



Planning Statement with Design & Access Details

Planning application for the construction of a permanent vehicular access track legally required as a 'Measure in the Interest of Safety' under the Reservoirs Act 1975 for essential safety works, ongoing inspection and emergency access and the erection of fencing at March Haigh Reservoir, off Blake Lea Lane, Marsden, Huddersfield

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1.0 Introduction

- 1.1 This Planning, Design & Access Statement has been prepared to support a full planning application by the Canal & River Trust ('the Trust') for:

'The construction of a permanent vehicular access track legally required as a 'Measure in the Interest of Safety' under the Reservoirs Act 1975 for essential safety works, ongoing inspection and emergency access and the erection of fencing at March Haigh Reservoir, off Blake Lea Lane, Marsden, Huddersfield.'

- 1.2 Creation of the proposed vehicular access to the reservoirs is required as a 'Measure in the Interest of Safety' (MIOS), which is a legal requirement pursuant to the Reservoirs Act 1975.
- 1.3 This application is made following a pre-application enquiry to Kirklees Council as Local Planning Authority ('LPA'), (Ref: 2022/21648), which involved a formal written response.
- 1.4 The proposed development falls within Schedule 2 of the EIA Regulations. The need for and scope of the Environmental Statement (ES) was agreed with Kirklees Council via formal 'Screening' and 'Scoping' opinions (Ref: 2022/21665).
- 1.5 The proposed development is also located within an area of land that is Registered 'Common Land' and 'Open Access/Section 15 Land' under the Countryside and Rights of Way Act 2000. On that basis, the Trust will be making a separate application to the Planning Inspectorate for works on Common Land, under Section 38 of the Commons Act 2006.
- 1.6 This statement addresses relevant planning matters including the reasons why planning permission should be granted. The statement is structured under the following headings as described below:

Introduction. Sets out the purpose of the statement, some background context and the full list of plans and documents.

Application Documents. Outlines the purpose of each technical document accompanying the planning application.

Site Description. Sets out a detailed description of land and physical features within the planning application site.

Historic and Current Access Arrangements. Sets out the historic difficulties of accessing the reservoir and provides the current context and limitations of accessing the reservoir by foot.

Legal Context. Provides detailed information relating to the procedures and requirements of the Reservoirs Act 1975 and sets out the implications of statutory inspections and carrying out reservoir safety works, including legally required measures in the interest of safety.

The Proposed Development. Sets out a detailed description of the proposed works scheme that make up the scheme for which the Trust is seeking planning permission.

Reservoir Works and Relationship to Access Track. Provides some details relating to all of the safety works required at March Haigh Reservoir following the most recent statutory reservoir inspection, including all works required as a measure in the interest of safety and how the provision of a permanent access track ties in with that wider context.

Relevant Planning History. Sets out the details and some context of a planning permission previously granted in this location for construction of a vehicular access track and also details of a recent planning permission secured by the Trust for a permanent vehicular access track across land with similar European and other designations to a reservoir within a neighbouring local planning authority.

Planning Policy Context. Identifies the 'statutory development plan' for Kirklees, establishes land designations within the application site and neighbouring land, sets out a comprehensive list of local planning policies relevant to the proposed development, relevant supplementary planning documents and relevant parts of the National Planning Policy Framework (NPPF).

Engagement. Provides a detailed explanation of the Trust's approach to pre-application engagement with a wide range of stakeholder and local residents.

Planning Analysis. Provides an analysis of compliance with the relevant planning policy and other material considerations of relevance to a decision on the planning application.

Conclusions. Provides a concise summary of the main points raised and justification for the proposed development.

- 1.7 In addition to this planning, design and access statement, which includes the Mineral Resource Assessment, this planning application comprises the following documents, plans and drawings.

Documents

- Completed application form and signed certificates
- March Haigh Reservoir Permanent Access Track Justification
- Environmental Statement (ES) comprising the following and including the Landscape Visual Impact Assessment and Ecological Impact Assessment:
 - Volume 1: Main Text
 - Volume 2: Technical Appendices
 - Volume 3: Non-Technical Summary
- DEFRA Biodiversity Net Gain Assessment
- Report to inform a Habitat Regulations Assessment
- Archaeological Desk-based Assessment
- Heritage Impact Assessment

- Site Waste Management Plan
- Climate Change Statement
- Flood Risk Assessment
- Drainage & Surface Water Strategy
- Draft s106 Agreement
- Statement of Community Involvement
- Operation and Maintenance Manual
- Construction Environmental Management Plan
- Construction Traffic Management Plan

Plans & Drawings

- Location Plan
- General Arrangement Plan x 3
- Cross Sections Drawings x 6
- Typical Cross Sections Pavement
- Typical Cross Sections Watercourse Locations

2.0 Application Documents

2.1 The statement is accompanied by the following plans and documents.

March Haigh Reservoir Permanent Access Track Justification document – the report sets out the challenges of safely accessing the reservoir for maintenance and repairs, and in an emergency. It explains the consequences of a failure of the reservoir, which would include loss of life and extensive property damage. It details why the construction of a permanent access track is essential to enable the Trust to safely continue to operate the reservoir and explains that this essential safety measure is now a legal requirement.

The document also contains an explanation of other options that have been assessed and discounted as unsuitable / unfeasible and explains why the Trust has no alternative other than to construct a permanent access track. This report explains the design of the track, the programme of works, and highlights the environmental measures included in the scheme.

Environmental Statement – the Environmental Statement (ES) provides a formal Environmental Impact Assessment (EIA). The ES provides a detailed assessment of the effects of the proposed development on landscape, landscape character and visual receptors; ecology and biodiversity; peat soils and hydrology and access and recreation. The document comprises three volumes - Volume 1 Main Text, Volume 2 Technical Appendices, and Volume 3 Non-Technical Summary. The ES is supported by a number of technical reports which are included in Volume 2.

Biodiversity Net Gain Assessment – this document is provided to quantify the habitat losses and gains resulting from the proposed development, using the DEFRA Metric 3.1.

Report to inform a habitat regulations assessment - the purpose of this report is to set out the information needed to enable the LPA, as competent authority, to undertake a Habitat Regulations Assessment as required under the Conservation (Natural Habitats) Regulations 2017 (as amended).

Archaeological Desk Based Assessment - provides an assessment of the significance of any recorded heritage assets within an identified 'study area' around the proposed development, together with an assessment of any potential impacts and mitigation measures.

Heritage Impact Assessment – provides an assessment of the significance of and impact upon any identified heritage assets as a result of the proposed development.

Flood Risk Assessment – this document sets out flood risk from rivers, the sea, groundwater, sewers, reservoirs, canals, and other artificial sources to assess whether the development is safe from flooding and considers the effects of the development to assess whether it is likely to increase off site flood risk.

Drainage & Surface Water Strategy – this document details the approach to dealing with surface water and drainage across the three varying sections of the proposed access track, including three identified culverted crossings.

Construction Environmental Management Plan – this purpose of this document is to establish the responsibilities for ensuring the protection of environmental features on site for the duration of the construction works and identify when specialist input is required.

Statement of Community Involvement – this document has been produced to set out the approach and full details of stakeholder identification; stakeholder mapping; the communication plan; stakeholder responses; future engagement and to establish the stakeholder tacker.

Minerals Resource Assessment – is included as part of this statement and has been produced as an assessment of whether minerals resources will be impacted as part of the proposed development.

Construction Traffic Management Plan - details traffic management measures for the construction phase of the development.

Operation and Maintenance Manual – this document explains how the track will be operated and maintained during throughout the reservoir safety works stages and on a permanent basis thereafter.

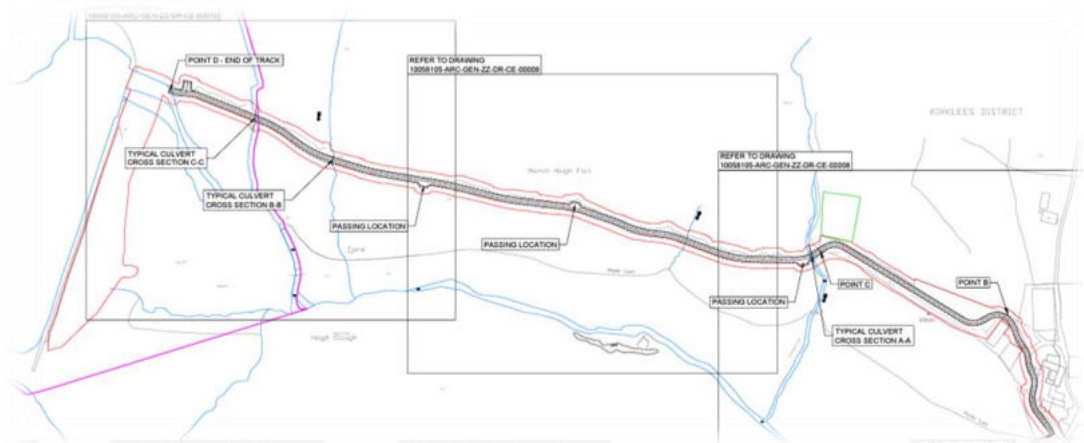
Site Waste Management Plan - sets out the approach to the management of construction waste through a commitment to the Building Research Establishment (BRE) SMART Waste Plan and principles outlined in the waste hierarchy.

Climate Change Statement – provides information on how the development addresses matters relating to climate change, which are detailed in Kirklees Council's Planning Applications Climate Change Guidance document, which was adopted in June 2021.

Draft s106 Agreement – draft s106 Agreement to provide for habitat compensation measures.

3.0 Site Description

- 3.1 The application site ('the site') is located on land in-between March Haigh Reservoir and Blake Lea Lane, which is approximately 3.5km northwest of Marsden in the Metropolitan District of Kirklees, West Yorkshire.
- 3.2 The site incorporates the linear route of a proposed access track from Blake Lea Lane through White Hall Farm towards the spillway of March Haigh Reservoir and includes land across the face of the reservoir embankment.
- 3.3 The image below illustrates the extent of the site edged in red.



- 3.4 The site follows the route of a previous vehicular access track, which was constructed in this location in 1999 and later re-instated as moorland habitat (more detail included in the *8.0 Relevant Planning History* section).
- 3.5 From Point A, the start of the proposed access track utilises the end of Blake Lea Lane, which approaches White Hall Farm from the southeast. The image below shows the appearance of the site at Point A looking towards White Hall Farm.



- 3.6 From Point A, the route of the proposed access track passes through White Hall Farm between two gated accesses to Point B. The image below shows the appearance of the site looking through White Hall Farm towards Point B.



- 3.7 From Point B, the proposed access track follows an established vehicle track associated with White Hall Farm to Point C. The image below illustrates the appearance of the site between Point B and Point C.



- 3.8 From Point C, the site enters open moorland, and the proposed access track route continues to follow the linear route of the former vehicular access track previously constructed in this location towards the reservoir spillway. The proposed access track finishes at Point D where there is a turning head for vehicles to manoeuvre.

- 3.9 The image below shows the appearance of the site between Point C and Point D of the proposed access track route.



- 3.10 From Point D, the site continues south across the crest of the reservoir and down the face of the embankment to incorporate a proposed extended fence line.
- 3.11 The image below shows the appearance of the reservoir embankment looking north across the crest towards the location of the site.



- 3.12 As described above, the site includes part of March Haigh Reservoir. This reservoir was constructed over 200 years ago to feed the canal network. The reservoir holds 240,000m³ of water and therefore falls under the ambit of the Reservoirs Act 1975. It is classified as a 'high risk' structure by the Environment Agency, and regarding the consequences of failure, the dam is assessed as a Category A reservoir.
- 3.13 The site is located within Registered Common Land and Open Access/Section 15 Land as defined by the Countryside and Rights of Way Act 2000. It is predominantly isolated moorland that is managed for nature conservation and used for agriculture, recreation, and water supply.
- 3.14 As referenced above, part of White Hall Farm is incorporated within the site between Point A and Point B. There are also some other agricultural/residential properties located further to the east on Blake Lea Lane.
- 3.15 There are two public rights of way (PRoW) identified nearby. PRoW COL/195/30 is located to the south of the site on lower ground and does not cross the proposed track route. PRoW COL/195/40 is located to the northeast and crosses the proposed track beyond Point C.
- 3.16 From Point C onwards, the site is located within the South Pennine Moors SSSI (Site of Special Scientific Interest) and the South Pennine Moors (Phase 2) SPA (Special Protection Area). These sites are designated for their nationally and internationally important habitats, including blanket bog, and their breeding bird assemblage.
- 3.17 The site and its surroundings are also within the Southern Pennines Landscape Character Area (LCA). This part of the LCA is adjacent to the Peak District National Park, which is located to the south.

4.0 Historic and Current Access Arrangements

- 4.1 The method of construction and original access for March Haigh Reservoir is not known and original construction documents are no longer available. It is presumed that all construction materials were carried by cart across the moorland and up the valley utilising a track which has since been lost.
- 4.2 More recently, important environmental designations have been imposed across on surrounding land including:
- South Pennine Moors SSSI (Site of Special Scientific Interest) in 1994
 - South Pennine Moors (Phase 2) SPA (Special Protection Area) in 1996
 - South Pennine Moors SAC (Special Area for Conservation) in 2005
- 4.3 Prior to these designations, the Trust could undertake maintenance works by transporting plant and materials to the reservoir via tractors and trailers as shown in the images below.



- 4.4 To facilitate maintenance work to the reservoir in 1999, planning permission was granted for a vehicular access track from White Hall Barn to the reservoir spillway (full details of the previous planning permission are included in Section 7.0 *Relevant Planning History*). This was constructed by excavating away the upper layer of peat that was supporting vegetation and laying down a depth of compacted stone.
- 4.5 The images below illustrate the appearance of the previous track in situ in 1999.



- 4.6 On completion of the works the excavated peat was placed back over the track with all the stone being left in place. The temporary track is still in situ today underneath the peat.
- 4.7 Currently, without a permanent access track, vehicles are not used across the open moorland due to the damage/disturbance they would cause to the moorland habitats and features, including breeding birds. Therefore, the only access is via the public footpath and informal tracks over exposed moorland, a distance of 0.8km, which is frequently impassable due to poor weather or bad visibility. Routine inspection visits and minor maintenance works are often impossible as all tools and materials must be carried on foot.
- 4.8 Under the reservoir surveillance regime for the reservoirs, it should be inspected two times per week, in order to check for developing defects and ensure the condition of the reservoir remains safe. These regular inspection visits are vital in identifying any immediate risks of failure and enabling rapid emergency access and reservoir draw down.
- 4.9 As well as these routine surveillance visits, the statutory regime under which the reservoir is protected requires that regular maintenance is undertaken. The grass is cut monthly during the spring and summer months, and vegetation clearance is required sometimes weekly in the growing season. These activities involve transporting the necessary machinery, and as above the weather and ground conditions can regularly preclude access, further putting the reservoir at risk. Additionally, there is an unacceptable risk to the health and safety of the inspectors and contractors, in continuing to work in these conditions.
- 4.10 The lack of vehicular access would also prevent timely delivery of heavy plant and equipment in an emergency in order to facilitate an emergency drawdown provided by the valves, and to carry out preventative emergency repairs. This is of particular concern, as the reservoir is at greatest risk of failure during poor weather.
- 4.11 The Trust is no longer able to operate the reservoir in this way and a permanent access track is therefore essential, as well as now being a legal requirement.

5.0 Legal Context

- 5.1 This section explains the legal requirement for the permanent access track, including the background to the relevant reservoir legalisation, procedures, and measures legally required to be “Undertaken” in the Interests of Safety’ for the reservoirs.

Background to the Reservoir Act

- 5.2 Prior to 1930, reservoirs were largely unregulated; however, there were several dam breaches leading to significant loss of life in the late 1800’s and early 1900’s. The most significant of these are outline below:
- 5.3 Dale Dyke Reservoir- failed in 1864, causing extensive flooding, killing 244 people and destroying 798 houses in Sheffield with flooding effects felt over 10 miles downstream.
- 5.4 Bilberry Dam collapsed in 1852, causing extensive flooding in Holmfirth and the deaths of 81 people.
- 5.5 The Defra and Environment Agency publication, ‘Lessons from historical dam incidents’ published in August 2011, provides a technical report on lessons learnt due to historical dam incidents. It notes that: *‘As a result of the failures of Bilberry and Dale Dyke and some serious problems encountered with other embankment dams, important lessons were learnt which led to developments in design and construction during the latter half of the nineteenth century.’*
- 5.6 In 1799, floods caused 3 reservoir dams close to Black Moss and Swellands to be washed out. One of these was Diggle reservoir – the dam overtopped and washed away. On the same night 2 more reservoirs failed, Tunnel End reservoir was also breached, and Swineshaw Common dam embankment burst in Stalybridge causing much damage to the valley below (source: Binnie, ‘Early dam builders in Britain’).
- 5.7 Eigiau and Coedty Reservoirs - in 1925, Eigiau reservoir dam failed, scouring a channel 20 metres wide and 3 metres deep, and inundating Coedty reservoir, causing a cascade failure of its dam. 16 people were killed, and a large part of the village of Dolgarrog was washed away.
- 5.8 Skelmorlie reservoir in Scotland failed in 1925 when a large section of the embankment failed due to overtopping and heavy rain, killing 5 people and causing extensive flooding and property damage.
- 5.9 The two failures in 1925 led to the passing of the Reservoirs (Safety Provisions) Act 1930, which established the first regulation and maintenance regime for reservoirs in England and Wales. Since the passing of the Act, and improvements in maintenance and inspection regimes, there have thankfully been no subsequent reservoir failures resulting in loss of life.

Regulation of March Haigh Reservoir

- 5.10 The Trust is the ‘Undertaker’ (owner or main operator) for 72 regulated reservoirs, which are all within England. Reservoirs are subject to stringent statutory control under the Reservoirs Act 1975, intended to assure the safety of the public below dams.

