

Item Number: 5
Application No: 19/01263/MFULE
Parish: Lillings Ambo Parish Council
Appn. Type: Major Environmental Statement
Applicant: Mr Richard Lever (Environment Agency)
Proposal: Formation of flood storage area consisting of construction of earth embankment with spillway, excavation of two temporary and two permanent borrow pits, erection of river flow control structure, re-profiling of sections of the River Foss, realignment of short section of Black Dike, raising of section of Ings Lane, carriageway edge protection to part of Lilling Low Lane and associated new and improved access arrangements, drainage, accommodation works, landscaping and biodiversity mitigation (cross boundary application with York)

Location: Land Adj To River Foss Lilling Low Lane West Lilling

Registration Date: 12 November 2019
8/13 Wk Expiry Date: 3 March 2020
Overall Expiry Date: 26 May 2020
Case Officer: Rachael Balmer **Ext:** 43357

CONSULTATIONS:

Environment-Agency Yorkshire Area Sabic Ethylene Pipeline	Recommend conditions SABIC should be consulted by the developer before construction commences on site.
Natural England	No objection, Comments and recommendations
Yorkshire Water Land Use Planning	No observation comments
Highways North Yorkshire	Recommend conditions
Public Rights Of Way	Info re the public right of way
National Grid Plant Protection	No objection
Archaeology Section	Recommend conditions
NYCC Natural Services	Recommendations
Foss Internal Drainage Board	Recommend condition and informative
Yorkshire Wildlife Trust	We are encouraged to see that the ecologist has made attempts to discharge our concerns with regards to our previous comments. However, at this time we would wish to support those comments made by ecologist, Martin Hammond. In particular we would be further encouraged to see compensation and precautionary measures secured for farmland birds through integration into the proposal design and for a revised LEMP to incorporate detailed planting schedules.
Highways England	No objection. Recommend Conditions
Flood Risk	Recommend conditions
Lillings Ambo Parish Council	Cannot support the application
Health And Safety Executive	HSE's Advice: Do Not Advise Against, consequently, HSE does not advise, on safety grounds, against the granting of planning permission in this case.
Neighbour responses:	Mr D Wadsworth, Mrs D Wadsworth And Mr S Wadsworth, Mr James Crawford, Robin Barker, Mr Brian Little, Mr Philip Swiers, Mr David Armitage, Mrs Amanda Hodgson, Mrs Elaine Magee, Mrs Fiona Hill, Mr And Mrs Hodgson, Mr Paul Wreglesworth, Mr Tom Watson, Mr Philip David, Mr AW and BW Mook, Ms Claire Wesley, James Copeland (NFU), Mr John

1.0 SITE:

1.1 The application site, in terms of the red outline, covers an area of 151.88 hectares, and is owned by seven landowners. It is an application which straddles two Local Planning Authority jurisdictions: Ryedale District (RDC) and City of York (CYC). Although the majority of the site is within RDC. A relatively small area to the extreme south of the scheme is the part in CYC authority. The site is to the north east of Strensall and to the south of West Lilling. The land is agricultural, used for crops and some grazing. One farm holding, with two dwellings, is within the site red outline (Lilling Green Farm and Lilling Green Cottage). The River Foss runs through the site, on a broadly central alignment. The site includes a public footpath which is part of the following Long Distance Walks: Centenary Way, Ebor Way and Foss Walk. The site area also includes the road known as Lilling Low Lane, and the access track which serves Lilling Green and forms part of the Long Distance Walk route (known as Ings Lane). The site also runs close to the Ethylene pipeline, and National Grid power lines (some of which are to be grounded).

2.0 PROPOSAL:

2.1 The proposal is titled the Foss Flood Storage Area (Foss FSA), and is part of a wider York Flood Alleviation Scheme (York FAS). It is an engineering operation which combines a number of elements to provide additional flood storage capacity upstream for up to 1,000,000m³ of water. This is to significantly reduce the risk of flooding of the land and properties downstream of the River Foss, in an area described as the 'Foss Corridor', which is already at high risk of flooding (greater than 1 in 100 year chance of being flooded). The Design and Access Statement states that the key impetus for this is the impacts of the 2015 flooding in York. The Environment Agency advises that whilst the Ouse responds more slowly to extreme rainfall, the Foss does not, and flooding can occur very quickly (as in 2007). Climate change predictions also show the incidence of extreme weather events will increase, and therefore so will the risk of flooding. The red outline of the application broadly corresponds with the extent of 1 in 100 years flood probability, this post development, and is in conjunction with any infrastructure considerations. Although the plan does show some areas within the red outline where flood risk is not expected to increase. This is discussed within the report.

