

**6. FULL APPLICATION - CONSTRUCTION OF A PERMANENT ACCESS TRACK TO FACILITATE ESSENTIAL SAFETY WORKS, ONGOING INSPECTION, MAINTENANCE AND EMERGENCY ACCESS TO SWELLANDS AND BLACK MOSS RESERVOIRS. (NP/O/0221/0110, BJT)**

**APPLICANT: Canal & River Trust**

**Summary**

1. This application proposes the construction of a track in open moorland, within the Natural Zone and in an area designated for its habitat and biodiversity interest as an SSSI, SAC and SPA. National and local policies set out a very strong presumption against development in these designated areas. The planning application sets out the case for approving the development in this case, advancing the public interest case for the essential maintenance of the two dams and reservoirs. Officers have concluded that the need for a permanent track to carry out the essential repair and maintenance work is a significant material planning consideration, given the public safety and water supply issues, and that the submitted scheme minimises the environmental impacts as far as possible, with those cannot be avoided being compensated for through off-setting works elsewhere in the area. Consequently, the application is recommended for approval, subject to the Trust entering into a Section 106 agreement to secure the off-site works and to conditions.
2. The accompanying Appropriate Assessment concludes that there will be an unavoidable impact on SAC habitat, namely blanket bog (including both loss and damage). Under the Habitats Regulations 2017 the proposal can therefore only be legally approved if the following conditions are met:
  - There are Imperative Reasons of Over-riding Public Interest (Regulation 64(1))
  - There are no alternative solutions (Regulation 64(1))
  - Compensatory measures must be taken to ensure that the overall coherence of Natura 2000 is protected (Regulation 68)
  - If the Authority is minded to approve the application, the Secretary of State must be notified at least 21 days before final approval (Regulation 64(5)).

**Site and Surroundings**

3. The proposed track is required to gain access for maintenance works to Black Moss and Swellands Reservoirs, which are located in a remote position on high moorland two miles north-east of Diggle and one mile south-west of Marsden.
4. The moorland, including the area occupied by the reservoirs, is within the Dark Peak Landscape Character Area which is an area of high landscape and nature conservation value. It is designated as a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Special Protection Area (SPA) . These designations are of national and international nature conservation importance. The moorland is also classified in the Core Strategy as Natural Zone. The area also has archaeological and historic interest dating from the Mesolithic (stone age) period and, more recently, presence of a 'leat' (artificial channel) that was constructed in the early 19th century to carry water from Black Moss Reservoir to Brun Clough Reservoir. Keepers Cottage is the only dwelling at the locality, accessed by an existing track off the A62.
5. There are several public footpath routes across the moorland in the vicinity of the reservoirs, including the Pennine Way, which passes between the two reservoirs and then continues along the north-west side of Black Moss Reservoir. Although the applicants, the Canal and River Trust, own the land associated with the reservoirs, much of the

surrounding land over which the temporary track passes is owned by the National Trust as part of their Marsden Estate. This land is also common land.

### Proposal

6. Construction of a permanent access track to facilitate essential safety works, ongoing inspection, maintenance and emergency access to Swellands and Black Moss Reservoirs.
7. The proposed route is a revision of the route utilised for the temporary access track constructed in 2006/07. A thorough assessment of alternative routes was completed in 2006 and agreed with Peak District National Park Authority and Natural England. The same route is proposed for the permanent track, with the exception of the start of the route which will utilise an existing track to the west of Brun Clough Reservoir as opposed to route was used in 2007, starting outside the designated area and then climbing eastwards into it. This alternative will help to mitigate visual and ecological impacts, and reduce the likelihood of unauthorised access.
8. The Trust are legally required by to carry out the works by January 2022.
9. Description of route (extract from supporting document):
  - A. *“The permanent access track will begin at an existing access from the A62 to the West of Brun Clough Reservoir, passing below the reservoir on an established stone track to Point A. From Point A, in informal existing track will be formalised with stone to the existing gate a point B. This section of the track differs from the 2006/07 temporary route, to remove the need to cut back the bank of Brun Clough Car Park, reduce the amount of stone required and avoid an area of deep peat outside the SAC/SPA. From Point B, most of the stone track will follow a disused feeder channel between Black Moss Reservoir and Brun Clough Reservoir, formalising the existing occasional light vehicle access arrangement. The stone track will terminate at point E shown in Figure 2. Permanent access to Swellands Reservoir head wall will be achieved by a bog mat track from Point E.*
  - B. *In 2007 the track used part of the Pennine Way as a temporary access route, however it is proposed to install the permanent bog mat track within the Trust’s land ownership, away from the Pennine Way to avoid interface. Uneven ground will be regulated with stone to provide a level base for the bog mats, with a geotextile layer to separate the stone from the existing vegetation and peat. From the intersection of the track with the Pennine Way at the eastern Black Moss dam, the bog mats will follow the previous route to the edge of Swellands Reservoir (Point F), with access into the reservoir for heavy construction plant and materials. A lighter duty track will ‘dog-leg’ to the north of Swellands on a previously un-used route over deep peat to provide ongoing inspection and maintenance access. Construction plant for the auxiliary spillway works will use this section of track between Points F and G on a once in and out basis. Temporary construction access to the main spillway and dam embankment is expected to be achieved by running on an access constructed within the reservoir bed, ramping in at the same point used previously (Point F)”.*
10. The supporting statement explains that the width of the track is 4m which is the minimum width to allow all vehicles to utilise the track without detriment to the edges.
  - The geometry of the track between Points A and E has been designed to accommodate 7.5T vehicles, based on the operational requirements. During construction, larger vehicles will use the track and road plates will be required to protect the surrounding ground from vehicle over-run. This ensures the track is no wider than it needs to be in the permanent state;

- The depth of the stone track is 300mm-540mm. Thickness has been reduced from the design thickness of up to 800mm by use of a geogrid within the construction and agreement of increased maintenance. This ensures; the least impact on the peat, lowest visual impact and reduced material usage
  - 8 no. permanent passing places are specified along the route;
  - Track construction generally to sit on top of the existing ground profile, with the exception of the start of the track at Point A, where cut will be required to provide a safe interface between the existing and proposed track;
  - Locally quarried rock of similar PH to the site;
  - The design life will be 25 years (with maintenance);
  - The maximum load will be 28 tonnes on the permanent section A62 to point E;
  - After construction the number of vehicle passes will be 2 inspection vehicles (4x4 vehicle) per week 3 tonne, monthly maintenance vehicle up to 7.5 tonnes;
  - No materials will be taken off site;
  - The existing gate at Point B will be utilised to prevent unauthorised vehicle access from the A62. A new gate will be installed to prevent unauthorised access between Points D and E;
  - The permanent design specification between Points E and G will be as follows:
    - i. The maximum load on the removable bog mat track section will be 7.5 tonne in the permanent case, with increased specification during construction;
    - ii. After construction the number of vehicle passes will be 3 inspection vehicles (4x4 vehicle) per week 3 tonne, monthly maintenance vehicle up to 7.5 tonnes;
    - iii. No materials will be taken off site;
    - iv. Permanent turning circle at Point G and passing place at interface with Pennine Way.
11. A Construction Traffic Management Plan has been prepared to manage construction traffic at the A62 Standedge Cutting. Discussions have also taken place with Oldham Council to agree measures to protect the public using the Pennine Bridleway at the point where it meets the A62. In addition, the Contractor will use 'banksmen' (a person responsible for directing the movement of vehicles and plant on or around a site) during construction at the points where the track meets the Pennine Bridleway, Pennine Way and other rights of way to ensure the safety of the public using these rights of way.
- 12. Background to the proposal**
13. The Canal and River Trust owns and operates four reservoirs in the vicinity of Swellands Reservoir within the Dark Peak. The reservoirs are situated on exposed moorland over 200m above residential areas. There is currently no vehicular access to the reservoirs, and pedestrian access is via difficult terrain which can often become impassable for engineering purposes due to poor weather and low visibility. Access is required to operate the reservoirs, for inspection, regular maintenance, large works in the interest of safety to the structures and for emergency access. The Trust believes that there are reasons in the interest of public safety to construct a single access route to service these reservoirs with provision made to access individual structures from a suitable hub location in the region of Black Moss western dam.
14. The reservoirs are regularly inspected and monitored to ensure there is a low risk that future failure could occur. Rapid access to the reservoirs is required to implement the emergency draw down procedures. The Trust say that providing reasonable permanent access to facilitate monitoring, maintenance, necessary remedial work and occasional improvement interventions would significantly improve the management and operation of the reservoirs. Black Moss Reservoir is the highest of the Trust's reservoirs at over 400m AOD with a capacity of 58,190m<sup>3</sup>, built in 1806 and formed by two impounding dams.

Swellands Reservoir has a capacity of 246,300m<sup>3</sup> impounded behind a 190m long dam wall about 9.6m high. The original dam at Swellands failed in 1810 when the construction was nearing completion, killing 6 people.

15. Given the requirement for the reservoirs in the public interest, the Trust say that a permanent access track is required to improve the management of the reservoirs and facilitate emergency access. The Trust says it has learnt many lessons from the Toddbrook Reservoir (near Whaley Bridge in August 2019) incident, including how challenging a similar response would be without appropriate access. The Trust believes that access to Swellands and Black Moss reservoirs must be able to facilitate a similar response. Following the Toddbrook incident, 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, the Environment Agency has published an advice note which provides recommended actions for reservoir undertakers and engineers. The recommendations include improvement to inspection, supervision, operation and maintenance activities. The Environment Agency is reviewing current legislation in line with the findings, and working with Defra to turn the recommendations into a full action plan for implementation. To satisfy the legal requirements under the Reservoirs Act, the Trust must complete regular inspections and regular preventative maintenance. The current situation without vehicular access presents difficulties in achieving this, and puts the Trust's operatives and inspectors at risk. Furthermore, the lack of mobile phone connectivity and emergency vehicle access adds to the impracticality of requiring reservoir surveillance inspectors to access the reservoirs on foot, making use of the Pennine Way and informal footpaths across exposed moorland.

