

**6. FULL APPLICATION: ESSENTIAL SAFETY WORKS TO RESERVOIR DAM INCLUDING REMOVING THE AUXILIARY SPILLWAY, REPLACEMENT OF THE PRIMARY SPILLWAY AND WORKS TO EXISTING WAVE WALL, LEGALLY REQUIRED AS MEASURES IN THE INTEREST OF SAFETY UNDER THE RESERVOIRS ACT. SWELLANDS RESERVOIR OFF THE A62 HUDDERSFIELD ROAD DIGGLE SADDLEWORTH (NP/K/0322/0346, JK)**

**APPLICANT: CANAL & RIVER TRUST**

**Summary**

1. This application proposes essential safety works to Swellands reservoir dam, including removing the auxiliary spillway, replacement of the primary spillway and works to existing wave wall. 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. 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. This application follows an application for a permanent track to allow access to the reservoirs for essential maintenance, repair and construction works.
2. Officers have concluded that the need for 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 cannot be avoided being compensated for through on-site enhancements. Consequently, the application is recommended for approval, subject to planning conditions.

**Site and Surroundings**

3. Swellands and Black Moss Reservoirs are located on the Pennine watershed, approximately 400 metres above sea level. in a remote location two miles north-east of Diggle and one-mile south-west of Marsden. The application site consists of the Swellands reservoir dam and includes part of its south-east corner and southern edge. The reservoir dam, which runs along the eastern side of the reservoir and includes infrastructure to retain and control the flow of water. The main spillway is at the southern end of the dam, with an auxiliary spillway at the northern end, there is a 1.5m high wave wall on top of the dam. The dam is approximately 190 metres long, with a height of 9.6 metres and a crest width of approximately 4 metres. The upstream (reservoir face) is rough pitched stone, whilst the downstream face is grassed.
4. The reservoir operates as part of the Scammonden Agreement (1965), which is a reciprocal agreement with Yorkshire Water whereby the Trust supplies water from Swellands reservoir to Yorkshire Water and Yorkshire Water then provides water to the Trust for the Huddersfield Narrow Canal.
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 approved new access route, but this property is some distance to the west the reservoirs themselves.

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 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 is owned by the National Trust as part of their Marsden Estate. This land is also common land.

### **Proposal**

7. The proposal is for the carrying out of essential safety works to Swellands reservoir dam, including removing the auxiliary spillway, replacement of the primary spillway and works to existing wave wall. These are described in more detail below.
8. As was explained in some detail in the application for the track, the Trust are legally required to carry out the works to the dams. This follows the recommendations of an independent Inspecting Engineer. The Engineer's section 10 report was issued on 10 March 2021 and included the following legally-binding Measures in the Interest Of Safety (MIOS) items which must be completed by 31 October 2023:

*a. A permanent access track should be built from A62 trunk road to the dam to facilitate the remedial works, surveillance and any emergency actions in the future (now approved subject to SoS approval and the signing of a section 106 agreement).*

*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 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 401.40m AOD or to such other level as may be needed to satisfy the freeboard requirements of the fourth Edition and Reservoir Safety.*

*g. A wave wall, of a height to be agreed with a QCE, should be built along the full of the dam.*

9. In response to these recommendations, the application proposes the following:

Wave Wall: To reduce the likelihood of reservoir levels overtopping, the existing wave wall is to be extended in both directions across the entire length of the dam, which will address MIOS items (b) to (g) above. The proposed extensions to either side will be integrated flush into the existing wave wall in situ so that it forms a continuous dry-stone wall. The proposed external facing material will be stone that is reclaimed from dismantled structures on the dam as much as is possible. If any imported stone is required, it will match the geological type, colour, grain size and dressing of the existing stone on site. To the south side, the proposed wave wall extension will be constructed flush with the new main spillway structure. To the north the wave wall extension will extend beyond the location of the existing auxiliary spillway (which is to be removed) to the edge of the reservoir. Following construction of the extensions to the wave wall, re-grading work will take place to the north of the wall and along the crest to create a top soiled and seeded ground level.