2.2 Two identical planning applications have been submitted to the respective Local Planning Authorities. The respective Case Officers have liaised together on the application's consideration. The CYC Planning Committee voted unanimously to approve the application at its meeting on the 19 November 2020. It is understood that the CYC has referred the application to the Planning Casework unit on the basis that within its administrative area the site falls within the York Green Belt. Some components of the scheme are not within Ryedale's planning area, and these are identified in the report. To ensure that there are no contradictory requirements, or confusion in the event of an approval, RDC and CYC will need to ensure that any mutually applicable conditions imposed, and the date of decision issued, are the same.

2.3 The engineering scheme described as the Foss FSA is made up of the following original components which are described in summary:

- Construction of an earth embankment (1.65km long and 19.85m above Ordnance Datum) with spillway. This embankment runs from Lilling Low Lane in a westerly direction, and then diverts southwards to follow the alignment of the River Foss, where at the southern extent the structure then straddles the River Foss at the point of the flow control structure siting. Approximately 400m of this embankment are in the CYC boundary. The clay core is to ensure that it is impermeable. The spillway is designed, in the event of overtopping, to allow excess water to flow into Black Dike
- Excavation of two temporary and two permanent borrow pits, which have been chosen based on their ability to yield clay. The former are to aid in the construction, and will be backfilled with

the material which does not meet the necessary requirements for the embankment, it will be returned to pre-existing levels and use. The latter will be a means to hold back water and provide a wetland habitat.

- Erection of a river flow control structure with 1900mm diameter aperture - with two tarmac/asphalt access tracks to that structure- its purpose is to regulate the flow of water leaving this area.
- Re-profiling sections of the River Foss (225 metres)
- Realignment of a section of Black Dike of 119 metres in length, formed by a two-stage channel. This is necessary due to the position of the embankment. This work is within the CYC area.
- Raising a section of Ings Lane between the bridge and Lilling Low Lane to the existing level of the bridge.
- Carriageway edge protection to part of Lilling Low Lane and creation of new hardstanding/parking in tarmac/asphalt.
- Associated new track (560m long) and improved access arrangements (in unbound crushed stone), drainage and accommodation works, with one permanent parking space
- Landscaping and biodiversity mitigation- including tree planting.

2.4 The scheme would also require:

- Temporary diversion of the Public Right of Way along Ings Lane;
- The grounding of various electrical power lines (subject to a different consent regime);
- Temporary diversion of the River Foss to permit construction of the flow control structure;
- Four temporary bridge crossings on the River Foss and one on Black Dike.

2.5 The scheme also originally proposed to potentially import c.2,3000m³ of clay to facilitate the timely formation of the embankment. Due to implications on the highway network and changes to the construction schedule, this clay is now not required.

2.6 The application has been determined in an earlier EIA screening exercise as an EIA development due to the scale of the scheme and its potential to impact on the internationally designated Strensall Common Special Area of Conservation (SAC). Whilst the site is not within the designated area, the drainage regime has the capacity to influence the hydrology. The Environmental Statement has therefore focused on the environmental biodiversity considerations on that basis. This is considered in more detail in the body of the report.

2.7 During the course of the consideration of the application, the following revisions have been made:

- Re-profiling sections of the River Foss has been extended to 1.3km, following further consultation with the Environment Agency's Fisheries, Biodiversity and Geomorphology team;
- The proposed habitat creation and tree planting has been revised, in order to ensure that these provide appropriate mitigation for effects on breeding birds and ponds, following recommendations from the North Yorkshire County Council's County Ecologist and the Yorkshire Wildlife Trust;
- Outfalls from the permanent borrow pits P1 and P2 have been changed from flapped pipe outfalls to open channel; and
- Minor changes have been made to the design of the Black Dike realignment (which is not within RDC area)

2.8 As the integrity of a site of International Biodiversity Importance (a Natura 2000 site) is being considered; the 'Component Authority' (RDC and CYC) are required to undertake a Habitats Regulation Assessment (HRA). This HRA is to establish what, if any, 'Likely Significant Effects' could affect the 'Conservation Objectives' of a Natura 2000 site. It is common for the applicant to undertake the HRA, and then the Competent Authority can choose to adopt the HRA. The initial HRA was a section in the Environmental Statement and was undertaken as a screening exercise. However, in response to the representation of Natural England, which took account of the 2018 judgement of the Court of Justice of the European Union in the matter of People Over Wind and Sweetman v Coillte Teorant, the court ruled that applying mitigation at the Screening stage was not the appropriate procedure to follow when undertaking a HRA. The screening exercise should either rule such effects out categorically, or if they

cannot be ruled out then to proceed to an Appropriate Assessment with detailed analysis and any mitigation is then applied accordingly. Natural England considered, and the LPAs agreed, that the level of analysis was that of an appropriate assessment, and no Likely Significant Effects could be ruled out at Screening stage.