### **Planning History**

16. 2006: Planning permission granted for the provision of a temporary access track (NP/O/0506/0418) to carry out urgent maintenance repairs. The temporary track was required for a period of 2 years and was removed when the work was completed.
17. Pre-application advice: Prior to submitting the application, the Trust sought pre-application advice on the current proposal. They were advised that it would be development requiring the preparation and submission of an Environmental Impact Assessment (EIA). The scope of the EIA was agreed with Authority through a formal 'Scoping Opinion' which was issued by the Authority on 30 October 2020. The Scoping Opinion confirmed the environmental topics that the PDNPA required to be addressed in the EIA. These are:
- i. Landscape, Landscape Character and Visual Impact;
  - ii. Ecology and Biodiversity;
  - iii. Archaeological and Cultural Heritage; and
  - iv. Access and Recreation.

In addition, the Scoping Opinion confirmed that the EIA should set out the public interest need for the development and should describe the main alternatives that were considered.

### **RECOMMENDATION:**

**That the Authority advises the Secretary of State that it is minded to approve the application subject to the signing of a section 106 agreement to secure the proposed off site off-setting and biodiversity net gain works, and subject to the following conditions:**

- 1) Statutory time limit for implementation**

- 2) Development in accordance with the submitted plans and specifications, subject to the following conditions:
- 3) The construction works shall not be carried out other than in the period August to March (to avoid the bird nesting season).
- 4) Submit sample/specifications of stone to be used for surfacing and geotextile matting.
- 5) Submit and agree details of any new gates and barriers.
- 6) Gates to be kept locked other than when the track is in use; any signage to be agreed before installation.
- 7) Restoration scheme to be submitted and agreed in the event that any part of the track is removed.
- 8) Archaeological conditions:
  - a) No development shall take place other than in accordance with the approved archaeological Written Scheme of Investigation, produced by WYAS Archaeological Services, Version 6, Dated January 2021-Revised June 2021 and titled Land at Rochers Moss, Manchester Road, Diggle. Written Scheme of Investigation for an Archaeological Watching Brief and Strip, Map and Sample.
  - b) Within a period of 12 weeks from completion of the development the archaeological site investigation and post investigation analysis and reporting shall have been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision to be made for publication and dissemination of results and archive deposition shall have been secured.

### **Key Issues**

- The principle of development within the Natural Zone, including the need for the track and consideration of alternatives.
- The impact of the proposed track on the nationally and internationally designated sites of ecological interest on the moorland.
- The landscape impact of the proposed track.
- The impact of the proposed track on the archaeological features of interest on the moorland including the industrial archaeological associated with the reservoirs.
- Impact on users of the public footpaths, including the Pennine Way.

### **Consultations**

18. **Natural England:** The reply was received as this report was being finalised, so officers will consider it in further detail and update Members accordingly at the Planning Committee meeting. However, the key points are extracted as follows:

***“Summary of Natural England’s advice: Objection.***

*Natural England objects to this proposal. As submitted we consider it will:*

- *have an adverse effect on the integrity of the South Pennine Moors Special Area of Conservation <https://designatedsites.naturalengland.org.uk/>*
- *damage or destroy the interest features for which Dark Peak Site of Special Scientific Interest has been notified.*

*We have reached this view for the following reasons: The proposals for a permanent access track will result in the permanent loss of 1.148ha of blanket bog, which is an SAC qualifying feature) and this constitutes a likely significant effect (by loss of extent). This loss of blanket bog cannot be avoided since it is a direct take of the area through the*

*footprint of the development. This loss of extent must be considered a likely significant effect upon the conservation objectives for the feature within the SAC.*

*Where a project has a negative assessment – i.e. where there is an adverse effect or it cannot be ascertained that a project would not adversely affect the integrity of a European site – and must be consented or carried out by the competent authority, the Imperative Reasons of Over-riding Public Interest (IROPI) test applies, your authority should consider the advice set out on the gov.uk website under “Habitats regulations assessments: protecting a European site.*

*If your authority is minded to grant permission, you must first assess the proposal in relation to the IROPI test. The decision to grant permission must then only proceed if the test is satisfied and the Secretary of State notified at least 21 days prior to the permission being granted. If the proposed decision by the LPA to grant permission is upheld, your authority will need to ensure that all necessary compensatory measures are appropriately secured as part of the permission to ensure that the overall coherence of the network of European sites is protected.*

*Compensation measures to be implemented if planning permission is granted*

*Natural England’s comments on the proposed compensation measures are based upon the outline measures set out in the Canal & River Trust Black Moss and Swellands Reservoir Works Report to Inform a Habitat Regulation Assessment (January 2021) and the National Trust commissioned report from an in-house volunteer survey and monitoring team 2020 survey report and this further informs the assessment below (any reading of this appraisal should be accompanied by sight of the in-house NT survey).*

*The selected area conforms to tests of appropriateness due to*

- Restoration will be off the protected site and will affect habitat that might not otherwise be restored.*
- The area for restoration is close to the protected site (it is contiguous with the site).*
- The selected area is currently in unfavourable condition.*
- Restoration proposed using the methods described is technically feasible in part, the survey suggests bunding may be inappropriate due to peat depth.*

*In outline, the condition and, given the likely causes, the proposed remedies are consistent with examples found within the SAC and restoration management measures applied to such peatland within the South Pennines. It is reasonable to conclude that the proposals are appropriate in the type of degraded peatland and in terms of the proposed measures.*

*In conclusion, should the IROPI test be satisfied, the proposed compensation is appropriate for the purpose of compensation when location, proximity to the SAC, status, ownership, habitat type and overall condition are considered”.*

19. **Highway Authority:** No reply

20. **District Councils:** No reply

21. **Parish Councils:** No reply

22. **Environment Agency:** No reply

23. **Ecology (PDNPA):** The response from the Authority’s Natural Environment and Rural Environment Manager are quoted in full, given the significance of the site:

**SECTION 1- Impact on Natura 2000 Sites**

*These comments are made in the absence of a response from Natural England, and may therefore be subject to verbal update if comments from NE are received. I have submitted detailed comments on the draft Habitats Regulations Assessment, which was based on the HRA report accompanying the application, separately. In summary my views are that:*

*The draft HRA correctly concludes that an Appropriate Assessment is required, both re the potential impacts on SAC (habitat) features and on SPA (breeding bird) features.*

*The draft Appropriate Assessment rightly concludes that there will be an unavoidable **impact on SAC habitat**, namely blanket bog (including both loss and damage). Under the Habitats Regulations 2017 the proposal can therefore only be legally approved if the following conditions are met:*

- 1. There are Imperative Reasons of Over-riding Public Interest (Regulation 64(1))*
- 2. There are no alternative solutions (Regulation 64(1))*
- 3. Compensatory measures must be taken to ensure that the overall coherence of Natura 2000 is protected (Regulation 68)*
- 4. If the Authority is minded to approve the application, the Secretary of State must be notified at least 21 days before final approval (Regulation 64(5))*

*The draft Appropriate Assessment concludes that it **is** highly unlikely there would be an **impact on SPA bird species (Golden Plover, Merlin and Short-eared Owl) during the construction phase**. If the construction work took place during the breeding season I would not agree with this assessment due to inadequate survey coverage and speculative assumptions about birds habituating to disturbance; however as the breeding season has now passed and work is required by January 2022, any impact could be entirely avoided by a planning condition requiring construction work to take place outside the breeding season (April to July inclusive).*

*The draft Appropriate Assessment concludes that there is unlikely to be a significant **impact on SPA bird species during the operational phase**. I have concerns about the area covered by the 2019 bird survey, speculative assumptions about the track providing a well-defined route for existing users rather than encouraging increased use, birds habituating to disturbance, and an inappropriate conclusion that there is plenty of surrounding habitat for birds to relocate to. However I am satisfied with the conclusion that there is unlikely to be a significant impact on SPA species for the following reasons:*

- The low-lying nature of the proposed track for the majority of its length, and its confinement within the leat, means that the zone of disturbance is likely to be limited.*
- The construction of a defined track is likely to encourage users to keep to this route, reducing the zone of disturbance compared to the current situation. Whilst it is difficult to gauge how this might balance against any increase in visitor use, experience from surfacing of the Pennine Way showed a net benefit to Golden Plover (i.e. reduced disturbance and increased area available for nesting) following surfacing.*
- Lack of breeding records or suitable breeding habitat for Merlin within 500m. of the proposed track.*
- The SSSI condition assessment identifies suitable habitat for Golden Plover and Short-eared Owl in the surrounding moorland; however, a lack of past or recent breeding records within likely disturbance distances (50m. for Golden Plover, 300-500m. for Short-eared Owl), coupled with an existing disturbance effect from visitor use, suggests it is unlikely any increase in use will disturb breeding Golden Plover or Short-eared Owl.*

**Consequently, the 4 conditions above need satisfying only in relation to the loss of**

### **1.148ha of SAC habitat (blanket bog).**

My comments on whether these conditions are met are as follows:

#### Imperative Reasons of Over-riding Public Interest:

The Authority will need to be satisfied that there are such reasons. Whilst Health & Safety considerations regarding dam safety are clearly a prime consideration, I would question whether sufficient information is provided to demonstrate that a permanent track is essential in order to meet H&S requirements, notably:

- I cannot see that it is clear, from the information provided, what additional inspection and maintenance measures are required over and above existing measures. Inspection and maintenance work currently takes place so whilst a track might facilitate that it is, however desirable, demonstrably not necessary for the current measures. Without clear identification of the additional inspection and maintenance measures required it is impossible to assess whether a track would be essential.

