

Basingstoke Canal Options Appraisal

Report to the Joint Management Committee
20 October 2006

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1. Background

- 1.1 As a re-cap, in line with the July 2006 Joint Advisory Group (JAG) meeting, this review was instigated in 2005 by Hampshire County Council, working with colleagues in Surrey County Council (SCC), to appraise options on the future management of the Canal. This arose from the ongoing financial constraints faced by many local authorities and the need to ensure long-term financing of the Basingstoke Canal Authority (BCA).
- 1.2 The process followed, up to the Joint Management Committee (JMC) October 2005, was:
- Stakeholder workshop July 2005 identifying:
 - the advantages, disadvantages, risks and dependencies for a range of potential options
 - options for generating further income streams for the BCA
 - Agreeing key success criteria against which each option was then evaluated
 - Proposing a shortlist of options for detailed appraisal to JAG September 2005, which was ratified by the Joint Management Committee October 2005
- 1.3 The shortlisted options for detailed feasibility work were agreed as follows:
- Option 1: Unchanged Management
- Cut the level of service
 - Formalise the funding agreement
- Option 2: Management by a third party
- British Waterways
 - National Trust
 - Set up independent body, such as a charitable trust (existing or new trust) or a Regional Park Authority
- Option 3: Stop or limit use of the Canal
- Retain water but stop through boat movements
- 1.4 It is worth re-iterating that the status quo has never been considered an option as this would continue the current slow decline of the Canal and would not resolve the funding constraints. This approach has been ratified by riparian partners.

2. Executive Summary

- 2.1 A structured process has been underway, from May 2006 to date, to complete the detailed appraisal of the shortlisted options for the future management of the Canal, that were ratified by the JMC October 2005.
- 2.2 The key driver for this review is to put the Canal in a position that it will have long term financial sustainability. As such any option for the future management of the Canal requires long term guaranteed funding from all local authorities – the two owners and the riparian partners.
- 2.3 Following meetings with British Waterways, the National Trust and Surrey Wildlife Trust it is clear that none of these organisations are in a position to take over the management of the Canal.
- 2.4 Whilst not considered at the outset, following a positive meeting with Landmarc Support Services, an option to outsource the operation of the Canal to a private company should be pursued further as other parties may also show a similar level of interest that could result in a competitive process. The Canal Society have concerns over stakeholder influence with an outsourced contract, as such they will be included in any further discussions on the outsourcing option.
- 2.5 Whilst a Regional Park Authority has, via an Act of Parliament, the ability to precept local authorities and thus secure long term funding the actual process of successfully getting the key legislation passed is questionable. This approach would not have the support of the four riparian partners present at the JAG September 2006, nor the Canal Society. As such it is not suggested that this option is pursued further.
- 2.6 Four charitable trust options are currently being considered:
1. Freehold asset transfer to the trust, including insurance and structural maintenance
 2. Full repairing lease, with the Canal put into good order by the owners
 3. Operational management under contract, with the freehold assets, insurance and structural maintenance remaining with the owners
 4. Local Authority controlled trust
- 2.7 Eight core success criteria have been identified that are fundamental dependencies for any charitable trust model to have a sustainable future.
- 2.8 The indicative costs suggest, on purely financial grounds, that any of the trust options will have an additional net cost to the new organisation above that currently incurred. That said not all the costs have been confirmed – the final position when we have these costs will give a truer picture. Decisions relating to the desire to pursue the potential to establish a charitable trust will need to be based on more than just the financial case.



- 2.9 In summary, if a charitable trust were determined as the most appropriate way forward this could be done in a staged way moving to option 3 initially, then as structural works are completed moving to option 2 (whilst also resolving the insurance liability issue), but further work is required to determine if benefits are realisable above the initial financial case. Option 3 – management by contract, is supported by the Canal Society, with the caveat of financial sustainability.
- 2.10 A legal opinion and detailed Structural Engineering report have been produced recently relating to the option to partially close the canal to navigation between Deepcut and Brookwood flights of locks.
- 2.11 Whilst the SCC legal opinion suggests that “The Act of 1777 does not confer any public right of navigation for present purposes”, a counter opinion has been received by the Canal Society. If there was a move to try and close the canal to navigation between Deepcut and Brookwood this is likely to be subject to vociferous challenge by way of judicial review, particularly from the Canal Society as this is contra to the principles of the original restoration for navigation purposes. It is suggested that the County Councils would have a good defence to that challenge, so long as the principles of natural justice were followed.
- 2.12 The Structural Engineering report clearly shows that partial closure to navigation within the Surrey section will not permit revenue savings to be made if the water levels are maintained at the current levels. It is considered to be unlikely that the SSSI will be rescinded to enable the water levels to be reduced.
- 2.13 Significant liabilities would remain for this asset in the event that a partial closure was determined. The locks would need to be replaced by weirs within the lock chambers, with an estimated cost of £1.4m for the 28 locks within the Surrey section, with a payback period of at least 13 years from the resulting revenue maintenance savings.
- 2.14 There are subsequent operational and financial implications from putting in weirs in undertaking dredging and structural maintenance in requiring a right of access over other peoples land, instead of transporting equipment etc. along the canal. This may not be granted.
- 2.15 As a result of the financial implications of partially closing the canal to navigation it is recommended that this option is not pursued further at this time.
- 2.16 It is proposed that:
- 2.16.1 In the first instance officers develop alternative funding formula models and a formal funding agreement, using a service level agreement format, including required performance measures
- 2.16.2 In the interim period until an agreement has been reached all authorities should accept their ongoing financial obligations to the Canal on the current basis
- 2.16.3 That senior elected Members then agree the principles of a long term rolling three or five year funding commitment for the Canal, to be effective from the



financial year 2008/09, using the information prepared by officers, to ensure that the actual running costs enable the Canal to operate as a safe, navigable waterway and the towpath remain open for recreation, meeting minimum legal requirements

- 2.16.4 That SCC and HCC develop an updated joint partnership agreement for the operation and management of the Basingstoke Canal as the two owners.
- 2.16.5 That further discussions are held with SWT, Hampshire and Isle of Wight Wildlife Trust and the Canal Society developing the potential for partnership working
- 2.16.6 That the two owners to commission a Condition Survey for the Canal as this is imperative for any future model
- 2.16.7 That the Income Generation sub-group continues its work in developing the most viable additional sources of income for the Canal, particularly exploring the HLF in relation to the structural works
- 2.16.8 Whilst the formula allocation and funding agreement are being developed that officers continue to pursue those preferred options as advised by members of the JAG, and then the JMC, to determine if an alternative management model would actually be feasible and viable for the Canal. The options here are:
- Outsourcing to a private sector company
 - Charitable Trust

3. Project structure for undertaking detailed feasibility work

- 3.1 The JMC received an update in March, and the JAG in July 2006, setting out the project structure and work planned/in progress to meet the detailed feasibility requirements.
- 3.2 A Steering Group, including riparian and stakeholder representatives, has been established to provide the overall decision making, strategy, politics and approval of output. The make up of the **Steering Group** is as follows:

Mike Dawson, Rose Younger – Surrey County Council
John Tickle, Lynn Mead – Hampshire County Council
Ian Brown – Canal Director
Mike Beckwith – Guildford Borough Council as Riparian Authority representative
Peter Redway – Chairman, Surrey and Hampshire Canal Society
Vanessa Burley – English Nature (to become Natural England)
John Sutton – Environment Agency

- 3.3 The detailed work is being undertaken by three separate project teams – one project team for each of the options above. Project Team 1 is examining Option



1 (existing management), Project Team 2 Option 2 (management by a third party) and Project Team 3 Option 3 (reducing the navigation).

