

Agenda Item No. 4(e)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

9 April 2020

Report of the Executive Director – Economy, Transport and Environment

**WATER ABSTRACTION AND IMPOUNDING (EXEMPTIONS)
REGULATIONS 2017 FUNDING – REQUEST FOR CREATION OF
RESERVE FUND**

(1) **Purpose of Report** To update the Cabinet Member on the current situation with regard to work currently being carried out on behalf of the County Council, under the Water Abstraction and Impounding (Exemptions) Regulations 2017 (the '2017 Regulations'), and to request that outstanding funds be moved into a reserve to enable officers to draw down funds to spend on this crucial work in 2020-21.

(2) **Information and Analysis**

Background

A Revenue Pressure Bid was submitted in early 2019, as a result of the Environment Agency's sudden decision to implement changes to the abstraction and impounding licensing regime introduced by the Water Resources Act 2003 ("WRA 2003") and implemented by the 2017 Regulations, which brought the canals into the licencing regime. Until 1 January 2019, canals had been exempt. At that time, it was not clear how many licences the County Council would be liable for. Initially, it appeared that the County Council could require around 60 licences in respect of abstraction/impounding of water, at a cost of £1,500 per application. This pressure bid secured £100,000 of revenue funding to carry out this work. The funds were placed in the Waterways Project cost centre for the 2019-20 financial year.

In addition, the Environment Agency indicated that measures may need to be undertaken for compliance reasons, however, the details of these would not be known until parts A and B of the licences had been submitted and reviewed.

During 2019, the County Council sort a Barrister's opinion to establish whether the County Council is the lawful Navigation Authority for the five canal

sections in Countryside Service portfolio. The requirement for licences would depend on whether or not the Council was a Navigation Authority for a particular section of canal. The Waterways Project Officer engaged intensively with the Environment Agency, locally and nationally, and with the support of the Association of Inland Navigation Authorities, to clarify many of the 'small print' and contradictory elements of the guidance. These efforts were successful in reducing the County Council's liability to four licences for the canals.

The four licence applications were submitted in January 2020 and are currently in the hands of the Environment Agency and have not yet been reviewed. The Case Officer has been unable to confirm when this will happen, but has indicated that it will be sometime in 2020-21. Once reviewed, discussions about compliance measures can commence.

Reasons for underspend

Work to establish Navigation Authority status, negotiate with the Environment Agency and commission a Water Resource Study for the Chesterfield Canal (one was already in place for the Cromford Canal) all had to be completed before the applications could be made. This background work took ten months to complete. The Environment Agency has taken longer than anticipated to review applications.

As outlined above, the Environment Agency is currently reviewing the four licence applications submitted in January 2020 and a response is expected sometime in 2020-21. Discussions on compliance measures will commence once the Environment Agency's review is completed.

The compliance measures are at this stage still unknown, however, it is very clear that these measures will not be delivered until the 2020-21 financial year. These measures would most likely include flow measurement equipment at points where water enters the canal and at key potential flooding locations, as well as much-needed design and construction work to lock by-washes to allow greater flow capacity. These works are essential to comply with the 2017 Regulations, and therefore it is crucial that these pressure bid funds are retained within a Reserve Fund to ensure these necessary works can be carried out.

(3) **Financial Considerations** This pressure bid secured £100,000 of revenue funding to carry out this work. The funds were placed in the Waterways Project Revenue cost centre for 2019-20. Current spend on this area of work amounts to £18,000: consisting of £12,000 relating to a water resource study, and £6,000 for the application fees to the Environment Agency. A request is therefore made that £82,000, the remainder of the £100,000 pressure bid funding, be moved into a reserve to enable the Waterways Project Officer to draw it down and spend the funds on compliance

projects in 2020-21, once these have been agreed with the Environment Agency.

(4) **Legal Considerations** As stated in the body of the report, the effect of the amendments implemented by the 2017 Regulations is to narrow the exemption from licensing available to navigation authorities. Previously, the exemption for navigation authorities applied to all transfers of water from one area of inland waters to another. The only condition was that the transfer of water by the navigation authority was in the course of its functions as a navigation authority. Under the new regime, the exemption is only available for transfers within an authority's water system and certain transfers out of an authority's system. This can lead to an increase in requirements for licences unless it can be demonstrated that the Council is a 'Navigation Authority' for a particular section of canal.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property, social value and transport considerations.

(5) **Key Decision** No.

(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(7) **Background Papers** Held on file within the Economy, Transport and Environment Department.

(8) **OFFICER'S RECOMMENDATIONS** That:

8.1 The ongoing work to complete the County Council's Water Transfer Regulations responsibilities is noted.

8.2 A Reserve Fund to hold the remaining pressure bid funds as detailed in the report is created to safeguard them for essential compliance works in 2020-21.

Mike Ashworth
Executive Director – Economy, Transport and Environment