

Summary Sheet

Council Report

Advisory Cabinet Decision Making Meeting - 15th February 2016

Title

Chesterfield Canal – Prepayment of the Council's maintenance costs to the Canal and River Trust

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Caroline Bruce, Interim Strategic Director – Environment and Development Services

Advisory Cabinet Member Approving Submission of the Report

Denise Lelliott, Advisory Cabinet Member – Jobs and the Local Economy

Advisory Commissioner Approving Submission of the Report

Commissioner Julie Kenny – Supporting Commissioner

Report Author(s)

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Ward(s) Affected

Ward 1 – Anston and Woodsetts
Ward 18 - Wales

Executive Summary

To consider the early payment in full of maintenance costs associated with the Chesterfield Canal and the cessation of the Council's liability for future unforeseen maintenance costs.

Recommendations

That in order to reduce the ongoing financial liability of the Chesterfield Canal, Commissioner Kenny is asked to:

1. Approve the proposal that the current and future maintenance costs of £517,711 payable by Rotherham MBC to the Canal and River Trust, over the period 2014/15 to 2023/24, be prepaid in full, for an agreed sum of £416,943.

2. Approve the agreement of a second Supplemental Agreement between Rotherham MBC and the Canal and River Trust, to document the prepayment of the maintenance contributions by the Council, the ongoing maintenance obligations of the Canal and the River Trust and the cessation of the Council's future maintenance liabilities.

List of Appendices Included

Appendix 1 – Proposed Course of the Chesterfield Canal in Rotherham

Background Papers

1. Agreement Relating to the Maintenance of Part of the Chesterfield Canal, Between British Waterways Board and Rotherham MBC, 30th September 1996.
2. Supplemental Agreement Relating to the Maintenance of Part of the Chesterfield Canal, Between British Waterways Board and Rotherham MBC, 13th July 2006.
3. Letter from the Canal and River Trust, 'Chesterfield Canal Maintenance Agreement', 3rd September 2015.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Chesterfield Canal – Prepayment of the Council's maintenance costs to the Canal and River Trust

1. Recommendations

That in order to reduce the ongoing financial liability of the Chesterfield Canal, Commissioner Kenny is asked to:

- 1.1. Approve the proposal that the current and future maintenance costs of £517,711 payable by Rotherham MBC to the Canal and River Trust, over the period 2014/15 to 2023/24, be prepaid in full, for an agreed sum of £416,943.
- 1.2. Approve the agreement of a second Supplemental Agreement between Rotherham MBC and the Canal and River Trust, to document the prepayment of the maintenance contributions by the Council, the ongoing maintenance obligations of the Canal and the River Trust and the cessation of the Council's future maintenance liabilities.

2. Background

- 2.1 RMBC supports the restoration of the Chesterfield Canal, which runs between Chesterfield and West Stockwith on the River Trent, a distance of 46 miles. In Rotherham, the Canal traverses the south of the Borough between Turner Wood and Norwood, but is only navigable between Turner Wood and Kiveton Park, leaving a 9 mile section to be restored between Kiveton Park and Staveley, Derbyshire. The un-restored section within Rotherham is indicated on the Plan in Appendix 1.
- 2.2 In 1996, the Council entered into an agreement with British Waterways Board (now the Canal and River Trust (CRT)), to upgrade the restored section of the Canal within Rotherham from "Remainder" standard, a status allocated to the whole of the then disused Canal by virtue of the 1968 Transport Act, to "Cruising" Standard; with the Council paying the difference between these standards, a so-called "step cost" for a period of 21 years, estimated at £23,258 per annum, subject to annual inflation provisions.
- 2.3 In addition to basic maintenance to "Cruiser" Standard, the Council also accepted responsibility for any "extraordinary" maintenance costs that might arise, e.g. damage to the Canal infrastructure, embankment leaks and collapses, etc. - excepting the first 10% of such costs, which were to be borne by the CRT.
- 2.4 In 2006, an amended agreement was drawn up between the Council and British Waterways Board, the main purpose of which was to try and offset the Council's basic maintenance costs. Two mechanisms were introduced in order to achieve this. First, an agreement to share commercial income (mooring and angling fees, for example) from that section of the restored Canal within Rotherham; and second the creation of a "Sinking Fund", comprising up-front payments by both parties, with the intention being that

the interest arising there from, would be used to reduce the Council's annual maintenance costs. Assuming interest returns at 2% above the then Bank of England base rate, it was calculated that an initial joint investment of £144,428, generating annual interest, would enable an amount of £17,900 to be drawn down from the fund, in order to reduce the Council's basic maintenance payments over a 21 year period. This agreement commenced in April 2003, the date when improvement works to the Canal were completed.

- 2.5 Unfortunately, neither of these arrangements has benefited the Council. Commercial income from the short section of restored Canal within Rotherham has been virtually nil, hampered by the absence of "through traffic". At the same time, Bank of England base rates have been 0.5% since March 2009, meaning that the Council has not benefited from the predicted returns from the "Sinking Fund".
- 2.6 This failure to generate interest has meant that the Council is required to make a significant annual contribution to maintenance costs. For example, the Council's liability in 2015/16 is £48,021. The calculated annual payments for the remainder of the Agreement,(over the next ten years) total £517,711.

