

## **Wiltshire Council**

### **Cabinet Capital Assets Committee**

**17 May 2016**

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**Subject: Transfer of land to the Wilts & Berks Canal Trust**

**Cabinet members: Cllr Fleur de Rhé-Philippe - Cabinet Member for Economic Development, Skills, Strategic Transport and Strategic Property**

**Cllr Toby Sturgis - Cabinet Member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste**

**Key Decision: No**

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#### **Executive Summary**

The Wilts & Berks Canal Trust (WBCT) has approached this Council as landowner to have 6 relatively small areas of land transferred to it. This is to further its aim of re-creating a navigable canal route linking the Kennet & Avon Canal near Melksham to the river Thames at Abingdon in Oxfordshire.

#### **Proposal**

That Committee is asked to support the WBCT by agreeing to the principle of transferring the assets listed in this report.

That Committee delegates authority to the Associate Director for People & Business, the Associate Director for Finance and the Associate Director for legal and governance in consultation with Cabinet Member for Economic Development, Skills, Strategic Transport and Strategic Property, Cllr Fleur de Rhé-Philippe the basis of transfer (freehold or long leasehold) and the detailed terms of each transfer/lease.

That Committee confirms at this time that its intentions are limited to transferring the assets only and they do not extend to seeking compulsory purchase powers on behalf of the WBCT.

#### **Reason for Proposal**

To support the aspirations of the Council's business plan, the Wilts & Berks Canal Trust's aims, the Council's Core strategy and to reduce the Council's liabilities associated with those pieces of land already restored.

**Dr Carlton Brand**  
**Corporate Director**

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#### Purpose of Report

1. To seek authorisation to transfer by way of long lease or freehold (as appropriate) 6 areas of land in Wiltshire to the Wilts & Berks Canal Trust (WBCT) to enable it to fulfil its aim of re-creating a navigable canal route linking the Kennet & Avon Canal at Semington and the River Thames near Abingdon in Oxfordshire.

#### Relevance to the Council's Business Plan

2. This proposal will directly and indirectly contribute towards the following outcomes of the Business plan:-
  - Outcome 1 – Wiltshire has a thriving and growing local economy. *Whilst it will take time to create a fully navigable canal across Wiltshire, once open, it will bring considerable benefits to the local economy much like the Kennet and Avon Canal has since its re-opening in 1990.*
  - Outcome 3 – Everyone in Wiltshire lives in a high quality environment. *Those parts of the Wilts & Berks Canal that have been restored offer a high quality environment for the people of Wiltshire and beyond to experience and enjoy. Allowing more stretches to be restored will increase this provision.*
  - Outcome 5 – People in Wiltshire have healthy, active and high quality lives. *Those parts of the Wilts & Berks Canal that have been restored have enhanced the network of routes for walkers and cyclists to enjoy the Wiltshire countryside, thus enhancing their general health and wellbeing. Again, allowing more stretches to be restored will enhance this further.*

#### Main Considerations for the Council

3. Each of the sites requested for transfer by the WBCT have different existing uses, legal/occupation issues and have potential strategic and

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other values. One of the main strategic aspects of these areas of land is their status in Wiltshire's Core Strategy.

### **Wiltshire Core Strategy**

4. Wiltshire's Core Strategy acknowledges that Canals are an important part of Wiltshire's green infrastructure and sustainable transport network. They provide recreational opportunities for boating and walking and green corridors for wildlife as well as playing a role in conveying flood water.
5. **Core Policy 53** - Wiltshire's canals - The restoration and reconstruction of the Wilts and Berks and Thames and Severn canals as navigable waterways is supported in principle. The historic alignments of the Wilts and Berks, including the North Wilts Branch, and Thames and Severn Canals, as identified on the policies map, will be safeguarded with a view to their long-term re-establishment as navigable waterways.

These alignments will be safeguarded by:

- i. not permitting development likely to destroy the canal alignment or its associated structures, or likely to make restoration more difficult
  - ii. ensuring that where the canal is affected by development, the alignment is protected or an alternative alignment is provided.
6. Proposals will be permitted that are designed to develop the canal's recreational and nature conservation potential, in particular, the use of the old line of the canal for walking, cycling and educational display/interpretation boards.
7. Proposals for the reinstatement of canal along these historic alignments or any alternative alignments will need to demonstrate that the cultural, historic and natural environment will be protected and enhanced, with no overall adverse effect, and that potential impacts on ecology, landscape, flood risk, water resources (abstraction) and water quality have been fully assessed and taken into account.
8. Proposals for the reinstatement of discrete sections of the canal will also need to demonstrate that the potential environmental impacts of the restoration project as a whole have been assessed and taken into account.
9. **Core Policy 16** - One of the parcels of land to the south west of Melksham in Berryfield lies within the 'Melksham link project' - Core Policy 16. It states that development should not prejudice the future use of the route as part of the Wilts & Berks Canal restoration project.
10. Restoration of the entire canal route will require the support and co-operation of many landowners whose property is subject to the restriction on development imposed by Core Strategy Policies 16 and 53. To assist with the delivery of this and demonstrate support to these policies, the Council as landowner is able to make its own land available

