

STROUD DISTRICT COUNCIL
STRATEGY AND RESOURCES COMMITTEE

**AGENDA
ITEM NO**

21 MAY 2020

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Report Title	AUTHORISATION TO USE COMPULSORY PURCHASE POWERS TO ACQUIRE LAND FOR COTSWOLD CANALS CONNECTED (PHASE 1B)
Purpose of Report	To consider the use of Compulsory Purchase Powers to acquire land to deliver the Cotswold Canals Connected (Phase 1b) project.
Decision(s)	<p>The Committee RESOLVES that:</p> <p>a. Having taken account of the issues set out in this report including the Appendices, the Committee considers that there is a compelling case in the public interest for the compulsory acquisition of the land and new rights identified in Appendix B of the report pursuant to the statutory powers contained in section 226(1)(a) and 226(3) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and consequently resolves to make a Compulsory Purchase Order to be known as THE STROUD DISTRICT COUNCIL COTSWOLD CANALS CONNECTED (PHASE 1B: OCEAN, STONEHOUSE TO SAUL JUNCTION) COMPULSORY PURCHASE ORDER 2020 for the compulsory acquisition of that land and those rights.</p> <p>b. The Head of Legal Services be authorised;</p> <p>(i) to prepare (in consultation with the Canal Project Manager and the Head of Property Services) an appropriate Order, Order Map(s) and Statement of Reasons in accordance with resolution (a) above.</p> <p>(ii) to make and submit the Order to the Confirming Authority and</p> <p>(iii) to take any further actions required for the purpose of securing confirmation of the Order including engaging Counsel and other external services as considered necessary.</p>

Consultation and Feedback	Our partners in the project; Cotswold Canal Trust (CCT), Stroud Valleys Canal Company(SVCC), the Canal and River Trust (CRT) and Gloucestershire County Council (GCC) are all supportive of the use of CPO powers.			
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Options	The Council and its partners could continue to try to negotiate the acquisition of the land required without confirming its intention to compulsory acquire land and submit the final bid for the project to the Heritage Fund. As failing to acquire the necessary land and property rights is the biggest risk to the project being delivered (and to securing the necessary funding) and there is a time limit for submitting the final bid, this would present a significant risk to the Lottery bid being successful. As some of the land required is unregistered and in unknown ownership the use of Compulsory Purchase Powers will be necessary and is the only way to ensure the project can be delivered.			
Background Papers	None.			
Appendices	Appendix A – Cotswold Canals Connected - Bid to National Heritage Lottery Fund Update Appendix B – Plans of land and new rights to be compulsorily acquired			
Implications (further details at the end of the report)	Financial	Legal	Equality	Environmental
	Yes	Yes	No	Yes

1. BACKGROUND

1.1. On 24th April 2018, the then Heritage Lottery Fund (HLF) awarded £842,800 as Development Funding, to the Cotswold Canals Connected project (Phase 1b) enabling the Council and its partners to work towards submitting a further Delivery Stage bid, in the order of £8.9 million, by a deadline of 1st June 2020.

1.2. The project's objective is the restoration of a 4-mile length of canal connecting the national waterway network at Saul Junction to the already restored 5-mile section running from Stonehouse to Thrupp. This would make Stonehouse and Stroud canal towns once again

- 1.3. The project will bring significant biodiversity, economic, leisure and health and wellbeing benefits (referred to in more detail in paragraphs 5.5 and 5.6 of this report).
- 1.4. Whilst Development funding does not automatically guarantee a Delivery Stage pass, the then HLF was clearly sufficiently impressed to award funding. Provided the project looks certain to deliver its outcomes to budget, there is no reason why the further bid should not succeed.

2. DEVELOPMENT STAGE PROGRESS

- 2.1 At its meeting in October 2019 the Committee resolved to support the principle of using compulsory purchase powers to acquire the land needed to deliver the Cotswold Canals Connected Project and to engage Counsel to start the preparation and processing of a CPO to confirmation
- 2.2 The Heritage (Lottery) Fund reviewed the Development Stage of the project in October 2019. Whilst the outcome of the review was generally positive, land acquisition was identified as remaining a major risk to the project.
- 2.3 The expectation is that we will submit the formal Delivery Stage bid by the 1st June 2020 as set out in the update at Appendix A to this report.

