

6. FULL APPLICATION - THE CONSTRUCTION OF A PERMANENT ACCESS TRACK LEGALLY REQUIRED AS A MEASURE IN THE INTERESTS OF SAFETY UNDER THE RESERVOIRS ACT FOR ESSENTIAL SAFETY WORKS AND ONGOING INSPECTION, MAINTENANCE, AND EMERGENCY ACCESS TO SWELLANDS AND BLACK MOSS RESERVOIRS, OFF THE A62 HUDDERSFIELD ROAD, DIGGLE, SADDLEWORTH (NP/O/1221/1393, JK)

APPLICANT: Canal & River Trust

Summary

1. This application proposes the construction of a permanent access track to serve two reservoirs. The application site is situated in open moorland, within the Natural Zone and in an area designated for its habitat and biodiversity interest as an SSSI, SAC and SPA. It is a re-submission following the refusal of a similar application in August 2021 (decision issued September 2021). National and local policies set out a very strong presumption against development in these designated areas and in the Natural Zone. 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. The resubmitted application seeks to address the issues which led to the refusal of the previous application, particularly the consideration and discounting of alternative options and providing more information on the legal responsibilities of the Canal and River Trust (to be referred to as the “Trust”) to carry out the works.
2. 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 there are no practicable alternative options. The submitted scheme minimises the environmental impacts as far as possible, with those that cannot be avoided being compensated for through off-setting works elsewhere in the area. The report therefore concludes that there are imperative reasons of over-riding public interest for approving the application. 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 planning conditions.
3. 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

4. The proposed track is required to gain access for essential inspection, repair and 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.
5. 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 the existing track off the A62, this being the first part of the proposed route.

6. There are several public footpath routes across the moorland in the vicinity of the reservoirs. These include two National Trails, the Pennine Bridleway and Pennine Way, as well as a number of other rights of way which cross the area, including the Standedge Circular Walk developed by the National Trust. The Pennine Way 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

7. Construction of a permanent access track legally required as a measure in the interests of safety under the Reservoirs Act for essential safety works and ongoing inspection, maintenance, and emergency access to Swellands and Black Moss reservoirs.
8. The proposed route is the same as that refused in 2021. It 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. The new track will start outside the designated area and then climb eastwards into it.
9. The proposed track will initially be utilised to provide access for the reservoir safety works, which will largely consist of construction vehicles carrying materials to and from the reservoirs and access for operatives. More specific details regarding construction vehicle types and sizes are set out in the following text. In addition to the reservoir safety works, the track will continue to be used on a permanent basis for ongoing inspection, surveillance, pre-planned and reactive maintenance, major construction, and emergency works. A table at 6.5 in the Planning Statement sets out the level and frequency of use.
10. The Trust are legally required to carry out the works to the dams. Creation of the proposed vehicular access to the reservoirs is required as a Measure in the Interest of Safety (MIOS), which is a legal requirement pursuant to the Reservoirs Act 1975. The new application includes a number of additional documents, including "*Swellands and Black Moss Reservoirs Justification for a Permanent Access Track*", which sets out the challenges of safely accessing the reservoirs for maintenance and repairs, and in an emergency. It explains the consequences of a failure of the reservoirs, which would include loss of life and extensive property damage. It details why the construction of a permanent access track is essential to allow the Trust to safely continue to operate the reservoirs and explains that this essential safety measure is now a legal requirement. The document also contains an explanation of other options that have been assessed and discounted as unsuitable / unfeasible and explains why the Trust has no alternative other than to construct a permanent access track.

11. The application also contains a significant amount of supporting information, including the following:

- An Environmental Statement which provides a formal Environmental Impact Assessment (EIA) and is an update of an Environmental Statement (ES) submitted with the previous application, to take account of additional environmental measures, updated survey information and the cumulative impact of the track when considered together with safety works to the reservoirs.
- Justification document for a permanent access track. This is a comprehensive document setting out the case for the track and can be found here if Members wish to read it in more detail: [Justification Document](#)
- Detailed drawings of the proposed track, including cross sections and the location of the proposed ponds
- Traffic Management Plan and a Swept path analysis and vehicle tracking drawings, showing the requirement for a 4 metre wide track.
- Written Scheme of Investigation for archaeological monitoring.
- Heads of Terms for a draft section 106 obligation

12. The application also includes a Planning, Design and Access statement which summarises the proposal and seeks to address the issues raised by the previous refusal. It explains the design of the track, the principles and programme of works, and the environmental mitigation and compensation measures. This outlines the additional environmental measures included in the revised proposal. These are summarised as:

- Formation of 38 new pools to replicate 30 open water pools lost within the leat;
- Peat reprofiling to address the potential for peat erosion along the northern edge of the track;
- Peat revegetation to prevent further peat erosion;
- Heather Bales and coir rolls to prevent peat erosion where drainage pipes discharge;
- Coir baffles to slow the flow of surface water drainage flows;
- Bird nesting deterrent measures to prevent the direct loss of nests within and adjacent to the track;
- Temporary bird screens to reduce bird disturbance;
- Delay of construction work between Points D and E until after bird breeding season;
- Native species planting across the surface of the proposed passing places to encourage a natural “green” appearance to mitigate the visual impact of the stone surface.
- Hydroseeded strip along the track surface from Point A to Point B to encourage a natural “green” appearance to mitigate the visual impact of the stone surface ;
- Natural seed planting within surface to mitigate the appearance of the stone.
- New tree planting on land within the vicinity of the track route for landscape and visual enhancement;
- Surfacing of informal walking route across Black Moss dam and to the south of Black Moss to reduce further blanket bog erosion; and
- Discouraging the use of an informal path route along southern edge of Swellands reservoir.