3.4 The make up of each Project Team is as follows:

Project Team 1 (led by Hampshire County Council)

Mike Dawson, Rose Younger – Surrey County Council
John Tickle, Lynn Mead – Hampshire County Council
Ian Brown – Canal Director
Sean Rendall – Woking Borough Council
Andy Ford – Rushmoor Borough Council

Advisors:

Andy Barber – Hampshire County Council, BCA Treasurer

Project Team 2 (led by Hampshire County Council)

John Tickle, Lynn Mead, Stuart Dorward – Hampshire County Council
Mike Dawson, Rose Younger – Surrey County Council
Philip Riley – Vice Chairman, Surrey and Hampshire Canal Society
Ian Brown – Canal Director

Advisors:

Andy Barber – Hampshire County Council, BCA Treasurer

Project Team 3 (led by Surrey County Council)

Mike Dawson, Rose Younger – Surrey County Council
John Tickle, Lynn Mead – Hampshire County Council
Peter Redway – Chairman, Surrey and Hampshire Canal Society
Ian Brown – Canal Director

Advisors:

Roger Squires, Tony Harrison – Inland Waterways Authority
Graham Cole – Surrey County Council, Structures Team
Ann Charlton – Surrey County Council, Head of Legal (linking with the Hampshire Legal Team)

3.5 It should be noted that as the work of each team progresses appropriate advice is sought, as the need is identified, to inform the detailed work from appropriate sources.

4. Progress to October 2006

Overall

- 4.1 Project teams three and one have met three times (24 May/5 June and 10/11 July and 4/5 September), whilst project team two has met five times to progress the evaluation of charitable trust/regional park authority status. The Steering Group has met once in July, when unfortunately none of the stakeholder representatives other than the Surrey and Hampshire Canal Society (Canal Society) were able to attend. A further meeting of the Steering Group is planned for early October, prior to the JMC.
- 4.2 An overall project plan was developed at the outset and updated following each project team meeting. This set out the work required, responsible officer and deadline dates.
- 4.3 Delays in producing some of the analysis has been experienced. This has been exacerbated by a large part of the work being undertaken during the core summer holiday period.

Project Team 1

Cutting the level of service – the minimum level of service

- 4.4 The focus of initial work was on identifying those activities undertaken by BCA that were Essential¹ and Desirable², along with which activities did not have to be undertaken by BCA, and which could be reduced with the resultant impact. Costs have been identified against each activity with support from the Treasurer. This analysis will enable the project team to make recommendations on the areas where BCA could cut the level of service, or provide elements differently at a lower cost. The complete analysis is shown at Appendix 1.
- 4.5 The indicative baseline cost of BCA operating the Canal with the Essential activities has been identified as £644,464. A large caveat needs to be applied by stating this is the baseline cost as the way of working with the BCA is reactive resulting from the significant backlog of structural work, which is the responsibility of the two owners. The baseline cost should ensure that the actual running costs enable the Canal to operate as a safe, navigable waterway and the towpath remain open for recreation, meeting minimum legal requirements. This includes the standby requirements providing 24/7 and 365 days per annum emergency cover with a first and second man.
- 4.6 The absence of an Asset Management Plan and a planned programme of structural works to address the backlog to date impacts on the BCA as some of their work inevitably requires them to address the structural repairs. This work

¹ Essential is defined as those activities required to keep the Canal open to navigation and the towpath open for recreation meeting minimum legal requirements

² Desirable is defined as those activities that add value but are not essential to the Canal



would normally be outside of their remit. Appendix 2 sets out those activities included in this baseline cost – which is taken from the Essential and Desirable analysis shown in Appendix 1.

- 4.7 It should be noted that this baseline does include the essential activity of major dredging, which is a core maintenance function that has not been undertaken recently due to the funding constraints. Apart from a stretch in Woking 2/3 years ago there has been no major dredging for at least seven years. This is required with some urgency now to remove silt build up, to maintain the channel depth for the Site of Special Scientific Interest (SSSI) and the navigation. Without adequate depth the silt and leaf litter gets churned up by the boats which impacts on the SSSI quality, for which the landowners are responsible.
- 4.8 The desirable activities, that add value to the local communities served by the Canal, such as education programmes, camping and facility hire would therefore not be provided by BCA. The potential for these services being provided in partnership with other organisations, such as the Surrey Wildlife Trust, are currently being explored.

Exploratory market testing

- 4.9 Work has been undertaken to market test with two external providers to determine what the costs might be if those activities that are essential but do not have to be provided by BCA are then outsourced. This would lead to BCA's role changing to one of largely client management, plus those activities requiring their professional expertise and judgement for the safe use of the Canal.
- 4.10 The two organisations are Surrey Wildlife Trust (SWT) and Landmarc Support Services (Landmarc). SWT are being approached because of their experience of managing the Countryside estate for SCC, including a SSSI, plus there is an existing working relationship with SCC. Landmarc are an Interserve Joint Venture with CSC Inc – Interserve is a leading provider of facilities management services to the Ministry of Defence (MOD). Along with the Landmarc contract they also provide lifecycle maintenance to over 6,000 buildings and assets across 106 sites as part of the South East Regional Prime contract covering London and six surrounding counties. Landmarc won the £600m contract in March 2003 to provide support services to the Army Training Estate for a ten year period. This comprises 130 camps, training areas and ranges in England, Scotland and Wales - covering approximately 1% (200,000 hectares) of mainland Britain. Approximately a third of these sites have SSSI status.
- 4.11 This analysis will then provide a comparative cost at the other extreme – as fully outsourced as possible, but retaining the existing management (the criteria for this project team).
- 4.12 From this analysis further work can then be undertaken regarding a potential recommended way forward regarding the future level of service provided.

Surrey Wildlife Trust (SWT)

- 4.13 SWT set up a wholly owned subsidiary in 2002 called SWT Countryside Services Limited. SCC transferred the management of the 6,500 acre freehold estate and 3,500 acres of access agreements under a 50 year lease (10,000 acres in total). These arrangements are delivered under a Service Delivery Specification and advised by a joint partnership committee, made up of SCC/SWT/private owners and including elected members from SCC. SCC continues to fund the Countryside Services budget but decreases this by £50,000 per year over 6 years. SWT has increased it's income generation and fundraising effort in support of the Estate. Any surplus income is covenanted to SWT who use it to deliver enhanced management of the Estate. It should be noted that the management of the Canal is significantly different to that of the Countryside Estate.
- 4.14 A meeting with SWT was held in August 2006, at which the Canal Society also attended. SWT stated that they would not be interested in taking over the running of the Canal. However, they are interested in working in partnership with the Canal Society, BCA and other representatives, and they stated that there is flexibility in the way they operate. As such there would be the possibility of working in partnership for the provision of services such as public relations, the education programme, human resources etc. There. This sort of approach would operate on a non-profit, full cost recovery basis.
- 4.15 SWT have been provided with the analysis of activities undertaken by BCA and will be meeting to consider what capacity they could have to take on what activities and at what cost.
- 4.16 Discussions also touched on other matters relating to charitable trust status given the current Chief Executive's direct knowledge of working trusts. His view is:
- That a new trust would need to have a board that represented and reflected all aspects of running a business, including finance, public relations etc.
 - The new trust would be best not operating as a membership trust for decision-making purposes
 - Caution should be exercised when considering the potential for generating further income from grant funding as no big grant "pot" exists and any grants attracted require a considerable administrative effort to secure and maintain, and are often of a short life.