3. Key Issues

- 3.1 Given that the "Sinking Fund" and commercial income arrangements have not off-set the Council's payments, it is desirable to re-negotiate or exit the arrangement at the earliest opportunity, in order to reduce or eliminate the Council's future liabilities. Moreover, the Council remains a "hostage to fortune" in respect of our responsibility for "extraordinary" maintenance costs.

4. Options considered and recommended proposal

- 4.1 Option 1, continue the existing arrangement. The Council's maintenance contribution in 2015/16 is £48,021. Under the terms of the agreement, this will increase annually in line with inflation indices and the Council will be liable until 2023/24 for these payments. Including liabilities owed for 2014/15 and 2015/16, the Council's estimated liability is £517,711. The monies in respect of 2014/15 and 2015/16 are still outstanding, as they have been included in the ongoing negotiations with the CRT.
- 4.2 Option 2, re-negotiate the terms and conditions of the existing agreement.
- 4.3 Option 3, seek early exit from the arrangement through a prepayment of the maintenance sum. Under the terms of the negotiated settlement, the sum has been discounted at 4%, so that the Council would have to pay a sum of £416,943, an estimated saving of £100,768.

The terms of the prepayment are favourable to the Council, given the discount rate that has been applied, relative to current interest rates. **It is therefore recommended that Option 3 is considered and approved.**

5. Consultation

- 5.1 Consultation has been taking place with colleagues in the Council's Financial and Legal Services, resulting in an approach to the CRT to discuss options for reaching a new agreement with the CRT, in respect of the Council's ongoing liabilities.
- 5.2 Consultation with the CRT has been ongoing, culminating in the Trust's letter of 3rd September 2015 outlining a prepayment option for the Council.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Upon receiving full approval, as recommended, the Council would seek agreement with the CRT for the prepayment of the Council's outstanding maintenance contributions and agree a revised legal agreement between the two parties. This agreement would recognise that the Council is making a prepayment to the CRT, who will be obligated to continue to maintain the Chesterfield Canal, in line with the obligations enshrined in both the 1996 Agreement and the 2006 Supplemental Agreement. This agreement will also need to document the cessation of the Council's obligations for extraordinary maintenance costs.

7. Financial and Procurement Implications

- 7.1 The cost to the Council of seeking a prepayment of our maintenance obligations with the CRT is £416,943. In order to fund this payment, a total of £97,300 is available from a provision made in 2014/15 and an allocation within the 2015/16 EDS budget. This is in respect of the canal maintenance monies owed to the Canal and River Trust for these two years, whilst the negotiations have been taking place. This leaves a remaining cost of £319,643. As the sum due has been discounted at 4% per annum, the proposed settlement is financially favourable to Rotherham MBC.
- 7.2 In order to enable the Council to treat this sum as a prepayment, it is essential that the legal agreement with the CRT demonstrates that this is a prepayment of the Council's maintenance contributions, and that the CRT is obligated to maintain the Chesterfield canal for the lifetime of the agreement. On this basis, in accounting terms the Council can spread the revenue costs out over the 8 year period 2016/17 – 2023/24, although the cash transaction will be by way of a one-off payment in the financial year that the agreement is made. As there is an annual budget provision of £48,650 within EDS, if this proposal is accepted, the Council will make an ongoing revenue saving of c£9k per annum. In addition, the Council is relieving itself of any future maintenance obligations. The Council is in discussions with the CRT with regard to whether there is a balance remaining on the sinking fund, or whether it has been fully spent on meeting the Trust's canal maintenance obligations. Any sums owed to the Council will be used to offset the final settlement amount.

- 7.3. It is likely that the Canal and River Trust will require the Council to be responsible for its legal costs in connection with the Second Supplemental Maintenance Agreement. Whilst we cannot be sure about the level of these fees, they are unlikely to be more than £1,500.

8. Legal Implications

- 8.1 There is a requirement to draw up a legal agreement with the CRT to formalise the prepayment arrangement, the continuation of the CRT's maintenance obligations and the cessation of the Council's obligations.

9. Human Resources Implications

- 9.1 There are no Human Resource implications within this report.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no Children and Young People or Vulnerable Adults implications within this report.

11. Equalities and Human Rights Implications

- 11.1 There are no Equalities or Human Rights implications within this report.

12. Implications for Partners and Other Directorates

- 12.1 Subsequent actions will be required by the Council's Financial Services in finalising payment to the Canal and River Trust.

13. Risks and Mitigation

- 13.1 The recommendation entails early exit from both the financial implications and the maintenance responsibilities associated with the current arrangement, in particular the "extraordinary" maintenance responsibilities contained within the agreement over which the Council has no influence.

- 13.2 Nevertheless, this seems a preferable option to the alternatives considered. Persisting with the existing "Sinking Fund" arrangement means that the Council's maintenance payments will only increase whilst ever interest rates and commercial income are as low as they have been in recent years and that the Council will continue to be responsible for the bulk of any extraordinary costs.

- 13.3 Any re-negotiation of the existing arrangement means that the Council would remain locked in to a hitherto under-performing arrangement and that the Council would remain liable for any extraordinary maintenance costs.

14. Accountable Officer(s)

Paul Woodcock, Assistant Director of Planning, Regeneration and Culture

Approvals Obtained from:-

Strategic Director of Finance and Corporate Services:- Jon Baggaley
Director of Legal Services:- Lesley Doyle

Head of Procurement (if appropriate):-

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