

MEMORANDUM OF UNDERSTANDING

BETWEEN

Derby City Council

and

the Environment Agency

**A Master Plan for Flood Alleviation and associated Economic
Regeneration in Derby – Our City, Our River**

DRAFT FOR CONSULTATION

The Memorandum of Understanding

Derby City Council and the Environment Agency – Midlands East Area (“the Environment Agency”) (“the Parties”) wish to work together to secure increased protection from flooding for the City of Derby and by so doing lead to the regeneration of the river corridor area of the City .

This Memorandum of Understanding (MoU) outlines how the Parties propose to co-operate in a project, “Our City, Our River” (“the Project”) in order to realise the benefits of improved flood protection within the City of Derby.

Background

- a) The Environment Agency prepared a flood risk management strategy for the River Derwent corridor from Milford to the confluence of the River Trent, the Lower Derwent Strategy (“the Strategy”). This Strategy can only be delivered by working in partnership with others who have a stake in achieving a reduction in the level of flood risk in Derbyshire and Derby City or who wish to be involved in development in the area and who are willing to contribute to the Project either by providing funding or works in kind.
- b) The Strategy identified that property and infrastructure were at risk of flooding and that many properties in the area would benefit from increased flood protection.
- c) The current level of flood risk is restricting development and regeneration in Derby City and without action will continue to limit the ability to attract inward investment in the future.
- d) The Strategy identified that increasing the height of flood defence walls on their existing alignment through the City of Derby would not be a viable option. This was due to the increased height being unacceptable within Derby and the resultant increased flood risk for areas upstream and

downstream of the City. The Strategy recommended increasing the size of the river corridor through Derby City.

- e) There are significant areas along the river corridor that would benefit from redevelopment and in so doing it would be possible to capitalise on their riverside setting.
- f) Derby City Council owns land within the river corridor and is thus in a position to support the Project as a landowner as well as the planning authority.
- g) The long term aim of the Project is to provide increased flood protection, provide appropriate regeneration within the river corridor and to reconnect the City to the river. In the short to medium term there is a need to secure the area to ensure the long term objectives can be achieved.
- h) Changes in the funding arrangements for flood defence schemes means that non Flood Defence Grant in Aid (FDGiA) contributions are now necessary to secure funding from central government and allow the development of a scheme. At the date of this MOU it is estimated that around 70% of the funding for the flood defence works needs to be provided from sources other than from the Environment Agency nationally controlled FDGiA allocation of funds.
- i) Derby City Council and the Environment Agency agreed that there were benefits to be gained for a joint project to be created to evaluate the possibilities for working together. A Joint Project Board was set up to consider and develop proposals. Derby City Council set up a Master Plan team to assist with the development of proposals.
- j) A Master Plan, for Derby City “Our City, Our River” has been prepared. It identifies the area needed for the flood conveyance route and the associated areas where there are opportunities for redevelopment. The Master Plan recognises the requirement to secure the area needed for the

conveyance route, so that inappropriate development does not prevent the development of a corridor for the river.

- k) To minimise the risk of lost opportunities to make space for water through Derby, the Master Plan has to be adopted and, by incorporation into Derby City Council's planning policy become a material consideration within the planning process.

The Parties' understanding is as follows

1 Project Aims

1.1 The Parties recognise that the purpose of this MoU is to formalise the Parties' commitment to working together to achieve the aims of the Project and to enable the Project to move forward.

1.2 The aims of the Project are agreed as

1.2.1 To achieve the adoption of the Master Plan by Derby City Council to secure the flood conveyance route through the City.

1.2.2 To reduce the overall risk of flooding to property in Derby City.

1.2.3 To facilitate appropriate regeneration of those areas of Derby City identified on Master Plan.

1.2.4 To ensure that mitigation works are undertaken to negate any adverse effect on the flooding regime in the areas upstream and downstream as a result of the flood defence works in the Master Plan area.

- 1.3 The Parties recognise that this is a long term project which will tie in with investment into Derby City and is expected to be achieved within the next 20 years.
- 1.4 This Memorandum will cover the initial phase of the implementation of the project, that is, up to the point where a significant commitment to funding is required.
- 1.5 When there are firm proposals which require a significant commitment of funds, the Parties agree that it will be necessary to enter into a legally binding agreement.
- 1.6 The Parties agree to negotiate the terms of such an agreement in good faith.
- 1.7 The Parties accept that all negotiations will be subject to their respective legal capacity at the time.
- 1.8 Derby City Council will put the Master Plan “Our City, Our River” to its members to seek approval for its inclusion as material consideration and make reference to it within their core strategy.