Landmarc Support Services

- 4.17 Landmarc expressed considerable interest in potentially taking on the management of the whole of the Canal. They want to undertake some thorough research into the Canal and potential for income generation. They are used to looking at ways of generating income/efficiencies and have a team undertaking this type of work.

4.18 They stated that:

- Landmarc manages, maintains and operates the built estate, and all training facilities and ranges, including targetry support for British Forces worldwide under a ten year contract
- They are used to working and delivering to targets and being paid by performance
- A third of the MOD land they manage has SSSI status
- Any income generated is currently split 70% to the landowner; 30% to Landmarc
- They have made savings on running vehicles
- They have a full tendering department
- It was estimated that to come up with a full, realistic and robust costing that this process would take approximately a year to complete

4.19 Landmarc are progressing meetings to go over some suggested topics that they need to discuss further to ensure there is clarity around what is required to be able to progress this.

4.20 The Canal Society expressed concerns around how much real influence/say they would have with an outsourced contract. The Canal Society will be included in future discussions on the outsourcing option.

Blackwater Valley

4.21 It should also be noted that, at the request of Rushmoor Borough Council, a separate appraisal is being undertaken within Hampshire County Council of the Blackwater Valley and the potential to merge functions/operations with the Basingstoke Canal. Work to identify the Essential and Desirable activities, along the lines of that completed in Appendix 1 of this report, followed by a meeting with the Basingstoke Canal to discuss potential synergies/economies is currently being undertaken. This process includes two riparian partners, who are involved in both the Canal and the Blackwater Valley – Guildford and Rushmoor Borough Councils.

4.22 The Canal Society expressed concern at this proposal, and felt that any approach to merge functions with the Blackwater Valley would take the focus away from the Canal given the very different agendas and emphasis of the two organisations.

4.23 Outline work is not highlighting significant savings or synergies. Work is still ongoing and until broader consultation has been undertaken with the wider members and officers groups of the Blackwater Valley the final outcomes will not be determined.



Income Generation/External Funding

- 4.24 The Income Generation sub-group has been tasked with exploring the potential to develop and realise further income streams using the ideas for income generation that came from the Stakeholder workshop July 2005.
- 4.25 The analysis from the group showing where it is felt the most viable sources of income could be realised is shown at Appendix 3.
- 4.26 The Canal Director has also been pursuing the potential to realise funding from the Heritage Lottery Fund (HLF) and any European funding as these are the two streams where the most significant income could potentially be realised. It should be noted that HLF funding might be a source of income to support the capital works to the Canal.

Formalising the funding agreement

- 4.27 There are various structures around for a formalised agreement such as that used by the Kennet and Avon Canal (owned and managed by British Waterways) and a service level agreement (SLA). An SLA already exists between Guildford Borough Council and BCA, as this is a core requirement within the Borough for grants in excess of £5,000. This could be used as a starting point for detailed discussions amongst riparian partners and the two owners.
- 4.28 The discussions by the project team concluded that prior to formalising the agreement there needs to be round the table support to fund the Canal at the required level by all of the riparian partners, particularly given it is one of the highest corporate risks identified within both Surrey and Hampshire County Councils. It was felt that this could be best facilitated at a senior political level led by the two owners Surrey and Hampshire County Councils, meeting and reaching agreement with their counterparts within the riparian partners.
- 4.29 To facilitate this debate it is also felt that alternative formula funding models need to be constructed to form the basis of a new equitable funding model for the Canal.
- 4.30 The current approach distributes funding based on mileage of Canal running through each district only.
- 4.31 From 1987/88, when Hart and Rushmoor, the two Hampshire districts, started to contribute to the cost of the Canal, the formula at this time was based on 50% of the County and 50% of the districts in that County (the same approach as adopted in Surrey). The apportionment was based on:
- One-third rateable value
 - One-third population
 - One-third Canal Bank Mileage

- 4.32 Discussions around alternative components for a funding formula need to be held with riparian partners, these modelled and then used as the basis of detailed discussions to reach agreement.
- 4.33 Other potential components could be:
- Community benefit – potentially travel time to the Canal from main towns
 - Presence of existing recreational facilities on the Canal in each area
- 4.34 It is proposed that:
- Alternative funding models are developed for discussion with riparian partners, based on the minimum level of funding that enables the Canal to operate as a safe, navigable waterway and the towpath remain open for recreation, meeting minimum legal requirements
 - Potential framework for agreement, such as a service level agreement, is drafted from scratch with riparian partners to specify expectations and obligations between all parties
 - Until such a time that the alternative funding model and contractual framework have been agreed, that all authorities accept their ongoing obligations to the Canal on the current basis
 - Agreed funding for a three or five year time period to allow any other potential management model to be progressed in detail
 - To reach agreement this process will need time to set up and negotiate, at both an officer and member level
 - The agreed way forward will need to go through the political process within each authority
 - It is expected that this whole process will take a year, and be in place for 2008/09 financial year

Project Team 2

Third Party Management: British Waterways

- 4.35 The current vision of BW is that they wish to be self sufficient within the next five years. As a consequence they are very cautious about taking on any new responsibilities for managing canals off the main canal waterways network .
- 4.36 Their general view is therefore that there would be a conflict of interest if BW were to take on the running of the Canal as a third party with full responsibility for its sustainable future. Any previous approach of this nature would have

required a large endowment (circa £15m) to fund its future and put the Canal into a “fit for purpose” state of repair, coupled with contractually locking in all the current local authority funding partners.

- 4.37 A formal letter confirming this position has been received.

Third Party Management: National Trust

- 4.38 The Head of Countryside from Surrey County Council and Treasurer’s Consultant from Hampshire County Council met with the Regional Manager and the Manager of the River Wey Navigation in March 2006 to discuss the potential for the National Trust to take on, in some form, the management of the Basingstoke Canal.
- 4.39 It was stated very clearly that the National Trust would not want to acquire the Canal or manage it on behalf of the owners. They would require a substantial endowment to underwrite the presumed costs and it is not a direction that the National Trust wishes to take.
- 4.40 Aside from this position they were very interested in the Options Appraisal work as any outcome is likely to have an impact on the River Wey Navigation, particularly regarding back pumping. They wanted to be kept informed of progress and felt it could be useful to sound out any direction and gain feedback with them before taking it into a public arena.