The existing crest wall will be extended across the width of the former auxiliary spillway section to create a complete wall in this location. The proposed crest wall extension will be finished with reclaimed natural stone from the dismantled auxiliary spillway structure where practical to do so. If imported natural stone is required, it will match the geological type, colour, grain size and dressing of the existing stone on site.

Dam crest level: It is proposed to grade the dam crest level to 401.20m AOD in compliance with MIOS item (f). It will be surfaced with a topsoil and grass seed finish to match the existing crest and reservoir embankment.

Rebuilding of the main spillway: It is proposed to rebuild the main (southern) spillway with increased capacity and create a longer two-level labyrinth weir. Reconstruction of the main spillway creates an opportunity to increase the drawdown facility of the reservoir and comply with MIOS (c). The replacement main spillway structure needs to be a predominantly concrete structure to provide adequate strength and durability to safely cope with the predicted water flow and discharge rates. Most of the new structure will be below the top water level and embedded within reservoir embankment. A very small amount of wall will be exposed on the exterior of the structure, which will be viewed against the reservoir embankment. The low level exterior vertical surface will have a form concrete finish, which consists of a stone texture imprint. This will also be coated with a biodegradable softening agent such as live yoghurt or farmyard manure to encourage growth of lichens and mosses and to soften the visual impact of the structure speed-up the ageing process of the material. The replacement spillway includes railings, which are for safety purposes to prevent a fall from height. It is proposed to have metal five bar estate fence railings, finished in green.

The existing main spillway includes a pedestrian footbridge over the spillway channel. This will be replaced by a new hardwood timber, measuring 8.1m in length by 1.2m wide. In addition to the footbridge over the channel, a stepped access path is also included, which will predominantly be finished with natural stone but in part be a level access finished with crushed stone.

Removal of auxiliary spillway: The existing auxiliary (north) spillway will be removed. Following the rebuilding of the main spillway structure, the auxiliary spillway will no longer be required. Removal of the auxiliary spillway meets requirement (d) of the MIOS. The former auxiliary spillway will be infilled and the existing ground profile along its entire length will be extended to match. It will be topsoiled and seeded with a grass surface, also to match the appearance of the existing embankment.

10. The application contains a significant amount of supporting information, including the following:
- An Environmental Statement which provides a formal Environmental Impact Assessment (EIA).
  - A Planning, Design and Access statement which summarises the proposal and assesses the impacts.
  - Detailed drawings of the proposed works to the dam.
  - An archaeological desk-based assessment and a Written scheme of investigation for an archaeological watching brief (February 2022).
  - A Construction Management Plan.
  - A Site waste management Plan
  - A Climate change statement

## **Planning History**

11. March 2022: *Planning application NP/O/1221/1393 for the construction of a permanent access track legally required as a Measure in the Interest of Safety under the Reservoirs Act for essential safety works and ongoing inspection, maintenance, and emergency access to Swellands and Black Moss Reservoirs off the A62 Huddersfield*: Planning Committee resolved to approve the application, subject to the approval of the Secretary of State and the prior signing of a Section 106 legal agreement to secure off site habitat compensation works. The Planning Committee accepted that the public safety concerns provided “Imperative Reasons of Over-riding Public Interest” justifying a permanent track through the Natural Zone and that the application demonstrated that there are no alternative solutions. The application also demonstrated that where possible it would conserve this peatland habitat and that where it could not, it would provide appropriate off site compensation. The decision has not yet been issued as we are awaiting the approval of the Secretary of State and the signing of the section 106 agreement, but progress is being made on both of these.
12. September 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).
13. 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.
14. Pre-application advice: 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 “in combination” effects with the proposed track.