13. Description of route:

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 at point B. This section of the track differs from the 2006/7 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 to E, most of the stone track will follow a disused canal feeder channel between Black Moss Reservoir and Brun Clough Reservoir and reuse the route of the previous temporary access track. The blanket

bog is not significant along this route, and its reuse avoids disturbance of virgin blanket bog. The stone track will terminate at point E. Permanent access to Swellands Reservoir head wall will be over a bog mat track from Point E.

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).

The supporting statement explains the key design parameters for the track:

- Granular materials ensure the track is free draining, without the need for positive drainage so as not to affect the hydrology of the peat. Culverts and pipes have been specified to areas where existing streams cross the proposed track;
- 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 has been designed to accommodate 7.5T vehicles. During maintenance works (construction) and for emergencies, larger vehicles, up to 28T, will use the track and road plates would be required at tight turns, to protect the track edges from damage due to 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 with a surface finish of stone. 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 will generally 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 gritstone of similar pH to the site will be used;
- The design life will be 25 years (with maintenance);
- The maximum load will be 28 tonnes on the permanent section A62 to point E;
- The existing gate at Point B will be utilised to prevent unauthorised vehicle access from the A62.

The section of track between Points A and E will be constructed of free-draining, larger diameter stone to maintain the current water flow regime and avoid concentration of flow via positive drainage which could otherwise lead to erosion. In contrast, a bound surface would risk the concentration of surface flows. The bog mat section of track between Points E and G has been specified as a lighter duty solution in consideration of the deep peat in this area. The bog mats will enable the flow of water through the peat to be maintained from one side of the track to another, to ensure the least impact to the hydrology of the peat.

Planning History

14. 2021: Planning application refused for 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) for the following reasons:

“1. The public safety issue does not create an Imperative Reason of Over-riding Public Interest justifying a permanent track through the Natural Zone, contrary to Core Strategy policies GSP1 and L1 and Development Management policies DMC1 and DMC2.

2 Alternative solutions have not been explored thoroughly enough given what is understood to be required (in terms of building work and regular maintenance) such that the requirement to demonstrate that there are no alternative solutions has not been fully made out to the satisfaction of the Authority, in particular by use of a temporary track, contrary to Core Strategy policies GSP1 and L1 and DM DPD policies DMC1 and DMC2.

3 The application does not demonstrate that it would conserve this peatland habitat nor result in acceptable impacts upon nesting birds, contrary to Core Strategy Policy L2 and Development Management policies DMC3, DMC11 and DMC12.”

15. 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.
16. Pre-application advice: In 2020, prior to submitting the first 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. The Scoping Opinion also confirmed that the EIA should set out the public interest need for the development and should describe the main alternatives that were considered.
17. February 2022: A Scoping opinion was issued to the Trust in respect of the areas that should be addressed in an Environmental Impact Assessment for the proposed works to the dams. The Trust had already acknowledged that the works would be the subject of an EIA because of the “in combination” effects with proposed track.

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) **A programme of phasing/timing of the construction works be agreed to avoid the bird nesting season in the designated SPA.**
- 4) **Agree sample/specifications of stone to be used for surfacing and geotextile matting.**
- 5) **Submit and agree details of any new gates and barriers.**
- 6) **Carry out habitat creation, pond creation, and tree-planting works in accordance with agreed timetable.**
- 7) **Gates to be kept locked other than when the track is in use; any signage to be agreed before installation.**
- 8) **Restoration scheme to be submitted and agreed in the event that any part of the track is removed.**
- 9) **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.**

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.
- The justification and need for a permanent 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 (*quoted in full given the importance of this issue*):

“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*
- 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.

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal, in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England’s advice.

Your appropriate assessment concludes that your authority is not able to ascertain that the proposal will not result in adverse effects on the integrity of any of the European sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, Natural England concurs with the conclusion you have drawn that it is not possible to ascertain that the proposal will not result in adverse effects on site integrity. Natural England advises that the proposal does not provide enough information and/or certainty to enable adverse effects on site integrity to be ruled out.

Regulation 63 states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site, subject

to the exceptional tests set out in regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the conclusion of your Habitats Regulations Assessment states that it cannot be ascertained that the proposal will not adversely affect the integrity of the European site, your authority cannot permit the proposal unless it passes the tests of regulation 64; that is that there are no alternatives and the proposal must be carried out for imperative reasons of overriding public interest.

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” on this link: <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#derogation>

The procedures set out within this advice should be considered as part of your decision making process including time frames in which any notifications should be undertaken. 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.

The land selected has been damaged in the past through wildfire and heavy grazing and possibly through peat extraction. This has resulted in loss of peat over parts of the site, drying of the remaining peat body and a switch to single species dominance of *Molinia* grassland over remaining peat soil or wetter areas (dry heath forms elsewhere on thin soils and drier areas).

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. Please refer to Richard Pollitt’s comments on Compensation Measures provided to your authority dated 02/07/2021 for further detail.