Third party Management: The Waterways Trust

- 4.41 The Canal Director spoke with the Chairman of the Waterways Trust to determine if they could either take on the management of the Canal or work in partnership to deliver aspects of the work. Whilst they have a keen watching interest in the review they are not in a position to take on the management of the fully restored Basingstoke Canal as a whole, or elements of it. The Waterways Trust do not have access to large sums of money and are a largely volunteer based charitable trust that provide help and support to waterways during restoration and provide funding for related restoration projects.

Meeting with the Surrey and Hampshire Canal Society

- 4.42 Whilst the Canal Society have been a part of project teams 2 and 3 this meeting, in early July 2006, was to understand what they could do regarding the potential management options for the Canal, given their resources are volunteer based as members of the Canal Society.
- 4.43 Whilst keen to be a part of the review they feel their focus is on improving the Canal, not on maintenance, and as a pressure group that has a voice on how the Canal operates and develops. Maintenance has limited appeal to volunteers. If the Canal Society input was to be broader they felt that they would need to look at the skills available, given the age profile of the Society, and see if volunteers were willing/able to help.



- 4.44 Three areas were identified as potential areas where they could work with BCA further:
- Education and Visitor Centre activities (not commercial operations due to difficulties of sustaining day to day support)
 - Improving the water supply and facilities, and undertaking work/activities to assist this
 - Fundraising/income generation
- 4.45 The Essential and Desirable analysis of activities was forwarded to the Canal Society, once it was completed, so they could have a more detailed look at potential areas they could support. The re-convened Income Generation sub-group was having its first meeting later in July and it was felt that the Canal Society could provide valuable input to this area of work.
- 4.46 Following a further Canal Society meeting, where they were consulting their membership on this review, they were able to confirm the outcome they are seeking from the review:
- Through navigation from the River Wey to Greywell must be maintained
 - Stable long term funding must be secured to finance the anticipated deficits on the revenue and capital budgets
 - The Canal Society must have a significant voice in defining the long term strategy for the Canal, setting management objectives and measuring those objectives against performance
 - A fully accountable and entrepreneurial organisation, responsible for the management of the Canal, must be established
- 4.47 A useful outcome of this meeting came from the Canal Society's proposal to develop a south east regional waterways strategy between the Basingstoke Canal, River Wey Navigation and the Wey and Arun Canal. This would enable a more strategic position to be developed for the Canals in the region.
- 4.48 Whilst it was agreed that this did not form part of this review, it was felt that once an agreed way forward for the Basingstoke Canal has been determined that it would be useful to speak to SEEDA (South East England Development Agency), who have been involved in the strategy development for the Wey and Arun Canal, and the IWA (Inland Waterways Association) to determine their support for this proposal. This proposal would have a joint approach from both County Councils and the Canal Society, along with SEEDA and IWA depending on their stance.

Setting up an independent body – Regional Park Authority

- 4.49 This analysis has been based around the Lee Valley Regional Park Authority for which an Act of Parliament was passed in 1966. This would be a statutory, independent body set up under an Act of Parliament with precepting powers regulated under the Levying Bodies (General) regulations 1992.
- 4.50 The Canal could be transferred freehold or leased to the Park Authority, or the Park Authority could just be responsible for management and revenue costs. A decision would need to be made regarding the capital costs as to whether the County Councils would continue to fund capital costs and if not how these were to be met. Riparian local authorities could transfer adjoining land as open space or for other purposes.
- 4.51 The Governance arrangements: this could be run by a board similar to the Joint Management Committee, but with precepting powers – this could include representatives of all the local authorities and could have appointed and co-opted members. Stakeholders, such as the Canal Society, could be involved on the board but are likely to have little sense of “ownership”.
- 4.52 A Regional Park Authority is likely to be no more entrepreneurial than the Canal Authority, and, because of guaranteed revenue funding could be less likely to seek new funding sources.
- 4.53 The need and practical ability to get an Act passed is the key issue here. The history of getting this type of legislation through suggests this is not always successful. There could be reservations or opposition from riparian local authorities. This arrangement could also have less accountability than a charitable trust model.
- 4.54 The key advantage with this option is that it fulfils the key objective for the Basingstoke Canal in achieving guaranteed funding through precepting local authorities under the Act of Parliament. The key issue with this option is how easy/successful it would be in getting the Act of Parliament approved – this would be dependent on having support from the riparian local authorities.
- 4.55 Following consultation with riparian partners and stakeholders at the September 2006 JAG meeting it was felt that the process to set up the Regional Park Authority would, at best, be difficult and be a very drawn out process. Local experiences of precepts demonstrate that the community are not happy with paying this type of levy. The Canal Society felt that stakeholders would have little say in how this type of organisation was run, and that it would be seen as bureaucratic and remote and that stakeholders would not be able to participate.
- 4.56 As such the view of the four riparian partners present was that this option would not receive support from their authorities, and, along with the Canal Society, that this option should not be pursued further.



Setting up an independent body – Charitable Trust options

General issues

- 4.57 A lot of recent work has been undertaken within Hampshire County Council regarding the potential to transfer Milestones Museum into charitable trust status. As a result it has been possible to use this learning in respect of the Canal appraisal. This included researching a number of reference sites, although further work has been undertaken specifically looking at navigations in the form of seven Canal organisations, a Regional Park authority and two much larger trusts encompassing a range of sites and activities. A summary of the Canal Trust research is shown at Appendix 4.
- 4.58 The advantages and disadvantages of trust status can be summarised as follows. These are set out in more detail within Appendix 5.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Single focus • Responsive decision making • User led (including non users) • Community engagement • Ability to attract sponsorship and donations • More commercial approach • More entrepreneurial culture • Income generation opportunities • Opportunity to develop new partnerships • Expertise and contacts of trustees • Partnership relationship with and independence from local authorities 	<ul style="list-style-type: none"> • Risk of failure • Less security from local authorities • Potential conflict of interests for authority members on trust board • Unreasonable expectations • Reversibility is difficult • Rules relating to trading activities • High dependence on grant funding • Additional costs of a trust (see financial case)

- 4.59 Appendix 5 also sets out more general issues relating to the considerations required in establishing a trust. This covers the following areas:

- | | |
|--|---|
| <ul style="list-style-type: none"> • Legal form • Governance • Trustees • Management • Insurance • Culture | <ul style="list-style-type: none"> • VAT • Gift Aid • Trading subsidiary • Partnership working • Strategic proposition • Risk |
|--|---|