3. LAND ACQUISITION: CURRENT POSITION

- 3.1 Land is required for the scheme's permanent structures and facilities as well as for temporary working space and access. Permanent new rights are also required for access and drainage etc. Acquisition has to some degree been hampered by changing requirements in the design of the scheme, in particular the canal route, provision of biodiversity land and some of the engineering works. Whilst contacts/discussions have been taking place for some considerable time with landowners there have been difficulties in identifying what the precise land requirements are in a number of cases.
- 3.2 Much of the early contact with landowners was conducted by other project partners e.g. SVCC/CCT. Formal negotiations for the majority, were however handed over to the Council's Property Services Section in January 2020. More accurate land acquisition plans have now been produced and formal negotiations are proceeding with landowners with varying degrees of progress. The immediate concern is to de-risk land acquisition (as far as possible) prior to the determination of the lottery bid in September. Every effort will continue to be made to acquire land by agreement but it is highly unlikely that all of the land required will be secured in that timescale; some acquisitions are complex and it may not be possible to agree terms with all of the affected landowners. An Option to purchase land has been secured in two cases and another one is at an advanced stage. However compulsory purchase would in any event be required in respect of some small areas of land which are in unknown ownership and is of advantage in enabling certain restrictions on titles to be removed.

4. COMPULSORY PURCHASE

Human Rights

- 4.1 In view of the current position it is appropriate to consider the use of compulsory purchase powers. Such powers should only be used where there is a compelling case in the public interest and as a last resort and the purposes for which those powers are used must justify interference with the human rights of those who have an interest in the land affected. Regard must be given in particular to Article 1 of the First Protocol; to the European Convention on Human Rights and to Article 8 where appropriate:

Article 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”

The preceding provisions shall not however in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties

Article 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others

- 4.2 These articles require a balance to be struck between the interests of the affected landowner and the public interest in the proposed project and compulsory purchase powers should only be used where there is a compelling balance in favour of the public interest.

Compulsory Purchase Powers

- 4.3 The most appropriate compulsory purchase powers in this case are contained in section 226 of the Town and Country Planning Act 1990. Section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think it will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land being acquired. Section 226(3) provides for the compulsory acquisition of adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides for permanent new rights to be acquired over or in land. It is a pre-requisite for use of the powers contained in section 226(1)(a) of the 1990 Act that the acquiring

authority considers that the development, re-development or improvement proposed is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the authority has administrative responsibility.

Compulsory Purchase Order and Associated Documents

- 4.4 A compulsory Purchase Order (once made by the acquiring authority) must be submitted to the appropriate Confirming Authority for confirmation in accordance with the procedural requirements of the Acquisition of Land Act 1981. The Order must be accompanied by an Order Map (or Maps) and a detailed Statement of Reasons setting out the justification for making the Order.
- 4.5 This project has now been designed in sufficient detail to identify all of the land and rights required to ensure its successful delivery. That land and those rights are identified on the plans appended to this report (Appendix B). Members should note that these plans contain land which will be required permanently and also land required for temporary access and working space. The current law relating to compulsory purchase does not allow acquiring authorities to distinguish between the two but the intention would be to negotiate temporary licences (in respect of the latter) preferably before, but if not, then after the confirmation of the Order rather than acquire such areas permanently. To assist members, Appendix B identifies land required permanently in pink colouring and land required temporarily in blue; permanent new rights are identified in magenta.
- 4.6 A Compulsory Purchase Order must be supported by a Statement of Reasons which sets out in detail the acquiring authority's "compelling case" for seeking confirmation of the Order in the context of the relevant authorising powers. Section 5 of this report sets out in summary form what officers consider is a compelling case for the use of Compulsory Purchase powers in this case pursuant to the legislative provisions referred to in paragraph 4.3.
- 4.7 There remains some work to be done in finalising the CPO documents and Statement of Reasons. It is anticipated that this work will be completed by early June and that if the proposed resolutions are adopted by the Committee a Compulsory Purchase Order can be made and submitted for confirmation at the end of June or early July.

5 THE CASE FOR COMPULSORY PURCHASE

The Planning Policy Position

- 5.1 The canal restoration project is one which enjoys significant support in terms of National and local planning policy. The Stroud District Local Plan (SDLP) (2015) and the Eastington Neighbourhood Development Plan (ENDP) (2016) contain a number of policies which support and promote the scheme. The principal SDLP Policy which supports the delivery of the scheme is **Policy ES11: Maintaining and Regenerating the Districts Canals**. This states (inter alia) that *"The Council will encourage the restoration of and other necessary functional improvements to the Districts canals. It will seek to improve access to and along the canals to encourage use for transport and for*

leisure/recreational purposes". The supporting text refers at para. 6.59 to the ongoing canal restoration project, "*led by Stroud District Council*". **Policy ES10: Valuing our historic environment and assets** seeks to preserve and enhance Stroud's Industrial Heritage Conservation Area which is inextricably linked to the Districts historic canal corridor. This policy is supplemented by the Council's IHCA Management Proposals Supplementary Planning Document adopted in November 2008. **Policy EP3** of the ENDP supports the continued restoration of the canal including development of canal-side land for tourist and recreational uses and activities.