2.9 It should be noted by Members, that whilst Natural England disagreed with the procedure, they ultimately concurred with the overall findings. Both Ryedale and CYC advised that in order for the Competent Authorities to be clear that full procedural compliance with the Habitats Directive had been undertaken, a revised HRA, covering both Screening and Appropriate Assessment was required. A revised HRA covering both stages was then submitted and subject to consultation. Based on the re-consultation response from Natural England, in relation to the consideration of this application, both RDC and CYC have adopted the revised HRA, as Competent Authorities, and have not sought to undertake a further Appropriate Assessment. In conclusion, no likely significant effects on the integrity of the conservation objectives of the Strensall Common SAC has been confirmed.

2.10 The application is accompanied by a range of further technical documents, which are summarised below and referred to in detail as required in the report:

- Design and Access Statement -which sets out the context and options testing; it briefly sets out the different scenarios for impact based on different levels of intervention, from do nothing, to downstream flood alleviation schemes. It sets out in summary the reasons for the proposed scheme.
- Planning statement - how the proposal seeks to align to national and local planning policies
- Statement of Community Involvement - how the Environment Agency has engaged with the various interest parties and communities on the project.
- Landscape and Ecological Management Plan;
- Tree Survey and Arboricultural Impact Assessment;
- Transport Assessment - traffic generation will be very much focussed on the construction phase, and this sets out how traffic will be expected to move in the site and on the surrounding road network; An addendum was subsequently provided to confirm the impact of the non-importing of clay.
- Flood Risk Assessment- how flood risk will change along the Foss Corridor as a result of the scheme;
- Geomorphology Assessment;
- Geotechnical Interpretive report;
- Heritage Statement

2.11 Subsequent further Plans related to revisions on the borrow pits, and the Black Dike Realignment. The landscaping masterplan was revised in areas A and E and the planting schedule accordingly updated.

Subsequent further documents include:

- HRA - Screening and Appropriate Assessment stages (with a further addendum)
- Environmental Action Plan updates
- Biodiversity Impact Assessment Calculator (updated to supersede the original in the Environment statement)
- Environmental Statement Addendum (additional information and updates to the original ES in relation to the changes proposed)
- Environmental Statement Addendum (Agricultural Land and Soils)
- Transport Statement Addendum
- Geomorphological Technical Note in relation to the Water Framework Directive (WFD)-mitigation measures in relation to the River Foss, The Black Dike and retained borrow pits.
- Explanatory Note- Landowner Compensation
- Minerals Resource Assessment

2.12 The applicant also submitted a series of supplementary statements in response to the consultation responses received:

- Response to comments made by the Foss Internal Drainage Board
- Response to comments made by the National Farmers' Union
- Response to Public representations (landowners, their agents and interested parties)
- Response to Ecology Bodies (NE, Yorkshire Wildlife Trust and CYC and NYCC Ecologists)
- Response to Natural England (Soils and Agricultural Land)

2.13 The key plans and supporting documentation are appended to this report. The remainder of the detailed technical information is available to view on the Council's website.

3.0 HISTORY:

3.1 Whilst a sizable area, there is limited relevant planning history relating to historic permissions for development in association with agriculture or domestic extensions.

3.2 A planning application at Lilling Green Farm (20/00032/FUL) was approved in March 2020 for 6 lodges. They are within the red outline of this application, but are within Flood Zone 1 and will remain in Flood Zone 1 based on the Environment Agency Flood extent maps produced as part of this application.

3.3 EIA Screening requests (18/01374/SCR) were received to each LPA and determined in February 2019 as a combined consideration by both CYC and RDC and NYCC (Minerals). It concluded that the development was an EIA application due to the uncertain effects on the hydrological regime of the Strensall Common SAC and SSSI. This would be considered through the submission of an Environmental Statement. The Environment Agency confirmed that they would undertake such a statement.

4.0 POLICY:

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 confirms that the determination of any planning application must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises:

The Ryedale Local Plan Strategy (2013)

The Policies Map (2019)

The Local Plan Sites Document (2019)

The Yorkshire and Humber Plan (Regional Spatial Strategy)- York Green Belt Policies (YH9 and Y1)*

The Local Plan Minerals NYCC 1997 saved policies

4/18 Restoration to Agriculture

5/6 Borrow Pits

4/6a Nature Conservation and Habitat Protection

4/14 Local Environment and Amenity

4/15 Public Rights of Way

*the area of the site within the York Green Belt is exclusively within the City of York boundary. As such, the City of York Council will consider the detailed impact of the scheme on the York Green Belt.