## **RECOMMENDATION:**

**That the application be APPROVED 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) **Submit and agree samples of materials to be used for new walls, facings and surfacing.**
- 4) **Submit and agree details of replacement footbridge.**
- 5) **Carry out restoration works in accordance with agreed timetable.**
- 6) **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.**
  - 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 impact of the proposed works on the nationally and internationally designated sites of ecological interest on the moorland.
- The landscape impact of the proposed works.
- 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**

15. **Highway Authority:** No reply to date

16. **Kirklees Council:** No reply to date

17. **Parish Council:** No reply to date

18. **Environment Agency:** No reply to date

19. **Archaeology (PDNPA):**

20. **Ranger Service (PDNPA):** *“We do not agree (with Environmental Statement) that there will be no significant effects when construction is complete. The tracks around the reservoirs will remain with detrimental impacts on the enjoyment of the area for users of the National trail, and for local recreational users. The access track application states the number of routine vehicle movements that are anticipated if the track becomes permanent, after the period of construction works is complete. There are quite a few vehicle movements anticipated, on a weekly basis, which is a concern, given that the track uses a section of the Pennine Bridleway, crosses the Pennine Way and takes vehicles into an otherwise traffic-free environment overlooked by the Pennine Way. The construction period for the track will result in temporary closure of the Pennine Bridleway, and diversion onto a less than ideal route along minor roads. Furthermore, the construction traffic management plan should include measures to manage the interface of the construction plant with the Pennine Way during the construction.*

#### *Recommendation:*

- *Improved construction traffic management plan to recognise the impacts of the development on recreation users at the reservoir during development.*
  - *Careful consideration of appropriate path surfacing techniques around the reservoirs to avoid unnecessary visual intrusion.*
  - *Maintenance of the ‘natural’ feel of the reservoir perimeter to minimise visual impact”*
21. **Transport Policy Planner (PDNPA):** *“The Planning Design and Access Statement accompanying this application refers to two transport policies that are relevant to this proposed scheme, T6 and DMT5. The measures described by the applicant to reduce impact on the rights of way network in and around the scheme boundary meet the requirements of the policies described above. Construction Traffic Management Plan: This appears to be robust and includes measures to ensure that all appropriate signage is maintained to a satisfactory standard throughout the operation. Vehicle movements between the A62 and the access track appear to have been equally well-considered; whilst movements along the access track appear well-managed.*

Visitor parking: Paragraph 9.53 of the Planning Design and Access Statement refers to discussions between the applicant and Oldham Borough Council regarding the closure of

*Brun Clough Car Park. It is proposed that Brun Clough Car Park will be closed for the duration of the works and that no alternative parking be provided. Images from Street View on Google Maps (March 2021) indicate that the car park is well-used, with overspill parking (at the time of the image capture) onto the roadside and onto the northern entrance of the Pennine Way. It is likely that closing the car park will displace parking elsewhere, possible on the roadside to the east and west of the car park; and onto the Pennine Way entrance. Should this occur, then there might be a requirement for consideration to be given to either the provision of an alternative car park; or the introduction of a temporary clearway order, combined with targeted enforcement of obstructively parked vehicles. Any alternative parking arrangements would need to be achievable without impact on the designated sites (SSSI / SAC / SPA) adjacent to the A62”.*

### **Representations**

22. No representations have been received in response to public notification.

### **Key Policies**

23. 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.
24. 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.”*
25. 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**

26. 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.
27. 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). GPS1 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.
28. 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.
29. 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.
30. 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.

31. 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.
32. 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).
33. 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.
34. Policy CC1 *Climate change and mitigation* requires that all development must build in resilience to and mitigate the causes of climate change.
35. Policy T6: Routes for walking, cycling and horse riding, and waterways; part A states; *"The Rights of Way network will be safeguarded from development, and wherever appropriate enhanced to improve connectivity, accessibility and access to transport interchanges. This may include facilitating attractive safe pedestrian and cycle routes between new residential or industrial developments and the centre of settlements. Where a development proposal affects a Right of Way, every effort will be made to accommodate the definitive route or provide an equally good or better alternative."*

#### Development Management policies

36. 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.
37. 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.

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

- b. 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.
- c. Development that would serve only to make land management or access easier will not be regarded as essential.
- d. 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.

39. 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.