- 5.2 The project is also supported through the Stroud District Local Plan Review. Although at an early stage in its development the draft Local Plan highlights the role of the Cotswold Canals in the District and the potential of the proposed scheme to deliver a re-opened Stroudwater Canal from Saul Junction to Brimscombe Port. Draft Site Allocation PS20/M5 Junction 13 additionally allocates the land required for the proposed canal scheme
- 5.3 These (and other) local policies reflect national planning policy as set out in the National Planning Policy Framework (NPPF).

NPPF's key premise is 'a presumption in favour of sustainable development' that should run through both plan-making and decision-taking. The scheme aims to deliver or enable sustainable development by delivering economic, social, and environmental benefits.

Section 9 of the NPPF promotes development that encourages more sustainable modes of transport which will help to contribute to wider health objectives. The scheme is expected to help promote local modal shift by encouraging leisure and potentially employment-related transport by boat, cycle and foot.

Section 8 of the NPPF provides support for planning decisions that deliver social, recreational and cultural facilities to meet community needs. It is recognized in the text of the NPPF that access to high quality open spaces and opportunities for recreation can make an important contribution to the health and wellbeing of communities and should therefore be protected. Similar protection and enhancement should be given to public rights of way and access routes. The scheme will promote access to the countryside and opportunities for recreation including walking and cycling along the associated towpath.

Section 14 of the NPPF promotes development that avoids increasing vulnerability to flood risk and makes development safe for its lifetime without increasing flood risks elsewhere. The scheme has considered the potential impact on flood risk.

Section 15 of the NPPF promotes development that contributes and enhances the natural and local environment including by protecting and enhancing valued landscapes, biodiversity and geodiversity. The scheme will secure bio-diversity gains and mitigation measures will be taken to protect vulnerable species and habitats

Section 16 of the NPPF relates to the conservation and enhancement of the historic environment. This includes protection of heritage assets in a manner appropriate to their significance including those with archaeological interest. The scheme falls

within the Industrial Heritage Conservation Area and its primary purpose is to restore and re-open this historic section of the Stroudwater Navigation.

Planning Permissions and Other Consents

5.4 Planning permissions/Listed Building Consents will be required for certain parts of the project e.g.

- (i) the “Missing Mile” section of new canal (to replace the original section filled in as a result of the construction of junction 13 of the M5 motorway) together with associated infrastructure. It is anticipated that a full application will be submitted to the Local Planning Authority as soon as essential flood modelling has been completed.
- (ii) Car parking provision at Fromebridge Mill. The Project Team are in discussions with the Local Planning Authority regarding siting size and design of this element of the scheme.
- (iii) Provision of biodiversity areas; detailed schemes are being worked up to enable applications to be made as soon as possible. As with the Missing Mile application, flood modelling work is being undertaken to inform these detailed schemes.
- (iv) Construction of new canal bridges at Stonepitts and Whitminster which will be procured on a design and build basis as the scheme progresses.

Whilst these permissions have not yet been secured, given the policy support for the project summarised in paragraphs 5.1, 5.2 and 5.3 it is not considered that there are any obvious reasons why the planning permissions required for the delivery of the project would be withheld.

5.5 Other consents from various bodies will be required for the delivery of the project e.g.:

- (i) Flood Risk Permits, Waste Management/Transfer Licences (Environment Agency)
- (ii) Internal Drainage Board Consents for works within 8m of a watercourse
- (iii) Highway Diversions (GCC)
- (iv) Consents for street works: New Roads and Street Works Act 1991 (GCC)
- (v) Mitigation licences for relocation etc. of disturbed species: Wildlife and Countryside Act 1981 (Natural England)
- (vi) Agreements for protection/diversion of apparatus of various utility providers
- (vii) Agreement with Network Rail for works to Ocean railway bridge
- (viii) Listed Buildings Consents
- (ix) Consent for works on or near M5 Junction 13 (Highways England)
- (x) Consent of CRT and the Company of Proprietors of the Stroudwater Navigation (CoPSN) being the bodies responsible for the existing sections of canal affected by the project

Discussions have been on-going for a considerable time with all of the bodies affected to identify the precise requirements for licences and consents. A timetable for securing all necessary consents has been built into the project programme and consultations to date indicate that the relevant bodies are very supportive of the scheme and that there should not be any insurmountable obstacles to obtaining those consents. CRT, CoPSN and GCC are partners in the project and share a common objective in achieving its delivery, subject of course to their respective statutory and other obligations.

The Well Being Considerations

- 5.6 Before exercising compulsory purchase powers pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 the acquiring authority must consider whether the proposed project is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority is responsible.
- 5.7 Section 6 of Appendix A summarises the anticipated outcomes of the project in terms of economic, social and environmental benefits to the Stroud District and beyond. Members will need to consider these anticipated outcomes in coming to a conclusion as to whether the test referred to in para 5.4 will be met. It should be noted that although these tests are expressed in the alternative, all three components of well-being would be met in this case.