#### Alternative Solutions:

I accept that if a permanent track is required, the proposed route is likely to have the least impact; however:

- The need to retain the reservoirs is justified on the grounds of maintaining water supply to the Huddersfield Narrow Canal via the “Scammonden Agreement”, and public water supply to the Colne Valley. Decommissioning the reservoirs is ruled out on those grounds. However whilst I accept the public interest in maintaining the canal water supply, I cannot see that any information has been provided re what proportion of the 1273M litres a year provided under the “Scammonden Agreement” comes from Black Moss & Swellands, and whether this could be supplied instead from other reservoirs; nor what proportion of the Colne Valley water supply Black Moss & Swellands provide. In addition, the application states that breaching the Scammonden Agreement would risk the continued provision of water to the canal - i.e. it is a risk not a certainty. There is no evidence that the Trust have discussed the option of discontinuing supply from Black Moss & Swellands with Yorkshire Water, or what the consequences would be.
- Limited information is provided re ruling out the option of a temporary track.

#### Compensatory measures:

Measures to enhance 5.22 ha of grass-dominated moorland at Holme Moor are proposed. As this would not create like-for-like habitat (blanket bog is effectively not creatable) assessing the adequacy of this is somewhat subjective. Natural England’s views on this will be critical and I would ultimately defer to their judgement on this; however in the current absence of comments from NE my view is that the measures proposed, provided they can be adequately secured through planning conditions/S106 agreement, provide sufficient habitat enhancement to offset the loss of the degraded blanket bog. It should be noted that Holme Moor lies outside, but adjoins, the National Park. There would therefore be a net habitat loss within the National Park. In this instance my view is that, exceptionally, the overall environmental benefit of doing the proposed compensation work at Holme Moor, coupled with the fact that it will enhance habitat linkage between moorland within and outside the National Park, is acceptable.

Notification of the SoS: This could be met by ensuring that, should the Authority be minded to approve the application, such approval is subject to SoS approval.

### **SECTION 2- Other nature conservation impacts**

The most significant potential impact is likely to be as a result of increased disturbance to non-SPA bird species for the section of the proposed track that would lie outside the leat around the reservoirs, both from vehicle activity and from any potential increase in visitor

*usage encouraged by the new track. The assertion that the track is more likely to encourage people to use a well-defined route rather than attracting further use is entirely speculative and I consider an increase in visitor use likely. Potentially vulnerable species here are Curlew, Snipe and Dunlin on the adjacent moorland, and Common Sandpiper and Dunlin around the reservoir margins. It appears that Redshank have been lost from this site, and Common Sandpiper may have declined. In my opinion (which I accept is also speculative) this is likely to be due to an increase in visitor numbers, highlighting the impact that any further increase might have.*

*At the western end of the route, west of the leat section, potentially vulnerable species are Lapwing, Snipe and Curlew. However I judge the likelihood of a significant impact here being much less, as any increase in visitors is likely to be less here than around the reservoirs, and disturbance is likely to be more transitory as people pass along the route.*

*Proposed mitigation measures will help reduce the risk of disturbance, and should be implemented; however a risk of increased disturbance remains. Further consideration should be given to measures that could be implemented to deter access around the reservoir margins in particular. The loss of pools within the leat will have a negative impact. I therefore welcome the proposal to create 30 new pools along the north side of the track to offset this loss.*

24. **Senior Archaeologist (PDNPA):** There will be some impact, but this is capable of mitigation. Recommends conditions. Summary of advice as follows:
25. *This application is supported by a Cultural Heritage chapter in the Environmental Statement and the text of the fully requested Desk Based Assessment in the technical appendix. These documents follow the pre-application advice provided with respect to the required search areas and what they should include. The supporting information meets the requirements of para. 189 of NPPF and DMC5.*
26. *The desk-based assessment demonstrates that the proposed development will have an impact on a number of known heritage assets including:*
- *The leat through which the track would run – this is a heritage asset of historical interest and local significance. The track will result in a permanent change to the form and appearance of leat and may encounter previously unknown or recorded features of leat. This represents moderate harm.*
  - *A series of mounds to the east of the leat, formed of stone and peat and standing up to 1.2m high, suggested to have been targets associated with a 19th century rifle range. These are heritage assets of historic interest and are of local significance. The mounds themselves are not affected, but the development is immediately within their setting and will lead to noticeable changes to their setting. This represents minor harm.*
  - *A historic quarry likely associated with the construction of the reservoirs. This is a heritage asset of historic interest and local significance. The proposed development will result in noticeable changes within its setting. This represents minor harm.*
  - *Black Moss, Little Black Moss and Swellands reservoirs are non-designated heritage assets of archaeological interest. The proposed development will result in changes to their setting that represents minor harm to their significance. It will also allow their long term management and safeguard the future of these heritage assets, which is a positive outcome.*
  - *Below ground potential – the area of moorland where the development is proposed is known to be the site of extensive prehistoric activity, particularly from the Mesolithic period. There is also archaeological potential for post-medieval remains and feature particularly associated with historic water management features, historic routes ways and historic quarrying. Such features are of historic*

*and archaeological interest and are of local significance. A minor - moderate level of harm could be anticipated.*

*Where the method of construction changes to bog matt this method of construction requires no cut and fill and therefore the level of impact is minimal.*

*In accordance with the requirements of the NPPF 197 the significance of the affected heritage asset and the scale of the harm identified above need to be taken into account to reach a balanced planning decision.*

Further details of a WSI have been submitted following consultation with our Senior Archaeologist and she has agreed this and comments as follows:

*Should the planning balance be favourable, the impacts identified need to be mitigated through a conditioned scheme of archaeological work. This needs to take the form of a scalable programme of archaeological monitoring of all groundworks in the first instance, which, depending on the nature of remains encountered, could be scaled up to a strip, map and sample exercise in the within the area of the development footprint. This needs to take place as an initial comprehensive watching brief over sections A-C, and the groundworks for the creation of the works compounds. It should start as a continuous watching brief over sections C-E, but depending upon the results and nature of the construction on the ground, this may be able to be reduced to intermittent monitoring.*

*This work needs to be carried out by a suitably qualified and experienced heritage/archaeological contractor in accordance with the nationally agreed standards of the Chartered Institute for Archaeologists to the Written Scheme of Investigation that has been approved by the Senior Conservation Archaeologist”*

27. **Landscape Architect (PDNPA):** Objects to the application. He considers that the Landscape and Visual Impact Assessment (LVIA) consistently under-estimates potential adverse landscape and visual effects. A number of significant adverse landscape and visual effects would likely be experienced as a result of the scheme. Acknowledges that public safety is hugely important, but objects to the scheme as detailed within this application due to the lack of justification of the need for a permanent track, combined with the level of potential significant adverse landscape and visual effects which would be experienced.
28. Key concerns summarised as follows:  
*“Landscape character – given the nature of a raised, surfaced 4m wide track in an open landscape with limited obvious man-made features, my view is that the magnitude of change is under-estimated. A track of this width and construction, plus associated regular vehicle movements are entirely incongruous new elements which strongly conflict with landscape character and experiential factors (such as tranquillity and scenic beauty). Magnitude of effect should certainly be medium adverse (or above).*
29. *The Planning Statement identifies that ‘There is currently no access’. However, it is also stated that the Trust currently visit the reservoirs three times a week, on foot, to make inspection visits. What is the nature of the construction works the permanent track is required to facilitate? Could a temporary access be used to undertake remedial construction works which are required to protect public safety? What is the justification for the need for a permanent track (bearing in mind that inspection visits are currently undertaken and these visits have presumably been adequate to identify a problem that requires remedial construction works)? While issues of public safety are clearly very important, I question whether the justification for a permanent track (particularly given that regular maintenance visits are currently possible) has been adequately made within the application. Is a temporary track (to facilitate the identified and necessary remedial construction works) a more appropriate and proportionate solution in this case?”*

30. In response to these concerns the applicants have submitted further details, including a response from the applicant's landscape consultant, which are referred to in the report below, but the Authority's Landscape Architect remains concerned. He says he is not questioning the need for/objecting to a track to facilitate essential construction operations, but the need to retain the 4m wide track as a permanent feature to facilitate ongoing inspection visits. He asks why argocats, quad bikes or appropriate 4x4 vehicles etc could not be used to facilitate ongoing inspection visits. These would require a much 'lower key' and narrower surfaced route (with potentially only limited areas of surfacing at wet points etc) with consequent lower adverse effects. He maintains his view that the LVIA under-represents adverse landscape effects which would be experienced as a result of the construction of a 4m wide surfaced track as a permanent feature in the Natural zone within a sensitive and valued National Park landscape. In response to the point about the size of the track and vehicles that are required to use it, the applicants have submitted further details, setting out that the track will be required to accommodate 7.5 tonne vehicles on occasions so a less robust construction would risk causing damage to the moor and endanger operatives.