40. 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:
    - iv. cumulative impacts of other developments or proposals; and
    - v. the setting of the development in relation to other features of importance, taking into account historical, cultural and landscape context.
41. 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.
42. DMC12 Sites, features or species of wildlife, geological or geomorphological importance states:
  - e. 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.
  - f. 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.
  - g. 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.
43. Policy DMT5: Development affecting a public right of way, part A states:

*“Where a development proposal affects the route of a public right of way, either the definitive line of the public right of way should be retained, or, in exceptional circumstances, where retention of the definitive line is not possible, the developer will be required to provide an alternative route that:*

  - (i) is of equal, or preferably, of an improved quality compared to the original;*
  - (ii) has similar or improved surface appropriate to its setting; and*
  - (iii) wherever appropriate, is of benefit to users with special needs, including those with disabilities; and*
  - (iv) is available before the definitive route is affected or, if this is not possible, until the development is complete, a suitable temporary route is available before the definitive route is affected; and*
  - (v) is as convenient and visually attractive as the original.”*

## **Assessment**

### **Principle of Development**

44. 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’.
45. 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.

46. Taking these policies as a starting point, it is considered that the proposed works to repair a reservoir dam 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, although it is acknowledged that the reservoir and dam are established landscape features. Notwithstanding this, 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.
47. 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.
48. 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.
49. 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.
50. 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.

### **Environmental Impact Assessment:**

51. As part of the full planning application an Environmental Impact Assessment (EIA) 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. It follows the Authority's Scoping opinion (February 2022) which set out the areas ("the scope") that the EIA should address. The findings of the EIA process are presented in an Environmental Statement (ES) which was submitted as part of the planning application. The key conclusions are summarised in the following sections of this report.
52. 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**

53. 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.
54. Chapter 7 of the ES deals with the assessment of the effects of the proposed 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. The detailed assessment was undertaken by specialist and experienced ecologists on behalf of the Trust. It is supported by a number of survey reports including a biodiversity and peat assessment incorporating a phase 1 habitat survey, peat depth survey, water vole survey and reptile habitat suitability assessment; an updated breeding bird survey report; and an NVC and fungi report.
55. During construction the development would result in the loss of a very small area (167sq.m) of acidic grassland and a further 1219sq.m of acid grassland would be subject to temporary disturbance and subsequently be restored on completion of construction using an acidic grassland seed mix of locally occurring species. Overall, the loss of the grassland habitat is considered to be negligible due to the small extent of loss. Although the grassland habitat is located within the SSSI/SAC/SPA, this habitat is not one of the reasons why the area is designated (the reason for designation is the blanket bog habitat which would not be impacted by construction). Nevertheless, it is proposed to ensure that there is a biodiversity net gain by enhancing 0.95ha of blanket bog next to Black Moss Reservoir.
56. Blanket bog habitat and 'flush' vegetation dominated by soft-rush is present in the channel below the existing and new spillway location. A very small area of blanket bog and flush

covering 35sq.m would be lost within the base of the large gully that the new spillway sits within. However, a further 325sq.m of peat and flush habitat would be reprofiled and restored to stabilise the gully edges and prevent any further drying and erosion of the adjacent blanket peat.

57. A key impact during the construction phase would be disturbance to bird species which use the reservoir and adjacent moorland habitat for breeding. The works would take place from March to September 2023 which includes the bird breeding season (generally April to mid-July at this location). It is proposed that temporary screens would be used during construction to minimise the risk of disturbance to breeding birds. Black Moss Reservoir would also continue to hold a small amount water and would potentially still be attractive to common sandpiper and dunlin. However the ES acknowledges that it is not possible to guarantee that all of the bird species present would be free from disturbance.
58. There is potential for water vole to be present at low density (and unable to be detected during surveys) in suitable habitats. As a precaution a pre-commencement check would be carried out for this species and, as for the sensitive blanket bog and flush vegetation, measures would be taken to avoid harm or disturbance during construction.
59. Overall, the ES concludes that the effect of construction on habitats and species can largely be avoided or mitigated. However, in the case of breeding birds it is not possible to guarantee that all bird species would be free from disturbance and the effect of this is that birds could be temporarily displaced during the 2023 breeding bird season. However, the effect would be time-limited and it is anticipated that breeding behaviour would be restored to the current situation once construction has ceased and water levels in the reservoir have been restored.
60. Completed Development: There would be no lasting adverse effects on habitats and species once the development has been completed as the new infrastructure will sit within the existing footprint and the grassland habitat will have been restored. There would also be a localised and minor beneficial effect on the adjacent blanket bog resulting from the large gully below the new spillway being stabilised and revegetated to prevent further drying and erosion of peat. There would be no long-term disturbance effect in relation to breeding birds.