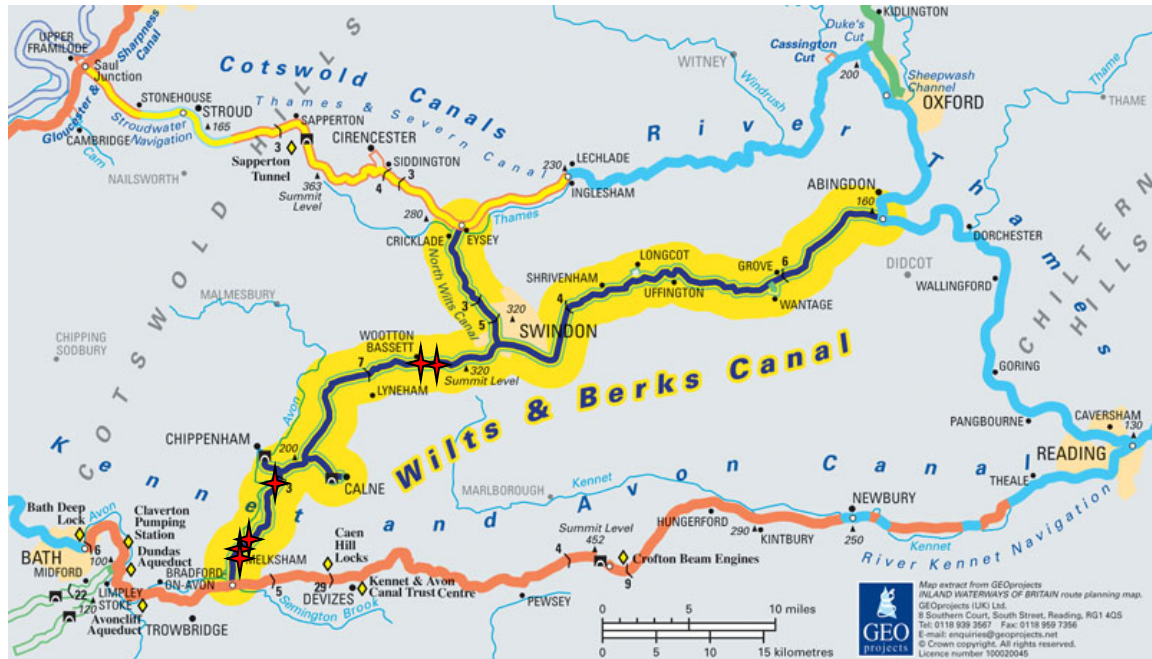
for canal restoration. Additionally, the council is the lead Local Authority of the Wiltshire, Swindon & Oxfordshire Canal Partnership.

11. Several of the parcels of land requested by the WBCT have already been restored and opened for public access. These include foot bridges, locks and vehicle crossings. There are significant risks to health and safety associated with open bodies of water such as these. The liability for managing these risks and maintaining structures will be transferred to the WBCT who, due to specialist nature of their organisation and number of sites owned are in a far better position to do so than the Council is at managing these risks.
12. The WBCT has expressed that the sites be transferred in the spirit of the council's community asset transfer policy.

## **Background**

13. The original Wilts and Berks Canal opened in 1810 having taken 15 years to complete. Of its 52 mile length, 30 miles lay within Wiltshire. It was originally used to transport various goods and materials to include those required to construct the Great Western Railway. Following a steady decline in use due to the superiority of the Kennet and Avon Canal and growth of the railways it was abandoned by an Act of Parliament in 1914 and the land on which it stood was either returned or sold to adjoining landowners.
14. The WBCT, originally formed in 1977, is a registered charity (no. 299595) and a registered company by limited guarantee (no. 2267719). Its aims are *"To protect, conserve and improve the route of the Wilts & Berks and North Wilts Canals, and branches, for the benefit of the community and environment, with the ultimate goal of restoring a continuous navigable waterway linking the Kennet & Avon canal near Melksham, the River Thames near Abingdon, and the Thames & Severn canal near Cricklade."* Further information is available <http://www.wbct.org.uk/>
15. The entire route of the canal, a list of the Council sites and their locations (red stars) are shown below.
  - a. Land at Morningside Farm, Royal Wootton Bassett
  - b. Land at Scotlands Farm, Royal Wootton Bassett
  - c. Land adjacent to Lackham College, Naish Hill
  - d. Land at Forest Farms, Melksham
  - e. King George V playing field Melksham
  - f. Playground at Berryfield Park, Berryfield, Melksham

More detailed and indicative site plans are provided in Appendix I.