### **Representations**

31. A total of 47 representations have been received in response to public notification, including letter from the RSPB and CPRE (Peak District and South Yorkshire), which are summarised separately.
32. The RSPB raise a number of concerns which centre on the impacts of the application for the South Pennine Moors Special Area of Conservation (the SAC), the South Pennine Moors Phase I Special Protection Area (the SPA) and the Dark Peak Site of Special Scientific Interest (the SSSI). Their concerns are as follows:
33. *Inadequacy of supporting surveys:*
- *The RSPB proposes that to fully assess the impact on the integrity and hydrological function of the SAC blanket bog, a full survey of peat depth along the whole route should be undertaken before a considered decision can be made on the development. The survey should include measurements every 20m along the route at a minimum and outwards from the track 5m each side.*
  - *The breeding bird survey undertaken by the Applicant is not adequate to appropriately assess the full impacts of the development on the breeding assemblage that may be present and affected by the proposals. In order to undertake an appropriate assessment in respect of the impacts on the SPA, the RSPB recommends the PDNPA needs a more complete breeding bird survey to be completed following the Common Birds Census (CBC) methodology and comprising of ten morning surveys conducted during the period March to July, with at least ten days between visits.*
34. *Potential impacts of the development*
- *Despite claims to the contrary, the development will create a circular route from Brun Clough car park along the Pennine Way to Black Moss Reservoir and back along the new track which links via other Public Rights of Way to Brun Clough. There is a serious concern that this will result in increased levels of disturbance of SPA and SSSI ground nesting birds, including from dog walkers in an area of the moor that currently sees very little footfall.*
  - *There is potential for an increase in illegal off-road vehicle use when a new access track is created, with only the most basic security measure of a padlocked gate being provided to prevent this. In other areas of the Peak District padlocked gates have proven to be an inadequate deterrent to illegal off-road activity and there need to be stronger measures provided to ensure no illegal vehicle access.*
  - *The Applicant has acknowledged that the hydrology of the blanket bog will be adversely affected by the use of bog matting and "could be anticipated to extend perhaps a few*

metres on either side of the track due to compaction.” Subject to the findings of the full peat depth survey recommended above, it is the RSPB’s view that compaction could be avoided on this most sensitive portion of the proposed track by avoiding the use of vehicles for routine inspection visits. If the development were to be approved, access to Swellands reservoir could easily be achieved on foot with vehicles being parked at the proposed compound at point E adjacent to Black Moss reservoir, thereby reducing the risk to the hydrological integrity of the most sensitive section of the proposed route.

- The Applicant accepts that there is potential for localised scour and erosion to occur where culverts and drains are being situated within the bed of the stone track. While “a programme of monitoring and maintenance” is proposed by the Applicant, the details on what this will entail and how it will be adequately resourced are not addressed. This is wholly insufficient and a fully worked up monitoring and maintenance plan should be required to fully inform the appropriate assessment to be carried out by the National Park Authority. Therefore, the RSPB recommends that a detailed, resourced monitoring and maintenance plan should be included in the application to ensure that the National Park Authority has confidence that the effects of any erosion are dealt with as soon as they arise and before they cause damage to the designated sites.

- The timing of the development will have significant impacts on the breeding bird assemblage of the SPA/SSSI and justification for this is given due to the legal requirements of the Applicant to undertake work on Swellands reservoir spillway by January 2022. The Applicant has not set out in the supporting documentation what the implications are if they were to miss this deadline. If the penalty is a financial loss for the Applicant then this does not justify the negative impacts on the SPA/SSSI designated features.

35. *Habitat Regulations Assessment derogation requirements*

- Based on the legal requirements under provisions within the Conservation of Habitats and Species Regulations 2017 (as amended)(the Habitats Regulations), we would expect the applicant to submit a document focused specifically on the Regulation 64 and 68 derogation tests. For each of the claimed public interest objectives, it should set out whether there are less damaging, feasible alternative solutions by which the project’s contribution to the defined IROPI could be met. The RSPB is of the opinion that these requirements have not been fulfilled within the supporting documentation provided by the Applicant. For the reasons listed above, it is the RSPB’s view that the Peak District National Park Authority cannot determine the case based upon the supporting information so far provided by the Applicant and that there are still serious concerns to be addressed before the proposed development can be approved.

36. The CPRE (Peak District and South Yorkshire) object to the proposed development on the basis of landscape and biodiversity impact and also submit that the current evidence base is insufficient to base a sound decision upon:

“Both reservoirs lie within the Dark Park SSSI, SAC & SPA, and the Natural Zone. Other than in exceptional circumstances, proposals for development in the Natural Zone will not be permitted. This means the development must be essential: (i) for the management of the Natural Zone; or (ii) for the conservation and/or enhancement of the National Park’s valued characteristics (Policy DMC2). The track is required for something in the NZ, not for management of the NZ itself, and it would certainly impact adversely on the special qualities of the location. In principle, the development should not be allowed. In the open bare landscape of the moor around both reservoirs a new stone track with regular vehicle use and snow poles would be particularly intrusive. This has also been highlighted in the comments of the PDNPA landscape architect who also suggests the developer’s LVIA consistently underplays the assessment of impacts. This needs addressing and correcting so a true picture of impacts is obtained before any final decision is made.

The RSPB’s comments, which we strongly support, also suggest that the assessment of biodiversity impact needs re-visiting and that the current surveys in support of the

*application are inadequate – thereby compromising the legitimacy of any determination. Despite the recent responses of the applicant regarding the potential mis-use of the track by recreational ‘offroaders’, we agree with the RSPB that the gating arrangements will not necessarily exclude adverse impacts, nor will the fact that it is not a through route. We also agree with the view that adverse impacts on tranquillity, including disturbance of wildlife within the SPA, are likely to follow from the formation of a new access track and the opportunity to create a more attractive circular route. We would therefore ask the NPA to look very carefully at more sensitive solutions, appropriate to the Natural Zone, including the more extensive use of geotextile/bogmat with less use of stone and reduced impact. Alternatives by way of more sensitive routing also need to be looked at more carefully to reduce disturbance within the SPA and thereby overall impacts”.*

37. Of the 45 representations from members of the public, 42 object to the application on a number of grounds, including the following:

- This area is home to many plant and animal species and is used by the public to ‘get away’ into what feels like a remote serene place. Installation of a permanent access track would damage both of these aspects. The value of the area and its remote feel would be lost, impacting people’s physical health, mental health, and the flora and fauna of the area.
- Totally intrusive and unnecessary development that would radically alter the character of the area. The track has not been necessary up to this point; why is it now? Wild trackless land is a very rare natural, recreational, and aesthetic commodity in England, and particularly in the Peak District. The construction, maintenance and use of the track will also impact unfavourably on wildlife for which this area is a refuge from disturbance from human activity, an extremely rare commodity in the Peak District.
- The proposed road is likely to increase instances of illegal access by off road vehicles and permit deeper intrusion onto the moor. There is already has a significant and ongoing problem with vehicles accessing the moor at Brun Clough.
- Most concerning is that improved access to the moor is likely to significantly increase the risk of fire. Marsden Moor has been subject to two devastating fires in the last decade. In both instances the fires were attributed to disposable barbeques. Providing easy walking access to the reservoirs is likely to create a “honey pot” picnic destination during the summer months.
- Whilst one understands the challenges the Canal & River Trust faces in maintaining its legal and contractual duties, it cannot be that these duties are impossible to satisfy under present conditions, as the Trust is already satisfying its duties under present conditions. The proposed construction cannot therefore be essential to the satisfaction of these duties. It might ease these duties, or make them less costly to the Trust, but it is no business of the local authority to assist the Trust in easing the duties or reducing the costs of the Trust.
- The 'Introduction' pleads that "difficult terrain", "poor weather", and "low visibility", and "lack of mobile phone connectivity" justify permanent vehicular access, yet not one of these conditions can have been unknown to the Trust upon agreeing the initial contract.
- The route outlined in the submitted supporting shows that from points marked D to G via E and F the proposed route will cause significant disturbance and obstacle to a number of established paths including the Pennine Way.
- The destruction of habitat, the impact on the environment and the CO2 emissions that would go in to a project like this are immense for the return. Not only that but it will provide direct access for people to visit the reservoirs which are currently a habitat to many birds and other wildlife - human pollution and general damage will far outweigh the benefits.
- The fact this area is currently only accessible by foot enhances its beauty and tranquility and makes it a much more peaceful and restorative place for local people. Vehicular access may disturb the habitat of ground nesting birds and impact on the important environmental properties of this peat moorland as a carbon trap. I think it would

encourage irresponsible and anti-social vehicle use and spoil this area for wildlife and visitors alike.

- The proposed development would spoil the areas it passes through, which ought to be conserved for their rich ecological and cultural importance.

38. Three representations support the application:

- This scheme to provide essential emergency access to the dams will also assist mobility disabled persons to access areas of the moors they currently can't get to. I would hope that the route would also gain, at least, permissive access for cyclists and horse riders so they too can enjoy the area currently under served by access. I note that the local Mountain Rescue Service would be able to reach areas much more quickly thus providing a much speedier response to walkers who injure themselves. The scheme appears to be well thought out and rather than a negative impact to the area it is a positive addition. I wholeheartedly support it.
- I wholeheartedly support this project which will help assist conservation and land management, a project conceived and managed by experts.
- I own Keepers Cottage (the only house accessed by this track), so use this track on a daily basis. I am in support of the proposed plans to upgrade the track as in its current state it can be tricky to navigate especially during the bad weather we are experiencing at the moment so anything that improves the safety when using the track is very welcome

### **Key Policies**

39. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. It was last updated in February 2019. The Government's intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority's Core Strategy 2011 and those in the Development Management DPD adopted in May 2019. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF.