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. Oldham Council:** *“It is the view of Oldham Council that the proposed access track is needed to allow regular maintenance and the ability to access in an emergency in order to address safety issues for the reservoirs. Currently, the nearest road is 2.5km away from the reservoirs and emergency access can only be made by helicopter in good weather (bearing in mind that the reason for an emergency is likely to be related to poor weather, e.g. heavy rainfall). If there was ever a failure of either of the reservoirs, there would be a risk to life in the worst-case scenario (full breach of a reservoir during heavy rainfall). In particular, for Black Moss Reservoir, the failure assessment of the southwest dam estimates that 280 people could lose their lives in Diggle and Uppermill along the Tame Valley towards Oldham, with extensive damage to over 4,900 properties worth over £209m in total.*

Having reviewed the current, revised application from the Canal and Rivers Trust, the Council are satisfied that the information submitted with the application addresses the stated areas of concern that led the Planning Committee to refuse the previous application, including:

- confirming that alternative options referenced by the planning committee, such as temporary access tracks, are not possible as the requirement to install a permanent access track is mandated as a ‘Measure in the Interest of Public Safety’ due to the safety issues raised about the reservoirs;*
- that discontinuance of the reservoirs is considered neither a viable nor desirable alternative; and*
- proposing additional environmental measures to enhance habitat and reduce disturbance risk to birds – the construction of the access track is to be of minimum required width and constructed of grit stone to blend in with the surrounding landscape. Given all of the above, and most particularly the significant impact to life and property were the reservoir to breach, the need for a permanent access track is apparent, and the new application has sought to address concerns raised by the Planning Committee about the previous application and minimise the impacts on the habitats and wildlife around the reservoirs.*

As a result, Oldham Council would strongly support the application and encourage the Peak District National Park Authority to grant permission for this essential access track to the reservoirs.”

21. Parish Councils: No reply

- 22. Environment Agency:** response to applicant, forwarded to the Authority:

“Thank you for sharing your concerns about the refusal of planning permission to allow CRT to complete measures in the interest of safety (MIOS). These safety measures were recommended by an independent, Government accredited, inspecting engineer in his statutory inspection report under the Reservoirs Act, as measures to be taken in the interests of public safety. Actions relating to these MIOS are legal requirements. This does mean that CRT are required by law to complete the safety works by 31 October 2023, otherwise an offence will have been committed. The Environment Agency is the enforcement authority for the Reservoirs Act in England and as such, we have a duty to secure compliance with the Reservoirs Act. The decision to refuse planning permission to enable the completion of these safety measures is concerning. We would be happy to participate in any discussion CRT and the planning committee may have to help explain the requirements of the Reservoirs Act and to share previous case law, which may be helpful to the committee.”

23. **West Yorkshire Fire Service:** *West Yorkshire Fire and rescue service (WYFRS) support the application for the access track to Swellands and Black Moss reservoirs. The track will provide a further access point to an area that has been previously destroyed by wildfires in the last few years. This access point will allow firefighting crews to transport equipment both via all- terrain vehicles and foot to the remote areas of the moor. The track will also enable WYFRS to utilise the area as a ‘fire break’ or allow us to put firefighting measures in place to mitigate further damage to the moor. It's difficult fighting any fire but the geography of the site makes this more troublesome - getting the equipment, the firefighters and the water up to where the firefighters need them is really challenging. This track would be a massive benefit to the access, tactics and planning for fighting any fires in this area. The accessibility would allow us to tackle small fires earlier limiting the devastation we have witnessed on Marsden moor over the last few years.*
24. **Ecology (PDNPA):** *Reply awaited, but on previous application noted that the draft HRA correctly concludes that an Appropriate Assessment is required, both on 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 there are Imperative Reasons of Over-riding Public Interest, there are no alternative solutions and compensatory measures must be taken to ensure that the overall coherence of Natura 2000 is protected. If the Authority is minded to approve the application, the Secretary of State must be notified at least 21 days before final approval. Previously expressed concern about the potential impact on SPA bird species during the operational phase, but satisfied with the conclusion that there is unlikely to be a significant impact on SPA species.*

The Ecologist questioned whether sufficient information was provided to demonstrate that a permanent track is essential, in particular in discounting a temporary track:

On the compensatory works, it was the Ecologists view 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.

25. **Senior Archaeologist (PDNPA):** *Advice on the previous application was that there will be some impact, but this is capable of mitigation. Recommends conditions. Summary of advice as follows:*

“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.

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.

Should the planning balance be favourable, the impacts identified need to be mitigated through a conditioned scheme of archaeological work.”

26. Landscape Architect (PDNPA): *“The application site is located in the Natural Zone and the ‘Moorland Slopes and Cloughs’ and ‘Open Moors’ LCTs in the Dark Peak. A number of my concerns on the previous application have been addressed – these include the need / justification for the works that this track facilitates and the requirement for a permanent track. I queried the need for the number/size of the passing places and this has been addressed. However:*

1. I still have concerns about the landscape and visual impact of the retention of the ‘full’ track (including the passing bays) – this track is a very intrusive feature in the landscape (and strongly conflicts with key perceptual qualities and character of this sensitive landscape within a National Park) and my view is that at least some of these passing places could / should be removed after completion of the reservoir maintenance works. This would allow the track to be maintained in situ (as emergency access is required / a legal obligation exists) with the provision for passing bays to be re-installed if required at a later date.