- 5.11 The Reservoirs Act 1975, is the principal legislation covering the safety, management and operation of 'large raised reservoirs'. These are defined as those that are designed to hold, or be capable of holding, more than 25,000m³ of water above the natural level of any part of the land adjoining the reservoir. This was further amended by the Flood and Water Management Act 2010 which reflects a more risk-based approach to reservoir regulation and reduces the storage capacity at which a reservoir will be regulated under the Act from 25,000m³ to 10,000m³. Under this Act only reservoirs designated as 'High Risk' require regulation (high risk does not refer to the condition of the reservoir or its associated dam).
- 5.12 March Haigh Reservoir is categorised as a 'high risk' reservoir and holds approximately 240,000m³ of water. Therefore, any works completed on the reservoir must be in accordance with the Acts.
- 5.13 The Reservoirs Act 1975 refers to the duties and responsibilities of Undertakers who have ultimate responsibility for reservoir safety. The Trust is the Undertaker of March Haigh Reservoir.

The Environment Agency is the enforcement authority for reservoirs in England. Reservoirs Act offences are primarily strict liability criminal offences. This means that for an offence to be committed, the mere fact that the non-compliance occurred is sufficient, rather than there being a need to prove wilful default and no reasonable excuse.

Panel Engineers

- 5.14 The Act requires that inspection and maintenance must be carried out by Panel Engineers. These are Qualified Civil Engineers appointed to a panel by the Secretary of State in consultation with the Institution of Civil Engineers. There are two types of engineers particularly relevant to this application.

Supervising Engineers

- 5.15 A supervising engineer must be employed to supervise the reservoir and keep the undertakers advised of its behaviour in any respect that might affect safety. The supervising engineer must supervise the reservoir in accordance with the Act. This includes giving notice to the Undertaker of things which might affect the safety of a reservoir, monitoring matters directed in any current inspection or safety report and monitoring the compliance of the Undertaker.
- 5.16 The Trust employs a team of Supervising Engineers recruited from the Panel to carry out this role. They are required by "Section 12" of the Act to submit a statement at least once per year setting out the actions that they have taken in relation to supervision of the Reservoir; they can also recommend that a "Section 10" inspection is called (see below) if there have particular concerns over the safety of any aspect of the reservoir.

Inspecting Engineers

- 5.17 An inspecting engineer is appointed to inspect a high-risk reservoir and identify and make recommendations to be taken in the interests of safety and maintenance. These reports are issued as “Section 10 reports”. The inspecting engineer is also employed to supervise and certify the completion of measures recommended in the interests of safety in an inspection report.
- 5.18 Inspections are required at least every 10 years, or earlier if recommended in a previous inspection report, or when requested by a supervising engineer, or within 2 years of a final construction certificate being issued for the reservoir.
- 5.19 As a legal requirement pursuant to the Reservoirs Act 1975 a Supervising Engineer will conduct an annual inspection of high-risk reservoirs and produce a statement with recommendations. Additionally, as a further legal requirement of the Reservoirs Act 1975, an independent Inspecting Engineer is appointed on a periodic 10-year basis (although this could be less if the Supervising Engineer recommends a shorter period but the maximum time between Inspecting Engineers surveys is 10 years) to undertake a full inspection of high-risk reservoirs such as March Haigh Reservoir.
- 5.20 The appointed Inspecting Engineer provides a Section 10(3) Report, which includes works to be carried out as ‘Measures in the Interest of Safety (‘MIOS’). MIOS are legally binding actions, which are enforceable under the Act.
- 5.21 If an Inspecting Engineer requires specific MIOS, the Trust, as the Undertaker is legally responsible for making sure these are carried out within the stated timescales. Failing to implement the MIOS within these timescales is a criminal offence.
- 5.22 The Inspecting Engineer can also make recommendations in relation to the maintenance of the reservoir, such as the frequency of specific maintenance measures; failure to comply with these requirements is also a criminal offence.

Risk Assessment for Reservoir Safety Management (RARS)

- 5.23 The Reservoirs Act 1975 sets out the statutory framework for inspection and maintenance of “High-Risk” reservoirs, placing legally binding requirements on the Undertaker. However, the management of reservoirs is wider than just this legal framework. The Environment Agency (‘the Agency’) has established a process for risk assessment for reservoir safety management, in order to manage the risks of an uncontrolled release of the contents of a reservoir, and consequential loss of life and damage. This RARS process was published by the Agency in 2013 and is followed by the Trust as best practice in the management of risk.
- 5.24 The RARS process adopts a three-tier approach; Tier 1 uses a qualitative assessment based upon the standard approach to risk assessment, with Tier 2 and 3 more specifically targeting quantitative evidence.

- 5.25 A Tier 2 level of analysis provides a base quantitative estimate of reservoir risk. This would be undertaken when risk issues have been identified at a Tier 1 level, or are already known, and the risk needs to be quantified to support appropriate management actions. It would identify the possible ways in which the reservoir may fail, the likelihood of failure, and the consequences of such a failure.
- 5.26 The Trust carries out RARS assessment for each of its reservoirs and works and maintenance are brought forward where necessary to mitigate identified risks.
- 5.27 Although the measures identified in these risk assessments to address the risks are not directly binding in themselves in the same way as the MIOS identified in a Section 10 report, the consequences of not complying with the findings may nevertheless result in an identified risk causing the failure of the reservoir. This would leave the Trust exposed to liability in civil law for any death or damage caused as a result. The Trust also has duties under the Health and Safety at Work (etc) Act 1974, and the Building Act 1984, to ensure that its assets do not cause unnecessary damage or injury; prosecutions under these Acts may be considered where an identified risk has not been adequately mitigated by the Trust as the Undertaker for a Reservoir.

Additional Requirements following Toddbrook Reservoir Emergency

- 5.28 The risks posed by Reservoirs were brought into sharp focus by the Toddbrook Reservoir incident in 2019, where the partial collapse of the concrete slabs forming the auxiliary spillway chute led to the evacuation of over 1,500 local Whaley Bridge residents. As a result, the Agency published an advice note which provides recommended actions for reservoir undertakers and engineers.
- 5.29 The recommendations include improvement to inspection, supervision, operation, and maintenance activities. Whilst not legally binding, it highlights the importance of regular inspection and maintenance regimes to the safety of reservoir assets. The Agency's advice note establishes good practice and must be followed by the Trust.
- 5.30 A permanent access track is essential for routine maintenance.
- 5.31 The Secretary of State for the Environment, Food and Rural Affairs commissioned an [independent review report](#) of reservoir safety legislation, led by Professor David Balmforth. This review report, published in May 2021, provides a comprehensive assessment of the current safety regime in England. It makes recommendations for improving the safety regime and to strengthen the roles and responsibilities for the regulator, reservoir owners and engineers.
- 5.32 It is expected that Defra will take forward detailed work with the Environment Agency and the industry, exploring the review recommendations to ensure we have a reservoir safety regime that is fit for the future. These reviews are likely to result in more emphasis on reservoir safety and inspections, and pre-emptive maintenance and monitoring.

The Flood Plan (Reservoirs Emergency Direction) 2021

- 5.34 Prior to June 2021, an undertaker could be instructed to prepare a flood plan for any reservoir (this is an emergency plan to make the reservoir safe during an incident). However, partly in response to the Toddbrook incident, a Ministerial Direction was issued which now requires all large, raised reservoirs to have an on-site emergency flood plan. The plan must outline which areas could flood in the event of an uncontrolled release of water from the reservoir, and the measures to prevent, control and mitigate such an incident to protect the downstream population.
- 5.35 The Flood Plan for March Haigh Reservoir requires that, within one hour of the concern being identified, the drawdown valves be opened to lower the reservoir level. Should the drawdown valves fail to operate, or should a more rapid drawdown be required, then the plan states pumps are to be mobilised to site. Currently this would have to be attempted by tractor and trailer across the moor, which is not a reliable method. Following this, emergency teams would need to set up on site to mitigate the damage to the reservoir and act on any advice from the Reservoir Engineer.

Relevant Case Law and Precedent

- 5.36 The Planning Court considered the scope and implications of the provisions of the Reservoirs Act 1975 in *(The Heath and Hampstead Society) v. City of London* [2014] EWHC 3868. Mrs Justice Lang explained that under Section 10, Parliament had expressly given responsibility to independent civil engineers to decide what safety measures were required for any particular dam, exercising their professional judgment and expertise (paragraph 66).
- 5.37 In addition, the judge concluded:
- “Neither the RA 1975, nor the ICE guidance, provides for the inspecting engineer to balance considerations of safety against competing factors such as preservation of the landscape, protection of the environment, or heritage assets. In my view, it would have been evident to Government and Parliament when the 1975 Act was passed that reservoirs and dams are situated in a wide variety of locations, including areas of outstanding beauty, and in the case of ornamental lakes, in historic settings close to heritage assets. This knowledge would also be available to the authors of the ICE guidance. So, it is significant that the only legislative consideration is public safety.”*
- “It can be seen that neither the Minister nor Parliament has seen fit to exempt lakes and dams in environmentally sensitive locations.”*
- 5.38 As noted from this case, Parliament would have been aware that many reservoirs and dams are located in environmentally sensitive locations, and it is significant that, although environmental designations are considered by the inspecting engineers, the overriding legislative consideration is public safety.
- 5.39 This case was also referred to in a successful appeal by Yorkshire Water against a decision by Kirklees MBC referenced APP/Z4718/A/2222372 – against officer recommendation - to refuse planning permission and listed building consent for works

to part of the listed slipway at Butterley Reservoir. The works proposed were required by a Section 10 report. The Inspector made clear her role was to consider the scheme proposed on its own particular merits and not whether some other option should be approved as an alternative. The relevance of alternatives was limited to any issue as to whether the scheme (and resulting harm to the listed structure) was necessary in the context of what was then paragraph 133 of the NPPF.

- 5.40 The Inspector considered the law and guidance at paragraphs 38 to 41, and also highlighted the particular risks in this location at paragraph 42. It is notable that the Inspector strongly rejected suggestions that discontinuance of the reservoir should be considered as a reasonable alternative. At paragraph 43 the Inspector held that discontinuance “would remove the flood alleviation properties of the reservoir and would have a major impact on the strategic water supply for the Huddersfield area such that alternative provision would need to be made”. The appeal was allowed.

Legal Requirement for a Permanent Access Track

- 5.41 This application is for an essential permanent access track to March Haigh Reservoir for maintenance, inspection, repairs and emergency access. A permanent access track is essential in order to safely manage these High-Risk reservoirs, and under the most recent Section 10 report for March Haigh the provision of such a permanent access track is now a legal requirement.

Section 10 report March Haigh Reservoir

- 5.42 An Inspecting Engineer visited March Haigh Reservoir on the 27th of October 2020. His report, was issued under Section 10 of the Act, on the 25th of February 2021. The report made various observations in relation to access. In paragraph 10.6, it is stated:

‘Neither the RA 1975, nor the ICE guidance, provides for the inspecting engineer to balance considerations of safety against competing factors such as preservation of the landscape, protection of the environment, or heritage assets. In my view, it would have been evident to Government and Parliament when the 1975 Act was passed that reservoirs and dams are situated in a wide variety of locations, including areas of outstanding beauty, and in the case of ornamental lakes, in historic settings close to heritage assets. This knowledge would also be available to the authors of the ICE guidance. So it is significant that the only legislative consideration is public safety. There is vehicular access to within 1 km of the dam at Green Owlers Clough on Waters Road. From there, access is by foot along the footpath running next to Haigh Clough, Photograph 10-1. Alternatively access by foot can be gained over rough steep ground from the A640 which runs within 600 m of, but 100 m above the dam. A vehicular access track to the dam was constructed for the 1999 remedial works but had to be covered over on completion for environmental reasons to meet SSSI requirements. This hinders access for surveillance, maintenance or emergency purposes to a degree that I consider clearly unacceptable in the circumstances at this reservoir, and I recommend under 12.2 Measures to be taken in the interests of safety under Section 10 (6) (a) to Provide a permanent access track to assure vehicular access to the dam at all times to facilitate surveillance, maintenance and emergency activities.’

- 5.43 Furthermore, the requirement for an access track is highlighted in paragraph 10.10 of the report in which it is stated that:

The reservoir has been assessed as Category A, with a resultant drawdown requirement of 5% height per day assessed over the top 30% of impounded height (subject to a minimum of 0.3 m/day and a cap of 1.0 m/day, neither of which applies at this dam with impounded depth 19.6 m). The specified inflow rate is the median (Q50) rate, but I consider that the ANSF adopted by the BW standard appears more appropriate. On this basis the required lowering would be 0.98 m per day. The outlet pipe alone would lower the water level over the top 30% of depth at a rate of about 0.72 m per day which does not meet the standard. Provision of imported pumps would increase the lowering rate to satisfy the standard, but this is prevented by the lack of a vehicle access track that is subject to a safety recommendation in this report.'

- 5.44 It should be understood that the requirement for an access track has been made a MIOS, showing that the access track is essential to facilitate access for the safe operation of these reservoirs.

- 5.45 As a result of the inspection, a total of eight of MIOS were imposed (Section 12.2 Section 10 report dated 25 February 2021) relating the reservoir safety. The requirement for a permanent vehicular access was included as MIOS number 6 as set out below.

'6. (a) Provide a permanent access track to assure vehicular access to the dam at all times to facilitate surveillance, maintenance and emergency activities. - To be completed within 3 years from the date of this report (To be completed by February 2024), subject to

(b) temporary arrangements to facilitate safety measures being reinstated without undue delay and no later than 9 months from the date of this report ((To be completed by November 2021).'

- 5.46 The Section 10 report also sets out "Matters of Maintenance", which are legally binding requirements under Section 10 (3)(b). These are ongoing requirements with no specific deadline, however failure to comply is a criminal offence.

- 5.47 The Section 10 report recommends further works to be undertaken that do not require the supervision of a qualified civil engineer.

- 5.48 Whilst not legally binding, these further requirements are important to continue to ensure the safety of the reservoir. Failure to comply with these requirements may result in the Supervising Engineer recommending that a further Section 10 inspection is needed due to concerns over safety and would likely to result in any new report requiring these works as MIOS and therefore legally required.

- 5.49 More details on the measures imposed as MIOS, 'matters of maintenance' and other recommendations pursuant the s10 Inspection are included in 'Section 7 Reservoir Works and Relationship to Access Track' to demonstrate how they tie in with the requirement for a permanent vehicular access.

6.0 The Proposed Development

6.1 As set out in *Section 5.0 Legal Context*, the Trust is legally required to construct a permanent vehicular access track from Blake Lea Lane to the dam of March Haigh Reservoir.

Purpose

6.2 The proposed vehicular access track will facilitate ongoing inspection and maintenance, as well as provide for emergency response. The track will be used by an inspection vehicle (4x4 or medium sized van) three times per week, with weekly maintenance visits using vehicles such as welfare vans and tippers. The track will also facilitate infrequent major construction works.

Design Principles

6.3 The design concept has been selected following a robust optioneering assessment that considered how to provide satisfactory essential access requirements whilst minimising the environmental impacts.

6.4 The design will be developed according to three principles:

- Reduce long term operational safety risk and reduce the risk to public safety;
- Deliver an environmentally sensitive project which minimises impact on protected species and designated areas; and
- Provide fit-for-purpose infrastructure, essential for long term access for surveillance, maintenance, and emergency access to the high-risk reservoir, ensuring safety of the public and Trust staff.

6.5 The track design will allow for maintenance and emergency works as and when required and would enable vehicles such as dumpers and cranes to transport equipment and materials. It should be noted that were a problem to develop with the dam, such works may require pumping equipment, pipes, and large volumes of material to be transported. It is essential that the access track is fit for purpose for such emergency events.

Track Design

6.6 The track geometry has been designed to follow the alignment of the previously constructed temporary track, and the natural ground profile as a best fit, without introducing what could appear to be an undulating track following the ground profile exactly. The design philosophy is as per the project brief and wherever possible, aims to utilise the existing track as a capping layer.

- 6.7 The temporary track will be fully uncovered in the first instance to review its condition. The permanent track construction will incorporate the same alignment as the existing track minimising impact to undisturbed land and taking advantage of any residual strength in the existing track. The proposed geometry has sought to utilise the existing track as a capping layer. The proposed track has therefore been designed to, wherever possible, sit on top of the existing track. There are however limitations on this, the existing track is 3m wide and the proposed track needs to be 4m wide therefore it is not possible for the proposed track to continually sit on the existing.
- 6.8 The proposal for the permanent access track is required to be 4m in width so that it can transport the types of vehicles required for the Trust to ensure the safe operation of March Haigh Reservoir. The 4m metre wide track will enable vehicles to utilise the track without detriment to the edges. It allows natural edges to be formed with no kerb line or retained edge and facilitates the softening of the edges over time. The permanent track will be designed for regular use by 7.5T vehicles. During maintenance works, construction and for emergencies, larger vehicles, up to 28T, will use the track, with any damage caused by additional wheel load being repaired immediately afterwards.
- 6.9 The main exception to using the entire route of former temporary track as a capping layer, is across Section 1 where the top of the track has been designed to sit level with the existing ground profile to minimise any impact. It is expected that construction will require the removal of the existing track in this area and replacement at grade with the existing ground level.
- 6.10 The depth of the stone track will vary across the track length dependent on the condition of the existing stone track in situ beneath the surface of the ground, the strength of the sub-strata and the horizontal alignment.
- 6.11 Stone usage will be reduced as far as is practicable through the use of geogrid and geotextile layers. This will improve durability and reduce the volume of material required.
- 6.12 Stone for the permanent track will be selected for its chemical makeup as well as strength characteristics for it to be suitable within the environment in which it is going to be used. It will be designed to maintain hydrological continuity across the peat.
- 6.13 Two layers of Geo-grids are to be included in the track design, which will protect against the anticipated load bearing of all required vehicles. Geo-grids are included to provide reinforcement, separation, and filtration protection.
- 6.14 It may not always be possible to position material directly under the geogrid, so some flexibility in terms of the final position is permitted to ensure the capping layer is suitable.