40. Paragraph 172 of the NPPF states that *"great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas and should be given great weight in National Parks and the Broads."*

41. With regard to Habitats and Diversity, paragraphs 175, 176 and 177 of the NPPF are relevant to this application:

*175. "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.*

*176. 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.*

*177. 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.*

### **Development Plan**

42. The main Development Plan policies which are relevant to this proposal are: Core Strategy policies: GSP1, GSP2, GSP3, GSP4, L1, L2, L3 and CC1, and Development Management policies: DM1, DMC2, DMC3, DMC11 and DMC12.
43. Policy GSP1 sets out the broad strategy for achieving the National Park's objectives having regard to the Sandford Principle, (that is, where there are conflicting desired outcomes in achieving national park purposes, greater priority must be given to the conservation of the natural beauty, wildlife and cultural heritage of the area, even at the cost of socio-economic benefits). GSP1 also sets out the need for sustainable development and to avoid major development unless it is essential, and the need to mitigate localised harm where essential major development is allowed.
44. Policy GSP2: *Enhancing the National Park* states that:
- Opportunities for enhancing the valued characteristics of the National Park will be identified and acted upon.
  - Proposals intended to enhance the National Park will need to demonstrate that they offer significant overall benefit to the natural beauty, wildlife and cultural heritage of the area.
  - When development is permitted, a design will be sought that respects the character of the area.
  - Opportunities will be taken to enhance the National Park by the treatment or removal of undesirable features or buildings. Work must be undertaken in a manner which conserves the valued characteristics of the site and its surroundings.
  - Development in settlements necessary for the treatment, removal or relocation of nonconforming uses to an acceptable site, or which would enhance the valued characteristics of the National Park will be permitted.
45. Policy GSP3 *Development Management Principles* sets out development management principles and states that all development must respect, conserve and enhance all valued characteristics of the site and buildings, paying particular attention to, amongst other elements, impact on the character and setting of buildings, scale of the development appropriate to the character and appearance of the National Park, design in accordance with the National Park Authority Design Guide and impact on living conditions of communities.
46. Core Strategy policy GSP4: *Planning conditions and legal agreements* states that the

National Park Authority will consider the contribution that a development can make directly and/or to its setting, including, where consistent with government guidance, using planning conditions and planning obligations.

47. Core Strategy Policy L1 *Landscape character and valued characteristics* states that development must conserve and enhance valued landscape character and valued characteristics, and other than in exceptional circumstances, proposals in the Natural Zone will not be permitted.
48. Core Strategy Policy L2 states that development must conserve and enhance any sites or features of geodiversity importance, and any sites, features or species of biodiversity importance and where appropriate their settings. For international and national sites the relevant legislation and protection will apply in addition to the requirements of policy. As set out in Core Strategy policy L2, the granting of planning permission is restricted for development likely to significantly affect a European (International) site, requiring that an appropriate assessment is first carried out of the implications of the development for the site's conservation objectives. Primary legislation restricts the cases in which exceptional circumstances may justify development, particularly development having a significant effect on the ecological objectives or integrity of a Special Protection Area (classified under the Birds Directive) or Special Area of Conservation (designated pursuant to the Habitats Directive).
49. Core Strategy policy L3 provides core policy principles for cultural heritage assets and requires that all development conserves and where appropriate enhances or reveals the significance of archaeological, architectural, artistic or historic assets and their settings. Development will not be permitted where there is harm to the significance of a heritage asset other than in exceptional circumstances.
50. Policy CC1 *Climate change and mitigation* requires that all development must build in resilience to and mitigate the causes of climate change by:
- making the most efficient and sustainable use of land, buildings and natural resources;
  - take account of the energy hierarchy by:
    - I. reducing the need for energy;
    - II. using energy more efficiently;
    - III. supplying energy efficiently;
    - IV. using low carbon and renewable energy.
  - be directed away from flood risk areas.
  - achieve the highest possible standard of carbon reductions.
  - achieve the highest possible standards of water efficiency.
51. Development Management policies
52. DM1 *The presumption of sustainable development in the context of National Park purposes* states:
- When considering development proposals the National Park Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (2012). It will work proactively with applicants to find solutions that are consistent with National Park purposes:
- i. to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park; and
  - ii. to promote opportunities for the understanding and enjoyment of the valued characteristics of the National Park.
- Planning applications that accord with the policies in the Development Plan will be approved without unnecessary delay, unless material considerations indicate otherwise.

53. DMC1 *Conservation and enhancement of nationally significant landscapes* states:

A. In countryside beyond the edge of settlements listed in Core Strategy policy DS1, any development proposal with a wide scale landscape impact must provide a landscape assessment with reference to the Landscape Strategy and Action Plan. The assessment must be proportionate to the proposed development and clearly demonstrate how valued landscape character, including natural beauty, biodiversity, cultural heritage features and other valued characteristics will be conserved and, where possible, enhanced taking into account:

(i) the respective overall strategy for the following Landscape Strategy and Action Plan character areas:

- White Peak;
- Dark Peak;
- Dark Peak Western Fringe;
- Dark Peak Yorkshire Fringe;
- Derbyshire Peak Fringe;
- Derwent Valley;
- Eastern Moors;
- South West Peak; and

(ii) any cumulative impact of existing or proposed development including outside the National Park boundary; and

(iii) the effect of the proposal on the landscape and, if necessary, the scope to modify it to ensure a positive contribution to landscape character.

B. Where a development has potential to have significant adverse impact on the purposes for which the area has been designated (e.g. by reason of its nature, scale and setting) the Authority will consider the proposal in accordance with major development tests set out in national policy.

C. Where a building or structure is no longer needed or being used for the purposes for which it was approved and its continued presence or use is considered by the Authority, on the evidence available to it, to be harmful to the valued character of the landscape, its removal will be required by use of planning condition or obligation where appropriate and in accordance with the tests in national policy and legislation.

54. DMC2 *Protecting and managing the Natural Zone* says:

A. The exceptional circumstances in which development is permissible in the Natural Zone are those in which a suitable, more acceptable location cannot be found elsewhere and the development is essential:

- i. for the management of the Natural Zone; or
- ii. for the conservation and/or enhancement of the National Park's valued characteristics.

B. Development that would serve only to make land management or access easier will not be regarded as essential.

C. Where development is permitted it must be in accordance with policy DMC3 and where necessary and appropriate:

- i. permitted development rights will be excluded; and
- ii. permission will initially be restricted to a period of (usually) 2 years to enable the impact of the development to be assessed, and further permission will not be granted if the impact of the development has proved to be unacceptable in practice; and
- iii. permission will initially be restricted to a personal consent solely for the benefit of the appropriate person.

55. Development Management policy DMC3: *Siting, design, layout and landscaping* requires development to be of a high standard that respects, protects, and where possible enhances the natural beauty, quality and visual amenity of the landscape, including the

wildlife and cultural heritage that contribute to the distinctive sense of place. It also provides further detailed criteria to assess design and landscaping, as well as requiring development to conserve the amenity of other properties.

56. DMC11 *Safeguarding, recording and enhancing nature conservation interests* states:
- A. Proposals should aim to achieve net gains to biodiversity or geodiversity as a result of development. In considering whether a proposal conserves and enhances sites, features or species of wildlife, geological or geomorphological importance all reasonable measures must be taken to avoid net loss by demonstrating that in the below order of priority the following matters have been taken into consideration:
- i. enhancement proportionate to the development;
  - ii. adverse effects have been avoided;
  - iii. the 'do nothing' option and alternative sites that cause less harm;
  - iv. appropriate mitigation; and
  - v. in rare cases, as a last resort, compensation measures to offset loss.
- B. Details of appropriate safeguards and enhancement measures for a site, feature or species of nature conservation importance which could be affected by the development must be provided, in line with the Biodiversity Action Plan and any action plan for geodiversity sites, including provision for the beneficial future management of the interests. Development will not be permitted if applicants fail to provide adequate or accurate detailed information to show the impact of a development proposal on a site, feature or species including:
- i. an assessment of the nature conservation importance of the site; and
  - ii. adequate information about the special interests of the site; and
  - iii. an assessment of the direct and indirect effects of the development; and
  - iv. details of any mitigating and/or compensatory measures and details setting out the degree to which net gain in biodiversity has been sought; and
  - v. details of provisions made for the beneficial future management of the nature conservation interests of the site. Where the likely success of these measures is uncertain, development will not be permitted.
- C. For all sites, features and species development proposals must also consider:
- ii. cumulative impacts of other developments or proposals; and
  - iii. the setting of the development in relation to other features of importance, taking into account historical, cultural and landscape context.
57. The accompanying text in the DM DPD explains that in support of policy DMC11 applicants will be expected to supply the following information as part of the assessment:
- a habitat/vegetation map and description (with identification of plant communities and species), and a description of fauna and geological/geomorphological features; and
  - adequate information about the special interests of the site in terms of scientific importance including: size and species population, diversity and richness, rarity, fragility, irreplaceability, naturalness, position in the ecological geographical unit, seasonal presence, potential value, the degree to which it is typical and representative, historical continuity and geological or geomorphological importance; and
  - assessment of the direct and indirect effects of the development including associated visitor pressure, pollution and changes in hydrology; and
  - details of any mitigating and/or compensatory measures and details setting out the degree to which net gain in biodiversity has been sought; and
  - details of alternatives considered including the 'do nothing scenario' and justification for the choice of the preferred option and for discounting other options; and

- details of provisions made for the beneficial future management of the nature conservation interests of the site. Where the likely success of these measures is uncertain, development will not be permitted.
58. DMC12 Sites, features or species of wildlife, geological or geomorphological importance states:
- A. For Internationally designated or candidate sites, or European Protected Species, the exceptional circumstances where development may be permitted are those where it can be demonstrated that the legislative provisions to protect such sites or species can be fully met.
  - B. For sites, features or species of national importance, exceptional circumstances are those where development is essential:
    - i. for the management of those sites, features or species; or
    - ii. for the conservation and enhancement of the National Park's valued characteristics; or
    - iii. where the benefits of the development at a site clearly outweigh the impacts on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.
  - C. For all other sites, features and species, development will only be permitted where:
    - i. significant harm can be avoided and the conservation status of the population of the species or habitat concerned is maintained; and
    - ii. the need for, and the benefits of, the development in that location clearly outweigh any adverse effect.