Costs and Funding

- 5.8 Section 4 of Appendix A sets out the estimated costs of the delivery stage of the project and the sources of funding. This demonstrates that provided the bid to the Heritage Lottery Fund is successful, and provided the Council is prepared to underwrite any fundraising shortfall (see para 4.6 of Appendix A) then all of the financial resources required to deliver the project within programme are likely to be available.

6 CONCLUSION

- 6.1 As stated in paragraph 4.2 of this report any decision on the use of compulsory purchase powers must weigh the public interest in the purpose for which those powers are proposed to be used against the human rights of the persons who will be affected and the powers should only be used where there is a compelling balance in favour of the public interest.
- 6.2 In the absence of being able to acquire all of the land identified in Appendix B by agreement, the making and confirmation of the proposed CPO would enable the Council and its partners in the project to restore and re-develop this historic section of the Cotswold Canals and provide opportunities for the re-generation of communities along the whole length of the canal and beyond, linking up Phase 1a of the canal restoration with the National Network. This would result in a step change in terms of the socio-economic and environmental benefits that will accrue to the District.
- 6.3 The Council now has a (probably unique) opportunity to bring forward the reinstatement of this section of the canals and the promotion of a CPO is pivotal to gaining the funding necessary to do this.
- 6.4 The land to be acquired is predominantly agricultural in nature and its acquisition would have little if any direct or indirect negative impact on residential properties or indeed on commercial businesses. The delivery of the project will provide significant potential benefits and opportunities to local businesses and to residents in terms of enhanced recreational and other opportunities as set out in Section 6 of Appendix A. The recommendation to the Committee therefore is that a compelling case can be made for the proposed compulsory acquisitions and that the interference with human rights in this

case can be justified having regard to the statutory right to compensation available to persons with an interest in the land concerned.

7 RISKS

- 7.1 The use of compulsory purchase powers can have the effect of hardening land-owners' attitudes to disposing of their land. This can result in objections to the Order and a public inquiry which could have the potential of delaying confirmation of the Order for as much as a year or more (i.e. towards the end of 2021) and increasing costs substantially. A contingency provision has been included in the project budget to cover those increased costs.
- 7.2 Ultimately, there is always the possibility that the Order is not confirmed in part or in whole by the Confirming Authority. The Council has however retained the services of senior Counsel and a firm of land referencing consultants both with significant expertise in compulsory purchase from whom advice and assistance can be drawn as required. This should minimise the risk of failure to secure confirmation of the Order for technical/procedural reasons

8 IMPLICATIONS

8.1 Financial Implications

Funding for land acquisitions is included within the overall project budget and therefore, should the lottery bid be successful, there are sufficient resources available to fund compulsory purchases.

An overview of the current budget position of the project, including the level of fundraising still required and highlighted risks, is included in Appendix A.

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8.2 Legal Implications

The report above sets out details of significant implications

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8.3 Equality Implications

An Equalities Impact Assessment is not required because the decision requested impacts equally on all landowners and the legislative framework for the CPO process must be followed. Full account has been taken of the Human Rights Act, in particular to Article 1 of the First Protocol; to the European Convention on Human Rights and to Article 8 where appropriate, as detailed in the body of the report. All landowners are advised to seek independent professional advice during negotiations.

The Cotswold Canals Connected 'outcomes for people' includes positive impacts: Specifically broadening participation by people from different socio-economic groups and ethnic backgrounds, age groups and abilities, tackling barriers to

participation and ensuring the participation of those hardest to engage. See paragraph 6.2 of Appendix A.

8.4 Environmental Implications

The update on the lottery bid at Appendix A, sets out details of significant environmental implications and enhancements (see paragraph 6.3).

As with most infrastructure projects the majority of the direct effects on the environment will occur during the construction phase. The Project Environmental Impact Report (which forms part of the delivery bid documentation), therefore, outlines the potential construction impacts and provides an outline of the Construction Environmental Management Plan (CEMP). This report links policy with potential impacts and provides a set of guiding principles for reference and adaptation by the engineering team and integration into the Delivery Plan and CEMP and it is the intention that the project will also work within the Council's emerging Climate Emergency Action Plan.

The major projects (such as the A38 Roundabout Crossing, the replacement of Walk Bridge, the M5 Crossing and the Ocean Railway Bridge) will be delivered by Contractors with Environmental Management Systems and procedures in place. The engineering team therefore will work with all designers and environmental managers to integrate mitigation measures into the CEMP as part of the Engineering Delivery Plan.

The Canal Environment Manager will be calculating net biodiversity net gain. The bid has no carbon counting requirements but the DEFRA Carbon Footprint methodology will be being applied to measure direct impacts from the development works to the land. Environmental sustainability remains an important outcome of the project and 'reducing negative environmental aspects' is a weighted outcome in the lottery bid.