Earthworks

- 6.15 Minor earthworks improvements have been shown throughout the northern edge of the track to re-profile the batter of the proposed pavement to be at grade with the existing ground level to promote a natural drainage slope for surface water runoff and reduce future degradation of the track. The earthworks will also support the side

slopes of the northern face of the track. The earthworks will also support the sides avoiding stone migration and ensure the track and avoid stone migration and ensure the track has less overall visual impact by reducing the visible width.

- 6.16 This approach will increase the overall footprint of the track whilst reducing the depth of material required to bring the edge of the track level with the existing ground.
- 6.17 The earthworks could be omitted from the design and surface water allowed to flow under the track base layer. However, this would result in a greater visual impact on the track and promote stone migration.
- 6.18 For illustrative purposes, the image below is included to show the appearance of a stone track located in a similarly protected landscape (SSSI, SPA & SAC) within the Peak District National Park, which has recently been installed by the Trust for access to a high-risk reservoir. Further information relating to details of the planning history is available in *Section 8 Relevant Planning History*.



Passing Places

- 6.19 Due to the number of construction vehicles using the track during planned maintenance or in an emergency, three passing places will be located at strategic positions between Point C and Point D, which provide optimal sight distance between them.

Unauthorised Access

- 6.20 The access track is situated on open access land and crosses the route of a defined PRoW. For the avoidance of doubt, the Trust will install sympathetically designed but clear waymarking to encourage and inform walkers not to deviate from the PRoW as it crosses the route of vehicular access track.

- 6.21 Furthermore, the access track includes two sets of locked gates at White Hall farm to prevent access for unauthorised vehicles and create an obvious physical barrier and demarcation for pedestrians and cyclists.
- 6.22 During inspections, maintenance activities, and in emergencies, all personnel will be briefed to ensure the gates remain locked and thorough checks will be completed prior to leaving the site.

Environmental Mitigation

- 6.23 The Trust recognises and has taken careful account of the sensitivity of the environment in which these works need to be undertaken. The planning application is accompanied by an Environmental Impact Assessment which sets out mitigation measures in detail. This is an iterative process and a range of surveys have already been undertaken to provide baseline data through which a number of mitigation measures have already been identified. These include:
- Minimised stone depth through incorporation of a geogrid and increased maintenance requirements to mitigate visual and ecological impacts;
 - Locally appropriate and ecologically considerate construction materials;
 - Maintenance of hydrological continuity across the track;
 - Retention of all material on site, including re-use of peat for habitat creation/sensitive landscaping where possible; and
 - Precautionary Working Methods to avoid impacts on protected species, such as common lizard, nesting birds.
- 6.24 In addition, documents such as a Construction Environment Management Plan, including Precautionary Working Method Statements for sensitive ecological and environmental features, and a Construction Traffic Management Plan are provided as separately with the planning application to demonstrate that suitable mitigation is embedded in the construction phase of the works.

Snow Poles

- 6.25 Snow Pole hazard delineators are to be included at appropriate locations along the track. The snow poles would comprise timber posts driven into the ground and painted green ('invisible green' RAL6015) with a reflective stud at the top.

Drainage

- 6.26 A Drainage & Surface Water Strategy document is submitted separately to this statement, which sets out in full detail the approach to managing surface water.
- 6.27 The Drainage & Surface Water Strategy document establishes that there is a slightly different approach to managing surfacing water across the identified track sections 1, 2 & 3 but essentially the philosophy is to provide an unbound track that allows water to flow through, ensuring that the peat receives the necessary flow of water despite the track construction and the natural water flow is maintained.

Watercourses

- 6.28 There are three existing watercourses crossing the site, two of which are currently culverted with existing structures. At this stage, it is expected that the existing culverts will need to be replaced with like-for-like diameter new concrete culverts and headwalls.
- 6.29 However, it is possible that upon further detailed inspection during the early stages of construction it could be established that the existing culverts in situ are in fact satisfactory and do not need replacing. A new pipe crossing will still need to be installed at the third, currently 'un-culverted', location.
- 6.30 Indicative details relating to a potential design solution for new replacement culverts are submitted with the application. However, full, and final designs will not be prepared until it is confirmed they are both required. Therefore, it is expected that a 'pre-installation' condition could be included to secure the submission of further culvert design and appearance details for approval, if necessary.

Maintenance

- 6.31 The track will require routine maintenance throughout its lifecycle due to being an unbound track in an aggressive environment. However, the track has been designed to minimise this as much as possible. It is typically expected that maintenance will be required primarily to the top layer of the track in Section 3. For Sections 1 and 2, the inclusion of a positive drainage system is anticipated to reduce the impacts of water ingress and therefore reduce the resultant maintenance.

Vehicle Movement

- 6.32 The proposed track will be accessed off Blake Lea, which is an adopted public highway connecting to the centre of Marsden to the west via Waters Road, Reddisher Road and Station Road.
- 6.33 Construction of the access track will increase the frequency of vehicle movement along the local public highway network. To address construction traffic, a Construction Traffic Management Plan document is submitted separately with the planning application, which outlines safe site access and parking arrangements for construction traffic throughout the construction phase of the scheme.
- 6.34 Vehicular activity on the track following initial construction will be low. The table below sets out the variety of activities, their frequency and type of vehicle required.

Activity	Frequency	Vehicle	People	Duration
Reservoir surveillance (RSI)	3 times a week	Welfare van (3 tonne)	2 people	4 hours
Routine maintenance (minor repairs)	Biannually	Tipper vehicle (7.5 tonne)	2 to 4 people	1 – 5 days
Operation – valve adjustment to set discharge rate	Weekly	Welfare vehicle	2 people	1 hour

Grass cutting	4 times per year	Welfare vehicle and trailer (7.5 tonne)	2 to 4 people	1 day
Vegetation clearance from structures, trash screens and removal	4 times per year	Welfare van (3 tonne), Tipper (7.5 tonne)	2 to 4 people	1 day
Planned preventative maintenance (PPM) within confined spaces access to draw-off tunnel - mechanical cleaning oiling and replacing.	Annually	Welfare van (3 tonne), Tipper vehicle (7.5 tonne)	2 to 4 people	1 day
Supervising engineer inspections	Biannually	3 x private vehicles (2 tonnes), welfare vehicle (3 tonne)	4 to 8 people	2 days
S10 inspection (legal requirement)	At least every 10 years	Private vehicle	1 to 2 people	As required
Duty Officer access (Access out of hours, all weather, any time, to operate valves)	Emergency	28 tonne cranes/wagons. 20 tonne dumpers	In excess of 10 people	Expect 1 - 6 months
Major emergency	Defect requiring emergency drawdown	28 tonne wagon to transport pumps and pipes. 20 tonnes dumpers	In excess of 10 people	Expect 1 - 6 months

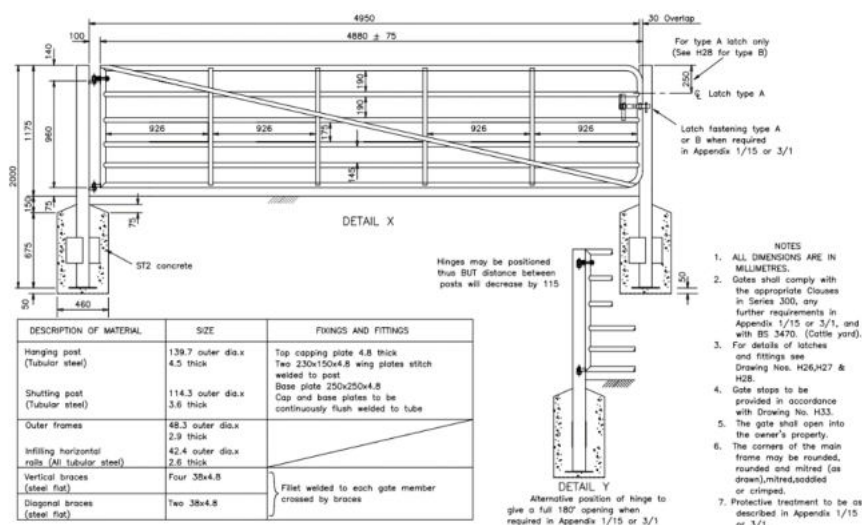
Fencing

- 6.35 In addition to the access track, wooden stock fencing is required on the reservoir embankment, which will connect to existing wooden stock fencing along the crest. The reservoir embankment is a man-made structure designed to hold water and does not include blanket bog or peat soil.
- 6.36 Grazing cattle can have a harmful impact upon the structural stability of a reservoir embankment, therefore the proposed fencing in this location is intended to create a small, enclosed area to prevent the cattle from accessing the embankment.
- 6.37 The proposed fencing will be timber, post, and rail stock fencing to match the existing fencing in situ.

Gates

- 6.38 There are two existing gates on site, which are located at the eastern end of the track located at White Hall Farm and east of Hard Head Clough, which will be temporarily removed during construction. Both gates will be then replaced in the same locations with new secure gates, which will remain locked to prevent unauthorised use of the track.

6.39 The image below shows an indicative example of a typical replacement gate for the each of the two locations.



Site Compound

- 6.40 The proposed development involves a temporary site compound area to be in place throughout the construction phase of the access track. The temporary compound will be approximately 140 square metres in size and situated within a farmer's field adjacent to Point C along the route of the track. The land is located outside of the SSSI, SAC & SPA designations, it does not contain any blanket bog or peat soil.
- 6.41 This land was previously used to stockpile peat soil as part of the previous 1999 planning permission for an access track in this location. Full details of the relevant 1999 planning history are included in *Section 8 Relevant Planning History* of this statement.
- 6.42 The compound will be used to provide the main welfare, storage and parking facilities during construction. The compound will need to be surfaced prior to the start of works to infill low spots and provide a suitable base for the installation of site offices, welfare and parking. A suitable geotextile will be used on the ground before stockpiling any excavated peat or construction materials. Once construction work on the access track is complete, the temporary compound will be removed from site, and the vegetation will be reinstated in accordance with an agreed scheme.

7.0 Reservoir Works and Relationship to Access Track

7.1 This application seeks planning approval for a permanent vehicular access track. However, in addition to the access track, the Trust is also required to carry out various works to March Haigh Reservoir, which are also imposed as MIOS as a legal requirement pursuant to the Reservoir Act 1975, 'matters of maintenance' and other recommendations pursuant to the s10 Inspection.

7.2 In addition to the permanent vehicular access track, the Trust is required to complete the following works at March Haigh Reservoir, which are also MIOS as a legal requirement pursuant to the Reservoir Act 1975.

- Investigate and control tunnel leakage by further grouting of the core taking account of improved methods available since the 1999 works - to be completed within 5 years of the date of this report. (To be completed by February 2026):
 - (b) As an interim measure, drill and insert one or more relief holes with filters local to the leakage point in the culvert - without undue delay and no later than 9 months of the date of this report, (To be completed by November 2021) and
 - (c) Maintain the water level as initially lowered to the bottom of the stoplogs at the main weir, and subject to further review and direction by the appointed Qualified Engineer - commencing without delay.
- Replace the hydraulically operated upstream scour valve with a more robust installation; this should comprise a good quality valve and an upgraded and robust actuation system. - To be completed within 5 years of the date of this report. (To be completed by February 2026).
- Line the original cast iron outlet pipe and its connection to the upstream HDPE pipe where ingress is occurring. - To be completed within 5 years of the date of this report. (To be completed by February 2026)
- Fit reduction gearing to the downstream (service) outlet valve to make it possible to operate it under reservoir head. - To be completed within 3 years of the date of this report. (To be completed by February 2024).
- Provide means and a safe system of work to facilitate control of water level at the main overflow, currently provided by the stoplogs, including under conditions of substantial overflow, and update the On-site emergency plan accordingly. This should be done in conjunction with the recommendation made in this report for review of adequacy of the overflow arrangements and dam freeboard - To be completed within 3 years of the date of this report. (To be completed by February 2024).

- Review the flood and wave calculations and take such measures as may be appropriate to ensure adequacy of the overflow arrangements and margin at the dam for floods.
- Make further provisions for monitoring (including additional drainage) as included under 12.7 Directions in respect of records under Section 11. - Each measure is to be completed within a period as determined by the appointed qualified Engineer.'

7.3 The works listed above are all required to be completed by February 2024. Therefore, the access track must be completed first, during 2023, to facilitate the above works and meet the MIOS deadline.

7.4 The Section 10 report also sets out "Matters of Maintenance", which are legally binding requirements under Section 10 (3)(b). These are ongoing requirements with no specific deadline, however failure to comply is a criminal offence. Matters of Maintenance are:

- General maintenance of the dam and ancillary works shall be to industry standard as appropriate to a dam of its assigned risk category, and as considered by the Supervising Engineer appropriate to facilitate surveillance and ensure safety in the circumstances at the reservoir. Aspects noted as currently or potentially having particular need of maintenance are as follows:
 - Keep a basic degree of maintenance of the remaining by-pass catch drain and its adjacent access track.
 - Local maintenance of the upstream facing and elimination of tree growth.
 - Fencing off the dam to exclude cattle, clearance of the remaining bracken, reinstating trampled areas on the downstream dam face, and control of vegetation by cutting.
 - Install manholes for rodding the left mitre toe drain.
 - Install a toe drain and a V-notch gauge at the Right mitre.
 - At the main overflow, sufficient repair and vegetation clearance to ensure structural adequacy and limit impedance to flow.
 - Repair displaced cope stones on the Right retaining wall downstream of the tunnel portal and repoint the retaining walls (with gaps left for pressure relief).'

7.5 The Section 10 report recommends further works to be undertaken that do not require the supervision of a qualified civil engineer, which are:

- Provide more secure fastenings of the pipe to the walls/floor of the tunnel and seal the leaking flange behind the downstream valve.
- Carry out static analysis of the embankment stability using appropriate stress parameters based on existing investigations or any further samples and tests as may be obtained in conjunction with recommended grouting works.

- 7.6 Whilst not legally binding, these further requirements are important to continue to ensure the safety of the reservoir. Failure to comply with these requirements may result in the Supervising Engineer recommending that a further Section 10 inspection is needed due to concerns over safety and would be likely to result in any new report requiring these works as MIOS and therefore legally required.

8.0 Relevant Planning History

The Site

98/62/91631/W1

- 8.1 Planning permission was granted by Kirklees Council on the 2nd of October 1998 for:
'Formation of access track (within a site of special scientific interest) at March Haigh Reservoir, off New Hey Road, Huddersfield.'

This planning permission was granted for the construction of a vehicle access track to March Haigh Reservoir. Information available from the Officer's Report identifies matters relating to the relevant green belt, landscape, and ecological policies at the time were assessed and the conclusion that there were no reasonable alternatives and that there was an overriding public interest.

- 8.2 It is stated in the Officer's Report that:

'It is clearly the case that British Waterways have examined alternative approaches to resolve the problem of achieving access to this isolated moorland reservoir and that it represents that most practical solution. As the retention of the track will allow for the removal of built-up silt from damhead, it is difficult envisage how this work could be carried out without securing land access.'

There is little doubt that the work is pursuant to a public interest. The formation of this access track and the subsequent reinstatement of vegetation over it will inevitably have some impact on the landscape and visual quality of the Special Protection Area. However, the applicants have amended the proposal significantly and take account of the views of English Nature, a statutory consultee and it is considered that conditions can be attached to ensure that the proposed development is carried out sympathetically to its surroundings.'

The alternative of abandoning the reservoir has been considered, however, the impact of this work would be far greater, and the loss of storage capacity could detrimental to the future use of the canal. The access track would still be required to achieve this, although it could be completely removed when the works have been concluded. With this in mind on balance it is therefore considered by Officers, that the formation of this access track be recommended for approval, subject to the conditions which have been agreed with English Nature and British Waterways.'

- 8.3 Regarding 'track removal', the planning permission included a condition (condition 8), which required the submission of details for approval relating to the 'reinstatement' of the ground surface along the track route using the excavated material.

- 8.4 Condition 8 is set out below:

'(8) The trackway will be reinstated using materials excavated during its construction, which will be stored outside the boundaries of the Special Protection Area, the details of which shall be submitted to and agreed in writing by the Local Planning Authority before development commences and thereafter maintained to the satisfaction of the Local Planning Authority.'

- 8.5 It is noteworthy that the approved restoration scheme did not involve the actual removal of the track but instead its covering over with vegetation. On this matter, it is explained in the Officer Report on the application that:

'The vegetation layer affected by the access will be stored elsewhere and placed back over the track and seeded with a finished level generally consisted with the surrounding undisturbed ground. This would allow the applicants to remove the

covering material to gain access at a later stage to the reservoir should further engineering works of a similar scale be necessary.'

99/70/91144/W1

- 8.6 A subsequent planning permission was granted by Kirklees Council in 1999, associated with the above, which was:

'Variation of condition 3 relating to period of works to be carried out on previous permission 98/62/91631 for formation of access track (within site of special scientific interest) at March Haigh Reservoir, off New Hey Road, Marsden, Huddersfield.'

- 8.7 In condition 3 of planning permission 98/62/91631, it stated that:

'No works on the site shall be carried out during the period of 1 April to 31 July inclusive.'

- 8.8 Planning permission 99/70/91144/W1 granted consent for a variation of condition 3 in which it is stated that:

'No works on the site shall be carried out during the period of 1 May to 31 July 1999 inclusive.'

- 8.9 It is understood that the condition was originally included to avoid any working in the bird breeding season. Through the application the Council agreed to allow some working in the bird breeding season. I.e., in April 1999.

Other

- 8.10 The Trust secured planning permission from the Peak District National Park Authority (PDNPA) for the construction of a permanent vehicular access track on land within the Peak District National Park and which is designed as a Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Special Area of Conservation (SAC). A previous permission had been secured for a temporary access track.

- 8.11 As with the track at March Haigh, subject to this planning application, the vehicular access to Swellands Reservoir is legally required as a MIOS. The application was supported by technical assessments including an EIA and a Justification Document. In granting planning permission, the PDNPA agreed that there were no other reasonable alternatives and that there were Imperative Reasons of Overriding Public Interest (IROPI).

NP/O/1221/1393

- 8.12 Planning permission was granted by the PDNPA in August 2022 for:

'Construction of a permanent access track legally required as a measure in the interest of safety under the reservoirs act for essential safety works and ongoing inspection, maintenance, and emergency access to Swellands and Black Moss reservoirs.'