## **Assessment**

### **Principle of Development**

59. The application site lies within the Dark Peak Open Moorland area of the National Park which is designated as Natural Zone. The Natural Zone represents the wildest and least developed parts of the National Park. The area combines high wildlife value and minimal obvious human influence. The map is used by the Authority to meet its obligations under Section 3 of the Wildlife and Countryside Act. The National Parks and Access to the Countryside Act 1949 (as amended) also refers to these areas as 'open country'.
60. Development Plan Core Strategy Policy L1 states that '*other than in exceptional circumstances, proposals for development in the natural zone will not be permitted*'. Core Strategy policy L1 is clear that development in the Natural Zone (gritstone moors, limestone heaths, limestone hills, limestone dales, semi-natural woodlands and other land meeting the definition) is acceptable only in exceptional circumstances. Unless it is demonstrated as being essential under the terms of policy DMC2, development should be located outside the Natural Zone and should not, where a proposal is close to the Natural Zone, harm the essential characteristics of these areas. The supporting text in the DM DPD explains that exceptions might include:
- works essential for the landscape management of these areas (e.g. a new path or a weir);
  - works essential for the conservation or enhancement of the National Park's valued characteristics (for example development related to the management or restoration of a heritage asset, an area of biodiversity value or work in support of eco-system services);
  - or in a small number of existing farmsteads located within the Natural Zone and on its borders.
61. Taking these policies as a starting point, it is considered that the provision of a track for the on-going maintenance of reservoirs in the Natural Zone does not readily accord with

the requirement for the development to be essential for landscape management or the conservation or enhancement of valued characteristics. However, it must also be acknowledged that the reservoirs are long-established landscape features and are clearly part of the history and cultural heritage of the area; the provision of reservoirs within the Peak District to serve the surrounding urban areas has had a significant influence on the landscape character of the moorlands of the National Park. The loss of these reservoirs would therefore detract from these valued characteristics.

62. In addition to this, there is a very significant public interest aspect to the proposed track. The supporting statements set out in some detail the need to maintain the reservoirs in a safe condition, for both public safety and water management reasons. The supporting documents refer to the Toddbrook Reservoir incident at Whaley Bridge in 2019 and explains how reservoirs are subject to a rigorous inspection system. That system has identified the need for a permanent vehicular access to Swellands and Black Moss reservoirs to ensure that they are maintained in an appropriate and timely manner, in the interests of public safety.

**63. Need for the Development**

64. The supporting statement explains that the Canal & River Trust is the ‘Undertaker’ (owner or main operator) for 72 regulated reservoirs. Reservoirs are subject to stringent statutory control under the Reservoirs Act 1975, intended to assure the safety of the public below dams. The Reservoirs Act applies to all reservoirs classified as ‘large raised reservoirs’, i.e. those that hold a volume of water of 25,000m<sup>3</sup>, or more, cubic metres above natural ground level. The Flood and Water Management Act 2010 introduced new arrangements for reservoir safety, based on risk rather than the size of the 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. The Trust is ultimately responsible for ensuring the structural integrity of the structures associated with the reservoir and where required by legislation, needs to ensure panel engineers are employed to complete the necessary monitoring, supervision, inspections and design and supervision of new reservoirs or repair works to existing reservoirs.
- 65. The Trust says that these works are essential for the discharge of the Trust’s obligations to carry out ‘measures in the interests of safety’ (mandated by the independent inspecting engineer) as undertaker of these large raised reservoirs under the Reservoirs Act 1975. A failure to carry out these works within the statutory timeframe would not only put the Trust at risk of regulatory action and criminal prosecution but would result in an unacceptable risk to lives and property within the surrounding community.**
66. Swellands Reservoir is one of the reservoirs that is operated under the “Scammonden agreement”, with the agreement relying on the combined Black Moss and Swellands catchment areas (Black Moss spills into Swellands and is therefore inherent in the agreement). The “Scammonden Agreement” is an arrangement between Canal & River Trust and Yorkshire Water Services (originally British Waterways Board and Huddersfield Borough Council respectively) which documents the exchange of water between both parties. The agreement was that Trust would use their reservoirs at March Haigh, Redbrook, Tunnel End and Swellands to support public water supply in exchange for a constant supply of water from the Borough of Huddersfield to the Huddersfield Narrow Canal at Marsden. This arrangement allows the effective sharing of water resources, to ensure statutory public water supply requirements and statutory navigation duties can be met, by the respective organisations.

67. The planning application explains that the supply to the canal at Marsden is the principal source of supply to the canal, constituting 75% of the overall supply of resource. Without Swellands reservoir being available, then the Trust would be in breach of this agreement and this would adversely impact on Yorkshire Water's public water supply duties. Moreover, the discontinuance of Swellands Reservoir by the Trust would risk the continued provision of water resource supply to the Huddersfield narrow canal at Marsden from Yorkshire Water. This would in turn threaten the Trust's statutory duty to maintain its navigational duty on the Huddersfield narrow canal, as this is its main source of supply, putting the future of the Huddersfield Narrow Canal at risk. The supporting statement explains that the value of the waterways is now appreciated to be wider than its industrial past and operational functionality, providing as it does amenity, recreation, environmental, cultural and health and wellbeing benefits for people who use and live near the Trust's inland waterways. A key feature of the Huddersfield Narrow Canal is Standedge Tunnel. Over 200 years old, it is the longest canal tunnel in Britain, stretching over three miles deep beneath the Pennine hills. Having been closed in the mid-1940s, the tunnel was restored and reopened in 2001. The Trust estimates that there are nearly 25,000 visits are made to Standedge Tunnel each year and at least 30,000 visits to the Huddersfield Narrow Canal, plus significant boating use. The statement concludes that despite its man-made origins, the Huddersfield Narrow Canal is an invaluable environmental asset. The canal itself is designated a SSSI for much of its length and it is an easily accessible green and blue space for the 226,500 people who live nearby.

68. Consideration of Alternatives to a Permanent Access Track

The Trust has considered a number of alternatives for the future of Swellands and Black Moss Reservoirs, concluding that continuing to operate the reservoirs with a permanent access track is the only feasible option in the public interest. The main options that have been considered and discounted are as follows:

69. *Reservoir Discontinuance*

Discontinuing the reservoirs has been considered, however as explained above, the reservoirs are required in the public interest. Discontinuance would have a direct effect on water supply to the Colne Swellands and Black Moss Reservoirs valley area as the water from these reservoirs provides a water feed that forms the Scammonden agreement between Yorkshire Water and the Trust.

70. *Low Ground Pressure All-terrain Vehicles*

The Trust has considered the use of alternative soft-track vehicles which are used elsewhere in the area for moorland maintenance. Regular use of any vehicle across the moor would form informal tracks, and all-terrain vehicles would not satisfy all access requirements nor provide emergency access for pumps and plant. A large variety of vehicles are needed for ongoing inspection and maintenance tasks: cars, vans and trailers and light goods vehicles for minor inspection and maintenance; moving materials such as masonry, cement, sealants, replacement valves, oils, tools, waste vegetation and debris for disposal; earth moving equipment; lifting equipment and welfare facilities. Irregular tracks for this type of equipment will cause impact which could not be reinstated, causing greater damage than a well-designed access.

In response to concerns raised, particularly by the Authority's Landscape Architect, the Trust have supplied additional information. They include photographs which show plant and machinery used by the previous owner (British Waterways Board) to access the reservoirs and highlight the damage this caused to the ground.

71. *Helicopter Access*

The Trust considered use of helicopters for the major civil engineering works, emergency access and ongoing operation and maintenance. However, as helicopters are unable to

fly in inclement weather, they would be unavailable when the current pedestrian route is impassable. The landing area required would need to be large and in the SAC/SPA. Helicopter access would therefore not be suitable for ongoing inspections. Weather constraints mean that helicopters would be infeasible for lifting in materials, particularly concrete, which is required for the upcoming civil engineering works. Furthermore, commercial helicopters are unable to lift the size of plant required for civil engineering works at the reservoirs. Helicopter access is therefore unsuitable for ongoing maintenance. Chinooks could be mobilised in an emergency situation, such as at Toddbrook Reservoir, however these were only mobilised to transport sandbags at Toddbrook, and the pumping equipment was brought in by road. Without a track to the reservoir dams, the time taken to implement procedures and transport pumps, generators, fuel, cables, hoses etc. in the event of emergency would undoubtedly be delayed.

*72. Temporary Access Track*

A temporary access track was installed, with planning permission, in 2006/07 to facilitate major civil engineering works to Swellands Reservoir. The Trust conclude that installing a temporary access track to complete major maintenance works intermittently does not allow plant and vehicle access in an emergency situation, and does not address the issues the Trust faces with regular inspection and maintenance which are required to ensure the safety of the reservoir.

*73. Alternative Permanent Track Design Solutions*

The proposed route is a revision of the route utilised for the temporary access track constructed in 2007/07. A thorough assessment of alternative routes was completed in 2006 and agreed with Peak District National Park Authority and Natural England. A map extract of the six access options from the 2006 Appropriate Assessment is set out in the supporting documentation. From a planning perspective, the alternative routes would all have an impact and, as concluded in 2006, these impacts are likely to be greater than those for the current proposal.

