trees. Removal of rubbish, fly tipping and other potential blockages.
- Investigating and controlling pollution incidents.
- Responding to enquiries from the public etc.
- Urgent repairs and maintenance.
- Structural improvements and repairs, e.g. bank strengthening, concrete channel replacement and repairs.
- Administration and management.