- 4.60 One of the benefits of charitable trust status is cited as the ability to have a much greater entrepreneurial capacity through raising external funding in the form of grants. To test this assumption the Hampshire County Council External Funding Team were asked to produce analysis of the potential grants that could be realised by a local authority and those that could be realised through a charitable organisation. This analysis is shown at Appendix 6.
- 4.61 This analysis needs to be explored further by the Income Generation Group, including the Canal Director and the Canal Society. Given income streams have been realised by the BCA to date, in partnership with the Canal Society, that would otherwise not have been available to a local authority it will be interesting to determine which of these other grant routes could still be accessible, and not be dependent on a charitable organisation being established.
- 4.62 The over-riding caveat here is caution. Refer to paragraph 4.15 and the advice from the Chief Executive of the SWT, given his experience of charitable trusts. This area of work needs further examination to determine to true extent for a charitable trust to realise extensive grant income, not currently seen by BCA, prior to any decision regarding this management option.
- 4.63 Fundamental dependencies that form the **core success criteria** for establishing a trust for the Basingstoke Canal are:
- Securing a long term funding arrangement with the authorities: this security is especially important for a single site trust which is not in position to share risk and costs within a portfolio of sites or rely on a secure income stream
 - A clear agreement by the owners relating to the current backlog of structural maintenance. This will need to set out a planned forward programme on how this will be tackled to bring the standard of the Canal up to an acceptable level
 - A single and responsive decision making body
 - A clear agreement for ongoing operational maintenance and management of the Canal, including the SSSI
 - Formation of a trust board which has the relevant skills including financial, legal, trusteeship, fund-raising, other commercial expertise and the connections to maximise funding, in particular recruiting the right Chair
 - Appointment of a Chief Executive, by a Shadow Board, who, with the Chairman, can lead the transformation required
 - Robust finance and managerial processes and systems, meeting necessary financial controls and compliance with statutory requirements that enable sustainable management and appropriate development of the Canal
 - Ability to maintain and enhance current risk management standards.

Evaluating the trust options

4.64 The trust options being considered for the Canal are:

1. Freehold asset transfer to the trust, including insurance and structural maintenance
2. Full repairing lease, with the Canal put into good order by the owners
3. Operational management under contract, with the freehold assets, insurance and structural maintenance remaining with the owners
4. Local Authority controlled trust

The indicative financial case for each trust option

4.65 The indicative financial case for each option has been compiled in the table below. These represent a 'like for like' financial position of the Canal under trust status in comparison with the current authority control. The future of the Canal under trust status would entail potential savings to be negotiated in the running costs, particularly transport, along with additional revenue generation and associated costs, depending on the strategic proposition developed by the new director and trustees.

4.66 The Consultant and the Business Development Manager for Recreation and Heritage within Hampshire that were involved in the detailed Milestones appraisal work attended the Project Team meeting in July, to consider the key issues regarding trust status for the Canal. Two key drivers for Milestones becoming a trust are not relevant to the Canal – business rate relief of 80% for the accommodation and gift aid realised from admission charges. The Canal Visitors Centre is owned and provided by Surrey County Council who bear all the costs for the site – these are not borne by BCA. As a result under trust status there would need to be an increase in baseline costs equivalent to 20% of the business rates. Gift aid would not be realisable in any significant level as admission charges are only levied on a small number of Canal users, such as the boaters.

4.67 It should be noted that any of the charitable trust options is dependent on a commitment to long term funding from the two owners and all of the riparian local authorities.

4.68 The indicative costs suggest, on purely financial grounds, that any of the trust options will have an additional net cost to the new organisation above that currently incurred. That said not all the costs have been confirmed – the final position when we have these costs will give a truer picture. Decisions relating to the desire to pursue the potential to establish a charitable trust will need to be based on more than just the financial case.

	Trust Options			
	Charitable Trust model 1: Freehold transfer to trust	Charitable Trust model 2: Freehold = owners; Canal put into good repair; Full repairing lease	Charitable Trust model 3: Freehold, structural repairs and insurance = owners; Trust manage under contract for owners	Local Authority Controlled Trust
	£	£	£	£
Savings:				
NNDR savings (Visitors Centre) (see note)	8,000	8,000	8,000	8,000
Gift Aid (see note)	2,800	2,800	2,800	2,800
Total savings	10,800	10,800	10,800	10,800
Additional costs:				
VAT (see note)	15,000	15,000	15,000	15,000
NNDR base 20% new cost	2,000	2,000	2,000	2,000
Insurance (see note)	15,000 +	15,000 +	15,000 +	15,000 +
Incremental costs of Director	20,000	20,000	20,000	20,000
Support services and statutory requirements (see note)	50,000 to 100,000	50,000 to 100,000	50,000 to 100,000	50,000 to 100,000
Total additional costs	102,000 to 152,000 +	102,000 to 152,000 +	102,000 to 150,000 +	102,000 to 150,000 +
Net cost to new organisation (see insurance note)	91,200 to 141,200 +	91,200 to 141,200 +	91,200 to 141,200 +	91,200 to 141,200 +
Cost to Borough Council relating to discretionary rates savings (see note)	0	0	0	0
Estimated set up costs:				
These would include: - third party legal costs - recruitment and training of trustees, director and finance manager - pension scheme related costs Need potentially full time person to implement for 6 months	50,000 to 100,000	50,000 to 100,000	50,000 to 100,000	50,000 to 100,000

Notes to the indicative financial case

NNDR	This is a pure estimate for the Visitors Centre only. No quotation has been received for this at this time, as it is apparent NNDR is not currently paid on the building. It is assumed that there will not be a discretionary rates saving relating to the remaining 20% as no discussions with Surrey Heath have taken place with respect to this aspect of the calculation
Gift Aid	Advice has been received that only donations to the BCA would attract gift aid – it is not applicable to boat or angling licenses
VAT	This assumes this is the proportion relating to non recoverable charitable activities
Insurance	This is an estimate, based on the Milestones quotation, but excluding the public liability relating to flood risk and damage to property. A formal quotation is awaited from Zurich. As a result of the fact that the key element of insurance being excluded at this time the “+” has been added to the financial case. Once the insurance quotation has been received this will demonstrate if it is a) insurable and if it is, whether it is b) affordable
Support Services	This relates to human resources, finance, legal, marketing, website maintenance, bank charges, audit and book keeping that are currently provided by, but not charged by, the two County Councils. IT charges are excluded as they are paid for by BCA

4.69 Further work is required on the charitable trusts options relating to the ability to reduce costs and realise further income streams as the first cast of the financial case suggests any of the models has a net cost, compared to the current picture. As the current picture is in deficit this issue is significant and, as set out, needs further exploratory work. Potential non-financial benefits have been identified as:

- Increased focus on users
- Increased focus on income generation
- Entrepreneurial culture to get things done
- Single and responsive decision making body

Option 1 Freehold transfer

Advantages	Disadvantages
<p>Considerable potential to raise external revenue funding including funding not available to local authorities</p> <p>If meeting capital costs potential for external funding</p> <p>High level of “ownership” by members if membership Trust could be highly entrepreneurial</p> <p>Structural and financial risks transferred from local authorities</p> <p>Probably high levels of voluntary activity</p>	<p>Considerable insurance costs</p> <p>Highly dependent on local authority funding</p> <p>High risk of failure largely irreversible</p> <p>High levels of risk to the Trust</p> <p>Voluntary input uncertain</p> <p>Could take a long time to set up</p>

4.70 This would enable the charitable trust more freedom to operate, and potentially encourage greater entrepreneurial capability as their success is dependent on generating additional income as they are responsible for everything to do with the Canal. Another key issue is whether or not this option would be dependent on the Canal being put into a state of good repair prior to handover. Without this the trust could experience significant difficulties, but could potentially realise grant funding to undertake specific works. This option is beneficial to the two owners as the Canal risk is transferred entirely to the new trust. If the insurance quotation comes back as uninsurable or unaffordable this option will not be viable, and will therefore be eliminated from further consideration.

