

**CRITICAL ORDINARY WATERCOURSES –
ENMAINMENT BY THE ENVIRONMENT AGENCY**

(Report by Head of Environment & Transport)

1. INTRODUCTION

- 1.1 Following the widespread flooding in 1998, the Government investigated methods of identifying watercourses most likely to flood properties and sought also to clarify responsibility for those watercourses. They have been called Critical Ordinary Watercourses (COWs)
- 1.2 For watercourses to be classified as ‘critical’ they have to pose a risk of flooding to the equivalent of 25 properties in any one-kilometre stretch.

2. CRITICAL WATERCOURSES IDENTIFIED:

- 2.1 This Council identified the following watercourses as critical:

Colmworth Brook, Eaton Socon.
Fox Brook, St Neots (from the railway westwards)
Houghton Field Drain, St Ives (adjacent to Somersham Rd)
Kingsbrook Drain, St Ives (parallel to Somersham Rd)

- 2.2 The Environment Agency have subsequently added Hen Brook, St Neots to the list (from the railway westwards).

- 2.2 The present responsibility for the maintenance of these watercourses varies. Three are Awarded Watercourses:

Colmworth Brook
Houghton Field Drain
Kingsbrook Drain.

Here the maintenance responsibility was “awarded” to this Council under the Enclosure Acts. The council has to carry out all maintenance work, even though we do not own the land. They are in reality “public watercourses”.

The remaining two watercourses, Fox Brook and Hen Brook, are the responsibility of the riparian owner. This means that the adjacent land owner i.e. the District Council for much of the length of the watercourses, is responsible for all maintenance work.

3. ENMAINMENT OF COWs

- 3.1 In 2003, DEFRA’s Flood and Coastal Funding Review decided that all COWs shall designated as statutory ‘main rivers’. The process of designation is called enmainment and gives the watercourses the same status as other major watercourses in the district, for example The River Great Ouse, Alconbury Brook and Hall Green Brook. Responsibility for

main rivers is vested in the Environment Agency (the Agency), which has responsibility for their maintenance and protection, the latter being enforced through extensive Byelaws.

- 3.2 The enmainment of Awarded Watercourses is complicated by the fact that the Award cannot easily transferred to a different authority without Government consent. This is being further investigated by the Agency.
- 3.3 The process of enmaining Hen Brook and Fox Brook has started with the Agency advertising their intention in local papers and a notice to the Council that these would be complete by 31 March 2005. They have also requested an agreement that our funds, currently spent on these watercourses, be transferred to the Agency.
- 3.4 The Agency are also offering to contract with the Council for it to undertake the maintenance of the enmained watercourses under a Memorandum of Understanding i.e. the Council would become the Agency's contractor.

4. PROPOSED MEMORANDUM OF UNDERSTANDING AND FUNDING

- 4.1 The Memorandum of Understanding would be between the Agency and the Council, initially for a period of 2 years.
- 4.2 The works included would be routine and non-routine maintenance, operation and maintenance of assets and emergency response. Works not included would be development control matters, enforcement actions, flood warnings and capital works. A yearly programme of works would be agreed and the Council paid for the work on a monthly basis. There would be very tight constraints on the methods of working with environmental issues a high priority.
- 4.3 The Funding Review stated that Councils should pay to the Agency those monies that they presently spend on the maintenance of critical watercourses in order to fund this work. As Fox Brook and Hen Brook are, in part, the council's riparian responsibility, the only funds spent are for those lengths where we own adjoining land. This riparian responsibility will not be extinguished by the act of enmainment. It is not considered therefore that any funds should be transferred to the Agency.
- 4.4 It appears that the Environment Agency are seeking funding equivalent to that which the council spends as a riparian owner together with part of the grant received through our Standard Spending Assessment for our broader land drainage responsibilities. However, the enmained watercourses are a very small part of the overall land drainage network over which the council exercises its powers. Accordingly it is proposed that the Council resists the transfer of any funds.
- 4.5 There appears to be no benefit to the Council in entering into an agreement to maintain the newly enmained watercourses. Historically the work has been completed by contractor on an ad hoc basis and could equally well be commissioned by the Agency.

5. CONCLUSIONS

- 5.1 Two COWs are to be enmained from April 2005 – Fox Brook and Hen Brook, in St Neots. The enmainment of the remaining COWs will depend on the resolution of the question of the Awards.
- 5.2 The Agency is offering a Memorandum of Understanding for this Council to carry out maintenance work on these watercourses. However, as the Council does not have an in-house work force there is no disadvantage from relinquishing management of the work.
- 5.3 The Council has some 100 miles of Awarded Watercourses for which it is responsible and exercises its permissive powers and riparian responsibilities for the best interest of local communities. This work would be compromised if funding were transferred to the Agency as the result of the enmainment of a small part of the watercourse network in which the Council takes an interest.
- 5.4 The deliberations of the Panel will be reported to the Cabinet when it considers this report at its meeting on 15 July 2004.

6. VIEWS SOUGHT AND RECOMMENDATION

- 6.1 The Panel/Cabinet are invited to note the enmainment process for Fox Brook and Hen Brook and the potential future enmainment of the three Awarded Watercourses listed at paragraph 2.2.
- 6.2 The views are sought of the Panel/Cabinet on the Environment Agency's request for the transfer of funds associated with the maintenance of the newly enmained watercourses.
- 6.3 It is recommended that Cabinet resolve that the Council does not take on the maintenance of the enmained watercourses on behalf of the Agency.
- 6.4 To consider the views of the Overview and Scrutiny Panel (Planning and Finance).

BACKGROUND INFORMATION:

Letter from Environment Agency - Environment and Transport files

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