**74. Environmental Impact Assessment:**

75. As part of the full planning application an Environmental Impact Assessment was undertaken. EIA is a formal procedure to assess and report on the environmental effects of certain types and scales of development. The purpose of EIA is to ensure that information about the environmental effects of the proposed development is available to the National Park Authority, as well as consultees to the planning process. The process of EIA identifies the environmental effects associated with the development during construction and once it has been completed, and identifies ways in which those effects can be mitigated to reduce, avoid or minimise any significant environmental effects. The findings of the EIA process are presented in an Environmental Statement which was submitted as part of the planning application. The key conclusions are summarised in the following sections of this report.

76. Each environmental topic was assessed in detail with the findings presented in individual topic 'chapters' within the ES. Each chapter sets out the methodology that was followed for that topic and describes the main considerations for each topic. The chapter then sets out in detail the likely impacts of the development for that topic and expresses the effect of any impact in terms of its 'significance'. Mitigation measures are identified to avoid, reduce or minimise adverse effects that are deemed to be 'significant'. Any beneficial environmental effects are also identified. Finally, any 'residual' environmental effects, i.e. those which remain once all mitigation has been taken into account, are clearly identified. For each topic, an assessment of the 'cumulative' effects of the Development alongside any other plans or projects in the vicinity of the development is also carried out. Each chapter concludes by stating whether any residual effects (once mitigation has been

taken into account) are deemed to be 'significant' for the environment or not.

## **77. Ecology and Biodiversity**

78. The EIA deals with the assessment of the effects of the development on ecology and biodiversity, including the peat resource. This involved consideration of the effects on the Dark Peak SSSI, the South Pennine Moors SAC and the South Pennine Moors SPA, and on habitats and protected species.
79. The EIA concludes that the development would result in the permanent loss of 1.148ha of blanket bog habitat, an internationally important habitat associated with areas of peatland and often supporting vegetation such as heather and cotton grasses. A further 0.103ha of blanket bog would also be lost for temporary track construction at Little Black Moss and Swellands Reservoirs, but subsequently restored. Other habitat loss would include areas of grassland of low ecological value. 0.165ha of wet pools and hollows would be lost along the leat but will be replicated during track construction.
80. Construction would also result in temporary disturbance to moorland breeding birds such as lapwing and potentially to other moorland species including common lizard and mountain hare. Mitigation has been incorporated into the track design to minimise harm to the blanket bog habitat, especially to reduce disruption to the movement of water through the peat. Measures will also be used to encourage birds to nest away from the route of the track during construction so that they will not be disturbed when on the nest.
81. Notwithstanding the above measures, the EIA concludes that there would be a significant effect due to the unavoidable loss of 1.148ha of blanket bog habitat which cannot be mitigated. Off-site habitat compensation is proposed to off-set this loss and details are presented in a 'Report to Inform a Habitat Regulations Assessment', which accompanies the planning application. The Canal and River Trust have been in discussion with the National Trust, who own the adjacent Marsden Estate to agree conservation works to off-set and compensate for this loss of habitat on Holme Moor, a site which is actually outside the National Park, but part of the dark peak moorlands. Measures to enhance 5.22 ha of grass-dominated moorland at Holme Moor are proposed. Consequently, Heads of Terms for a Section 106 agreement have been submitted with application. In order to secure these conservation works the section 106 agreement would have to be signed before the decision notice can be issued; this is reflected in the recommendation above.
82. The use of compensatory works elsewhere is acknowledged to be a last resort when harm cannot be avoided, but the principle of biodiversity net gain, carrying out works to achieve benefit over and above that loss, is now an accepted principle in the planning system. If the Committee is minded to approve the application, officers would work with the Canal and River Trust and with the National Trust to agree the work programme for this off-setting and net gain work. At the time of writing this Committee report the views of Natural England are still awaited. This response is likely to be significant in assessing whether these compensatory measures would provide sufficient mitigation to the acknowledged loss. The Authority's Ecologist's response is that the measures proposed, provided they can be adequately secured through planning conditions/S106 agreement, provide sufficient habitat enhancement to offset the loss of the degraded blanket bog. It should be noted that Holme Moor lies outside, but adjoins, the National Park. There would therefore be a net habitat loss within the National Park. In this instance the Ecologist's view is that, exceptionally, the overall environmental benefit of doing the proposed compensation work at Holme Moor, coupled with the fact that it will enhance habitat linkage between moorland within and outside the National Park, is acceptable.
83. Completed Development: There is a risk of long-term changes to the flow of water

through the blanket bog habitat and underlying peat as a result of the track. These effects will be mitigated by regular monitoring and track maintenance to address any impacts as they arise. This will avoid any significant environmental effect in the long-term. Once construction has finished, the ES says that the risk of disturbance to moorland birds and their nests is considered to be negligible, as it is expected that birds will become accustomed to the infrequent vehicle movements along the track. A locked gate and low barrier will be provided on the track to prevent unauthorised vehicle use and to discourage pedestrian access, to ensure that disturbance to moorland birds is minimised. The report concludes that overall there would be no significant effect on ecology in the long-term.

84. In the consultation responses concern has been raised about the potential impact of the use of the track once it has been completed, both by maintenance vehicles and walkers (and possibly other recreational users such as off-roaders). The applicants have submitted a document addressing these points. As noted in the previous paragraph, the Trust would have locked gates on the track to prevent off-roading, but this could only be done at the western end of the route; there are currently gates just off the A62 and at the point east of the existing track where it enters open moorland. They are also proposing a low wooden barrier at point E, at the western end of Black Moss reservoir, close to the Pennine Way; details of this would require approval. Additional fencing and gating in the open moorland would be unacceptable. The Authority's Ecologist has raised concerns about the potential increase in recreational use of the route on nesting birds, although he acknowledges that this is open moorland where there is open access under the CROW Act. This will be a difficult issue to resolve as introducing signage in the open moorland could be intrusive; officers have asked to applicants to look at this further, with a view to agreeing suitably low key measures to discourage public use, but they do not consider the new track would become an attractive alternative or circular route because there are already well-established routes in the area and the line of the track would not be obvious from these routes.

#### **85. Landscape, Landscape Character and Visual Effects**

86. The EIA deals with the impact of the development on short, medium and long distance views and landscape character and resources. It was informed by photomontages to illustrate what the track would look like from viewpoints that were agreed with the Authority.

87. The ES concludes that due to the location of the proposed development within the National Park there is limited ability to accommodate it without undue harm. The footprint of the development (a track) is linear in nature but narrow with a maximum width of 4.0m. The stone used in its construction will be gritstone, similar to that found in the locality. The ES notes that tracks are a feature of this landscape (for example, the Pennine Way), but equally they are relatively limited in nature and extent and not common at all on open moorland.

88. In terms of how to accommodate the track in the landscape, the report says that the characteristics and sensitivity of the peat habitat preclude the potential for cutting into the ground, so it is proposed to lay material onto the existing surface. The following measures have been incorporated within the design to mitigate the landscape impacts of constructing the track over existing ground:

- Bog mats are proposed in the visually and ecologically sensitive area surrounding Black Moss and Swellands, to reduce the construction depth; and
- The existing stone track off the A62 will be utilised at the start of the route. This is a well-established track outside the SAC/SPA/ SSSI. There will be an element of cut and fill at the interface between the existing track and proposed track, to ensure the proposed track blends into the existing.

- The use of the existing leat for the majority of the proposed stone section minimises visibility of the track.
- The selected route has been chosen to reduce landscape and visual impact to a minimum by following the route of an existing track and locating in the base of the former leat. Nonetheless, it cannot be regarded as a landscape improvement or enhancement measure as it introduces a man-made feature into an unsettled, open and semi-natural landscape. Overall, the effect on landscape is deemed to be significant, particularly from three viewpoints located between Points A-C (the leat) and between Points D-E and Points E-G (the open moorland north of Swellands Reservoir).

89. The Environmental Statement acknowledges that introducing a permanent access track into a protected open landscape that is a designated National Park and highly sensitive, in landscape and visual terms, without incurring significant damage is challenging. The proposal seeks to limit the potential impacts and reduced them an absolute minimum by selecting a route that uses an existing track, working with the natural terrain as much as possible and using a disused leat. It avoids substantial earthworks to achieve more even gradients and uses bog mats in the most sensitive locations. Nonetheless, despite these measures, where the proposed track leaves the existing track from Point A onwards, the effects are judged to be significant in visual and landscape terms.
90. As noted in the Consultation section above, the Authority's Landscape Architect considers that the impacts of the track on the landscape are understated in the ES and he objects to the application, questioning the need for a permanent track. The applicant's landscape consultant has responded to suggestion that the landscape impacts are understated (document dated 18 March 2021), but the Authority's Landscape Architect retains his view of the impact and the need for a permanent track. The applicant's landscape consultant says: *"The fact that the track follows an existing stoned track and falls into a man made leat and is in close proximity to 2 man made reservoirs has influenced the judgement of medium rather than high in this case".* He goes on to say in respect of magnitude: *"Generally, the track will be laid on top of the existing ground and protected by geotextile fabric. Occasionally localized cut and fill with material scraped off high spots to fill low spots, will occur but there will be no large scale cut and fill. No peat will leave the site. Whilst acknowledging that the proposed development is an adverse change, the fact that the track is narrow at 4.0m , constructed from local stone and, importantly for substantial lengths, the track will follow an existing stoned track or a man made leat and is not appreciably visible cutting across the open moorland untouched by mans activities, the overall value of minor adverse is considered to be valid in this context".* The Authority's Landscape Architect does not consider a 4 metre wide track to be "narrow" and says that the response simply restates the original assessment.
91. In making a recommendation on this application, the Authority's Planning officers have considered these opposing views, particularly in the context of whether a permanent track is required. We have come to the conclusion that if the need for a permanent track is accepted, the route that has been chosen is the least intrusive from a landscape point of view. The first section from the A62 follows an existing track outside the designated moorland and is less sensitive than the route of the temporary track approved in 2006. The remainder largely follows that route and is considered to be the least harmful in terms of landscape impact. It is acknowledged that there will be some landscape intrusion, but that this is not so great as to outweigh the case of overriding public interest that has been put forward.

