

Enquiries to: Richard Riggs

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Nick Wild
Canal & River Trust
Fearn's Wharf
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Date: 16 January 2023
Our Ref: 2022/21665

Dear Mr Wild

Description: **Construction of permanent access track legally required under the Reservoirs Act 1975 for essential safety works, ongoing inspection and emergency access.**

Location: **March Haigh Reservoir, Blake Lea Lane, Marsden, Huddersfield**

Scoping Opinion made in accordance with Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

I write in connection with the above planning pre-application received by Kirklees Council on 09 November 2022 (reference 2022/21665), specifically in connection with the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 *[the EIA Regulations]*.

I am writing to advise that I have undertaken a Screening Opinion assessment in accordance with regulation 8(1) of the EIA Regulations ('Applications which appear to require screening opinion'). As a result, I consider that the proposed development is likely to have a significant effect on the environment and the Local Planning Authority has subsequently adopted a Screening Opinion in line with regulation 5(2) of the EIA Regulations, which has determined that the proposal is considered to be EIA development.

Therefore, please accept this letter as formal notification, in accordance with the requirements of regulation 11(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, that the planning application as proposed is considered by the Local Planning Authority to be EIA development which requires an Environmental Statement to be submitted with the planning application.

The detailed reasons for the Local Planning Authority's Screening Opinion decision can be found within the findings of the Screening Opinion assessment, dated 17.01.23, attached to this letter.

The planning application will continue to be considered EIA Development unless the Secretary of State determines otherwise by virtue of issuing a Screening Direction to that effect, in accordance with a request for a Screening Direction being made by the applicant to the Secretary of State under Regulations 6(10)(b), 7 and 11(9).

Further information required:

It is the Local Planning Authority's considered opinion that additional information is required, and that this should be provided within an Environmental Statement. Additional information is required because the development is considered likely to cause a significant effect in terms of its visual and landscape character impacts, peat soils resource impacts, ecological and biodiversity impacts (flora, fauna, and funga), and Public Rights of Way/accessible land impacts. The following information is required:

- Landscape Visual Impact Assessment (with updated viewpoints)
- Ecological Impact Assessment
- DEFRA Biodiversity Net Gain Metric 3.1
- Shadow Habitats Regulations Assessment
- Measures and opportunities for enhancement and improving connectivity with wider ecological networks
- Peat soils hydrology, removal/re-use, and imbedded carbon release information
- Assessment of potential impacts on nearby Public Rights of Way, National Trails, and other accessible/open land

Next steps:

Please note the EIA Regulations set out certain requirements which you must now follow in order to proceed with the planning application.

In accordance with regulation 11(4), the applicant must write to the Local Planning Authority within 3 weeks of the date of this letter, to confirm whether they intend to either provide an Environmental Statement for the application (and advertise the Environmental Statement appropriately in accordance with regulation 20), or, alternatively, whether they will be seeking a written Screening Direction from the Secretary of State.

If the applicant does not write to the Local Planning Authority to confirm their intended course of action within 3 weeks, the Local Planning Authority will be required to consider the application for planning permission to be refused at the end of those 3 weeks, in accordance with regulations 11(6) and 11(8) of the EIA Regulations. Please note, as part of these regulations, such a refusal will appear on the statutory register of applications, but the applicant will not be able to make an appeal against the refusal under Section 78 of the Town and Country Planning Act 1990 (as amended).

Please note, there do not appear to be any requirements to provide the necessary information and Environmental Statement within a particular minimum timescale, nor does there appear to be any requirement to make a request for a Screening Direction from the Secretary of State within a certain timescale, despite the requirement to notify the Local Planning Authority of the intention to take that course of action within 3 weeks of the date of this letter. However, in accordance with regulation 20(8), if the applicant confirms their intention to provide an Environmental Statement, the Local Planning Authority will suspend consideration of the planning application until the Environmental Statement and other necessary documents have been received.

Other considerations:

(i) Kirklees Council Validation Requirements:

Please be advised that the relevant validation information (available [here](#)) to support a planning application is required notwithstanding this determination that the proposal is considered EIA Development and an Environmental Statement should be prepared. Similarly, if the applicant does respond to confirm that a Screening Direction is being requested, or if they receive a Screening Direction response from the Secretary of State to the effect that an Environmental Statement is not required, this does not replace or supersede the requirement to provide the outstanding information to comply with the Council's Validation Checklist. Failure to provide the validation information will cause a delay to the determination of the application whether or not an Environmental Statement is required.

(ii) The Habitats Regulations:

Kirklees Council has a statutory duty from the EU Habitats Directive 92/43/EEC, to uphold the requirements of the Conservation of Habitats and Species Regulations 2017 [*the Habitats Regulations*] when carrying out its functions. Under Article 6(3) of the Habitats Directive, the Council must consider if the development is likely to have a significant effect on the conservation objectives of relevant 'Natura 2000 sites', through undertaking a Habitats Regulations Assessment (HRA). Under regulation 63 of the Habitats Regulations, a competent authority may not grant permission to a project which is likely to have an adverse effect unless appropriate mitigation measures are put in place and are demonstrated to be deliverable within the planning proposal.

It is reasonable to believe that this development, in this location, is likely to have an effect on designated sites through its impacts on the visual and landscape character of the integral designated habitats sites and ecological impacts on protected, priority, and sensitive habitats and species. At the moment, no HRA Stage 1 Screening has been undertaken to determine if an effect would be likely or if it would be "significant" under the terms of the Habitats Regulations. On this basis, the Local Planning Authority cannot determine whether a significant effect is likely on the South Pennine Moors Phase 2 Special Protection Area, South Pennine Moors Special Area of Conservation, and South Pennine Moors Site of Special Scientific Interest.

Regulation 27 of the EIA Regulations and the National Planning Practice Guidance (NPPG) both expect the EIA and HRA processes to be undertaken in a coordinated manner when relevant (e.g., to a similar timescale and using similar information).

As such, the Council is also formally requesting that further information should be provided in this regard. The type of information required would be an assessment of the direct and indirect impacts of the proposal on the abovementioned designated habitats sites, and the ecological impacts of the proposal on protected, priority, and sensitive species and habitats (including consideration of 10% biodiversity net gain); this is commonly referred to as a Shadow Habitats Regulations Assessment (SHRA).

Should you require any further information or wish to discuss the content of this letter please do not hesitate to contact me via the details below.

Yours sincerely



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Planning and Development Service
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Huddersfield

R Riggs

Richard Riggs
Senior Planning Officer