- 8.13 Under the Conservation (Natural Habitats etc.) Regulations 2017 (as amended) the application had to be referred to the Secretary of State (SoS) for consideration and was subsequently approved following its referral.

9.0 Planning Policy Context

Local Planning Policy

9.1 The Kirklees Local Plan was adopted on the 27th of February 2019 and comprises the following:

- Kirklees Local Plan Strategy and Policies;
- Kirklees Local Plan Allocations and Designations; and
- Kirklees Local Plan Policies Map.

9.2 The site and surroundings are in the Colne Valley Ward on the Local Plan Policies Map and are shown to include the following designations:

Designation	On part or whole of site
Green Belt	Whole of site
Minerals Safeguarding (Sandstone and Sandstone SCR)	Whole of site
Heathland Wildlife Habitat Network	Whole of site
Biodiversity Opportunity Zones (Uplands; Mid Altitudinal Grasslands)	Whole of site
South Pennine Moors Phase 2 Special Protection Area (SPA)	Part of site
South Pennine Moors Special Area of Conservation (SAC)	Part of site
South Pennine Moors Site of Special Scientific Interest (SSSI)	Part of site
South Pennine Moors SPA/SAC Strategic Green Infrastructure Network	Part of site
Dark Peak Nature Improvement Area	Part of site

9.3 The following Local Plan policies are considered likely to be relevant to the site:

- Policy LP1 – Presumption in favour of sustainable development;
- Policy LP2 – Place shaping;
- Policy LP3 – Location of new development;
- Policy LP7 – Efficient and effective use of land and buildings;
- Policy LP20 – Sustainable travel;
- Policy LP21 – Highways and access;
- Policy LP22 – Parking;
- Policy LP23 – Core walking and cycling network;
- Policy LP24 – Design;
- Policy LP27 – Flood risk;
- Policy LP28 – Drainage;
- Policy LP29 – Management of water bodies;
- Policy LP30 – Biodiversity & Geodiversity;

- Policy LP31 – Strategic Green Infrastructure Network;
- Policy LP32 – Landscape;
- Policy LP34 – Conserving and enhancing the water environment;
- Policy LP35 – Historic environment;
- Policy LP36 – Proposals for mineral extraction;
- Policy LP38 – Minerals safeguarding;
- Policy LP51 – Protection and improvement of local air quality;
- Policy LP52 – Protection and improvements of environmental quality;
- Policy LP53 – Contaminated and unstable land.

Local Guidance Documents

9.4 Relevant Supplementary Planning Document and local guidance documents include:

- Planning Applications Climate Change Guidance (June 2021); and
- Highway Design Guide SPD (November 2019).

National Guidance Documents

9.5 Relevant national guidance documents include:

- Biodiversity Net Gain Technical Advice Note (June 2021);

National Planning Policy Framework

9.6 In addition, some of the Government's national planning policies contained in the National Planning Policy Framework (NPPF) are relevant, which are:

9.7 With regard to 'Habitats and Biodiversity, the NPPF paragraphs 180, 181 and 182 of the NPPF are relevant in which it is stated that:

'180. 'When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and d) development whose primary objective is to conserve or enhance biodiversity should

be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.'

181. 'The following should be given the same protection as habitats sites: a) potential Special Protection Areas and possible Special Areas of Conservation; b) listed or proposed Ramsar sites; and c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

182. 'The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.'

9.8 Other relevant NPPF chapters are:

- Chapter 2 – Achieving sustainable development;
- Chapter 4 – Decision-making;
- Chapter 8 – Promoting healthy and safe communities;
- Chapter 9 – Promoting sustainable transport;
- Chapter 11 – Making effective use of land;
- Chapter 12 – Achieving well-designed places;
- Chapter 13 – Protecting Green Belt land;
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment;
- Chapter 16 – Conserving and enhancing the historic environment; and
- Chapter 17 – Facilitating the sustainable use of minerals.

10.0 Engagement

Local Planning Authority

- 10.1 The Trust engaged with Kirklees Council at the pre-application stage. The formal pre-application submission with supporting documentation sought advice relevant to securing planning from Kirklees Council as the local planning authority.
- 10.2 The proposal falls within Schedule 2 of the EIA regulations, which triggers the requirement for a 'Screening Opinion' and subsequent 'Scoping Opinion' from the local planning authority. Therefore, the Trust submitted a formal request for Environmental Impact Assessment (EIA) Screening and Scoping with the pre-application enquiry.
- 10.3 The need for and scope of the Environmental Statement (ES) was subsequently agreed with Kirklees Council via the formal 'Screening' and 'Scoping' opinions (Ref: 2022/21665).
- 10.4 A formal written response was provided by Kirklees Council to the pre-application submission (Ref: 2022/21648), which includes the following concluding summary:

'The proposal would be subject to an Environmental Statement under the EIA Regulations, as detailed by the Council's EIA Screening Opinion and Scoping report. Officers also note the legislative requirements for the proposal under the Reservoirs Act 1975 as a measure in the Interest of Safety following an assessment of March Haigh Reservoir by the Environment Agency. In light of this, it is considered likely that the proposal could be acceptable under the requirements of the Development Plan and national planning policy, subject to the satisfactory provision of assessments and mitigation required under the relevant regulations for the protection of designated European habitats sites, as well as the other material considerations outlined in this advice.'

Local Community

- 10.5 Additionally, as part of a process of pre-application engagement, the Trust has sought to communicate with all relevant stakeholders.
- 10.6 A Statement of Community Involvement (SCI) has been produced to set out the approach and full details of stakeholder identification; stakeholder mapping; the communication plan; stakeholder responses; future engagement and to establish the stakeholder tacker.
- 10.7 The SCI is included as a separate document, however. by way of a concluding summary, there have not been many responses from the wide variety of organisations and individuals targeted in the communication plan. The Trust has met with representatives from the RSPB, the Ramblers Association, and the National Trust to present the scheme, establish any concerns arising and to discuss how any outstanding matters can be addressed.

11.0 Planning Analysis

11.1 This section of the statement provides a planning analysis having regard to the proposed development, the site context, the planning history, and the planning policy context. The section is structured as follows:

- The principle of development;
- Green Belt;
- Ecology and biodiversity;
- Landscape and visual impact;
- Minerals Resource Assessment;
- Heritage & Archaeology;
- Access and recreation;
- Mitigating and adapting to climate change;
- Flood Risk and Drainage;
- Amenity;
- Access & Highway safety; and
- Other Matters.

Principle of Development

11.2 In Local Plan Policy LP1 (Presumption in favour of sustainable development), it is stated that:

'When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. The Council will always work pro-actively with applicant jointly to find solutions which means that proposals can be approved wherever possible, and to secure development that improves the economic, social, and environmental conditions in the area.'

11.3 The site is located within the 'Huddersfield Rural' area under Local Plan Policy LP2 (Place Shaping) in which development 'challenges' are recognised, considering the imposition of 'constraints by European protected habitats and species'.

11.4 In Local Plan LP3 (Location of new development) it is stated that:

'Development proposals will be required to reflect the Spatial Development Strategy, Policy LP1 Presumptions in Favour of Sustainable Development and Policy LP2 Place Shaping.'

11.5 In Local Plan Policy LP3, it is also stated that: *'Development should reflect place shaping strengths, opportunities and challenges for growth.'*

11.6 Ahead of submitting the planning application, the Trust has engaged with Kirklees Council and undertaken a formal pre-application enquiry. As part of the Council's written response in January 2023, it states the following regarding the principle of development:

The proposal would form works under the legislative requirements of the Reservoir Act 1975, as a Measure in the Interest of Safety (MIOS), allow vehicular access to March Haigh Reservoir to facilitate necessary safety works to be undertaken.

Given this, and the historic planning permissions for similar previous developments at this site, it is likely that the principle of development for this proposal would be considered acceptable under the adopted Development Plan. There are also likely to be significant public benefits associated with the proposal which should be set out in a Planning Statement.'

11.7 Detailed information relating to the principle of development is set out below.

Need, Imperative Reasons of Overriding Public Interest & Alternatives

Need

11.8 A significant amount of additional information is provided with the planning application to explain the need for the permanent access track. This is set out in the document titled 'March Haigh Reservoir – Justification for a Permanent Access Track' ('the Justification Document'), which contains a detailed explanation of the need for the track, alternatives and includes the legal context and the legal requirement as a MIOS under Section 10 of the Reservoirs Act 1975, and operational challenges and requirements going forward to safely manage and maintain the reservoirs.

11.9 Information in this context is also set out in *Section 5 Legal Context* and *Section 8 Reservoir Works and Relationship to Access Track* of this statement.

Imperative Reasons of Overriding Public Interest

11.10 The construction of a permanent access track is necessary for Imperative Reasons of Overriding Public Interest (IROPI), as defined in regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations').

11.11 The Trust recognises that the South Pennine Moors SAC protects a priority habitat, blanket bog, and therefore only reasons related to 'human health, public safety or beneficial consequences of primary importance to the environment, or other imperative overriding public interest only after having regard to the opinion of the Secretary of State' can be considered (Defra 'Habitat Directive: guidance on the application of article 6(4)').

11.12 For the reasons explained in detail in the Justification Document, a permanent access track is imperative to ensure the safe operation and maintenance of March Haigh Reservoir, and to allow for emergency works and draw down if necessary. The consequence of failure of either reservoir, and resultant loss of life, loss of property (including residential dwellings) and flooding provide IROPI for the permanent access track as required by the Regulations.

- 11.13 In addition, as explained in the Justification Document, the reservoirs provide public water supply to Yorkshire Water, and indirectly enable water to be provided to the Huddersfield Narrow Canal.

Reservoirs Act & the Planning Court

- 11.14 In 2014, the Planning Court (High Court of Justice) considered the scope and implications of the provisions of the Reservoirs Act 1975 in 'The Heath and Hampstead Society v. City of London [2014] EWHC 3868'. The judge, Mrs Justice Lang, explained that under Section 10 Parliament had expressly given responsibility to independent civil engineers to decide what safety measures were required for any particular dam, exercising their professional judgment and expertise (paragraph 66).

- 11.15 The judge concluded:

'Neither the RA 1975, nor the ICE guidance, provides for the inspecting engineer to balance considerations of safety against competing factors such as preservation of the landscape, protection of the environment, or heritage assets. In my view, it would have been evident to Government and Parliament when the 1975 Act was passed that reservoirs and dams are situated in a wide variety of locations, including areas of outstanding beauty, and in the case of ornamental lakes, in historic settings close to heritage assets. This knowledge would also be available to the authors of the ICE guidance. So it is significant that the only legislative consideration is public safety.'

'It can be seen that neither the Minister nor Parliament has seen fit to exempt lakes and dams in environmentally sensitive locations.'

- 11.16 As noted from this case, Parliament would have been aware that many reservoirs and dams are located in environmentally sensitive locations, and it is significant that, although environmental designations are considered by the inspecting engineers, the overriding legislative consideration is public safety.

Consideration of Alternatives

- 11.17 Information on the consideration of alternatives was included in the original planning application. Further information to respond to the second reason for refusal is included in this application. The information is set out in the Justification Document and provided below.

- 11.18 The Trust is legally required to provide a permanent access track to March Haigh Reservoir as it is required as a MIOS under Section 10 of the Reservoirs Act 1975.

- 11.19 **In order to operate March Haigh Reservoir, there is no legal alternative to the construction of a permanent access track. A permanent access track is considered by the government appointed Inspecting Engineer to be an essential requirement to ensure the safety of the reservoir, and to enable other safety critical works to be**

undertaken. A MIOS is a legally binding obligation; failure to provide the track is a criminal offence.

11.20 Therefore, the only potential alternatives to be considered are:

- Reservoir discontinuance, if this were to be approved by the Environment Agency as the regulator, and all other necessary approvals were in place to enable works to be completed prior to the February 2024 MIOS deadline; or
- An alternative choice of route for the access track.

Alternative Routes

11.21 It is important to establish the consideration which the Trust has given to any alternative other track route to provide vehicular access to March Haigh Reservoir.

11.22 The proposed permanent track follows the route of a previous vehicular access track granted planning permission by Kirklees Council in 1999. As part of the work carried out relating to the 1999 planning permission, alternative track routes were considered at that time.

11.23 It is stated in the 1999 Officer Report that:

'A detailed statement supporting the proposal has been submitted by British Waterways during the course of the application. This states that 2 alternative routes for such an access track were considered from a highway to the north and west. The alternatives to that currently submitted involve the crossing of bog areas adjacent to a steep ravine or involve the use of a steep gradient, thus increasing its visual impact. The eastern route is therefore considered to involve the least difficulty with access for small to medium sized vehicles along Blake Lea Lane and the least visually intrusive.'

11.24 Therefore, to follow the route of the previously approved access track is the most suitable option in terms of associated impacts and will mostly involve previously disturbed ground surface material. On that basis, no other alternative track route options are considered.

11.25 For completeness, it is worth noting that prior to the access track becoming a legal requirement, the Trust had investigated alternative options to a permanent track, all of which had been discounted as not feasible, including consideration of the scope for a temporary track, and other alternatives such as helicopters and low ground pressure all-terrain vehicles.

Reservoir discontinuance

11.26 If the reservoir was discontinued and drained, with the dam removed so that no substantive residual risk remained, this would preclude the practical need for a permanent access track. It should be noted that a substantial temporary access track

would be required to facilitate the significant physical works associated with discontinuance.

- 11.27 The Trust has reviewed the need for March Haigh Reservoir and has reviewed high-level issues around discontinuance. Please see below the reasons why discontinuance is not currently considered viable by the Trust, due to adverse consequences of public importance.

Discontinuance and the Huddersfield Narrow Canal

- 11.28 The discontinuance of March Haigh Reservoir would jeopardise the Trust's reciprocal arrangement with Yorkshire Water Services Limited (YWSL) who, under the Scammonden Agreement (for further detail of the agreement see the Justification Document), provides 75% of the water to the Huddersfield Narrow Canal in exchange for public water supply from the reservoirs to YWSL. Loss of water supply to the canal through the Scammonden Agreement could lead to closure of the canal.
- 11.29 Without March Haigh, and through this without the YWSL supply, loss of the Huddersfield Narrow Canal would result in loss of habitat, flora and fauna on this SSSI canal route, and loss of aquatic life. Additionally, there would be loss of amenity for local residents on this green corridor through urban areas. This would also impact on local economies. The Huddersfield Narrow Canal, as part of the inland waterways network, is an asset to the nation and plays an important part of Climate Emergency plans, providing sustainable travel routes.
- 11.30 Five miles of the Canal is designated as a SSSI between Ashton Under Lyme and Oldham. The site is designated and therefore protected under the Wildlife and Countryside Act 1981 for its habitat of standing waters, and the species that rely upon this habitat. Loss of water would result in damage to the SSSI.
- 11.31 The Trust cannot discontinue March Haigh Reservoir without potentially putting water supply to the Huddersfield Narrow Canal at risk. The access track is essential for the retention of March Haigh Reservoir.

Discontinuance – high level consequences of public interest

- 11.32 Principal, adverse consequences of public interest associated with discontinuance are assessed as being:
- Failure to act upon the legally binding MIOS by the deadline set by the Inspecting Engineer under s10;
 - Loss of public water supply via both reservoir storage and catchment area under the Scammonden Agreement;
 - Potential for loss of reservoir water attenuation and the increased risk of flooding, due to flows from the 2.5km² catchment area;
 - A significant reduction in the security of supply of water to the Huddersfield Narrow Canal, with navigational and environmental impacts;

- Direct impact on the SSSI, SPA and SAC, where the reservoirs are located. In particular, mitigation would be required for reduction in water table and the potential for peat drying out, with consequences for climate change and possible increased wildfire hazard in the susceptible area (two large wildfires happened in 2020, one being on Black Moss);
- The requirement to construct a substantial temporary access track given the significant scale of the discontinuance works;
- Future access required to allow the Trust to fulfil any ongoing inspection, and maintenance obligations;
- Impact on the protected landscape and visual receptors;

Discontinuance - practical implications

- 11.33 If the reservoir was discontinued and drained, with the dam removed so that no substantive residual risk remained, this would preclude the practical need for a permanent access track, although it should also be noted that a substantial temporary access track would be required to facilitate the significant physical works associated with discontinuance.
- 11.34 Until the discontinuance works were completed, the Trust would continue to supervise and maintain the reservoirs under the Reservoirs Act 1975, including requirements to comply with the MIOS. Unless the discontinuance works could be completed by February 2024, a permanent access track would still be required to comply with the MIOS. As outlined above, the permanent access track has been required by an independent Inspecting Engineer in order to ensure the continued safety of the March Haigh Reservoir. Given the complexities involved with discontinuance, both legal and practical, and the consents that would be required, the Trust considers that even if discontinuance were both viable and desirable in the public interest, it is unlikely to be completed by February 2024.
- 11.35 Discontinuance of the reservoirs presents the following practical issues in addition to issues associated with the security of water supply to the Huddersfield Narrow Canal:
- **Construction.** The discontinuance works would require the excavation of large volumes of material. Reuse of the dam material within the reservoir bed may be possible for reprofiling or silt stabilisation, however this may not be acceptable due to the habitat designations and sensitive environment. The discontinuance works in themselves would require the construction of a temporary access track for the construction vehicles and arisings.
 - **Access.** Vehicular access to the reservoir is currently not possible. Following the discontinuance, the Trust would retain strict liability for the land and any residual assets, which would in itself would require a safe access route for ongoing inspection and maintenance.
 - **Ecology and environment.** Removal of the reservoir is a significant change to the local area, which is protected by numerous environmental designations, and would of itself require a Habitat Regulations Assessment. Silt stabilisation and managed

revegetation are likely to be required to make safe the large quantities of silt in the reservoir bed.

