



## **CABINET – 25 NOVEMBER 2022**

### **TRANSFER OF A SECTION OF THE ASHBY CANAL TRANSPORT AND WORKS ACT ORDER**

### **JOINT REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT AND THE DIRECTOR OF LAW AND GOVERNANCE**

#### **PART A**

##### **Purpose of the Report**

1. The purpose of this report is to inform the Cabinet of the statutory process<sup>1</sup> which is required to be followed in order to transfer certain transport powers to the Ashby Canal Association (ACA) and, to enable that process to progress, to recommend that the County Council approves the promotion of a suitable Order.

##### **Recommendations**

2. It is recommended that:
  - a. The County Council resolves that it is satisfied that it is expedient for the Council to apply to the Secretary of State for Environment, Food and Rural Affairs to promote an Order under the Transport and Works Act 1992 to transfer powers under the Transport and Works Act Order 2005 to the Ashby Canal Association for a section of the Ashby Canal line between Snarestone and Measham; and
  - b. The County Council authorises the Director of Environment and Transport in consultation with the Director of Law and Governance to take all steps as may be necessary or expedient for the purposes of promotion of the Order.

##### **Reasons for Recommendation**

3. To enable the Ashby Canal Association to take on the ownership and the obligations and responsibilities, subject to Secretary of State consent, regarding the restoration of the section of canal between the current terminus at Snarestone and Measham.

##### **Timetable for Decisions (including Scrutiny)**

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<sup>1</sup> Under Section 239 of the Local Government Act 1972.

4. The County Council will receive a report on 7 December 2022 seeking agreement for the proposals. A further report will be submitted to the County Council following the submission of the application to the Secretary of State.

### **Policy Framework and Previous Decisions**

5. In September 2019, the Cabinet approved the submission of an application to the Secretary of State for the Environment, Food and Rural Affairs for consent to transfer powers under the Transport and Works Act Order 2005 to the Ashby Canal Association.
6. In September 2021, the Cabinet approved the allocation of £1.1m for funding the maintenance of the section of the Ashby Canal to be transferred to the ACA, subject to Parliamentary approval of the transfer of a section of the TWAO.

### **Resource Implications**

7. There are no additional resource implications associated with the recommendations of this report.
8. The Council's Estates Team has advised that the value of the land proposed for transfer is nil due to the restrictions of the TWAO that limit the use of the land to a canal.
9. Maintenance funding of £1.1m linked to the transfer of the TWAO to the ACA was approved by the Cabinet in September 2021.

### **Circulation under the Local Issues Alert Procedure**

10. Mr D. Harrison CC, and Mr R. Ashman CC.

### **Officer(s) to Contact**

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## **PART B**

### **Background**

11. Since 1994, the County Council has led on the restoration of the Ashby Canal, which was closed in 1966 due to mining subsidence. The last significant section (500m) was restored in 2014/15 from Snarestone northwards to the re-built Bridge 62.
12. The restoration has, to date, been substantially funded from third party sources. With limited capital remaining or further sources of funding, the Council has limited capacity to invest in the project but has come under increasing pressure from stakeholders to do more.
13. The Ashby Canal Association is a Registered Charity and a Company Limited by Guarantee, established in 1966 to promote the restoration of the Ashby Canal. The ACA has indicated a willingness and capability to take on the ownership and the obligations and responsibilities under the Transport and Works Act Order 2005 (TWAO), subject to Secretary of State consent, in seeking to restore the next section of canal, between the current terminus at Snarestone and Measham High Street.
14. In September 2019 the Cabinet approved the submission of an application to the Secretary of State for the Environment, Food and Rural Affairs for consent to transfer powers under the Transport and Works Act Order 2005 to the ACA.
15. At the time it was noted that there were two land parcels which the County Council was purchasing before the transfer application could be submitted. It subsequently became apparent that alongside the land purchases, there were two rights that also needed to be progressed. Work to complete the land purchases and rights is ongoing. It is expected that these will be concluded shortly and that the transfer application will be submitted in early 2023.

### **Legal Process**

16. Legal advice on the application process has been provided by Parliamentary Agents (Sharpe Pritchard) who advised that the County Council by virtue of Section 20 of the Transport and Works Act 1992 may apply for an Order under that act but must comply with the provisions of Section 239 of the Local Government Act 1972 as power to apply for such Order is subject to the same conditions as apply to a Local Authority promoting Bills in Parliament.
17. Under S239 of the Local Government Act 1972, the application and promotion of the Bill to transfer the powers under the TWAO requires a resolution by the full County Council that it is satisfied that it is expedient to promote a Bill. This resolution then needs to be confirmed by a second resolution at a further meeting of the Authority held as soon as possible after the expiry of 14 days after the Bill is deposited (or in the case of the TWAO), the application is made to the Secretary of State for the Environment, Food and Rural Affairs.

18. The two resolutions must be passed by a majority of the County Council's members and not just a majority of those attending the meeting.
19. In addition, the Authority must comply with prescribed advertising requirements. Each resolution must be preceded by not less than 30 clear days' notice of the meeting, given by advertisement in one or more local newspapers and should be in addition to the ordinary notices required to be given for convening a meeting of the Authority.
20. The draft Statutory Instrument for the TWAO transfer (which includes a plan of the land to be transferred) will be appended to the County Council report. Minor amendments to the draft may be required before submission to the Secretary of State.

### **Consultation**

21. A public consultation regarding the proposed transfer of the TWAO to the ACA was carried out in 2019, prior to the report being presented to the Cabinet. 95% of the 143 respondents strongly agreed with the proposal to transfer the TWAO land and powers to the ACA.
22. No further consultation is required at this time.

### **Equality and Human Rights Implications**

23. There are no significant equality or human rights implications directly arising from this report. An Equality and Human Rights Impact Assessment (EHRIA) screening exercise was completed for the report to the Cabinet in September 2019 which concluded that a full impact assessment was not required.

### **Background Papers**

Report to the Cabinet: 13 September 2019 – Potential Transfer of Part of the Ashby Canal.

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5605&Ver=4>

Report to the Cabinet: 17 September 2021 – Ashby Canal Maintenance Funding.

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6446&Ver=4>