

To: Cabinet
Date: 14 June 2023
Report of: Head of Corporate Strategy
Title of Report: Agency agreement to undertake land drainage and flood investigation services on behalf of Oxfordshire County Council

Summary and recommendations	
Purpose of report:	To seek approval to enter into an agency agreement with Oxfordshire County Council under Section 101 of the Local Government Act 1972 and Section 19 of the Local Government Act 2000 to undertake duties relating to the Land Drainage Act 1991/Flood and Water Management Act 2010, on behalf of and as an agent of Oxfordshire County Council as Lead Local Flood Authority.
Key decision:	Yes
Cabinet Member:	Councillor Nigel Chapman, Cabinet Member for Citizen Focused Services and Council Companies
Corporate Priority:	Pursuing a Zero Carbon Oxford
Policy Framework:	Council Strategy 2020-24

Recommendations: That Cabinet resolves to:	
1.	Grant approval to enter into an agency agreement with Oxfordshire County Council pursuant to Section 101 of the Local Government Act 1972 and Section 19 of the Local Government Act 2000 to undertake ordinary watercourse consenting and other duties relating to the Land Drainage Act 1991/Flood and Water Management Act 2010 on behalf of Oxfordshire County Council, as described in this report.

Appendices	
None	

Introduction and background

1. Under the Flood and Water Management Act 2010 (FWMA), Oxfordshire County Council were designated as Lead Local Flood Authority (LLFA) and as such had powers conferred upon them with regards to flood risk management, and management of surface water and groundwater. These responsibilities include flood investigations under Section 19 of the FWMA, and consenting of construction of structures within ordinary watercourses, investigation of nuisance caused by erecting a structure or alteration of a watercourse, or enforcement against activities not permitted within watercourses, as defined by Sections 23, 24, and 25 of the Land Drainage Act 1991 (LDA, which were transferred to the LLFA by the FWMA).
2. Oxfordshire County Council is looking to formally delegate a number of functions to Oxford City Council, namely:
 - Section 19 (FWMA) - flood investigations into events above a threshold set by the FWMA or Oxfordshire County Council as LLFA (i.e internal flooding to five or more properties, one property for more than one week, flooding of critical infrastructure). These are undertaken in conjunction with the LLFA, and any relevant stakeholder (e.g. Thames Water for sewer flooding).
 - Section 23 (LDA) - the determination of applications for consent to alter a watercourse, such as installing culverts, headwalls, or any other structure, or any alteration which may affect flow.
 - Section 24 (LDA) – investigate any nuisance caused by erecting or altering an obstruction or culvert in a watercourse
 - Section 25 (LDA) - enforcement action in accordance with Oxfordshire County Council policy for watercourse enforcement.
3. Oxfordshire Districts including the City Council have undertaken these functions on behalf of Oxfordshire County Council on an informal time-based basis since circa. 2015, and a fixed fee paid for service since 2019. We are now seeking to formalise this informal appointment, and formally transfer powers under the FWMA from Oxfordshire County Council to Oxford City Council by entering into an agency agreement pursuant to Section 101 of the Local Government Act 1972 and Section 19 of the Local Government Act 2000 (“the Agreement”).
4. Guidance notes for the processing and determination of consents under Section 23 of the LDA, and guidance outlining enforcement procedure and protocol will be provided by Oxfordshire County Council to Oxford City Council.
5. The benefits to the City Council of entering this Agreement are that we gain the ability to control installation of new structures within/alteration of ordinary watercourses in the City, and have direct involvement in investigating and securing mitigation for flood incidents which impact our residents.
6. The Council will be provided with funding to cover the costs of undertaking the duties delegated by the County Council under the Agreement. Oxfordshire County Council will pay the City Council a fixed annual contribution of £6,000 on 1 April in each year that the Agreement remains in force. This sum will be index linked. Further sums may also be paid by the County Council to enable the City Council to continue providing the functions under the Agreement (see paragraph 8 below).

7. Entering into this agreement will contribute to the Corporate Priority '*Pursuing a Net Zero Oxford*' by making the City more resilient to climate change by improved flood risk management.

Financial implications

8. The acceptance of the agreement provides a secured income for Oxford City Council of £6,000 per annum. There are no additional cost implications, as the work is already being undertaken under the remit of the (Principal) Flood Mitigation Officer. The number of City Council officer hours spent undertaking the work will be recorded, and should the time taken to undertake the work exceed the annual payment of £6,000 (calculated using the agreed hourly rate) then additional money can be claimed from the County Council on an hourly basis as stated within the agreement.
9. Oxford City Council will also receive the application fees (£50 per application) paid by applicants when requesting consent under Section 23 of the LDA, which the City Council are entitled to keep in addition to the fixed annual contribution of £6,000.

Legal issues

10. Under the proposed Agreement, Oxford City Council would be appointed as agent of Oxfordshire County Council under s101 of the Local Government Act 1972 to undertake ordinary watercourse consenting and other duties relating to the Land Drainage Act 1991/Flood and Water Management Act 2010, on behalf of Oxfordshire County Council.
11. Both Oxford City Council and Oxfordshire County Council have the right to terminate the Agreement on providing the required 3 month period of notice.
12. Legal Services have examined the legal agreement and have raised no concerns with its contents from a legal perspective.

Level of risk

13. Acceptance of the agreement carries no additional risk with regards to resources, as it is formalising an existing arrangement carried out informally by City Council officers. However, should circumstances change, a 3 month notice period for ending the agreement has been incorporated to ensure City Council are not committed to providing this service indefinitely.
14. On taking on the aforementioned responsibilities from Oxfordshire County Council, Oxford City Council would '*...indemnify the County Council in respect of all actions claims costs demands proceedings and liabilities which may arise from any act omission or neglect on the part of the District Council...'*. In order to reduce and mitigate the risk of this indemnity being called upon, the work will be undertaken by a suitably qualified technical specialist within the relevant City Council team (Principal Flood Mitigation Officer or equivalent, or as delegated by), and undertaken using knowledge and professional judgement.
15. Therefore, the degree of risk is commensurate with other technical duties/advice already undertaken/dispensed by the Council, such as that for approval of planning applications, or other technical projects. Furthermore, public liability and other insurance is in place (as required as part of the agreement) should any issues arise as a result of this work, again as with other specialist functions undertaken by Oxford City Council.

16. Legal Services have examined the agreement, and have raised no concerns as to level of risk.

Equalities impact

17. An Equalities Impact Assessment is not required for this proposal.

Carbon and Environmental Considerations

18. There are sustainability and environmental benefits to the City Council, in that we have greater control of activities that go on within the watercourses in the City, and are more closely involved with flood investigations when necessary, and enforcement of issues if required.

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Background Papers: None