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

61. 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, from locations agreed with the Authority, to illustrate what the completed dam would look like. The completed development would result in a minor residual visual effect from the new spillway and associated railings and footbridge, but these impacts will not be harmful once the works have been completed and have weathered to some extent. The use of concrete in the spillway would only be visible at close quarters, only above water level and this will weather if treated as proposed. The use of matching natural stone elsewhere in the development will ensure that the new wave wall and spillway will assimilate into the landscape.
62. In response to this, Officers have questioned the use of concrete for the external faces of the spillway. Whilst the use of concrete on surfaces that are constantly or regularly under water may be acceptable, in terms of its long term durability, external faces which are not subject to water should be natural stone. The Trust has been asked to clarify and consider this; a verbal update will be given at Planning Committee.

63. The detailing of the other parts of the scheme are considered to be acceptable, including the extend dam, the wave wall and the footbridge, subject to the final details of the footbridge being submitted and approved. The longer wave wall will obviously be visible in the landscape, but this will be in the context of the existing wall, dam and infrastructure.

### **Archaeological and Cultural Heritage**

64. This part of the EIA dealt 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 Swellands Reservoir, on the north of Black Moss Reservoir. The reservoirs themselves, although not formally designated heritage features, are of some historic interest. The ES concludes that the construction phase of work represents the single greatest impact to the archaeological resource as this is the phase that will have the maximum impact on below ground deposits where the archaeological resource is situated. The construction phase would have an impact upon the setting of the reservoirs. The level of any archaeological remains sealed below the modern land is currently unknown. Any potential below ground remains, especially any Mesolithic (stone age) artefacts, could be locally or regionally important and so any effect would be significant. The application proposes that this will be mitigated by a programme of monitoring in the form of a watching brief during construction and recording, conservation, archive deposition and publication of any archaeological features or finds uncovered. It concludes that, overall, with mitigation in place, there would be no significant effect on archaeology or cultural heritage. In addition, it states that due to the reuse of stone reclaimed from the existing spillways to construct the extended wave wall and the facing of the new spillway to give the appearance of stone, there would be no long-term effect on the historic landscape or the setting of specific heritage assets (please see last section for officer comments on this).
65. The Authority's archaeologist has raised some detailed questions about some statements in the archaeological assessment, but overall it is considered that the impacts on features of archaeological interest will not be significant or harmful.

### **Access and Recreation**

66. This part of the EIA dealt 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
  - The loss or gain of amenity, existence of equivalent recreational opportunities and the displacement of activities. During Construction.
67. The ES concludes that the key effect during construction would be indirect disturbance to the amenity of users of open Access Land, Common Land, the Pennine Way and other rights of way and informal paths, resulting from noise and visual disturbance. The effect would be time-limited and of short duration. The effects may result in the temporary loss of recreational amenity, potentially leading to avoidance of the area by recreational users during construction (unless following the Pennine Way National Trail in which case there is no alternative route). An informal path that runs along the dam crest of Swellands would also be temporarily closed to public use during construction for health and safety reasons. However, this is not a formal Public Right of Way and that no public rights of way would be closed or diverted.

68. 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 Trust advises that following consultation with Oldham Council, it has been agreed that alternative parking provision is not required. The temporary loss of amenity and use of the car park at Brun Clough and informal path along Swellands dam crest would be moderately significant but short-term and reversible, for the duration of construction only which will be from March to September 2023. As noted above, in the consultation section, the Authority's Transport Planner has expressed concern about the temporary loss of this popular car park. The Trust has agreed to explore the possibility of alternative parking on other land in its ownership in the locality, but this would be difficult to require by condition.