2. I also note the landscape mitigation works included with this application – this is positive and welcomed, but I do not think (6 areas of 3-5 trees – unfenced) is enough to adequately mitigate / compensate / offset the landscape and visual effects of the proposed scheme (and comply with Policy L1). I would like to see a greater number of trees along this clough (e.g. three additional groups of 3-5 or the 6 existing groups increased to 7 - 9), the provision to include fencing if necessary (to prevent grazing of the trees by livestock) and the potential explored to plant trees / manage the existing larch around the car park at Brun Clough (which was discussed with the applicant on a site visit in mid-November) to be agreed with the landowner/s if possible.

I therefore would request that if this scheme gains permission that a landscape condition to secure additional planting (than that included in the application) if possible and adequate tree protection / maintenance is put in place (Purpose: to provide additional essential landscape and visual mitigation to reduce ‘net’ adverse effects of the development).”

In response to this the Trust has advised that a review has been undertaken regarding reducing the number of passing places, but due to the length of the track and the topography, this would be unsafe, the distances already being long (over 350m in places). Attempting to reverse large vehicles or even vans with trailers for significant distances

down a narrow winding track is considered unsafe with a high health and safety risk of the vehicle falling into the peat. The passing places have been reduced to 6m length on the outside face and the location of the passing places has been rationalised allowing three to serve a dual function of widening tight bends to facilitate plant movement. The passing places will be greened by planting with local species. They also say that major emergency and maintenance construction works can be needed at any time. Permanent passing places are a part of the permanent access track, and are required in order to promptly react to an emergency situation. The Trust also notes that removing and rebuilding passing places regularly will cause more environmental damage and bird disturbance. The Trust advises that this is not a desirable option. With regard to additional tree-planting, the Trust says that it is happy to include more tree planting as requested. The Trust has already discussed additional planting in the clough with the local landowner who will gladly have more trees on his land. The Trust will also explore whether the local authority will agree to tree planting as being suggested around Brun Clough car park. If this is agreed, then there is scope to also take this suggestion forward.

Representations

27. Two representations have been received in response to public notification, including a letter from the RSPB, which is summarised separately.
28. RSPB response summarised as follows: Welcome the inclusion of additional information regarding justification for a permanent access track which includes the legal context, as one of the RSPB's original concerns related to the earlier application was that justification for the track had not been adequately provided as alternative solutions, such as reservoir discontinuance, had not been adequately considered. The additional information has alleviated this concern as it more clearly defines the legal need for the track for the continued operation of Swellands reservoir and has clarified the impacts of reservoir discontinuance and how that would affect public water supply and the supply of water to the Huddersfield Narrow Canal.

Welcome the additional measures proposed to discourage unauthorised use of the track. The mitigation proposals should be robustly monitored to ensure that access points remain impenetrable to unauthorised vehicles and so that the extent of use of the proposed track can be measured to assess the success of mitigation in dissuading people from accessing a part of the moor that currently sees little footfall and disturbance. If use of the track exceeds what is envisioned, we suggest that further mitigation measures will need to be applied to reduce disturbance to breeding birds once the track is in operation and this should be frequently reviewed to ensure no long-term effects on the breeding bird assemblage that includes Special Protection Area (SPA) qualifying bird species such as golden plover, merlin and short-eared owl. Any gate should be as impenetrable as possible using robust locking mechanisms and be of a specification that prevents all unauthorised access. The access points should be routinely monitored to ensure they remain in place and any breaches of, or damage to this access point should be rectified immediately.

The necessity of use of the permanent section of bog matting between Black Moss reservoir and Swellands reservoir. RSPB considers that use of this section of the track, over the most sensitive area of deep-peat blanket bog should be minimised as much as possible, being used only in emergency situations or when heavy equipment is needed at Swellands reservoir. Consider that that access to Swellands reservoir for routine inspections (which are proposed three times per week) could be achieved on foot with vehicles being parked at the proposed compound at point E adjacent to Black Moss reservoir. This would alleviate some of the pressure on the hydrology of the blanket bog in the vicinity of the bog matting.

Potential for erosion close to culverts and drains and lack of detailed management plan to rectify problems as they arise. Welcome the applicant's additional measures to avoid or minimise peat erosion comprising heather bales, coir baffles, localised regrading of peat hags and vegetation of bare peat patches. It is a positive change that the possibility of erosion will be dealt with from the outset. Also welcome the inclusion of the 'Operation and Maintenance Manual' which outlines a timetable for specific monitoring and maintenance actions.

The RSPB's was concerned about the adequacy of the breeding bird survey accompanying the original application, but now acknowledge that additional monitoring took place throughout the 2021 breeding season which resulted in a total of 17 monitoring visits, allaying some of the initial concern. The RSPB recognises the updated legal situation placing an obligation on the applicant to complete works to Swellands reservoir by 31 October 2023 and recognises that for this to be achieved, the construction of the proposed track will need to take place during the bird breeding season of 2022. Welcome the addition of new mitigation methods, such as temporary screening, to help prevent some of the inevitable disturbance to and potential displacement of breeding birds. Also note that the application states that whilst the total construction period would be approximately six months, the construction process will start at the Western end of the route and will not reach the reservoirs where redshank are located until the later stages of construction from mid-July 2022 onward. By the time track construction reaches the point at which redshank, common sandpiper and mallard are located, these species will have completed breeding. RSPB seeks assurance that construction of the proposed track at the end closest to Black Moss reservoir does not begin until there is adequate evidence that those species mentioned above, that are at risk from disturbance close to the reservoirs, have finished their breeding activity.