16. WBCT has recently created a new governance and management structure which has a board of trustees overseeing strategy and an executive team to carry out delivery of the project. This is supported by a very strong pool of volunteers who help with the restoration work and it has successfully relied on direct negotiations with landowners to secure sections of the former canal route. It attracts donations, grant funding and in some cases S.106 planning gain monies to fund the works. It is considering the possibility of obtaining compulsory purchase powers under the Transport and Works Act directly or via the Canal and River Trust (formerly British Waterways) as acquiring authority.
17. The WBCT has appointed a master planner and has identified 3 major programmes for delivery each comprising up to 10 projects with much greater focus on enabling development to assist with the release of land for the canal restoration. The masterplan process has identified the need to vary the original route of the canal in places to ensure continuity.
18. Both the Council and the WBCT are key members of the Wiltshire Swindon & Oxfordshire Canal Partnership. This partnership ([www.wiltsandberks canal.org.uk](http://www.wiltsandberks canal.org.uk)) has a wide range of organisations supporting the restoration including Sustrans to create a safe walking and in some instances cycle routes along the canal corridor by recreating the towpath. This is known as the Towpath project and ultimately aims to create a safe walking route between Bath and Oxford. The Canal & River trust (formerly British Waterways) is actively supporting the restoration of the Wilts & Berks canal as part of a new southern canals network.

### Background – Site specific

19. Plans showing for indicative purposes the extent of what is to be transferred in each case are provided in the appendix.

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20. Land at Morningside Farm, Royal Wootton Bassett – acquired by North Wiltshire District Council (NWDC) to facilitate the restoration of the canal in conjunction with the WBCT. Restoration was completed about 3 years ago and included the re-construction of a new vehicle bridge over the canal and a new lock. The remainder of the land at Morningside Farm has been declared surplus by this Committee and proceeding to transfer the freehold of the canal will facilitate the remaining land to be sold.
21. The canal at Scotlands Farm, Royal Wootton Bassett was restored about 20 years ago with the permission of Wiltshire County Council. It forms the northern boundary of a larger block of agricultural land which is let out and is held for reversionary/longer term purposes.
22. Land adjacent to Lackham College, Naish Hill was also acquired by NWDC to facilitate the restoration of this section of the canal which was largely completed about 10 years ago. This involved restoration either side of the Council's land and included the reinstatement of a bridge and locks.
23. Land at Forest Farms, Melksham. This section runs through the council's rural estate and is therefore occupied by third parties. This section of canal has not been restored and it is proposed that when the opportunity arises to free the canal site from the tenancies, the Council does so and then transfers it to the WBCT with suitable provisions to ensure that it also provides, as accommodation works, a suitable vehicle crossing.
24. Part of King George V Playing Field Melksham. This is held by the council as a Field in Trust <http://www.fieldsintrust.org/> Only a very small part of the field is required and the WBCT has already carried out works on this site. The transfer of this site is likely to require the prior consent of Fields in Trust and possibly the Charity Commission and subject to their respective permissions being granted, this small site is proposed to be transferred.
25. Playground at Berryfield Park, Berryfield, Melksham. This forms part of the Melksham link project, the exact route of which is yet to be confirmed but it currently goes through an existing playground. There are some covenants relating to its use and should this land be required, it is proposed that it is transferred subject to the WBCT negotiating the release of any covenants and to the replacement of the playground elsewhere in the local community together with other considerations as appropriate.

### **Overview & Scrutiny Engagement**

26. [To be completed by OSE team.]

### **Safeguarding Implications**

27. There are no safeguarding implications with this proposal.

### **Public Health Implications**

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28. Along all the stretches of canal that have already been restored, the WBCT has reinstated a towpath and wherever possible, linked this in to the existing public rights of way network to ensure that it is enjoyed by as many people as possible. This has increased the opportunities for free public walking, running and cycling access in a traffic free environment. Numerous working parties are organised by WBCT that promotes active restoration which primarily involves a wide range of volunteers and is an indirect way of enhancing fitness and social wellbeing.
29. There are health risks associated with open bodies of water such as canals. The liability for managing these risks will be transferred to the WBCT with every transfer and due to its specialist nature it is in a better position than the Council to provide safeguarding measures (e.g. buoyancy aids, signage, education).

### **Procurement Implications**

30. There are no notable procurement implications to the Council with the proposals in this report.

### **Equalities Impact of the Proposal**

31. There are no notable equalities impact of transferring land by way of freehold or leasehold interest in the way proposed. Restoring the canal will enhance the ability of the diverse population of Wiltshire and beyond to access and enjoy the landscape and countryside of Wiltshire, Swindon and Oxfordshire.