2 Governance

- 2.1 Derby City Council will be the Lead Promoting Authority for the project.
- 2.2 The Environment Agency will be the Lead Delivery Authority.
- 2.3 The Environment Agency will provide full technical support and advice to Derby City Council. Detailed design briefs will be required for areas within the “Our City, Our River” project area. Derby City Council and the Environment Agency will provide advice to any developer seeking to develop land within the project area in line with the design briefs.

- 2.4 A Joint Project Board has been established consisting of representatives from both the Environment Agency and the Derby City Council to direct and coordinate the further development of the project. The Project Board is to continue and is to be chaired by a representative of Derby City Council.
- 2.5 The Environment Agency and the Derby City Council agree that the persons appointed as representatives on the Joint Project Board will have sufficient authority to make decisions on behalf of their sponsoring organisation.

3 Funding

- 3.1 At the date of this MoU the total cost of the proposed flood risk management works for the project area and resultant mitigation works required is estimated to be £100 million. This sum could be reduced by an estimated £20 million by the private sector developing key regeneration sites
- 3.2 The Parties will seek to make an application for FDGiA funding from central government to support the creation of flood defence works. However, the Parties acknowledge that these funds will only be made available if supporting non FDGiA funding is identified and the application demonstrates how the Project and associated mitigation works will be funded.
- 3.3 The Derby City Council accepts that funding, in addition to any FDGiA central government funding available to the Environment Agency, will be required over the life of the Project.
- 3.4 Derby City Council and the Environment Agency will work together and use all their available powers to seek to raise funds to support the Project and related flood defence works .

- 3.5 A specific funding team including representatives from both Parties, and other interested parties if appropriate, will be set up to identify, investigate and pursue possible funding opportunities which could contribute to the Project
- 3.6 The Parties will seek to engage with existing and future beneficiaries of the Project to further the aim of combining the regeneration of the “Our City, Our River” project area and provision of flood protection for Derby City as a whole.

4 Implementation

- 4.1 The Environment Agency, working with Derby City Council’s Master Planning team, will prepare an implementation plan for consideration by both Parties.
- 4.2 The Parties will work together to seek to agree what mechanisms will be employed and how the plan will be physically implemented on the ground.
- 4.3 The Environment Agency will aim to use its powers under Water Resources Act 1991 Section 165 to complete any flood defence works, but if compulsory purchase is necessary for flood defence purposes, the Environment Agency will consider the use of the compulsory purchase powers available under the Water Resources Act, Section 154.
- 4.4 Derby City Council will aim to secure land for regeneration in the areas identified in the Master Plan by negotiation, but if compulsory purchase is necessary for regeneration purposes, Derby City Council will consider the use of their compulsory purchase powers.

- 4.5 The future maintenance of standalone flood defence assets will be undertaken by the Environment Agency in accordance with its statutory powers and duties, working in partnership with Derby City Council.
- 4.6 Where third party structures have been constructed which include a flood defence function, the Parties will work with the owner of the land to agree a plan for the maintenance and inspection of these defences.
- 4.7 All external communications relating to the project, including publicity will be joint communications, unless otherwise agreed. All external communications will be approved in advance by both Parties.
- 4.8 Derby City Council and the Environment Agency agree to work together in line with the mutually agreed detailed design briefs in the issuing of planning advice and regulatory activities in relation to the “Our City, Our River” project area.
- 4.9 The Parties recognise that the implementation of the Project, even if the Master Plan is adopted, will be subject to market response, available funding, economic appraisal and the satisfaction of all statutory requirements.

5. General

- 5.1 This MoU will be reviewed annually by the Joint Project Board. A review at any other time may be arranged at the mutual agreement of the Parties.
- 5.2 This MoU may be terminated by one party serving six months notice in writing on the other; or, on the written agreement of both parties that its purposes have been fulfilled or cannot be fulfilled, it may be terminated immediately.

- 5.3 Any information identified by either of the Parties as being confidential or commercially sensitive information and shared in connection with this MoU will be kept confidential by the Parties except with the consent of the other Party or where disclosure is required by operation of law, statute or regulation.

- 5.4 Nothing in this Memorandum of Understanding shall prejudice or otherwise fetter the statutory powers and duties of either party.

- 5.5 This MOU is not a legally binding agreement

Signed by
On behalf of Derby City Council
Dated

Signed by
On behalf of the Environment Agency
Dated.....

DRAFT FOR CONSULTATION