The RSPB welcomes the proposed habitat compensation outlined for Holme Moor which proposes to diversify an area of Molinia dominated moorland. As Molinia dominance is a widespread issue in some of the Peak District's and South Pennines SSSIs, the RSPB would like to see this compensation package used to evidence potential new techniques to deal with this widespread issue. As the proposed habitat compensation area is outside of SSSIs, there is scope to trial new techniques that would require Natural England consent elsewhere. Propose a detailed trial and monitoring scheme be implemented, with early input from Natural England it could help to evidence future work within SSSIs. Propose follow up discussions between the National Park Authority, Natural England, the RSPB and other interested parties to finalise the details of the works and management plan before permission for the development is granted.

In response to this the Trust has said that it will submit an addendum to the Operation & Maintenance Manual to ensure measures are documented:

- inspecting the gate locks and carrying spares as part of weekly reservoir surveillance
- repair of any damage to gates as part of weekly reservoir surveillance.

The Trust also acknowledges the RSPB's concerns regarding driving on the bog mat track for surveillance visits, however this is a legal requirement under the Reservoirs Act as a measure in the interests of safety (MIOS). With regard to the bird breeding season, the Trust confirms that construction is programmed close to the reservoirs after bird breeding season is complete, and the Trust will comply with any condition requiring this (to protect the redshank and other species nesting at the reservoirs).

29. One other representation supports the application, summarised as: *"I live at Keepers Cottage and use part of this track for access to my property. Although the part I use is ok for vehicle access, I often see 4x4 vehicles going past and struggling to get up the hill (I assume to access the reservoir) as the track is so bad. The current access is quite treacherous and I'm surprised there's not been an accident or injury already. I know the*

area is protected which I fully support but the track is needed to provide safe access to maintain reservoirs. The proposed route follows pretty much what's there already and just improves it".

Key Policies

30. 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 2021. 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.
31. 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."*
32. 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

33. 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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).

40. 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.

41. Policy CC1 *Climate change and mitigation* requires that all development must build in resilience to and mitigate the causes of climate change.

42. Development Management policies

43. 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.

44. 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; 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.

45. 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.
46. 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.
47. 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.

48. 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.

49. 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

50. 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'.

51. 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.
52. 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. Consequently, the application should only be approved if there are overriding reasons of public interest which outweigh the planning policy presumption against development in the Natural Zone and an area which is designated for its conservation and biodiversity interest. In particular, the development must be fully justified and must be the only practicable option
53. Given this policy context and the concerns expressed by Members when they considered the previous application in August 2021, the resubmitted application provides important additional information about the legal requirement for the works to the dams and the permanent access track, reservoir inspection process, the consideration of alternatives, and additional mitigation works. 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.

Justification and need for a permanent track

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. Black Moss Reservoir is the highest of the Trust's reservoirs at over 400m AOD with a capacity of 58,190m³, built in 1806 and formed by two impounding dams. Swellands Reservoir has a capacity of 246,300m³ impounded behind a 190m long dam wall about 9.6m high. There is currently no vehicular access to Swellands and Black Moss reservoirs, and pedestrian access is via difficult terrain which can often become impassable for engineering purposes due to poor weather and low visibility.

54. Pedestrian access is only possible via the Pennine Way and informal tracks over exposed moorland, over a distance of 2.5km from Brun Clough Reservoir. The current poor access regularly precludes routine inspection visits due to poor weather and/or bad visibility which makes the route to site impassable. Even minor maintenance works are frequently impossible as all tools and materials must be carried on foot. Furthermore, the lack emergency vehicular access adds to the impracticality of routine inspections. Under the reservoir surveillance regime for the reservoirs, they should both be inspected 3 times per week, in order to check for developing defects and ensure the condition of the reservoir remains safe. These regular inspection visits are vital in identifying any immediate risks of

failure and enabling rapid emergency evacuation and draw down. The lack of access tracks means that the risk from catastrophic failure is amongst the highest in the UK for reservoirs.