Option 2 Full repairing lease

4.71 With this option the freehold of the Canal remains with the County Councils, who undertake to put the Canal into good repair and then transfer the Canal to the Trust on a full repairing lease.

Advantages	Disadvantages
<p>Revenue funding needed less than Model 1</p> <p>Considerable potential to raise external revenue funding including funding not available to local authorities</p> <p>Initial Capital costs not met by Trust</p> <p>Could be very entrepreneurial</p> <p>Not irreversible</p> <p>Structural and financial risks transferred from local authorities</p> <p>Much voluntary activity</p>	<p>Could have high insurance costs</p> <p>Capital costs would have to be met by County Councils</p> <p>Dependent on local authority funding but not as great as Model 1</p> <p>Voluntary input uncertain</p> <p>Some risks to the Trust, including risk of failure, but not as great as Model 1</p> <p>Could take a long time to set up</p>

4.72 A key dependency with this option is the two owners putting the Canal into a good state of repair. This could be undertaken in a phased way, with responsibility being passed to the trust as the work was completed. This would present less risk than option 1 as the Canal would be in a good structural state of repair. This would require a conditions survey and a commitment to a programme of capital works from both owners, significantly Surrey County Council as they are responsible for 28 out of the 29 locks.

4.73 Again this would enable the charitable trust freedom to operate and be more entrepreneurial. Insurance could be an issue with this option as well – where the liability for flood risk lies would be key.

Option 3 Management under contract

4.74 Freehold of the Canal remains with the County Councils who also continue to be responsible for ongoing structural repairs and insurance. The trust undertakes the management of the Canal under contract to the two County Councils.

Advantages	Disadvantages
Revenue funding needed less than models 1 and 2	Potential to raise external funding not as great as Models 1 and 2
Some potential to raise external revenue funding including funding not available to local authorities	High levels of cost and risk remain with the County Councils
Insurance costs not borne by Trust	Long term division between structural repair/maintenance and operational management
Could be entrepreneurial	
Not as dependent on local authority funding as models 1 and 2	
Risks of failure not as great as Models 1 and 2	
Some financial risks transferred from local authorities	
Much voluntary activity	
Not irreversible	
Less complicated to set up than Model 1 and 2	

4.75 Whilst this could mean the trust may not be encouraged to be as entrepreneurial, given they do not have responsibility for structural repairs and insurance, this could be the most favourable option as it transfers least risk to the trustees, but still allows freedoms in the way it operates in meeting the day to day management obligations. This option would provide the one with least risk of failure, as it transfers least risk from the two owners. This option is supported by the Canal Society, with the caveat of it being financially sustainable.

4.76 There were some concerns from the owners that there may not be as much volunteer effort available under this option. At the Joint Advisory Group meeting it was reported that the Kennet and Avon Canal Trust have not seen a fall off of volunteer effort even though restoration has been completed. This was felt to be because of the commitment and enthusiasm of the local people having something local that they can play a part in.



Option 4 Local Authority Controlled Trust

4.77 Local Authority control is greater than 20% of the places on the Trust's board. Freehold remains with the County Councils. The Trust undertakes the management of the Canal and could also be made responsible for structural repairs.

Advantages	Disadvantages
Some potential to raise external revenue funding	Potential to raise external revenue funding not as great as independent Trust
Not irreversible	Capital costs count towards Prudential borrowing calculation
Could have voluntary activity	Trustees have personal liability and therefore risk averse
Could be entrepreneurial	Not as responsive to users and interest groups as independent Trust
Easy to transfer staff	Unlikely to be as entrepreneurial as an independent Trust
Relatively easy to establish	Highly dependent on local authority funding
	Voluntary input less than independent Trust
	High levels of cost and risk remain with the County Councils
	Not very accountable

4.78 Whilst this may satisfy local authorities in terms of control of the new organisation, as they would have a stake on the board at >20% as compared to the other trust options, this may well stifle the ability to be truly entrepreneurial and attract new funding. Consideration needs to be given to the impact on the County Councils Prudential borrowing calculations from the cost of structural repairs – and whether the cost of the structural repairs would lie with the trust or remain with the two County Councils.

4.79 There could be a “Friends” group or an Advisory Committee to take forward the views of stakeholders. The Canal Society have concerns over this option as they believe that they would have no voice, and that it would be bureaucratic and remote.

- 4.80 It could be determined that this option does not present much change from the current position, whilst significantly increasing the risk to trust in transferring responsibility for the structural repairs.

Summary of trust options evaluation

- 4.81 Some key information is awaited that will dictate whether some of the options, particularly option 1 with freehold transfer, is viable. This is particularly the insurance quotation and the cost of the NNDR on the Visitors Centre (and if it applicable to any other property relating to the Basingstoke Canal).
- 4.82 With any of the charitable trust options it will be essential at the outset to set out an exit clause to clarify what would happen in the event of failure of the trust given the risk of breach and that it is one of the highest corporate risks currently with both owners.
- 4.83 One of the concerns of a charitable trust from a local authority perspective is the limit of not more than 20% representation on the Board. One way to avert this concern would be to develop a Service Level Agreement between each local authority and the charitable trust which clearly defines service standards within a performance management framework.
- 4.84 If a decision was made to pursue a charitable trust option further work would be required to determine the most appropriate governance arrangements. This would relate specifically to trustees and whether or not they would be appointed or operate as a membership trust. If it were to be a membership trust this would have a significant impact on the Canal Society as to whether they were integral to, or remained outside of the arrangements. Some outline information is contained within Appendix 5.
- 4.85 In summary, if a charitable trust were determined as the most appropriate way forward this could be done in a staged way moving to option 3 initially, then as structural works are completed moving to option 2 (whilst also resolving the insurance liability issue), but further work is required to determine if benefits are realisable above the initial financial case which suggests a net cost to the new organisation.

Project Team 3

- 4.86 The work of this group is centred around legal opinion on a range of issues relating to stopping through boat movements, along with the major structural implications of stopping using locks and considering alternative methods of moving water along the Canal.

Legal Opinion

- 4.87 The Surrey Legal Team were commissioned to provide a legal opinion as to:
- a. Whether the Canal can lawfully be closed to navigation.



- b. The implications of closing the Canal, including liability to the owners of boats moored on the Canal, the owners of property adjoining the canal, those holding licences for boats, angling and other activities, and providers of funding such as the Heritage Lottery

4.88 The conclusions of this report are:

Whether the Canal can lawfully be closed to navigation: public rights

- (i) The Act of 1777 does not confer any public right of navigation for present purposes.
- (ii) The public currently has rights of access to the Canal which are governed by various statutes including the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968 (if the Canal is a country park), and the Wildlife and Countryside Act 1981.
- (iii) Under this statutory framework, there is no absolute obligation on the Council to keep the Canal open to navigation.
- (iv) Any decision by the Council to close the Canal to navigation will be susceptible to challenge by way of judicial review.
- (v) Provided the Council acts in good faith and complies with the principles of natural justice, including proper consultation, it will have a good defence to any such challenge. This includes a defence based on the limited resources that are available to it.
- (vi) There is no public right of navigation in the Canal based on express grant or use since time immemorial.