### **Environmental and Climate Change Considerations**

32. There are no significant detrimental environment and climate change implications with this proposal. Increasing the right of way network provision will assist the population to travel across the County in more sustainable forms of transport.
33. Prior to carrying out any restoration engineering works planning permission will need to be obtained and during that process consideration will be giving to the impact of the works on habitats and ecology and mitigation measures sought as part of the application process prior to approval being granted.

### **Risk Assessment**

#### **Risks that may arise if the proposed decision and related work is not taken**

34. Members of the public currently use the towpaths alongside the stretches of the restored canal and the Council will continue to carry the public liability for them if the proposed decision is not taken.
35. The WBCT is increasingly required to demonstrate deliverability of certain sections of the canal. Not supporting it could weaken the policies protecting the route in the Core Strategy.

**Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks.**

<b>Risk</b>	<b>Action to mitigate the risk</b>
I The project to restore the entire length of the canal may fail leaving the WBCT with short stretches of un-connecting canal.	Ensure that land parcels transferred to the WBCT are capable of delivering public access, economic or environmental benefits, or reduce the Councils financial liability, in isolation and on their own merits.
II. The parcels of land are transferred to WBCT who then lack the funding to restore or maintain them	A business plan will be required from WBCT in respect of any unrestored stretch prior to it being transferred. This is to avoid the Council having to find funds to maintain sections of canal and surrounding land if the WBCT did receive the land.
III. The Council comes under pressure to compulsorily acquire sections of the canal if other landowners are unwilling to co-operate (as occurred with Stroud District Council)	The lease/transfer to WBCT will only be agreed on the basis that this is not an expectation of the WBCT. The WBCT will need to register as a navigation authority and will be seeking CPO powers under the Transport and Works Act.

**Financial Implications**

- 36. There are no anticipated negative financial implications with the proposal. Most of the sites are alongside agricultural land and as the route is protected in the Core Strategy, no development can take place. The market value of the restored sites is therefore very limited and this needs to be weighed up against the possible negative value of the sites yet to be restored because they may have been filled in with harmful material or material that cannot be reused locally and has to be properly disposed of at cost.
- 37. Transferring the Morningside Farm site will enable the remaining farmland to be sold by the council which is forecasted to be realised in the 2016/17 financial year.

**Legal Implications**

- 38. Some of the proposed sites are currently included within agricultural tenancies. In addition, one of the sites is currently used as a play area and further discussions will need to take place regarding the repositioning of this facility. Therefore, the transfer/lease of the parcels will need to be on a phased basis.



39. The estates team of Strategic Assets & Facilities Management will agree the lease/transfer terms associated with each parcel of land to cover any legal implications that may arise. In general, the terms of the lease/transfer will be in accordance with the principles of the community asset transfer policy to include an obligation to transfer back the land in certain agreed circumstances.
40. Section 123 of the Local Government Act 1972 gives Wiltshire Council the ability to transfer land at less than market value where that transfer helps secure the promotion of the economic, social, or environmental wellbeing of the area. The Secretary of State's approval is required if the undervalue exceeds £2,000,000 – which is unlikely to be the case in any of the transfers to be considered in this project.
41. Once the s123 condition is satisfied then WC can transfer the ownership of an asset to WBCT if WC holds sufficient rights in that asset, the right in the asset held by WC can only be determined by a detailed analysis of the title document.

### **Options Considered**

#### **Reject the proposal and refuse to transfer any land parcels to the WBCT.**

42. This option is considered inequitable on the basis that some of the land parcels were acquired by NWDC in order to facilitate Canal restoration and significant volunteer time, WBCT members time and funds have been invested in them (e.g. restoration of combined new brick built bridge and lock at Morningside Farm). Some of the parcels will represent a financial liability to the Council if retained. This approach is contrary to the sentiments of policies 53 and 16 of the Core Strategy.

### **Conclusions**

43. Whilst complete restoration may be several years away, the determination of the WBCT has thus far restored considerable sections of the former canal. It is likely that as more sections become linked, they will become increasingly beneficial to the overall wellbeing of the area and of the population, much like the Kennet and Avon Canal is today.
44. Committee is asked to consider showing its support by agreeing in principle to transfer the assets highlighted in this report.
45. Committee is further asked to delegate to Officers the detailed decisions of whether to transfer each site either by freehold or long leasehold interest and to incorporate terms therein to protect the Council's interests.

**Dr Carlton Brand**  
**Corporate Director**

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### **Background Papers**

The following documents have been relied on in the preparation of this report:

None

### **Appendices**

#### **Appendix I: Location and Indicative Site Plans**