55. As well as routine surveillance visits, the statutory regime under which the reservoirs are protected requires that regular maintenance is undertaken. These activities involve transporting the necessary machinery, and as above the weather and ground conditions can regularly preclude access, further putting the reservoirs at risk. Additionally, there is an unacceptable risk to the health and safety of the inspectors and contractors, in continuing to work in these conditions. The justification documents sets out in much more detail the frequency and purpose of visits at table 1, paragraph 4.3.
56. In addition to routine inspections and maintenance, with assets this age regular minor maintenance works are required; however, for the last 28 years, no significant maintenance has been possible, other than when the temporary track was installed in 2006/7. The lack of vehicular access would also prevent timely delivery of heavy plant and equipment in an emergency situation in order to facilitate emergency draw down to lower water levels in the reservoirs with pumps to augment the rate of drawdown provided by the valves, and to carry out preventative emergency repairs. This is particularly of concern, as the reservoirs are at greatest risk of failure during poor weather, precisely when access is difficult or impossible with vehicles and plant. The Trust is no longer able to operate the reservoirs in this way and a permanent access track is therefore essential, as well as now being a legal requirement.
57. The Trust says that providing a permanent access would significantly improve the safe management and operation of the reservoirs. The Planning Statement explains that prior to the designation of the land as an SAC and SPA, the Trust (and its predecessor) could undertake maintenance works by transporting plant and materials to the reservoirs via tractors and trailers (archive photos have been submitted with the statement), with this often causing damage to the ground. Vehicular access is not possible across the open moorland due to the damage it would cause to the protected peat blanket bog.
58. The Reservoirs Act 1975 provides the legal basis for the regulation of large, raised reservoirs, and has been amended over time, most recently by the Flood and Water Management Act 2010. Additional requirements have also been imposed on reservoir undertakers since the Toddbrook incident. Swellands and Black Moss reservoirs are designated as High Risk, Large Raised Reservoirs under the 1975 and as such they are subject to the statutory inspection and maintenance regime. The Planning Statement explains the role of inspecting engineers in more detail. These are independent Panel inspectors. Inspections are required at least every 10 years, or earlier if recommended in a previous inspection report, or when requested by a supervising engineer, or within 2 years of a final construction certificate being issued for the reservoir. If an Inspecting Engineer requires specific MIOS, the Trust, as the Undertaker is legally responsible for making sure these are carried out within the stated timescales. Failing to implement the MIOS within these timescales is a criminal offence. The Inspecting Engineer can also make recommendations in relation to the maintenance of the reservoir, such as the frequency of specific maintenance measures; failure to comply with these requirements is also a criminal offence. The justification document submitted with application makes it clear that the Trust is legally obliged to provide the access track under the requirements of the Section 10 report if it wishes to continue to operate the reservoirs.
59. In addition to this, the Environment Agency has established a process for risk assessment for reservoir safety (RARS) management, in order to manage the risks of an uncontrolled release of the contents of a reservoir, and consequential loss of life and damage. The RARS process was published by the Agency in 2013 and is followed by the Trust as best practice in the management of risk. Although the measures identified in these risk assessments to address the risks are not directly binding in themselves in the same way

as the MIOS identified in a section 10 report, the consequences of not complying with the findings may nevertheless result in an identified risk causing the failure of the reservoir. This would leave the Trust exposed to liability in civil law for any death or damage caused as a result.

60. Following the Toddbrook incident at Whaley Bridge in 2019, the Environment Agency published an advice note which provides recommended actions for reservoir undertakers and engineers. The recommendations include improvement to inspection, supervision, operation, and maintenance activities. Whilst not legally binding, it highlights the importance of regular inspection and maintenance regimes to the safety of reservoir assets; the Agency's advice note establishes good practice and must be followed by the Trust.
61. Finally, the Secretary of State for the Environment, Food and Rural Affairs commissioned an independent review report of reservoir safety legislation, led by Professor David Balmforth. This review report, published in May 2021, provides a comprehensive assessment of the current safety regime in England. It makes recommendations for improving the safety regime and to strengthen the roles and responsibilities for the regulator, reservoir owners and engineers.
62. Legal Requirement for a Permanent Access Track: This application is made on the basis that a permanent track is essential in order to safely manage these High-Risk reservoirs, and under the most recent Section 10 report for Swellands the provision of such a permanent access track is now a legal requirement. The Inspecting Engineer's report, issued under Section 10 of the Act, was issued on 10 March 2021. The report made various observations in relation to access. As a result of the inspection, the report requires a number of "*Measures in the Interests of Safety*" (MIOS). These works are all legally required to be completed by 31 October 2023, and therefore the access track must be completed first, during 2022, in order to meet the deadline for the remaining six MIOS. The following works should be completed by 31 October 2023:
 - A. A permanent access track should be built from the A62 trunk road to the dam to facilitate the remedial works, surveillance, and any emergency actions in the future.
 - B. Measures should be implemented to ensure that the reservoir can safely pass the Design and Safety Check floods whilst maintaining wave freeboard and acceptable overtopping rates as recommended in the fourth Edition of Floods and Reservoir Safety.
 - C. In developing acceptable measures for passing the PMF account should be taken of the present poor state of the South (Main) spillway which should be repaired or reconstructed as appropriate.
 - D. If the North (Auxiliary) spillway is to be retained then investigations should be carried out to ensure that there would be no unacceptable erosion downstream of the sill and of the short formal channel in an Extreme Flood.
 - E. The rip-rap should be repaired where it is damaged near to the south end of the dam.
 - F. Crest levels on the dam should be brought up to a minimum level of 401.40 m AOD or to such other level as may be needed to satisfy the freeboard requirements in the fourth edition of Floods and Reservoir Safety.
 - G. A wave wall, to a height agreed by a suitably qualified engineer, should be built along the full length of the dam.

63. Consideration of Alternatives to a Permanent Access Track

When the previous application was considered by the Planning Committee in August 2021, Members expressed concern that the alternative options to providing a permanent access track had not been fully considered and discounted by the Canal and River Trust in a manner that would justify a departure from the strong policy presumption against

development in the Natural Zone and an area designated as an SSSI, SAC and SPA because of its conservation and biodiversity interest. These concerns were also expressed by the RSPB in its response to the application (however, see the Consultation section above for its response to the current application).

64. When the Trust submitted the previous application, it set out 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 current application makes it clear that not doing the works is not an option, given the legal obligations on the Trust:

“In order to operate Swellands reservoir, there is no legal alternative to the construction of a permanent access track. A permanent access track is considered by the government appointed Inspecting Engineer to be an essential requirement to ensure the safety of the reservoir, and to enable other safety critical works to be undertaken. A MIOS is a legally binding obligation; failure to provide the track is a criminal offence”.