Whether the Canal can lawfully be closed to navigation: private rights

- (i) In general, the Council's obligations to leaseholders and licencees will depend on the terms of the agreements or contracts made.
- (ii) Where an agreement does not provide for early determination by the Council, any attempt to do so will leave the Council liable to pay compensation.
- (iii) It is very unlikely that any claim for compensation from the owner of a property adjoining the Canal based on a fall in the value of his property would be successful.
- (iv) Funding received from charitable or other sources may have to be returned if it has not been spent in accordance with the terms on which it was given. The specific terms of each agreement will determine whether this is the case.

4.89 Following the production of this opinion it should be noted that BCA are asking BW to comment. The Canal Society, who had received a conflicting opinion in

1977, have had their documentation verified with a retired solicitor, who is a member of the Canal Society. This updated legal opinion rebuts the opinion obtained by SCC to the effect that the Act of 1777 does not confer any public right of navigation for present purposes.

- 4.90 As a result of these conflicting opinions it is clear that further advice would need to be sought in the event of any consideration to close the canal, particularly given some core documentation was not available to inform the SCC Legal Advice.
- 4.91 It should also be noted that if there were any attempt to close the canal that this would lead to vigorous opposition by the Canal Society, not least through the courts.

Structural Engineering Report

- 4.92 The structural feasibility of changing the operation of the canal is being led by the Surrey County Council Structural Engineering Team.
- 4.93 The Engineering Review Draft Final Report considers the engineering and economic aspects of closing parts of the Canal to navigation. The Report will also have relevance to the working groups considering Options 1 and 2. Irrespective of the outcome of these deliberations there will still be an asset to be managed. An Executive Summary has been produced, and is shown in Appendix 7. The Report recommends that this should be read in conjunction with the Final Report (doc.no. 3608/04). This is an extensive report, and once approved as a Final Report by the two owners will be made available to JAG members if required/requested.
- 4.94 The focus for closing the navigation was on the Deepcut and Brookwood flight of locks – 17 in total in an area of a steep slope down towards Woking. The soil structure is green sand and thus continuously shifting. Any solution would need to consider the core drainage function of the Canal, along with the significant geological issues to avoid a future breach, and the fact that a flow of water must be maintained to protect the SSSI regarding the ph level of the water – dredging is an issue here due to water depths in some areas.
- 4.95 It was agreed that the structural report would need to identify full cost, benefit and risk analysis (including advantages and disadvantages of each proposal) of potential solutions in reducing the navigation, as compared with the lifetime cost of continuing as present.
- 4.96 The key conclusions arrived at within the Engineering Review Executive Summary are:
- The Basingstoke Canal is a very substantial asset. It appears to have been under funded since restoration. The present maintenance allocation is

below recommended levels. There is a significant backlog of maintenance and the levels of risk are high.

- The engineering and economic outcome is heavily influenced by environmental considerations (SSSI, Conservation Area, hydrology and recreation). The eventual conclusion will need to take all of these considerations into account.
- A risk assessment exercise for the canal has been commenced. It has been shown that the earthwork embankments have a higher level of strategic risk than lock gates but the latter are more important at a tactical or operational level. The work done to date suggests that the closure of certain parts of the Canal to navigation does not significantly reduce the level of strategic corporate risk.
- Partial closure to navigation within the Surrey section will not permit revenue savings to be made if the water levels are maintained at the current levels.
- It is considered to be unlikely that the SSSI will be rescinded to enable the water levels to be reduced. Significant liabilities would remain for this asset in the event that a partial closure was determined. In the longer term it would be necessary to replace the lock gates with a weir within the lock chambers. This would avoid some of the revenue maintenance costs but would require a significant capital investment in order to carry out this type of construction at remote locations. Further consideration needs to be given to the hydrology of this option. However, it is unlikely that any form of solution would cost less than £50,000 per lock (this is considered to be a conservative estimate). Given the 28 locks within the Surrey section this would translate to approx. £1.4m.
- If weirs were introduced for all 29 locks, and applying the conservative cost of £50,000 per lock to convert it to a weir, it would take at least 13 years to recover the investment, when setting this off against the achievable revenue maintenance savings
- It should also be noted that if weirs were introduced, and therefore locks were not usable, this would have an impact on moving dredging and major structural works up the canal. This would not only introduce a financial consideration, but could also result in a restriction as there would need to be a right of access over other peoples land – and this may not necessarily be granted.
- The classification of the Mytchett section as a reservoir is likely to mean that a significant amount of work will be required by the Environment Agency. It has not been envisaged that this section would be closed to navigation.

- The Canal is an important part of the drainage network in the area. Partial closure to navigation would still require the weirs and sluices to be maintained in order to effectively manage this drainage network.
- Substantial progress has been made in recent years by the BCA to implement an effective inspection and record keeping regime. Further work is required, together with the implementation of an asset management plan, to permit a more effective maintenance plan.

4.97 The Project Team agreed to commission a separate but parallel study from Dr John Eaton (University of Liverpool) and Tony Harrison (IWA Hydrology expert) on water levels in the Canal to determine the baseline scenario and understand what the implications of making changes to this baseline would be. This work will be scoped out with the two owners, the Canal Director, the Environment Agency and English Nature (assuming availability within the given timeframe for required completion of this work), and is due to be completed by the end of the calendar year 2006. This will form part of the new Conservation Management Plan, which does not form part of this review.

5 Current operations

- 5.1 It should be noted that whilst the review is progressing the other operational issues are being pursued that impact on the long term financial sustainability of the Canal:
- Managing costs down where possible, such as transport costs
 - Pursuing income generation streams
 - Development and finalisation of the Management Plan for the SSSI

6 Staffing issues

- 6.1 It will be appreciated that the current situation faced by the canal is of concern and anxiety to all the staff who are working hard to keep the canal in effective operation.
- 6.2 Throughout this process staff have been updated on the work of the sub project teams by the Canal Director. There was an all staff briefing on the contents of this report in advance of the JMC which was held at the Canal Centre 4 October 2006.
- 6.3 Some of the options under consideration could entail changes in current employment arrangements. As and when a final option is selected by members and the full implications are understood a full staff consultation will take place in accordance with County Council policy in this area.