## 92. Archaeological and Cultural Heritage

93. This part of the EIA deals with the effects of the development on potential archaeological resources. These resources include some of the most significant Mesolithic flint finds in

the north-west of England, including two arrowheads found within close proximity to each other to the north of Black Moss Reservoir. Other resources include the former leat (along which much of the proposed access track would be sited), a series of mounds to the immediate west of the line of the proposed access track and an old quarry site located between the proposed route and the north-eastern end of Black Moss Reservoir, which are also seen as heritage assets.

94. The ES concludes that there would be no impact on archaeological resources once the track has been completed as there would be no ground disturbance during this phase. The Authority's Senior Archaeologist agrees with these conclusions and recommends conditions be attached to any approval. The Trust has now agreed and submitted a Written Scheme of Investigation (WSI) with our Senior Archaeologist.

#### 95. **Access and Recreation**

96. This part of the EIA deals with the effects of the development on access and recreation resources and 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.

97. During Construction: The key effect during construction would be indirect disturbance to the amenity of users of open Access Land, Common Land, the Pennine Bridleway, Pennine Way and other rights of way. The effects may result in loss of amenity, potentially leading to temporary avoidance of the area by recreational users. Additionally, Brun Clough car park would also be closed to the public for the duration of construction and this would be a significant effect, albeit a temporary one. The supporting statement says that in consultation with Oldham Council it has been agreed that alternative parking provision is not required. There is also the potential for improvements to the car park surface on completion of construction.

98. The ES concludes that the effects on amenity are mitigated by much of the route being located within the leat and less visually intrusive. Additionally, the construction phase is temporary (16 weeks) and would progress from west to east in phases, with construction activity limited in extent at any one time. In addition, consultation with the Authority's Rights of Way Officer has taken place to agree measures to safeguard the public at the point where the Pennine Bridleway is impacted by the track construction at the A62. This will include a holding bay on the Pennine Bridleway. A banksman will be used at the Pennine Bridleway and also on the Pennine Way and other rights of way which will be temporarily impacted by construction activities to ensure the safety of the public. The ES concludes that with this mitigation in place the loss of amenity for recreational users during construction is not significant.

99. Completed Development: In the long-term the track would result in a significant effect on visual amenity for recreational users due to the inherently sensitive location, but the potential impacts have been limited and reduced to an absolute minimum by selecting a route that uses an existing track, works with the natural terrain as much as possible and uses a disused leat.

100. **Summary of Impacts**

101. The EIA process has identified that the development would result in residual landscape, visual, and ecological effects which cannot be mitigated for and are judged to be significant in EIA terms. Authority officers agree with this conclusion. The key summary points from the analysis set out above are as follows:
102. Landscape: There would be a significant effect on landscape character. However, the selected route has been chosen to reduce landscape impact to a minimum by following the route of an existing track and locating it in the base of an old leat. Nonetheless, the track cannot be regarded as a landscape improvement or enhancement measure as it introduces a man-made feature into the Natural Zone, which is also designated as an SSSI, SAC and SPA.
103. The first section of new track (Point A to B) will be prominent and highly visible as it leaves the existing stoned track and rises up the hillside towards Point B when viewed from the public footpath near Keepers Cottage. The visual effect of the part of the track from Point D to Point E would also be significant when viewed from the Pennine Way to the north of Black Moss and Swellands Reservoirs. This is due to the close proximity of the track to the Pennine Way where the view is dominated by uninterrupted views of open moorland and largely featureless other than the presence of Blackmoss Reservoir.
104. The introduction of a man-made track into this open landscape at this point will have an adverse effect as it not associated with any landscape enhancement or improvement measures. Similarly, the visual effect of the track would be significant when viewed from the Pennine Way to the south of Black Moss and Swellands Reservoirs. From this viewpoint, the track would appear as a narrow scar above both Black Moss and Swellands Reservoirs. It is likely, however, to be more noticeable above Black Moss Reservoir from Point E to F as the surface will be stoned. From Point F to G the surface will be bog mat which is likely to be more recessive in appearance. The EIA concludes that the “scar” from this perspective, although narrow, will nonetheless represent an intrusion into otherwise wild and open moorland landscape, other than the presence of the two reservoirs.
105. Ecology: Whilst the track and construction methodology has been designed to avoid or reduce impacts on ecology as far as possible, there remains a permanent loss of 1.148ha of blanket bog habitat would be a significant effect which cannot be avoided or mitigated. It is proposed to off-set this habitat loss with off-site habitat compensation measures. This impact will largely occur at the construction stage and there would be no significant effects on ecology once the track is in place, other than the impact of disturbance through potential increased recreational use.
106. Archaeology: A programme of monitoring during construction along with the recording, conservation, archive deposition and publication of any archaeological features or finds means that there would be no significant effect on archaeological and cultural heritage.
107. Access and Recreation: The temporary closure of Brun Clough car park at the construction stage would be a significant impact for recreational users which cannot be mitigated for. However, this temporary impact could be off-set by improvements to the car park surface once construction is complete. There would also be a significant impact on the visual amenity of recreational users on the Pennine Way near Black Moss and Swellands Reservoirs as a result of the visual intrusion of the permanent track into the open moorland.
108. In terms of the possible interaction of these effects, the ES concludes that the consideration of effect interactions has not identified any additional significant affects resulting from the different disciplines acting in combination.

## **Environmental Management**

109. A statement has been submitted with the application to set out how the development meets the requirements of this policy. It also points out that with climate change there will be greater pressure on critical infrastructure such as reservoirs as a result of increasingly common severe weather events.

## **Conclusion**

110. This application proposes the construction of a track in open moorland, within the Natural Zone and in an area designated for its habitat and biodiversity interest as an SSSI, SAC and SPA. The national policy and environmental law, together with the Authority's policies, set out a very strong presumption against development in these designated areas. Consequently development must only be approved in exceptional circumstances. The planning application sets out the case for approving the development in this case, advancing the case overriding public interest for the essential maintenance of the two dams and reservoirs. The Canal and River Trust are obliged by law, as an "undertaker" to maintain the reservoirs and the associated structures and are subject to a rigorous inspection system to ensure this.
111. The application makes the case for a permanent track to undertake this essential maintenance. It sets out the environmental impacts of the proposed track and evaluates this in the Environmental Impact Assessment (EIA) and Environmental Statement (ES respectively). The EIA and ES acknowledge that the track would cause harm, in some cases significant. However, the scheme seeks to avoid and mitigate harm wherever possible and to off-set the harm that is inevitable, through off-site works agreed through a section 106 agreement.
112. Officers have considered whether the approval of this application would set a precedent which could result in pressure to approve other tracks in sensitive locations. With regard to reservoir access in the Peak District, Black Moss and Swellands reservoirs are unusually remote and inaccessible, with no vehicular access at present, whereas all other reservoirs in the moorlands and surrounding valleys have some form of vehicular access, even isolated and elevated ones such as Chew reservoir. When compared to other proposals for access tracks in the moorlands, it is most unlikely that any of these could advance the case that they support essential infrastructure and are required in the public interest. Any tracks required which are essential for the management of the Natural Zone or for the conservation and/or enhancement of the National Park's valued characteristics may be acceptable in principle (policy DMC2).
113. From a Habitat Regulations perspective, the accompanying Appropriate Assessment concludes that there will be an unavoidable impact on SAC habitat, namely blanket bog (including both loss and damage). Under the Habitats Regulations 2017 the proposal can therefore only be legally approved if the following conditions are met:
- There are Imperative Reasons of Over-riding Public Interest (Regulation 64(1))
  - There are no alternative solutions (Regulation 64(1))
  - Compensatory measures must be taken to ensure that the overall coherence of Natura 2000 is protected (Regulation 68)
- If the Authority is minded to approve the application, the Secretary of State must be notified at least 21 days before final approval (Regulation 64(5)); this is reflected in the recommendation above.
114. As noted above, in the Consultation section, the response from Natural England was received as this report was being finalised so the key points from that response have been included in this report, but officers are considering the response in more detail and

will update Members at the Planning Committee meeting. However, this response had been anticipated and reflects the advice given by the Authority's Natural Environment and Rural Economy manager, who is also an ecologist (see above). Both NE and the Authority's specialist advice is that the track will cause harm to the SAC habitat so it can only be approved if there are "Imperative Reasons of Over-riding Public Interest" and there are no alternative solutions, with compensatory measures taken to ensure that there is no net loss of habitat (see last paragraph). The planning application has been submitted on this basis and has sought to address these matters.

115. Officers have concluded that the need for a permanent track to carry out the essential repair and maintenance work is a significant material planning consideration, given the public safety and water supply issues, and that the submitted scheme minimises the environmental impacts as far as possible, with those cannot be avoided being compensated for through off-setting works elsewhere in the area. These exceptional circumstances are considered to be strong material planning considerations that provide an overriding justification in this case for making an exception to the policy presumption against development in the Natural Zone. Consequently, the application is recommended for approval, subject to the Trust entering into a Section 106 agreement to secure the off-site works and to conditions, as set out above.

### **Human Rights**

116. Any human rights issues have been considered and addressed in the preparation of this report.
117. List of Background Papers (not previously published)
118. Nil
119. Report author: Brian Taylor