65. The main options that have been considered and discounted were as follows (these are set out in more detail in the justification document referred to above):

66. *Reservoir Discontinuance*

Discontinuing the reservoirs has been considered; however as explained above, the reservoirs are required in the public interest. The statement submitted with the current application sets out the reason why the discontinuation of the reservoirs would not be in the public interest summarised as follows:

- Failure to act upon the legally binding MIOS by the deadline set by the Inspecting Engineer under s10;
- Loss of public water supply via both reservoir storage and catchment area under the Scammonden Agreement;
- Potential for loss of reservoir water attenuation and the increased risk of flooding, due to flows from the 2.5km² catchment area;
- A significant reduction in the security of supply of water to the Huddersfield Narrow Canal, with navigational and environmental impacts;
- Direct impact on the SSSI, SPA and SAC, where the reservoirs are located. In particular, mitigation would be required for reduction in water table and the potential for peat drying out, with consequences for climate change and possible increased wildfire hazard in the susceptible area (two large wildfires happened in 2020, one being on Black Moss dam itself);
- The requirement to construct a substantial temporary access track given the significant scale of the discontinuance works;
- Future access required to allow the Trust to fulfil any ongoing inspection, and maintenance obligations;
- Impact on the protected landscape and visual receptors;
- Loss of non-designated heritage assets.

On discontinuance, the submitted statement concludes that *“...it is clear that discontinuance of the reservoirs is neither a viable nor desirable alternative, having regard in particular to the significant adverse consequences for the public interest that would be associated with such a step, even if the necessary consents could be obtained”*. The Trust also say that given the complexities involved with discontinuance, both legal and practical, and the consents that would be required, the Trust considers that even if discontinuance were both viable and desirable in the public interest, it is unlikely to be completed by October 2023.

67. *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 the current application, the Trust have supplied additional information, including photographs which show plant and machinery used by the previous owner (British Waterways Board) to access the reservoirs and highlighting the damage this caused to the ground.

68. *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 Section 10 report considered whether Helicopters could be used as an alternative to a permanent access track; concluding that it would not be possible to use helicopters in bad weather, when access would be more likely to be required in an emergency. Helicopters have insufficient load capacity for the equipment required. Also, the altitude and location of the reservoirs can mean that helicopter access is prevented by wind or cloud and cannot be relied upon as the primary means of emergency response.

The original application also explained that 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 not be feasible for lifting in materials, particularly concrete, which is required for the upcoming civil engineering works on the dam. 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. The Trust considers that without a track to the reservoir dams, the time taken to implement procedures and transport equipment in the event of emergency would undoubtedly be delayed.

69. *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. In addition to this, the current application includes additional information setting out the need for an access track for weekly and monthly inspections and maintenance works.

70. *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 was 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.

Environmental Impact Assessment:

71. The following sections are largely unchanged from the report on the previous application as the Environmental Impact Assessment is still relevant and was not the main area of concern when the previous application was considered. However, there is some updating in the Ecology and Biodiversity section and in the Access section.
72. 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.
73. 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.

Ecology and Biodiversity

74. 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.
75. 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 replaced by new ponds during track construction.
76. When the first application was considered in August 2021 there was also significant concern, also expressed by the RSPB and CPRE, that construction of the track would also result in disturbance to moorland breeding birds in their breeding season, given the timetable for the works. The revised application now addresses this, setting out the timetable for the works, beginning in May 2022. Whilst it acknowledges that there is a risk of disturbance to certain species of birds with associated predicted adverse impacts during

the construction and operational phases, this impact needs to be weighed against the IROPI and minimised and mitigated as far as possible. The Planning Statement deals with this as follows:

“However, it is important to note that whilst the total construction period would be approximately six months, the construction process will start at the A62 (eastern end) of the route and will not reach the reservoirs where redshank are located until the later stages of construction from mid-July 2022 onward. A map to show the timeline of construction along the track is presented on each of the Figures 1-13 in the Breeding Bird Survey report (PAA 202197) to confirm the location of construction in relation to each individual species. By this time track construction reaches the point at which redshank, common sandpiper and mallard are located, these species will have completed breeding and this is confirmed by evidence from the monitoring of deterrent effects on breeding birds during 2021 which established that breeding activity of all species had ceased by the end of June 2021 (it is acknowledge that this end date could move back into July as a result of in-year weather conditions and so mid-July has been used as a more conservative ‘end of breeding’ date for the purposes of this assessment). Dunlin, common reed bunting, tufted duck and common linnet were also confirmed from the reservoirs only and would not, therefore, be disturbed by access track construction during the breeding season”.

77. As noted above, this has now addressed the concerns of the RSPB, although they do recommend additional monitoring to ensure that this occurs. This can be covered by a suitably worded planning condition. 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.
78. In addition to this, 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. The application proposes the creation of 38 new ponds close to the new track, with the location of these now shown on the submitted plans. The 38 pools will replace 30 lost during construction of the access track. The aim is to create a scattering of pools across the moorland to the north of the leat, along the entire length, mimicking as far as possible the distribution of the pools which occur naturally within the leat. The creation of pools will also help to re-wet the adjacent peat body, thereby providing an indirect benefit to the blanket bog habitat, as well as the creation of the pools themselves. The supporting Planning Statement explains that it is important that the intact peat body north of the track is not damaged whilst creating the pools, so gullies or drains will be dammed to create the pools; the peat will not be removed from areas of intact peat to create new pools. In addition to this, there is a small area (approximately 274m²) of bare, actively eroding peat which is adjacent to the proposed track. Restoration works are proposed on this area to prevent additional peat erosion.
79. 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.