7 Conclusions

- 7.1 The key driver for this review is to put the Canal in a position that it will have long term financial sustainability. As such any option for the future management of the Canal requires long term guaranteed funding from all local authorities – the two owners and the riparian partners.
- 7.2 Delays in producing the detailed work, mainly arising from the fact the work was planned over the core summer holiday period, has meant that final conclusions have not yet been reached. Further work is required after the JMC relating to some of the options. A Project Plan setting out the forward work programme is set out in Appendix 8. This will assist in maintaining the momentum of the review.
- 7.3 It is likely that any recommendation will be around a phased approach to realising a final position.
- 7.4 Having determined the essential activities, and an indicative baseline cost, there will need to be extensive discussions to reach agreement on a revised approach to the formula funding arrangements and to developing a detailed service level agreement. This will need to define service standards set within a performance management framework. This will increase accountability and give the BCA more certainty to plan into the future regarding funding levels.
- 7.5 Following meetings with BW, the National Trust and SWT it is clear that none of these organisations are in a position to take over the management of the Canal.
- 7.6 Work is ongoing with the Blackwater Valley, but early indications are that there are no real efficiencies or synergies that could be realised from merging functions with the Basingstoke Canal. Final outcomes will be determined following consultation with the wider members and officers groups of the Blackwater Valley. It should be noted that the Canal Society do not support any form of merger with the Blackwater Valley as it would take the focus away from the Canal given the very different agendas and emphasis of the two organisations
- 7.7 Following the positive response by Landmarc regarding the potential outsourcing of the management of the Canal it would be worth pursuing this option further as it is likely that there could be other potential players in the market as well. The required process to follow would need to be mapped out, and this would require a full tender and would need to comply with the County Council's Contract Standing Orders. This could take up to two years to realise.
- 7.8 At the Joint Advisory Group meeting in September 2006 some concern was expressed at the concept of outsourcing the management of the Canal to a private company, particularly by the Canal Society (paragraph 4.20 refers). One stakeholder's direct experience suggested that:

- You get nothing unless you pay for it
 - The specification is paramount. If you miss anything it will be to the contractors advantage and the Basingstoke Canal's cost
 - It will take 2-3 years to draw up the contract in detail
- 7.9 As such the option of outsourcing will need to be thoroughly explored prior to reaching conclusions on any potential way forward.
- 7.10 The issue of whether to move forward as a charitable trust is a complex one. Much work has been undertaken to date, along with learning from the Milestone's recent work, and the process Surrey County Council went through when putting their countryside estate into trust status with SWT. It is clear that further specific and detailed work will be required if the members of both the JAG and the JMC feel that benefits are realisable over and above the financial case, which indicates a further net cost to the organisation. It is likely that this process could take at least a further two years to pursue.
- 7.11 The Canal Society are in favour of option 3 of the charitable trust options – management under contract, with the caveat of it being financially sustainable.
- 7.12 Whilst the Regional Park Authority meets the key objective of this review in guaranteeing funding for the Basingstoke Canal, feedback from the September 2006 JAG by riparian partners and the Canal Society demonstrates that this option would not be supported. Without local authority support it would not be possible to get the required Bill passed in Parliament to set up the Regional Park Authority and precept the local authorities. As such this option should not be pursued further (paragraphs 4.49-4.56 refer).
- 7.13 The Legal Opinion states that “The Act of 1777 does not confer any public right of navigation for present purposes”. It also states that whilst any decision to close the Canal would be subject to challenge by way of judicial review, that the two owners, providing they act in good faith and comply with the principles of natural justice, including proper consultation, will have a good defence to any such challenge.
- 7.14 The Canal Society have had their old legal opinion updated which contradicts the SCC opinion above. In other words the Act of 1777 does confer public rights of navigation for present purposes (paragraphs 4.87-91 refer). Any decision to pursue partial closure of the Canal would need careful consideration given the opposing opinions received on this matter to date.
- 7.15 In general, the County Councils' obligations to leaseholders and licencees will depend on the terms of the agreements or contracts made. If the agreement does not provide for early determination they are likely to be subject to paying compensation if they try and do so. Also, any grants and donations received in relation to the restoration and navigation may need to be repaid if it was not

spent under the terms by which it was given, but this is subject to the terms of each grant payment.

- 7.16 The levels of risk associated with the operation of the Canal could be reduced if the Canal were to be partially closed to navigation and the water levels were to be substantially reduced. This is unsurprising as the greatest level of risk is a breach of the canal inundating populated areas. However, this step would be in direct contravention of the SSSI requirements as well as being environmentally undesirable.
- 7.17 The work done to date suggests that the closure of certain parts of the Canal to navigation does not significantly reduce the level of strategic corporate risk to the two owners. Partial closure to navigation within the Surrey section will not permit revenue savings to be made if the water levels are maintained at the current levels. It is also considered to be unlikely that the SSSI will be rescinded to enable the water levels to be reduced (paragraph 4.96, Appendix 7 refers).
- 7.18 Significant liabilities would remain for this asset in the event that a partial closure was determined, but water levels retained to preserve the SSSI. The cost of conversion of the 29 locks to weirs is estimated at £1.45m, and it is estimated that it would take at least 13 years to recover this investment when setting the costs off against the achievable revenue maintenance savings.
- 7.19 It is proposed that given the cost implications set out in the Structural Engineering Report that closing the Canal to navigation is not pursued further. The Canal Society strongly oppose this option, and as such support the view that this option is not pursued further (Appendix 7 refers).
- 7.20 The implications contained within the Structural Engineering report mean that to pursue any option the Canal will need to be put into a good state of repair. As such as Condition Survey will need to be completed jointly by the two owners to enable an Asset Management Plan to be produced that sets out a reasonable and achievable forward programme of structural repairs.

8. Recommendations

- 8.1 It is recommended that the members of the JMC support the following key recommendations:
- 8.1.1 Until such a time that an alternative funding model and contractual framework have been agreed, that all authorities accept their ongoing obligations to the Canal on the current basis
- 8.1.2 Agree the principle that any option for the future management of the Canal requires long term guaranteed funding from all local authorities – the two owners and the riparian partners

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- 8.1.3 In the first instance officers develop alternative funding formula models and a formal funding agreement, using a service level agreement format, including required performance measures (paragraph 4.34 refers).
- 8.1.4 That senior elected Members then agree the principles of a long term rolling three or five year funding commitment for the Canal, to be effective from the financial year 2008/09, using the information prepared by officers, to ensure that the actual running costs enable the Canal to operate as a safe, navigable waterway and the towpath remain open for recreation, meeting minimum legal requirements
- 8.1.5 That SCC and HCC develop an updated joint partnership agreement for the operation and management of the Basingstoke Canal as the two owners.
- 8.1.6 That further discussions are held with SWT, Hampshire and Isle of Wight Wildlife Trust and the Canal Society developing the potential for partnership working
- 8.1.7 That further work is undertaken by the Canal Director in reviewing the potential to reduce current operational costs and realise further income streams. This is to ensure current costs are at the optimum level for practical and operational efficiency, and also in preparation for any potential move to charitable trust status in the future
- 8.1.8 That the Income Generation sub-group continues its work in developing the most viable additional sources of income, including exploring the HLF as a source of income to support the capital works to the Canal (Appendix 3 refers)
- 8.1.9 Whilst the formula allocation and funding agreement are being developed that following options are pursued further:
- Outsourcing to a private sector company
 - Charitable Trust
- 8.1.10 That the Regional Park Authority option is not pursued further given the lack of support for this option as a viable way forward for the future management of the Canal (paragraph 7.12 refers)
- 8.1.11 That given the cost implications set out in the Structural Engineering Report that closing the Canal to navigation (between Deepcut and Brookwood flights) is not pursued further at this time (paragraph 4.96 and Appendix 7 refer)
- 8.1.12 That the two owners to commission a Condition Survey for the Canal as this is imperative for any future model, which will lead to the production of an Asset Management Plan for the Canal (paragraph 7.20 refers)
- 8.1.13 That the Project Plan set out in Appendix 8 is taken forward