- **Community and amenity.** The scale of the discontinuance works may face objections from the public due to the change of amenity value.
- **Negative impact on downstream water quality.** Silt can become mobile in periods of high rainfall. With the reservoir in place, this leads to migration of silt towards the invert of the reservoir, but with the reservoir discontinued, this could lead to silt being washed downstream. This situation would resolve after a few years when the silt had revegetated, but in the short/medium term there would be a risk of pollution to local watercourses.

Alternatives methods if the access track were not a MIOS

11.36 For completeness, it is worth noting that prior to the access track becoming a legal requirement, the Trust has investigated alternative options for access for maintenance works at the reservoir, all of which had been discounted as not feasible. It must be emphasised that none of the previously explored options referenced below are now available to the Trust as an alternative way of overcoming the safety issues that have been identified. Pursuant to the Section 10 report, the Trust is under a strict legal obligation to provide a permanent access track.

11.37 The options considered, but no longer available, were:

- Use of low ground pressure all-terrain vehicles;
- Temporary access track for the planned major civil engineering works; and
- Helicopter access.

Low ground pressure all-terrain vehicles

11.38 Regular use of alternative vehicles such as a Hagglund/Softrack, would form informal irregular tracks and impact on the moorland habitats, with informal tracks likely to evolve and widen over time in an unmanaged way as vehicles sought to avoid ruts and damaged areas, thereby likely causing greater damage over the long term than a well-designed access track. All-terrain vehicles do not satisfy all access requirements, nor can they carry the pumps and plant required to provide maintenance or emergency access.

Helicopter access

11.39 It would not be possible to use helicopters in bad weather, when access would be more likely to be required in an emergency. Helicopters have insufficient load capacity for the equipment required. Also, the altitude and location of the reservoir can mean that helicopter access is prevented by wind or cloud and cannot be relied upon as the primary means of emergency response. The method is also not feasible for the regular small-scale maintenance that is necessary and does not resolve safety concerns with the surveillance visits require two times per week as a minimum.

11.40 It is also worth noting that the landing area required would need to be large and be sited within the SAC/SPA, which is likely to require planning approval and a Habitat Regulations Assessment.

11.41 Chinooks were mobilised at Toddbrook Reservoir, however these were only used to transport sandbags, and the pumping equipment had to be brought in by road. Chinooks are subject to similar constraints as helicopters, they cannot fly in poor visibility conditions, so they are also not acceptable from a safety point of view.

Temporary Access Track

11.42 A temporary access track has been used previously at March Haigh in order to complete major maintenance at the reservoir in 1999. Using a similar approach going forward would not address access requirements for regular inspection and maintenance. Failure to complete regular routine maintenance can lead to defects developing with an increased risk of dam failure. A temporary track would also not be a practicable means of access in case of an emergency.

11.43 Having regard to above context, the Trust considers that there are no alternatives to a permanent access track.

Development within the SAC & SPA & the 'Habitat Regulations'

11.44 As identified earlier in this statement, most of the application site is within the South Pennine Moors SAC and South Pennine Moors SPA. Under the Habitat Regulations, any development that has the potential to result in a 'Likely Significant Effect' on a European site and is not directly connected with the management of the site for nature conservation reasons, must be subject to a Habitat Regulations Assessment (HRA).

11.45 The purpose of the Habitats Directive is to enhance Europe's biodiversity by protecting its most important habitats and species. This is achieved, in part, through the designation of protected sites.

11.46 The Directive is affected in England and Wales by the Regulations referred to earlier in this statement. The Regulations require competent authorities (those with decision making powers) to assess the impact of plans or projects that may have a significant effect on these "European sites", either alone or in combination with other plans or projects. Competent authorities cannot consent to plans or projects they determine may have an "adverse effect on the integrity of a European site" following such an assessment.

11.47 However, the Regulations provide 'derogation tests' under regulation 64 and 68 which allow such plans or projects to be approved provided three tests are met:

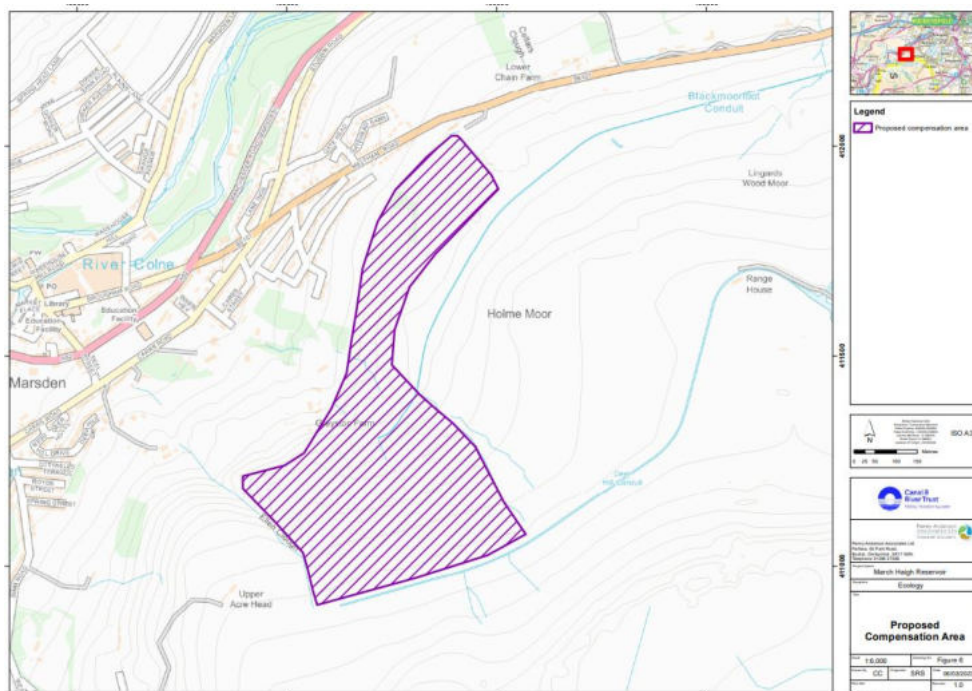
- There must be no alternative solutions to the plan or project which are less damaging (Regulation 64);
- There are IROPI for the plan or project to proceed (Regulation 64);
- Compensatory measures are secured to ensure that the overall coherence of

the network of European sites is maintained (Regulation 68).

- 11.48 Developments which may result in an adverse effect on the integrity of a European Site can only be authorised once the above tests have been met.
- 11.49 A 'Report to Inform a Habitat Regulations Assessment' (the HRA report) is submitted with the planning application with the purpose being to set out the information needed to enable the Kirklees Council to undertake a HRA. The report has been prepared by Penny Anderson Associates (PAA), a specialist and experienced ecological consultancy established in 1972. It is informed by the ES which includes an assessment of cumulative impact in which the impact of the access track and reservoir works is assessed.
- 11.50 It is concluded in the HRA report that there will a permanent loss of 0.42 hectares (ha) of peatland habitat, modification of a small 0.076 ha amount of peatland habitat where the peat would be re-used to minimise removal off Site and indirect effects on peat hydrology during construction the South Pennine Moors SAC, which cannot be avoided. The bog is assessed as being in an 'unfavourable recovering condition'. It is concluded in the HRA report that any adverse effects on the integrity of the SPA will be addressed through an off-site compensation habitat scheme, which is set out within the HRA report.
- 11.51 Furthermore, embedded, and ongoing bird mitigation measures are identified in the HRA report in accordance with the mitigation hierarchy to avoid impacts in the first instance and then, where impacts are unavoidable, to minimise or restore the potential impacts. However, in addition, and to address the unavoidable loss of approximately 0.5ha of qualifying bird species nesting and foraging habitat within the SPA, off-site compensation habitat measures are included within the compensation habitat scheme, which are also set out in the HRA report.
- 11.52 The requirement is therefore to assess the planning application with respect to the 'derogation tests'. Matters relating to Regulation 64 have been addressed above.
- 11.53 Having regard to Regulation 68, the requirement is for the impact to be offset through sufficient compensation measures.
- 11.54 As noted above, a habitat compensation strategy is proposed to off-set the loss of blanket bog habitat and associated hydrological function, and loss of habitat for SPA qualifying bird species, which shall be no less than 3.5ha in size. The strategy, including the principles upon which it has been developed, are set out in the HRA report and it is proposed to deliver the strategy through a legally binding s106 agreement and a draft s106 is submitted with the planning application.
- 11.55 The Trust has worked with the National Trust, a major landowner of the surrounding moorland, and has reached agreement with the National Trust to provide a scheme for habitat improvement at Holme Moor around Round Hill to compensate for that loss.
- 11.56 These compensation measures are legally required to be outside the South Pennine SSSI designated area because Natural England already has duties to restore to "favourable status," (under the Wildlife and Countryside Act); therefore, the Trust

cannot duplicate this effort and must provide compensation in an area of peat moorland which would not otherwise have been improved.

- 11.57 Details of the proposed habitat compensation measures are provided in a document included with the HRA Report, titled 'Compensation Scheme for March Haigh Reservoir Proposed Access Track'. The proposed measures comprise best practice approaches for peatland restoration which are used by the National Trust and others to re-wet and restore degraded peat habitats. The image below shows an indicative outline of the compensation strategy boundary.



- 11.58 In conclusion, the Trust accepts that the permanent access track will have to satisfy the derogation tests due to the impact on the SAC and considers that the grounds of the tests have been met. See also the Justification Document.
- 11.59 The information included with the planning application demonstrates that there are no viable alternatives to a permanent access track; there are clear grounds for IROPI given the risk to human life posed by failure of the reservoirs - demonstrated by the fact that these measures are required as legally binding MIOS by an independent inspecting engineer; and the Trust has secured over 5 hectares of improved habitat to compensate for the loss of just over 1 hectare due to the construction of the access track.

Management of Water Bodies

- 11.60 Kirklees Local Plan Policy LP29 (Management of Water Bodies) also contains issue of principle relating to water bodies, such as future management, maintenance, and safety. In Policy LP29 it is stated that:

'Where it proposed to develop a site already containing a water area, this should normally be retained as part of the proposal and include a future management plan for the maintenance of the water area to ensure the safety of residents for the lifetime of the development. This includes bodies of water associated with existing buildings, even

where they are remote from the building, and includes ancillary elements linked to the operation of the water body.'

- 11.61 In terms of the context of Policy LP29, the proposal is required entirely in connection with the Trust's ongoing future management and maintenance requirements for March Haigh Reservoir. The proposed vehicular access track is a specific requirement imposed upon the Trust as legally required MIOS to facilitate future surveillance, maintenance, and emergency activities.

Green Belt

- 11.62 The site is located within the designated Green Belt. The starting point for considering the principle of development in the Green Belt is whether it is defined as 'not inappropriate' development as set out in the National Planning Policy Framework (NPPF).

- 11.63 In paragraph 147 of the NPPF, it is stated that:

'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.'

- 11.64 Regarding the creation of a vehicular access track, in paragraph 150 of the NPPF, it is stated that *'engineering operations'* are included as one of the *'certain other forms of development are also not inappropriate in the Green Belt provided that they preserve its openness and do no conflict with the purposes of including land within it.'*

- 11.65 It is considered that the proposed vehicular access track to March Haigh Reservoir constitutes an 'engineering operation' that could be 'not inappropriate' development in the Green Belt.

- 11.66 The further requirement for assessing whether these forms of development are 'not inappropriate' in the Green Belt, is to preserve the openness of the Green Belt and not to conflict with the purposes of including land within it.

- 11.67 In paragraph 138, it sets out the five purposes of including land within the Green Belt, in which it is stated that:

'Green Belt serves five purposes:

- a) To check the unrestricted sprawl of large built-up areas*
- b) To prevent neighbouring towns merging into one another*
- c) To assist in safeguarding the countryside from encroachment*
- d) To preserve the setting and special character of historic towns*
- e) To assist in the urban regeneration, by encouraging the recycling of derelict and other urban land'*

- 11.68 'Openness' of the Green Belt is a broad policy concept, which has not been formally defined. In the Supreme Court Case R (Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council (2020), it was stated that openness is:

'A matter of planning judgement rather than law'

- 11.69 In terms of assessing the impact of a proposal on the openness of the Green Belt, in the NPPF, Planning Practice Guidance (PPG), paragraph 001, it is stated that.

- *'Openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume.'*
 - *The duration of the development, and its remendability – taking into account any provisions to return the land to its original state or to an equivalent (or improved) state of openness; and*
 - *The degree of activity likely to be generated such as traffic generation.'*
- 11.70 It is considered the proposed development is 'not inappropriate' development in the Green Belt as it comprises an engineering operation, which does not conflict with the purposes of including land within the Green Belt or harm openness in accordance the NPPF.
- 11.71 Notwithstanding this position, the proposed works to provide permanent access to the reservoir must take place as MIOS in the public interest. These works clearly need to take place at the reservoir, which is a non-footloose asset. In the event that the LPA concludes that it is by definition 'inappropriate' development in the Green Belt, then it is considered that the need and public safety benefits as set out in detail in the Justification Document would constitute 'very special circumstances'.
- 11.72 As part of the pre-application enquiry response, Kirklees Council stated the following regarding compliance with relevant Green Belt planning policies:
- 'The proposal lies within the designated Green Belt. Under NPPF (Chapter 13) Paragraph 150, certain exemptions area made for acceptable development in the Green Belt (providing proposals preserve its openness and do not conflict with the purposes of including land within it).*
- The relevant exemptions are considered to be (b) engineering operations and (c) local transport infrastructure which can demonstrate a requirement for a Green Belt location. It is likely that the proposal would be considered against these exemptions in national Green Belt impacts on the designated Green Belt should be undertaken as part of a planning application to put forward the case for the project under NPPF (Chapter 13), particularly.'*
- 11.73 The proposed development is satisfactorily assessed against Green Belt policy and is, in the first instance, considered to be 'appropriate' development.

Ecology & Biodiversity

- 11.74 The site falls mostly within the South Pennine Moors Site of Special Scientific Interest (SSSI), the South Pennine Moor Special Area of Conservation (SAC) and the South Pennine Moors (Phase 2) Special Protection Area (SPA). These sites are designated for their nationally and internationally important habitats, including blanket bog, and their breeding bird assemblage. There is a small section of the track route to the East that is located marginally outside of the designation boundary.
- 11.75 Local Plan Policy LP30 (Biodiversity & geodiversity) includes issues of principle relating to the identified designations, which imposes strict restrictions upon any new development that is likely to have a harmful impact.
- 11.76 In Local Plan Policy LP30, it is stated that:

'The council will seek to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, Habitats and Species of Principal Importance and the Kirklees Wildlife Habitat Network.'

11.77 Specifically regarding the South Pennine Moors, it is stated in Policy LP30 that:

'Proposals which may directly or indirectly compromise achieving the conservation objectives of a designated or candidate European protected site will not be permitted unless the proposal meets the conditions specified in Article 6 (3) – (4) of the Habitats Directive.'

11.78 Additionally, the following requirements in relation to new development are set out in Policy LP30:

'Development proposals will be required to:

- (i) result in no significant loss or harm to biodiversity in Kirklees through avoidance, adequate mitigation or, as a last resort, compensation measures secured through the establishment of a legally binding agreement;*
- (ii) minimise impact on biodiversity and provide biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist;*
- (iii) safeguard and enhance the function and connectivity of the Kirklees Wildlife Habitat Network at a local and wider landscape-scale unless the loss of the site and its functional role within the network can be fully maintained or compensated for in the long term;*
- (iv) establish additional ecological links to the Kirklees Wildlife Habitat Network where opportunities exist; and*
- (v) incorporate biodiversity enhancement measures to reflect the priority habitats and species identified for the relevant Kirklees Biodiversity Opportunity Zone.'*

11.79 Local Plan Policy LP34 (Conserving and enhancing the water environment) is also relevant regarding protecting the ecological value of the water environment, in which it states:

'Proposals must:

- 1. Ensure no deterioration of water courses or water bodies (including ground water) by conserving and, where practicable, enhancing:*
 - a. the natural geomorphology of watercourses, including reinstating watercourses to their natural state through removal of modifications resulting from past industrial uses;*

- b. water quality; and
- c. the ecological value of the water environment, including the functionality of habitat networks.'

11.80 Furthermore, the NPPF includes similarly relevant planning policy in Chapter 15, which relates to conserving and enhancing the natural environment. In paragraph 174, it is stated that:

'Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) *protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) *recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystems services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- c) *maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
- d) *minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) *preventing and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.'*

11.81 Additionally, regarding the protection of habitats and biodiversity, it is stated in the NPPF, paragraph 180 that:

'When determining planning applications, local planning authorities should apply the following principles:

- a) *is significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.*
- b) *development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and broader impacts on the national network of Sites of Special Scientific Interest;*

- c) *development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;*
- d) *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in an around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'*

ES: Ecology & Biodiversity

11.82 Chapter 7 of the ES deals with the assessment of the effects of the proposed development on ecology and biodiversity. This has involved consideration of the effects on the South Pennine Moor SSSI, the South Pennine Moors SAC and the South Pennine Moors SPA, and on habitats and protected species. The assessment has been carried out following the guidelines set out in the Chartered Institute for Ecology and Environmental Management 'Guidelines for Ecological Impact Assessment.' Mitigation measures, including additional mitigation measures highlighted earlier in this statement, are taken into account in the ES.

11.83 The detailed assessment undertaken by PAA as specialist and experienced ecologists is supported by a number of survey reports including, a phase 1 habitat and NVC survey report, a breeding bird survey report, a water vole and notable species report, a fungi assessment report, and a hydrology assessment and peat depth mapping. In addition, this part of the ES should be read in conjunction with the HRA report.

11.84 It is concluded in Chapter 7 of the ES that:

'The Proposed Development would result in the permanent loss of 0.4296ha of blanket bog in unfavourable recovering condition, and associated features, plus 0.0133ha of acid flush, located within the SSSI/SAC and SPA along with a further 0.076ha blanket bog modified due to the intention to re-use a proportion of peat rather than remove off site as waste. A total of 0.077ha non-designated low value semi-improved acid grassland would be permanently lost. There is no potential for damage/destruction of nests and disturbance to the breeding bird assemblage, including species associated with the SSSI/SPA at the construction stage due to timing constraints. There is potential for disturbance to birds from operational vehicle use and increased recreational disturbance at the operational phase of the Proposed Development.