80. 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, having been introduced in the Environment Act 2021. 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. The current application has provided more detail on the proposed works and includes Heads of Terms for a Section 106 legal agreement which the Canal and River Trust would enter into to ensure delivery of these off-site works and their subsequent management.
81. Natural England's response on the compensatory works is important (see above in the Consultation section). Whilst NE object to the loss of SAC, they advise that it is the Authority role as the competent authority to decide whether there are imperative reasons of over-riding public interest which would justify approval of the application, not NE's. Natural England's response on the compensatory work is essentially supportive, noting that the selected area (Holme Moor) conforms to tests of appropriateness due to the following:
- 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.

Natural England note that the land selected has been damaged in the past through wildfire and heavy grazing and possibly through peat extraction. This has resulted in loss of peat over parts of the site, drying of the remaining peat body and a switch to single species dominance of *Molinia* grassland over remaining peat soil or wetter areas. They conclude that the proposed remedies are consistent with examples found within the SAC and restoration management measures applied to such peatland within the South Pennines and that the proposals are appropriate in the type of degraded peatland and in terms of the proposed measures.

82. The Authority's Ecologist's advice is that the measures proposed provide sufficient habitat enhancement to offset the loss of the degraded blanket bog, provided they can be adequately secured through planning conditions/S106 agreement. 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, but the guidance on biodiversity net gain and off-setting requires that such works must take place where they would provide "additionality", rather than in designated areas which have statutory protection. In this instance, the overall environmental benefit of 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 considered to be acceptable in the circumstances where the track is considered to be essential and in the public interest.
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. Officers agree with this conclusion.

84. In responses to the previous application, concern was 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 Trust 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, 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. There are no vehicular access points to the east. 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 had also 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, but some low key signage at key points to discourage public use should be effective. The Trust does 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. The Trust also proposes to use relatively large profile gritstone for the surfacing of the track, which will not be a comfortable surface to walk on, as compared to existing routes.

Landscape, Landscape Character and Visual Effects

85. 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.
86. 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.
87. 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).

88. 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.
89. 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".*
90. The Authority's Landscape Architect still has some concerns about the width of the track at 4 metres, but he now accepts that the track is required and no longer objects to the application. He has requested some additional tree-planting in the clough areas, to which the Trust have agreed. He has also suggested that some of the passing places be removed when they are not required for the more significant works at the dams, arguing that they will not be required for the regular maintenance and inspection visits. The Trust has also responded to this, saying that the passing places may be required on some of these visits but that the removal of the passing places and then their reintroduction when more significant works are planned would involve a cycle of disturbance which would be more harmful to the area, whereas leaving them in place would allow them to naturalise if they are not being used heavily. Overall, officers agree with this.
91. In making a recommendation on this application, 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, although the steeper section from the existing access track to the western boundary of the designated area will be locally prominent, particularly when first constructed. 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.

Archaeological and Cultural Heritage

92. 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.

93. 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 agreed and submitted a Written Scheme of Investigation (WSI) with our Senior Archaeologist.

Access and Recreation

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.
94. 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.
95. 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.
96. 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 a minimum by selecting a route that uses an existing track, works with the natural terrain as much as possible and uses a disused leat.

Summary of Impacts

97. 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:

98. 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.
99. 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.
100. 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.
101. 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.
102. 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.
103. 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.
104. 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

105. 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

106. 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 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 resubmitted planning application reinforces the case for approving the development in this case, advancing the case of overriding public interest for the essential maintenance of the two dams and reservoirs. The Canal and River Trust is 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 and is legally obliged to comply with recommendations of the Section 10 report. This states that a permanent access track is required and that essential works must also be carried out to the dams themselves by 31 October 2023.
107. The application makes the case for a permanent track to undertake these essential construction inspection and maintenance works, responding to Members concerns about the legal obligation to do the works and the consideration of alternative options, including the discontinuation of the reservoirs. 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.
108. As with the previous application, 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 exceptional justification 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).
109. Although it is not part of the Trust's justification for the application, it should be noted that the West Yorkshire Fire Service now supports the application for the track as it would provide emergency access for tackle wildfires in an area where there has been a high incidence of fires in recent years. It should also be noted that Oldham Council support the application, noting the potential risk to life and property in the event of dam failure.
110. 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 "IROPI" (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.

111. As noted above, in the Consultation section, the response from Natural England is that the construction of a permanent track will cause loss of designated landscape and the SAC habitat so it can only be approved if there are “Imperative Reasons of Over-riding Public Interest” (the IROPI test) and there are no alternative solutions, with compensatory measures taken to ensure that there is no net loss of habitat. The planning application has been submitted on this basis and has sought to address these matters. The National Park Authority is the competent authority in respect of the IROPI test, not Natural England. Natural England also consider the compensatory measures to be acceptable and conclude that the selected area on Holme Moor conforms to tests of appropriateness and that, should the IROPI test be satisfied, the proposed compensation is appropriate for the purpose of habitat compensation.
112. 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 the public interest for making an exception to the policy presumption against development in the Natural Zone. Officers consider that the Canal and River Trust, as applicants, have addressed the concerns which led to the refusal of the previous application in 2021 with regard to the need for a permanent track, the consideration of alternatives and the impact on the designated landscape, habitats, and species, particularly breeding birds. 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

113. Any human rights issues have been considered and addressed in the preparation of this report.
114. List of Background Papers (not previously published)
115. Nil
116. Report author: John Keeley