69. Once the works to the dam have been completed, there would be no effect on recreational amenity due to the relatively small scale and design of the works to ensure that they are in keeping with the existing reservoir infrastructure.

70. Cumulative Effects:

A key consideration in EIA terms is the potential for cumulative effects to arise from the development in combination with other approved and proposed projects. In particular, there are two other projects that would take place in proximity to the development. These comprise the permanent access track, which would extend from the A62 to Black Moss and Swellands Reservoirs and is anticipated to be constructed between May and October 2022. The second project is proposed works to be undertaken at Black Moss (September/October 2023) and Little Black Moss Reservoirs (August to November 2022) which is outside of the bird breeding season. The ES concludes that the projects will take place at different locations and over different years, so the same bird species will not be impacted twice.

71. From a landscape and visual perspective, the works at Swellands Reservoir dam is of insufficient scale to have any cumulative effect with the permanent access track or works at Black Moss and Little Black Moss Reservoirs. In terms of habitats, there would be no significant cumulative effect on habitats as the only habitat to be impacted by the dam works is a small area of acidic grassland and blanket bog/flush habitat. A larger area of grassland and blanket bog would subsequently be restored and revegetated.

72. From an access and recreational point of view, there is the potential for a cumulative loss of recreational amenity due to the construction period spanning two years. Brun Clough Car Park would also be closed during the period of construction in each year.

73. Finally, from an archaeological and heritage perspective, it is anticipated that there would be a minor cumulative effect on the setting of heritage assets resulting from the short-term visual intrusion of construction activities. There would also be a minor cumulative effect on setting with the three projects in place.

### **Environmental Management**

74. 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.

### **Highways**

75. A traffic management plan is submitted with the planning application covering the vehicular traffic movement throughout the proposed construction works and traffic calming measures on the A62. Vehicular traffic movements associated with the proposed reservoir dam works

are anticipated to be low and are limited to the construction period only, which is demonstrated in the traffic management plan. For the construction stage, it is proposed to apply for a Temporary Traffic Regulation Order to provide for a reduced speed limit of 30 mph on the A62, supported with a speed activated sign, to help accommodate the movement of construction traffic. Other safety measures are proposed during the construction stage, as detailed in the traffic management plan.

## **Conclusion**

76. This application proposes the carrying out of works to Swellands dam and the associated infrastructure including the spillways. The site is 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 planning application makes the case for approving the development in this case, advancing the case overriding public interest for the essential maintenance of the reservoir infrastructure. 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 these essential works must also be carried out to the dams themselves by 31 October 2023.
77. The application has set out the need for the proposed reservoir dam works including, the legal context and the legal requirement as a MIOS under Section 10 of the Reservoirs Act 1975 and information has been provided to establish the public safety risk, including consequences in the event of reservoir failure. The application (together with previous application for a permanent track) has demonstrated that there is an essential need for the proposed reservoir dam works. These are considered to be exceptional circumstances under policy L1 and DMC2 to accept the principle of development in the Natural Zone.
78. The application sets out the environmental impacts of the proposed works and evaluates these in the Environmental Impact Assessment (EIA) and Environmental Statement (ES respectively). The EIA and ES conclude that there would be no significant harm and that any impacts are, in any case, outweighed by the public interest need for these essential works. Consequently, it is considered that the proposed development is not a significant departure from Core Strategy policy L1 or DM DPD policy DMC2.
79. From a Habitat Regulations perspective, the accompanying assessment concludes that there will be no unacceptable impacts on SAC habitat. If there were such impacts, under the Habitats Regulations 2017 the proposal could 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)

Given the conclusions in the preceding HRA report, if the Authority is minded to approve the application, there is no need to notify the Secretary of State before final approval.

80. Officers have concluded that the need for the essential repair and maintenance work to the dam 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 on-site enhancements. 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. Consequently, the application is recommended for approval, subject to conditions, as set out above.

**Human Rights**

81. Any human rights issues have been considered and addressed in the preparation of this report.

82. List of Background Papers (not previously published)

Nil

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