Mitigation measures have been incorporated as an inherent part of design from the outset to minimise impacts on the environment. This has included careful route selection and sensitive design and construction methods. A number of alternatives to the Proposed Development including do-nothing and discontinuance of the reservoirs have been considered, as well as alternative routes, construction methods and programme.

Additional mitigation measures are proposed to further reduce the impacts on habitats and protected species. This would include creation of acid grassland habitat on the limited areas of earthworks along with measures to retain critical hydrological links (see Chapter 8 of this ES). Should the construction programme unavoidably extend into the nesting season, bird deterrent measures such as strimming, controlled use of conservation dogs and screening would be deployed with the aim of preventing direct loss of nests and to minimise disturbance of breeding birds adjacent to the construction zone.

At the operational stage additional measures will be implemented to minimise the effects of any increase in recreational pressures to limit any disturbance to breeding birds.

Precautionary measures of working will also be adopted in relation to other species which may be present within the construction zone, comprising water vole, mountain hare, common toad, and common lizard.

With the above measures in place there will remain an unavoidable and permanent loss of blanket bog within the SSSI/SAC/SPA which cannot be mitigated. A separate shadow Habitat Regulations Assessment report has been prepared to set out the proposals for compensation measures to off-set adverse effects on the integrity of the European sites. These measures are intended to also address the impacts of the Development on the South Pennine Moors SSSI.

The residual risk of disturbance to both the designated moorland bird assemblage and bird assemblage in general will be reduced to neutral by measures designed to limit parking opportunities, encourage users to make use of existing footpaths (through signage, for example) and to monitor/review recreational pressures and implement a suite of further measures, if required in collaboration with the National Trust. However, there would be a residual effect of moderate adverse level with regard to the loss of habitat for moorland breeding birds, including SPA qualifying species. It is proposed to provide habitat compensation measures that will benefit the moorland breeding bird assemblage, including those species which are listed as qualifying features of the South Pennine Moors (Phase 2) SPA. The habitat compensation measures are set out in detail in the shadow HRA (PAA 2023a).'

Biodiversity Net Gain

11.85 In addition to the biodiversity net gain requirements in Local Plan Policy LP30, it is stated in paragraph 174 of the NPPF that:

'Planning policies and decisions should contribute to and enhance the natural and local environment by:

d) minimising impacts on and providing net gains for biodiversity, including coherent ecological networks that are more resilient to current and future pressure.'

11.86 Furthermore, Kirklees Council adopted its Technical Advice Note on Biodiversity Net Gain in June 2021, in which it is stated that:

'Within Kirklees, development inside the scope of this guidance will be expected to deliver a measurable biodiversity net gain. At this time, in the absence of legislation, a minimum of 10% net gain in biodiversity is required.'

- 11.87 To quantify the habitat losses and gains resulting from the proposed development, a Biodiversity Net Gain Assessment (BNG Assessment) has been provided using the DEFRA Metric 3.1. The BNG Assessment is provided in full detail as a separate document, which includes a calculation of losses and gains.
- 11.88 It should be noted that areas of irreplaceable habitat (degraded blanket bog and associated upland acid flushes) are removed from the net gain calculation and dealt with separately under a bespoke off-site compensation scheme at Holme Moor (Round Hill), which is set out in full detail in the HRA report submitted with this application.
- 11.89 The BNG Assessment reports a biodiversity net gain of +18.72%, which is achieved with some on-site BNG but also by creating an off-site BNG compensation scheme on land owned by the Trust at Redbrook Reservoir (which is in addition to the HRA compensation scheme at Round Hill). The off-site scheme at Redbrook Reservoir balances the loss of biodiversity units on the site (excluding the irreplaceable blanket bog and acid grass land habitats addressed through the HRA compensation scheme). It is stated in the BNG Assessment conclusion that:

'The +18.72% increase in habitat biodiversity units (area-based) is largely achieved by the off-site compensation scheme, which is calculated to provide a 5.9 net gain in area biodiversity units. In addition, creating new areas of upland acid grassland on site provides 1.81 biodiversity units.

The streams and ditches are retained under the scheme with only minor encroachment to the riparian zone where replacement culverts are to be installed. Therefore, there is no overall change for watercourses under the Metric.

The scheme will have a suitable Habitat Management Plan to establish and maintain habitats over the required 30 year period.

Landscape & Visual Impact

- 11.90 The site is not shown on the Kirklees Council Local Plan, Proposals Map, to be included within any specific landscape related designations. However, The Trust recognises the sensitivities of the landscape context and requirements set by Local Plan Policy LP32 (Landscape) and the NPPF.
- 11.91 The site lies within open moorland within the South Pennines Landscape Character Area (LCA). The Southern Pennines are part of the Pennine ridge of hills, lying between the Peak District National Park and the Yorkshire Dales National Park. Within the Kirklees District LCA the site is within the High Moorland Plateaux of the Southern Pennine. This part of LCA is adjacent to the Peak District National Park, which is located to the south.
- 11.92 In Local Plan Policy LP32 (Landscape), it states the following regarding protecting landscape quality:

'Proposals should be designed to take into account and seek to enhance the landscape character of the area considering in particular:

- a. the need to protect the setting and special qualities of the Peak District National Park, views in and out of the park and views from, surrounding viewpoints;*
- b. the setting of settlements and buildings within the landscape;*
- c. the patterns of woodland, trees and field boundaries;*
- d. the appearance of rivers, canals, reservoirs and other water features within the landscape.'*

11.93 Furthermore, the NPPF includes similarly relevant planning policy in Chapter 15, which relates to conserving and enhancing the natural environment where paragraph 174 is relevant.

Principle of Minimum Intervention

11.94 Having full regard to this context, a principle of minimal intervention underpins the route by utilising the natural form of the landscape, where possible, to minimise view of the track, and in the consideration of track width and proposed materials, which are:

- The alignment of the track has been chosen with the aim of reducing landscape and visual impact to a minimum by following the route of an existing track, working with the existing terrain and locating a large section of it within the base of a former leat (a disused artificial channel which was constructed to carry water from Black Moss Reservoir into Brun Clough Reservoir).
- A local earth coloured gritstone is proposed to form the stone track with aim of blending with the landscape.
- Stone depth has been minimised through the incorporation of a geogrid to mitigate visual and ecological impact.

Track Width

11.95 The track is designed as 4 m wide, to manage construction traffic for planned maintenance works, plus requirements for monitoring and future emergency and maintenance works. An explanation of the track's width is set out in the Justification Document and included below which where it is concluded that it is not practicable to further reduce track width for the following reasons:

- The track edge will be constructed on top of the existing peat. This means that the edge will be unrestrained. Use of a 4m width provides a narrow lightly trafficked edge which can tolerate the lack of restraint. Reducing the width would result in collapse of the track at the loaded edges, and so necessitate providing formal edge restraint such as a kerb line. This would have an effect on the hydrology, causing greater damage to the peat or causing drying out.

- A reduced width of unrestrained track was considered but this would cause vehicles to track on the edges and cause collapse of the unrestrained track edges. Vehicle wheelbases will not run central to the track because it meanders to reduce impact on the adjacent bog. The 4m wide track allows the vehicles to adjust their alignment on the track without risk of overrun.
- Safety - a narrower track would increase the risk of a vehicle over-running the track and immediately becoming stuck in the soft surrounding peat. The consequence of a vehicle 'leaving' the track due to an incident is significant. This would cause significant damage to the peat as well as blocking access. Rescuing a stranded vehicle would be highly problematic due to the limitations in access (long, narrow, winding track).
- The track is designed with a high-grade geotextile reinforcement, allowing significant distribution of loads across the construction width. While this doesn't result in the track acting fully like a raft, it means that there is significant distribution of loads across the construction width. Reducing width would increase the thickness of the track.
- A narrower track would result in vehicles having only one safe wheel route and this leads to additional loading and wear. To compensate this would require an additional thickness of stone, resulting in peat compression.

11.96 The scope to reduce track width has been carefully reviewed but it has been confirmed that the proposed width is the minimum that is feasible.

11.97 In addition, it should be noted that vegetation will grow in the peat adjacent to the proposed track edges, which is expected to soften the edges of the track route.

Existing Culverts

11.98 The track route passes over two existing culverted watercourses, which have an established headwall construction to the southern elevations. It is proposed that the two existing culverts will either be retained in situ or replaced on a like for like basis.

11.99 At this stage, it is expected that the existing culverts will need to be replaced with like-for-like diameter new concrete culverts and headwalls. However, it is possible that upon further detailed inspection during the early stages of construction it could be established that the existing culverts in situ are in fact satisfactory and do not need replacing.

11.100 Indicative details relating to a potential design solution for new culverts as a replacement are submitted with the application. However, full, and final designs will not be prepared until it is confirmed they are both required. Therefore, it is expected that a 'pre-installation' condition could be included to secure the submission of further culvert design and appearance details for approval, if necessary.

11.101 Both culverted locations will require physical barrier protection to prevent a fall from height risk for both vehicles and pedestrians. The approach has been to meet the

relevant safety standards but consider the lowest impact and sympathetic way this can be achieved in visual terms.

- 11.102 It is proposed that a three-sided rail barrier is installed on each headwall to adequately function as a visual and physical barrier along the edge of track, which will be painted in green ('invisible green' RAL6015) to match the snow poles.

ES: Landscape & Visual Impact Assessment

- 11.103 A detailed Landscape and Visual Impact Assessment (LVIA) has been undertaken, which will assess the likely significance of the effects of change arising from the proposed development on both the landscape as an environmental resource in its own right as well as considering the likely impact on views and visual amenity (as experienced by people). It includes an assessment of the susceptibility of the landscape to change as well as the scale and significance of effect. This process has followed the methodology set out in Guidelines for Landscape and Visual Impact Assessment third edition (GLVIA3).

- 11.104 The LVIA is contained within Chapter 6 of the ES (Landscape and Visual Assessment). The assessment has been informed by photomontages which illustrate what the track would look like from the agreed viewpoints.

- 11.105 Within Chapter 6 of the ES, it is concluded that:

'Introducing a track into a sensitive open moorland setting is not without its challenges and the LVIA has examined the effects of such a development on landscape character and resources and from a range of distances.

Receptor sensitivity has been judged in landscape terms to be medium and in visual receptor terms to be medium high.

For both categories the effects are judged to be minor adverse as the proposed access track is a functional device that cannot be regarded as a landscape enhancement measure. However, various measures have been adopted in its design which help to mitigate the overall effects. These include restricting the width to 4.0m, using excavated peat on the embankments to the track to avoid taking it off site, using 1.0m high snow poles painted invisible green, using fencing painted invisible green, ensuring the track matches local topography and follows the route of the former track as closely as possible.

In landscape effect terms the effects of the Proposed Development are judged to be minor adverse which is not significant in EA regulation terms and in accordance with the methodologies used in this assessment.

In visual terms the effects are also judged to be adverse but vary in scale depending on distance and elevation. In the overwhelming majority of cases the effects of the proposed access track are limited with 12 of the values judged to be minor/negligible or no change. This is not significant in EA regulation terms. There are only 2 views in which a moderate adverse effect is recorded, and these are from footpaths in close

proximity to the Proposed Development. These effects are significant in EA regulations terms.'

In cumulative effect terms when the Haigh Clough woodland planting scheme starts to mature then the operational effects of the Proposed Development will subside rapidly and, in some cases, register no impact at all where the track becomes obscured by trees.'

11.106 Therefore, there is some unavoidable visual impact resulting from the construction of an access track in this location but it is concluded that this has been reduced to a minimum through design mitigation resulting in the overwhelming majority of viewpoints having minor/negligible visual impacts.

11.107 The forthcoming Haigh Clough woodland planting scheme is acknowledged, which will provide additional visual screening from the identified viewpoints and will further reduce the visual impact of the track from relevant viewpoints.

Minerals Resource Assessment

Mineral resources

11.108 The site is shown on the Kirklees Council Local Plan, Policies Map, to be within a much wider 'Minerals Safeguarding Area' (Sanstone; Sandstone with Surface Coal Resource).

11.109 In Kirklees Council's Local Plan Policy LP38 (Minerals Safeguarding), it is stated that:

'Surface development will only be permitted within a Mineral Safeguarding Area where it has been demonstrated that:

a. the mineral concerned is proven to be of no economic value as a result of the undertaking of a Mineral Resource Assessment; or

b. the development will not inhibit mineral extraction if required in the future; or

c. there is an overriding need for the development; or

d. the mineral can be extracted prior to the development taking place.'

11.110 As part of the pre-application enquiry with Kirklees Council, the following information was provided through internal consultation:

'Should the justified need for the permanent track be accepted, the proposals would comply with Local Plan Policy LP38(C). In any event, it is unlikely that mineral extraction would be feasible in this location due to the constraints associated with the high nature and sensitive status of this area (South Pennine Moors Special Protection Area / Special Area of Conservation).'

11.111 Further to the comments by Kirklees Council above, construction of a vehicular access track in this location would comply with Local Plan Policy LP38(b), which states:

'b. the development will not inhibit mineral extraction if required in the future.'

11.112 It is considered that construction of a proposed access track as a surface development with no deep foundations is quite easily capable of removal (with alternative provision provided on a temporary basis) and would not prevent mineral extraction beneath the surface if it was required in this area.

11.113 Given the above, it is considered that the proposed development is compliant with Local Plan Policy LP38.

Peat

11.114 Furthermore, as part of the pre-application enquiry response, Kirklees Council stated the following regarding peat:

'The site lies within an area with a relatively high volume of peat soils. The supporting information notes that there would likely be some peat extraction required as part of the construction phase of development, but that this would be re-used on-site in ways to prevent unnecessary loss of the resource. Extraction works may also have an impact on the release of imbedded carbon from the site.'

11.115 It is acknowledged that the site lies within an area within which peat soil is present and that the peat resource would, by necessity, be removed under the track width to enable the required design specification to be met. A significant proportion of this peat has already been removed and then replaced as part of the former temporary track granted consent in 1999, which has resulted in some loss of structure to much of the peat affected by this proposal. A smaller proportion of largely undisturbed peat would be required to be removed to provide appropriate levels for construction.

11.116 In the NPPF, Chapter 17 (Facilitating the sustainable use of minerals), paragraph 211 it is stated that; *'In considering proposals for mineral extraction, minerals planning authorities should..... d) not grant planning permission for peat extraction from new or extended sites.'*

11.117 Chapter 8 of the ES deals with the effects of the proposed development on peat resources and hydrology, which includes an assessment of embedded carbon in the peat resource in which it is stated that:

'As part of the delivery of the proposed scheme, the Site will be subject to some disturbance/removal of peat to enable construction of a safe and suitable permanent track required under the MIOS for March Haigh Reservoir. The design of the track and construction methods has minimised the footprint of the scheme in terms of land-take for the proposed permanent track. Evaluation of the design identified 0.42ha of peatland habitat and underlying (shallow) peat will be unavoidably lost. The majority of this is peat that has already been disturbed in the past (that was re-laid over the former

temporary track and has revegetated). A small proportion of this peat will be from previously undisturbed peatland areas.

There is calculated to be approx. 1400m³ of waste material derived from the construction phase of the Proposed Development. Not all of this will be peat, and some will be stone, vegetation and other materials. However, for the purposes of the assessment it is assumed that all material is peat and that all this peat conforms to the carbon content of a 'typical' damaged catotelmic peat type (104kg C per m³).

The total carbon lost from Site through the removal of 1400m³ of peat via the waste management stream can, therefore, be calculated.'

- 11.118 Subsequently, taking into consideration impacts at both the construction and operational stages, embedded and additional mitigation and considering the residual effects, it is concluded in Chapter 8 of the ES that:

'The Site falls within the South Pennine Moors SSSI, and the citation identifies three sites of geological interest within the designated area – Derby Delph Quarry (SE017161), Standedge Road Cutting (SE 018095-023098) AND Pule Hill (SE 032112-032117). All of these sites are some considerable distance away from the Site and no significant impacts of the Development have been identified for these geological sites.

In addition, March Haigh and Buckstones LGS is present within the wider catchment, approximately 650m and 500m, respectively, to the west and north of March Haigh Reservoir. Due to the distance of the LGS, some distance from the Development and situated within the upper catchment of the wider March Haigh moorland no direct impacts are identified. Therefore, no significant impacts are identified as a result of the Development, although there may be some minor increase in recreational access to this area of the wider moorland (see Chapter 9 of the ES). This is, however, identified as unlikely to result in any significant impact on the notable features of the LGS.

The Proposed Development would result in some further disruption of the hydrological integrity of the designated area in the vicinity of the track (with some disruption already having taken place as a result of the previous temporary track). In addition, the peat resource would, by necessity be removed under the track width to enable the required design specification to be met. A significant proportion of this peat has already been removed and then replaced as part of the former temporary track design, resulting in some loss of structure to much of the peat affected by this Proposed Development. A smaller proportion of largely undisturbed peat would be required to be removed to provide appropriate levels of construction.

Localised earthworks along the edge of the track would re-use approximately 710m³ of peat as part of embedded mitigation.

The c.1400m³ peat removed/disturbed to enable track construction would be largely re-used within the Site to provide additional mitigation for impacts to the peat resource, as follows:

- Peat material with greater structural integrity would be re-used to form low bunds along the southern edge of the track. Vegetated turves would be removed prior to bund formation and then replaced to reinstate the existing habitat, with additional seeding as needed. This would also soften the edge of the track within the landscape.
- Peat material with lower structural integrity (likely to be that peat removed from the wettest parts of the former temporary track) will be spread as a thin layer across the compound area before re-instatement of acid grassland on this area.

The above mitigation would enable the scheme to retain 907m³ of peat material (64.79% of the total disturbed/removed during construction) on the Site when employing the creation of a continuous 1:3 batter along the southern edge plus re-use of peat across the compound area during restoration after construction is complete. This equates to the retention of 108.84g of carbon that might otherwise have been taken off Site as waste.

The remaining 493m³ of peat (35.21% of the total disturbed/removed during construction) equating to a maximum of 59.16g carbon, but this is likely to be lower due to the nature of the material (unconsolidated peats and/or non-peat material such as stone) would be removed as waste.

Under this approach approx. 65% of the peat directly affected would be retained within the Site, albeit in a modified form due to temporary removal, storage and re-use.

With the above measures in place there will remain an unavoidable impact of peat loss within the Proposed Development footprint and on localised hydrological integrity and peat carbon stores within the protected area which cannot be mitigated at the construction stage. A separate Shadow HRA has been prepared to set out the proposals for compensation measures to off-set adverse effects on the integrity of the South Pennine Moors SAC. These measures are intended to also address the impacts of the Proposed Development on the South Pennine Moors SSSI.'

- 11.119 It is considered that as the proposed development involves peat that has already been disrupted by a previous development, proposes to retain 65% of the disturbed peat within its existing environment on-site, and also includes an established compensation strategy to off-set the loss of blanket bog habitat and associated hydrology function and peat carbon storage it is satisfactory to comply with the overall objectives of the NPPF and Local Plan Policy LP36.

Heritage & Archaeology

- 11.120 With respect to above ground heritage assets, there are no World Heritage Sites, Scheduled Monuments or Registered Parks and Gardens within or adjacent to the site. There is a small collection of dwellings present around White Hall and The Dean. White Hall Farm and the nearby Barn to the north of White Hull Farm, dating from the 1760's are both Grade II listed buildings.
- 11.121 It is recognised that Local Plan Policy LP35 is likely to be relevant, in which it stated that:

'Development proposals affecting a designated heritage asset (or an archaeological site of national importance) should preserve or enhance the significance of the asset.'

- 11.122 Furthermore, the NPPF includes similarly relevant planning policy in Chapter 16 regarding conserving and enhancing the historic environment. In paragraph 194, relating to information requirements to accompany a planning application, it is stated that:

'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.'

- 11.123 The application includes a separate Heritage Impact Assessment and a full Desk-Based Assessment (DBA) of the site, including both Archaeology and Cultural Heritage assessments in which the values in Conservation Principles, Policies and Guidance (Historic England 2008) or the interests in the National Planning Policy Framework (NPPF) are used to articulate the significance of the heritage asset.

- 11.124 As referenced above, the Trust has produced a Heritage Impact Assessment (HIA), to assess the significance of and impact upon any heritage assets identified within or adjacent to the site that are likely to be affected as a result of the proposed development.

- 11.125 In conclusion, it is stated in the HIA that:

'The area covered by the red line plan submitted with the accompanying planning application for a permanent access track has two known and recorded areas of archaeological interest (as recorded in the Heritage Environment Records) but passes through an area known to be rich in archaeological deposits generally.

Areas most likely to yield archaeological deposits are usually those that are difficult to occupy and have not been previously disturbed. Most of this proposed route to the reservoirs has been disturbed during the construction of the in-situ 'temporary' access track, which was recovered on completion of the previous works (using materials removed from the site at the beginning of works).

The access track itself is therefore less likely to hold archaeological deposits, but items may remain where the peats and soils will be dug either side of the previous track to facilitate its widening or mixed in the material replaced on the temporary track.

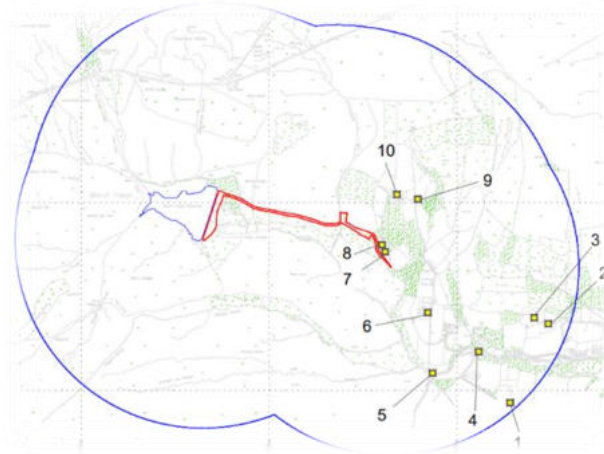
The area proposed for the site compound has greater potential for archaeological finds, but this has been used in the past as a site compound and storage area.

Areas close to the auxiliary spillway channel, close to a known and recorded 'working' site at which flints have been found, and the area east of the dam where fencing is proposed, is thought to have the greatest potential for buried archaeology.

West Yorkshire Archaeological Services have been commissioned, and produced comprehensive archaeological desk-based study, and are in the process of writing the Written Scheme of Investigation (the watching brief).

The two listed building, White Hull Farmhouse and its barn are of national importance, but the track will follow the existing track through the farmyard. The track passes only to the side and rear of the properties leaving their principle elevations unaffected. The track passes at sufficient distance from the original fabric of these buildings (they've been extended in timber clad buildings) that any impacts from the proposals will be minimal.'

- 11.126 In addition, as referenced above, the Trust has commissioned a DBA looking at a wider area than the application site. A study area identified in the image below has been used for the purpose of the assessment to understand the nature and extent of the surrounding archaeological resource. The study area is centred on the proposed route of the permanent track. Records of all identified cultural heritage features are described and presented in a 'Catalogue of Heritage Assets' within the DBA. An assessment of the significance or sensitivity of any recorded heritage assets within the study area has been undertaken in line with the requirements of the NPPF, Chapter 16: 'Conserving and enhancing the historic environment'.



- 11.127 In terms of impact assessment and the scope for archaeological findings, the following conclusion is set out in the DBA.

'Evidence of activity from the Mesolithic to post-medieval periods are recorded in the study area in an area dominated by open moorland. The study area incorporates a well-studied area of Mesolithic activity around March Hill, representing one of the most important Mesolithic sites in the country. One recorded lithic working area overlaps with the western end of the PDA [Previously Developed Area]. It is possible the PDA

contains further evidence of prehistoric activity, most likely in the form of lithic scatters or individual finds.

A Roman road crosses the study area, possibly crossing the western end of the PDA, though its precise course here is unknown. It is possible that the road itself and associated Roman material from road traffic may be present.

Post-medieval remains, in particular drystone walls, are likely to be impacted by the proposed access track.

The lack of development and intensive agriculture may facilitate the survival of earlier archaeological material, particularly of prehistoric and Roman periods. This archaeological desk-based assessment has established that there is a high potential for archaeological remains within the PDA based on the known heritage assets in the study area.'

- 11.128 In terms of impact assessment and further mitigation in relation to the scope for archaeological findings, it is stated in the DBA that.

'A watching brief is recommended to mitigate damage to archaeological remains by groundworks associated with the construction of the access track.'

- 11.129 Following the above recommendation in the DBA and as referenced in the conclusions of the HIA, the Trust will now progress a Written Scheme of Investigation for an Archaeological Watching Brief with WYAS, which at this stage is intended to be produced at the earliest possible convenience for submission and approval by Kirklees Council.

- 11.130 It is considered that the information provided to accompany the application, the findings, conclusions, and recommendations of the assessment work that has been completed and subsequent commitment to the written scheme of investigation and archaeological watching brief is sufficient to demonstrate compliance with Local Plan Policy LP35 and the NPPF.

Access & Recreation

- 11.131 As identified earlier, the site is located within an extensive area of Access Land (as designated by the Countryside and Rights of Way (CRoW) Act 2000) and CRoW Act Section 15 (Common Land).

- 11.132 The site falls within an area of Access Land and Common Land crossed by several PRoW, a bridleway and informal paths. The site also falls within the South Pennine Moors SPA/SAC Strategic Green Infrastructure Network. A National Trail (the Pennine Way) also traverses the moorland some 1.4km to the south but the Development is not visible or directly accessible from this route. PRoW COL/195/40 is to the located to the northeast and crosses the proposed track between Point C and passing place 1.

- 11.133 Local Plan Policy LP23 (Core walking and cycling network) address access and recreation and relates to the core walking and cycling network identified in the Local Plan. Under Core Strategy Policy LP23, it is stated that:

'The core walking and cycling network as shown on the Policies Map will provide an integrated system of cycle routes, public footpaths and bridleways that provide opportunity for alternative sustainable means of travel throughout the district and provide efficient links to urban centres and sites allocated for development in the Local Plan.'

11.134 In terms of protection against new development, it is stated in Policy LP23 that:

'Proposals that may prejudice the function, continuity or implementation of the core walking and cycling network will not be permitted. Existing public rights of way that form part of the core walking and cycling network or elsewhere will be protected and enhanced.'

11.135 Additionally, Local Plan Policy LP31 (Strategic Green Infrastructure Network) is also relevant. It is stated in Policy LP31 that:

'Within the Strategic Green Infrastructure Network identified on the Policies Map, priority will be given to safeguarding and enhancing green infrastructure networks, green infrastructure assets and the range of functions they provide. Development proposals within and adjacent to the Strategic Green Infrastructure Network should ensure:-

(i) the function and connectivity of green infrastructure networks and assets are retained or replaced;

(ii) new or enhanced green infrastructure is designed and integrated into the development scheme where appropriate, including natural greenspace, woodland and street trees;

(iii) the scheme integrates into existing and proposed cycling, bridleway and walking routes, particularly the Core Walking and Cycling Network, by providing new connecting links where opportunities exist;

(iv) the protection and enhancement of biodiversity and ecological links, particularly within and connecting to the Kirklees Wildlife Habitat Network.

The council will support proposals for the creation of new or enhanced green infrastructure provided these do not conflict with other Local Plan policies.

11.136 Furthermore, the NPPF includes relevant planning policy in context with access and recreation. It is stated in the NPPF, paragraph 98 that:

'Access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities and can deliver wider benefits for nature and support efforts to address climate change.'

11.137 It is stated in the NPPF, paragraph 100 that:

'Planning policies and decision should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example adding to links to existing rights of way networks including National Trails.'

11.138 The Trust has undertaken pre-application engagement with the National Trust, Ramblers Association and Open Spaces Society regarding access and recreation. The feedback is summarised below, which has been taken into consideration within the application:

- The need for careful management at the point where the access track, construction and subsequent reservoir works cross footpath COL/195/40;
- The need to consider the potential for increased recreational pressure, both authorised and un-authorised and associated increased risk, litter, disturbance and impact on land manager resources; and
- The need to maintain open access to Access Land and Common Land.

11.139 Chapter 9 of the ES provides an assessment of the effects of the proposed development on access and recreation resources. This has involved:

- Identification of all recreational opportunities that may be affected including Rights of Way, Open Access Land, adjacent recreational areas and legal, permissive and unauthorised uses;
- Determination of types of user, activities undertaken, levels of usage and travel distance; and
- Consideration of permanent and/or temporary closures and diversions, the loss or gain of amenity, existence of equivalent recreational opportunities and the displacement of activities.

Proposed track route and location of rights of way



11.140 It is identified in the ES that, current levels of recreational use are low and limited mainly to walking, dog-walking with some running and (on the bridleway that runs along Willykay Clough) mountain biking.

11.141 Based on the ES assessment of construction and operational phase impacts, mitigation measures and consideration the residential effects, it is concluded that:

'A desk study has been undertaken to establish the baseline conditions of the Site and is supplemented with observations of current recreational use gleaned during the course of other surveys.

The Proposed Development falls within an area of Access Land and Common Land, crossed by several PRow, a bridleway and informal paths and falls within the South Pennine Moors SPA/SAC Strategic Green Infrastructure Network. A National Trail (the Pennine Way) also traverses the moorland some 1.4km to the south but the Proposed Development is not visible or directly accessible from this route.

Current levels of recreational use are low and limited mainly to walking, dog-walking with some running and (on the bridleway that runs along Willykay Clough) mountain biking. There is reported to be unauthorised off-road vehicle use entering Marsden Moor from the northern side, off the A640.

The main points of access to the Site are via Blake Lea Lane to the east, where there are two informal parking areas on the verges of the lane. Access to the moorland is via PRow. The other points of access are from the A640 to the north where the Pennine Way car park and Buckstones car park provide access via Access Land and a PRow, respectively.

The Proposed Development would result in localised and temporary loss of recreational amenity during construction, as well as impacting directly on four PRow. No temporary diversions or closures of the PRow are proposed and there will be no loss of access to the designated Access Land/registered Common Land at any time. All existing parking areas will remain accessible. Safety measures comprising use of a banksman and short lengths of Heras fencing and signage will be deployed to guide the public safely through active construction areas as necessary.

A CTMP will be prepared and implemented to managed construction traffic on Blake Lea Lane. A CEMP will be prepared and implemented to manage construction traffic along the proposed access track route.

With the above mitigation in place there remains a residual effect in terms of loss of recreational amenity at the construction stage. This is due to noise and visual disturbance and disruption to footpaths which cannot be avoided. However, these effects are localised and temporary, and would be likely to affect relatively low numbers of recreational users.

At the operational stage of Proposed Development, the introduction of the Proposed Development and associated vehicle movements is anticipated to result in a permanent loss of recreational amenity from two viewpoints (Viewpoints 6 and 7) due to visual intrusion of the track into the landscape which has been mitigated as far as possible by selecting a route that follows the line of a previous temporary track and limiting vehicle speed to 10mph.

The track would not be fenced off from the adjacent moorland (though a section of fencing incorporating a style will be erected along the base of March Haigh Reservoir embankment), so there will be no loss of access to and from Access Land/registered Common Land, although unauthorised vehicle use will be prevented from the east where existing gates will be replaced with padlocked gates at White Hall Farm and Hard Head Clough. It is possible, therefore, that the Proposed Development could result in an increase in levels of recreational use, though this is uncertain.

If levels of recreational use were to increase then this could lead to erosion, fire risk, litter, and interface with grazing livestock. Additional mitigation measures are proposed, therefore, to monitor and take action, in partnership with the National Trust and in liaison with other relevant stakeholders including the fire service and police as required to reduce this effect to negligible.'

- 11.142 It is considered that the identified negligible effect demonstrates that the proposed development will not have an overall detrimental impact on access and recreation in the area, which is compliant with the objectives of Local Plan policies LP23 and LP31 and paragraphs 98 and 100 of the NPPF.

Mitigating & Adapting to Climate Change

- 11.143 Kirklees Council adopted its local guidance note; 'Planning Applications Climate Change Guidance' in June 2021, in which it is stated that:

'This guidance note is to advise developers/applicants that the Council now expects a Climate Change Statement to be submitted as part of all planning applications. This is to enable developers to demonstrate how climate change factors have been considered in preparing proposals in the context of Kirklees Local Plan, National Planning Policy Framework and other national requirement relating to climate change.'

'This guidance note requiring a Climate Change Statement cannot implement new policy requirements but will allow planning officers, elected members and the community to clearly see how climate change has been considered as developers prepared their planning applications.'

- 11.144 A climate change statement is submitted with the planning application setting out how the development has been designed to reduce and minimise energy consumption, and its approach to sustainable development.

- 11.145 In the context of adapting to climate change, it is considered important to acknowledge the requirements of Local Plan Policy LP29 (Management of water bodies), in which it is stated that:

'Where it is proposed to develop a site already containing a water area, this should normally be retained as part of the proposal and include a future management plan for the maintenance of the water area to ensure the safety of residents for the lifetime of the development. This includes bodies of water associated with existing buildings, even where they are remote from the building, and also includes ancillary elements linked to the operation of the water body.'

- 11.146 It is important to set the development within a wider context of the pressure from climate change on ageing critical infrastructure. Increasing extremes in weather patterns are bringing considerable challenges for the management of such infrastructure which need to be overcome to maintain resilience and, ultimately, protect public safety. For example, the damage incurred at the Trust's Toddbrook Reservoir in July/August 2019 followed the combination of two consecutive rare storm events – the first a 1 in 40-year severity storm followed by 1 in 90-year weather event just two days later. In early 2020, storms Ciara, Dennis and Jorge – three major events within a month or so – collectively caused very significant damage to waterway infrastructure across the north of England.

- 11.147 Rapid access to the reservoirs is required to implement well-developed and understood emergency drawdown procedures.

Flood Risk & Drainage

Flood Risk

11.148 The site is shown on the Environment Agency's (EA) Flood Map to be within 'Flood Zone 1', which is considered to be at the lowest risk from tidal and fluvial flooding.

11.149 In Local Plan Policy LP27, it is stated that:

'Proposals must be supported by an appropriate site-specific Flood Risk Assessment in line with national planning policy. This must take account of all sources of flooding set out in the Strategic Flood Risk Assessment and demonstrate that the proposal will be safe throughout the lifetime of the development (taking account of climate change). The proposal must also not increase flood risk elsewhere and where possible should reduce flood risk. Mitigation measures, where necessary, should be proposed.'

11.150 In context with the requirements of Local Plan Policy LP27 above, it is stated in the NPPF Technical Guidance that a Flood Risk Assessment (FRA) is required for development of sites that are more than 1 hectare in size, including Flood Zone 1.

11.151 As part of the Trust's formal pre-application process with Kirklees Council ahead of this application, the EA were consulted for comments on the proposal. In response, the EA acknowledged that reservoirs are at risk from reservoir flooding, but stated the following:

'Reservoir flooding is extremely unlikely to happen providing the reservoir is appropriately managed and maintained. All large, raised reservoirs designated as 'high-risk' and those where the risk is still to be determined must be inspected and supervised by reservoir panel engineers. The Environment Agency are the enforcement authority for the Reservoirs Act 1975 and under the Act it is a requirement that reservoirs are inspected regularly, and essential safety work is carried out.'

11.152 As the site area exceeds 1 hectare in size, a Flood Risk Assessment (FRA) has been prepared and is submitted with the application, which sets out an assessment of the risk from flooding at the site from rivers, the sea, groundwater, sewers, reservoirs, canals, and other artificial sources to conclude whether the development is safe and also considers the effects of the development to assess whether it is likely to increase off site flood risk elsewhere.

11.153 The FRA concludes as follows:

'This FRA demonstrates that the proposed access track would be safe from flooding and would not increase off-site flood risk from any source. The development proposals, therefore, comply with the requirements of the NPPF.'

11.154 It is therefore considered that the proposed development is complies with the relevant parts of Local Plan Policy LP27 and the NPPF.

Drainage

11.155 The proposed development will involve the management of surface water across the track, including two existing culverted locations and a proposed new culvert in association with an identified third watercourse.

11.156 In Local Plan Policy LP27 (Flood Risk), it is stated that:

'Proposals involving building over existing culverts, or the culverting or canalisation of water courses will not be permitted unless it can be demonstrated to be in the interests of public safety or to provide essential infrastructure and that there will be no detrimental effect on flood risk and biodiversity. Where feasible, development proposals should incorporate re-opening of culverts, modification of canalised water courses and consideration of mitigation measures to achieve a more natural and maintainable state.'

11.157 Additionally, local planning policy requirements regarding drainage are set out in Local Plan policy LP28 (Drainage), in which it is stated that:

'There will be a general assumption against pumping surface water. It must also be demonstrated that the surface water management solution is designed to meet requirements over the lifetime of the development including evidence that management and maintenance arrangements have been secured to cover that period. This includes ensuring proposals to store water meet national standards and latest best practice.'

11.158 Furthermore, Local Plan Policy LP34 (Conserving and enhancing the water environment) is relevant, which states:

'Proposals must:

3. Dispose of surface water appropriately (in accordance with the Local Plan drainage policy) adhering to the following networks in order of preference:

- a. to an infiltration system wherever possible (such as soakaway);*
- b. discharge into a watercourse with the prior approval of the landowner, navigation authority or Environment Agency, where applicable. To comply with Part 1 of this policy this must be following treatment where necessary or where no treatment is required to prevent pollution of the receiving watercourse;*

c. *discharge to a public sewer.'*

- 11.159 A separate Drainage & Surface Water Strategy is submitted as a technical document to accompany the application, which sets out how surface water and drainage will be dealt with across the length of the track including the details the proposals for replacing two existing watercourse culverts and providing one additional culvert installation.
- 11.160 The Drainage & Surface Water Strategy document establishes that there is a slightly different approach to managing surfacing water across the identified track sections 1, 2 & 3 but essentially the philosophy is to provide an unbound track that allows water to flow through, ensuring that the peat receives the necessary flow of water despite the track construction and the natural water flow is maintained.
- 11.161 One recent design change to note, which directly improves the impact of surface water drainage flow rates across the track, is the now shorter track length of 965 metres. Point D shown on the submitted plans now represents the end of the track where there is a vehicle turning point, which does not tie in with the existing reservoir spillway.
- 11.162 This approach will reduce the risk of water flow from the reservoir spillway running onto the track and therefore prevent damage to the structural integrity. Additionally, connecting the track with the spillway could be a water contamination hazard and would require significant future maintenance due to the track's material being washed away and result in possible slippage.
- 11.163 It is considered that the information detailed in the Drainage & Surface Water Strategy is satisfactory to demonstrate compliance with Local Plan policies LP27 and LP28.

Amenity

- 11.164 The site is located in an isolated location on moorland, but it is acknowledged that there are some residential properties/farmsteads nearby on Blake Lea Lane. Part of the proposed track route between Point A and Point B passes through White Hall Barn.
- 11.165 In Local Plan Policy LP51 (Protection and improvement of local air quality), it is stated that:
- 'Development will be expected to demonstrate that it is not likely to result, directly or indirectly, in an increase in air pollution which would have an unacceptable impact on the natural and built environment or to people.'*
- 11.166 In Local Plan Policy LP52 (Protection and improvement of environmental quality), it is stated that:
- 'Proposals which have the potential to increase pollution from noise, vibration, light, dust, odour, shadow, flicker, chemicals and other forms of pollution or to increase*

pollution to soil or where environmentally sensitive development would be subject to significant levels of pollution, must be accompanied by evidence to that the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.

Such developments which cannot incorporate suitable and sustainable mitigation measures which reduce pollution levels to an acceptable level to protect the quality of life and well-being of people or protect the environment will not be permitted.'

11.167 In Local Plan Policy LP53 (Contaminated and unstable land), it is stated that:

'Development on land that is unstable, currently contaminated or suspected of being contaminated due to its previous history or geology, or that will potentially become contaminated as a result of the development, will require the submission of an appropriate contamination assessment and/or land instability risk assessment.'

11.168 For the construction phase of development, a Construction Environmental Management Plan is provided separately with the planning application to demonstrate that the construction working practices will minimise and mitigate any effects on the surroundings, including the occupiers of nearby residential properties.

11.169 In terms of the physical impact of the track once constructed, there are no associated features that would lead to any detrimental impacts relating to noise, lighting, odour or vibrations upon the surroundings, including the occupiers of nearby residential properties.

11.170 A natural stone material will be selected for its chemical makeup so that it is suitable for use in this environment and will not result in any ground contamination beneath or on land surrounding the track. There is no likelihood of ground contamination as a result of the proposed track.

11.171 In terms of the ongoing future operation of the proposed track, it is not considered that the proposed frequency of which it is proposed to be used (as set out in *Highway Safety* below) will lead to any detrimental impact upon the amenity of the surroundings, including the occupiers of any nearby residential properties.

11.172 As part of the pre-application enquiry, Kirklees Council responded as follows regarding the likely impact upon amenity:

'Given the relatively remote location of the site, type of development proposed, and the sporadic nature of nearby residential dwellings/farmsteads, it is considered unlikely that the proposal would have adverse impacts on the residential amenities of neighbouring occupiers in terms of overbearing, overlooking, overshadowing, and loss of outlook.

Once operational, it is also considered unlikely that the proposal would have a significant adverse effect on local air quality, noise levels, odour, external lighting, and vibration due to the proposed frequency of use.'

- 11.173 It is considered that the proposed development is compliant with requirements Local Plan policies LP51, LP52 and LP53.

Access & Highway Safety

- 11.174 The proposed track will be accessed off Blake Lea, which is an adopted public highway connecting to the centre of Marsden to the west via Waters Road, Reddisher Road and Station Road.

- 11.175 It is stated in Local Plan Policy LP21 (Highways and access) that:

'New development will normally be permitted where safe and suitable access to the site can be achieved for all people and where the residual cumulative impacts of development are not severe.'

Proposals shall demonstrate adequate information and mitigation measures to avoid a detrimental impact on highway safety and the local highway network.

- 11.176 In the NPPF, Chapter 9, paragraph 111, it states the following regarding highway safety:

'Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'

- 11.177 It is acknowledged that construction of the access track will increase the frequency of vehicle movement along the local public highway network. Therefore, to address construction traffic, a Construction Traffic Management Plan document is submitted separately with the planning application, which outlines safe site access and parking arrangements for construction traffic throughout the construction phase of the proposed access track.

- 11.178 Furthermore, it is worth noting that, as a vehicular access track was previously granted planning permission in this location from Blake Lea Lane in 1998, it is considered that highway safety along the same local highway network for use by similar construction traffic has previously been considered acceptable in this location.

- 11.179 The increase in traffic movement along the local public highway network following construction will be low. Regular inspection visits, requiring a permanent access track are vital in identifying any immediate risks of failure and enabling rapid emergency and draw down to be affected.

- 11.180 Regular weekly routine inspection visits will be carried by 4x4 vehicles or 3 tonne vans, far less frequent works will be carried out with 7.5 tonne vehicles with a trailer for maintenance work. Also, the track will need to accommodate, 28 tonne wagons and 20 tonne dumpers for major emergency access on a highly in-frequent basis.

11.181 As part of the pre-application enquiry, Kirklees Council responded as follows regarding the frequent ongoing operational use of the proposed access track:

'The proposal would likely introduce c. 3 inspection trips per week by a 4x4 vehicle plus weekly trips from maintenance vehicles (such as welfare vans and tippers) once the track is operational. Officers consider that this would be unlikely to severely impact on highway safety in the area.'

11.182 Given the information provided to support construction traffic management and low impact of ongoing future operational requirements, it is considered that the proposed development complies with Local Plan Policy LP21 and the NPPF.

Other Matters

Fencing

11.183 In addition to the access track, wooden stock fencing is required on the reservoir embankment, which will connect to existing wooden stock fencing along the crest.

11.184 Grazing cattle can have a harmful impact upon the structural stability of a reservoir embankment, therefore the proposed fencing in this location is intended to create a small, enclosed area to prevent the cattle from accessing the embankment.

11.185 The proposed fencing will be timber, post, and rail stock fencing driven into the surface of the ground to match the height and appearance of the existing fencing in situ. The overall impact of the proposed fencing is considered low in both physical and visual terms.

11.186 In Local Plan Policy LP24 (Design) it is stated that:

'Proposals should promote good design by ensuring:

a. the form layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;'

11.187 In the NPPF, Chapter 12 (Achieving well designed places), paragraph 126, it is stated that:

'Good design is a key aspect of sustainable, creates better places in which to live and work and helps make development acceptable to communities.'

11.188 The external appearance of the proposed wooden post and rail fence is sympathetic to the established character of the surroundings through the use of a natural timber material, matching the existing fencing in situ. Similarly, the proposed fence is of the same post and rail construction to match like-for-like with the existing stock fencing in situ.

11.189 It is considered that the proposed continuation of stock fencing across the reservoir embankment is compliant with Local Plan Policy LP24.

11.190 The reservoir embankment consists of a man-made structure that is designed to hold water. It does not include blanket bog or peat soils that could be affected by the erection of stock fencing in this location.

Site Compound

- 11.191 The proposed development involves a temporary site compound area to be in place throughout the construction phase of the access track. The temporary compound will be approximately 140 square metres in size and situated within a farmer's field adjacent to Point C along the route of the track. The land is located outside of the SSSI, SAC & SPA designations, it does not contain any blanket bog or peat soil.
- 11.192 This land was previously used to stockpile peat soil as part of the previous 1999 planning permission for an access track in this location, which has been out in detail in Section 8 *Relevant Planning History* of this statement.
- 11.193 The compound will be used to provide the main welfare, storage, and parking facilities. The compound will need to be surfaced prior to the start of works to infill low spots and provide a suitable base for the installation of site offices, welfare, and parking. A suitable geotextile will be used on the ground before stockpiling any excavated peat or construction materials. Once construction work on the access track is complete, the temporary compound will be removed from site, and the vegetation will be reinstated. A species mix is proposed and will be enhanced to include some additional plant species that will provide suitable seed-bearing plants for Twite feeding.

Cumulative Effects

- 11.194 The ES includes an assessment of the cumulative effects of the permanent access track and other projects in the vicinity.
- 11.195 Given the relatively remote nature of the proposals, distant from other built development, a zone of approximately 1 km from the site boundary has been considered appropriate for the consideration of cumulative effects, unless topic specific considerations required a wider zone to be considered, e.g. for consideration of long-distance views.
- 11.196 The projects identified and included in the assessment are listed in Table 1.2 of the ES. This includes the reservoir works. The conclusions are set out in in the topic chapters of the ES.

12.0 Conclusions

- 12.1 The planning application is supported by a comprehensive set of documents.
- 12.2 *Section 11 Planning Analysis* of this statement addresses the principle of development; green belt; ecology & biodiversity; landscape and visual impact; minerals resource assessment; heritage & archaeology; access and recreation; mitigating and adapting to climate change; flood risk & drainage; amenity; and access & highway safety having regard to the development, the site and relevant planning policy.
- 12.3 The planning application includes a range of additional mitigation measures and measures to prevent authorised access.
- 12.4 A significant amount of additional information is being provided with the planning application to explain the need for the permanent access track. This is set out in the Justification Document, which contains a detailed explanation of the need for the track, including the legal context and the legal requirement as a MIOS under Section 10 of the Reservoirs Act 1975, and operational challenges and requirements going forward to safely manage and maintain the reservoir.
- 12.5 In addition, the Justification Document provides details of the public safety risk, including consequences in the event of reservoir failure. The Trust as applicant has included this information as part of seeking to fully explain the importance of, and essential need for, the permanent access track.
- 12.6 For the reasons explained in detail in the Justification Document, a permanent access track is imperative to ensure the safe operation and maintenance of March Haigh Reservoir, and to allow for emergency works and draw down if necessary. The consequence of failure of this reservoir, and resultant loss of life, loss of property (including residential dwellings) and flooding provide IROPI for the permanent access track as required by the Regulations. In addition, as explained in the Justification Document, the reservoir provides public water supply to Yorkshire Water, and indirectly enable water to be provided to the Huddersfield Narrow Canal.
- 12.7 The Planning High Court has considered the application of the Reservoirs Act and made clear that Parliament would have been aware that many reservoirs and dams are in environmentally sensitive locations, and it is significant that, although environmental designations are considered by the inspecting engineers, the overriding legislative consideration is public safety.
- 12.8 In order to operate March Haigh Reservoir, there is no legal alternative to the construction of a permanent access track. A permanent access track is considered by the government appointed Inspecting Engineer to be an essential requirement to ensure the safety of the reservoir, and to enable other safety critical works to be undertaken. A MIOS is a legally binding obligation; failure to provide the track is a criminal offence.

- 12.9 Therefore, the only potential alternatives to be considered are:
- An alternative choice of route for the access track.
- 12.10 For completeness, it is worth noting that alternative track routes have been considered as part of the work carried out to secure planning permission in 1999 for the current access track, which remains in situ beneath the surface of the ground. Two possible alternative routes were available and considered but they were discounted based on having a greater visual and ecological impact than the approved route.
- 12.11 The Trust has reviewed the need for March Haigh Reservoir and the consequences of discontinuance. This exercise has demonstrated that discontinuance is neither a viable nor a desirable alternative to complying with the Trust's legal obligations, having regard to the adverse consequences for the public interest that are identified in this document and the Justification Document.
- 12.12 There are no alternatives to a permanent access track and detailed information has been provided to support this conclusion.
- 12.13 The planning application is accompanied by an ES which contains a formal EIA of the proposed development and identifies ways in which environmental effects can be mitigated to reduce, avoid, or minimise any such significant effects.
- 12.14 A report to inform a HRA is submitted with the planning application with the purpose being to set out the information needed to enable the PDNPA to undertake a HRA. The report has been prepared by PAA, a specialist and experienced ecological consultancy established in 1972.
- 12.15 The Trust as applicant acknowledges that there will be an impact on peatland habitat and habitat for moorland breeding birds. The aim, however, is to minimise the impact and compensate for the permanent loss. An ecological compensation strategy no less than 3.5ha in size is proposed to off-set a loss of blanket bog habitat, associated hydrological function and loss of habitat for moorland breeding birds. The measures would be delivered through a legally binding s106 agreement.
- 12.16 The Trust accepts that the permanent access track will have to satisfy the derogation tests under the Regulations due to the impact on the SAC. The Trust considers that the grounds of the tests have been met. The information included with the planning application demonstrates that there are no viable alternatives to a permanent access track; there are clear grounds for IROPI given the risk to human life posed by failure of the reservoirs - demonstrated by the fact that these measures are required as a legally binding MIOS by an independent inspecting engineer; and the Trust has proposed no less than 3.5ha of improved habitat to compensate for the loss of 0.43ha peatland habitat due to the construction of the access track.

- 12.17 A Biodiversity Net Gain Assessment has provided with the application, which demonstrates a biodiversity net gain of 18.72%.
- 12.18 A principle of minimal intervention underpins the design approach to the development. A detailed explanation is included in this statement and the justification document for the width of the track, demonstrating that it is minimum width feasible for ongoing maintenance and emergency procedures.
- 12.19 There is an acknowledged landscape and visual impact albeit it is concluded in the ES that this has been reduced to a minimum.
- 12.20 It is considered the proposed development is 'not inappropriate' development in the Green Belt as it comprises an engineering operation, which does not conflict with the purposes of including land within the Green Belt or harm openness in accordance the NPPF. Notwithstanding that position, the proposed works to provide permanent access to the reservoir must take place as MIOS in the public interest and constitute 'very special circumstances'.
- 12.21 The proposed development involves disturbance of peat that has already been disrupted by a previous development, it proposes to retain 65% of the disturbed peat within its existing environment on-site and includes an established compensation strategy to off-set the loss of blanket bog habitat and associated hydrology function and peat carbon storage. Additionally, the construction of a proposed access track as a surface development with no deep foundations is quite easily capable of removal (with alternative provision provided on a temporary basis) and would not prevent mineral extraction beneath the surface if it was required in this area.
- 12.22 It is considered that the heritage and archaeological information provided to accompany the application, the findings, conclusions, and recommendations of the assessment work that has been completed and subsequent commitment to the written scheme of investigation and archaeological watching brief is sufficient to demonstrate a satisfactory approach.
- 12.23 The proposed track route will not be fenced off from the adjacent moorland, so there will be no loss of access to and from Access Land or registered Common Land, although unauthorised vehicle use will be prevented from the east where existing gates will be replaced with padlocked gates at White Hall Farm and Hard Head Clough. It is concluded in the ES that the proposed development will have a 'negligible' impact on access and recreation in the area.
- 12.24 A climate change statement is submitted with the planning application setting out how the development has been designed to reduce and minimise energy consumption, and its approach to sustainable development. It is important to set the development within a wider context of the pressure from climate change on ageing critical infrastructure. Increasing extremes in weather patterns are bringing considerable challenges for the management of such infrastructure which need to be overcome to maintain resilience and, ultimately, protect public safety.

- 12.25 A Flood Risk Assessment is submitted with the application, which concludes that the proposed access track is safer from flooding and would not increase flooding elsewhere. Additionally, a separate Drainage & Surface Water Strategy document is submitted with the application to demonstrate a satisfactory approach to managing surface water across the site.
- 12.26 In terms of the physical impact of the track once constructed, there are no associated features that would lead to any detrimental impacts relating to noise, lighting, odour, or vibrations upon the surroundings, including the occupiers of nearby residential properties.
- 12.27 Any increase in traffic movement along the local public highway network following construction will be low. Regular inspection visits, requiring a permanent access track are vital in identifying any immediate risks of failure and enabling rapid emergency and draw down to be affected.
- 12.28 Having regard to the above analysis and the significance of the development, the Trust respectfully requests that the Kirklees Council grants planning permission for the development.