The Ryedale Plan - Local Plan Strategy (5 September 2013)

Policy SP1 General Location of Development and Settlement Hierarchy

Policy SP9 The Land-Based and Rural Economy

Policy SP10 Physical Infrastructure

Policy SP12 Heritage

Policy SP13 Landscapes

Policy SP14 Biodiversity

Policy SP15 Green Infrastructure Networks

Policy SP17 Managing Air Quality, Land and Water Resources
Policy SP18 Renewable and Low Carbon Energy
Policy SP19 Presumption in Favour of Sustainable Development
Policy SP20 Generic Development Management Issues

Material Considerations:

National Planning Policy Framework (NPPF) (2019)
National Planning Practice Guidance
NERC Act s.40 (2006)

4.2 The City of York Council has advised that The Minerals and Waste Joint Plan (of which Ryedale is part of) is currently at the examination phase. Examination hearings took place in Spring 2018 and in January 2019. The Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA) are currently being finalised by consultants and the joint authorities have sent through a Schedule of Modifications on the Plan following the hearing sessions and additional government guidance on Fracking. A Main Modifications consultation has been delayed due to the Covid-19 pandemic.

4.3 Paragraph 48 of the NPPF gives advice to the decision-maker concerning the extent of weight which can be attributed in the decision making process concerning emerging planning policy.

"Local planning authorities may give weight to relevant policies in emerging plans according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."

4.4 The Joint Minerals and Waste Plan is at an advanced stage in the examination process with only limited comments on those policies that are specifically relevant to this application. These include: M13, M25, S02, DO2, D05, DO6, DO7, DO9, D10 and D12. Moderate weight can be given to these relevant policies as a material consideration.

5.0 CONSULTATIONS:

5.1 A brief summary of the position of statutory and non-statutory consultees is included on the front sheet of the report, and issues raised are addressed in the relevant appraisal sections of the report. All consultation responses are available for Members to view on the public access webpage, and referred to in the report accordingly.

5.2 In terms of Parish Council responses, no responses have been received from Sheriff Hutton (as Ward area), Flaxton and Thornton le Clay Parishes. Lillings Ambo Parish is the Parish Council serving the area in which the scheme is situated. At the writing of the report three formal responses of objection has been received from the Lillings Ambo Parish Council. A summary of the initial concerns raised include:

- Construction traffic issues ;
- Increased flooding via drains backing up of land to the north of the Foss;
- The implications of the flooding around Lilling Green Farm and the access road;
- Maintenance of the piping to ensure no silting up;
- Loss or diversion of the Centenary Way do to construction work or flooding; and

- The ecological implications as raised by NYCC.

Subsequent objections are summarised as follows:

- Concerned about the amount of construction traffic the Environment Agency propose to bring through the village of West Lilling. As we previously pointed out there are alternative routes they could use. The route through the village has two pinch points where vehicles cannot pass. One being a single track bridge, which has already suffered damage, and at a bend in the centre of the village. We already endure heavy goods traffic taking a short cut from the A64 to the A19. Any more traffic would make life extremely unbearable, and extremely dangerous. The foot path is narrow. You have to stand back from the road when heavy goods vehicles approach. They drive very close to the curb because the road is narrow. The EA says the foot path is one metre deep. At one metre you are standing extremely close to large wheels thundering past!
- Other observations that have not been addressed is the amount of water locked into agricultural land causing more substantial damage. This agricultural land, not designated to flood, will not be compensated.
- The amendment says there may be temporary closures of Centenary Way and other foot paths. This is unacceptable.
- Lilling Low Lane is expected to flood. Fold down signs will be placed to warn people. Who will monitor this and who will change the signs?
- Who will maintain and clear the silt ponds which capture the water before it feeds into the River Foss? Responsibility needs to be decided before construction commences.
- There appears to be little maintenance strategy at present, only discussion with the Drainage Board. Surely, who maintains any work should be in place prior to commencement of the construction.
- Huge disappointment at the response to our request that construction vehicles use an alternative route other than the one through West Lilling.
- Pleased that there is no longer a need to import clay but the number of extra vehicles will still dramatically increase the already heavy traffic inflicted on the village.

5.3 Three responses of support been received. One of which is from the Foss Society, with the other responses from members of the public who live in the area downstream from the Foss, and who have experienced flooding of their homes. They consider that flood storage area is urgently needed. CYC have received a similar level of responses in support from residents.

5.4 26 letters of objection have been received from 19 individuals, families or organisations, including the NFU. A summary of the issues raised which are planning considerations is listed below:

- Loss of best and most versatile agricultural land;
- Loss of food production; quality assurance of food; and carbon footprint implications;
- Increasing flood risk in an area which currently does not flood;
- Concerns about the implications of the scheme for inadvertent flooding upstream;
- Concerns about the backing up of wider drainage ditches and current and former works to drains rendered useless;
- Disagree that the water will only remain for 36 hours but even so depending on the crops this will have a critical effect on the types of crops which can be planted flooded ground takes months to regenerate, and would affect the cropping rotation system from an arable perspective;
- The owner of Lilling Green is concerned about the implications for their access road- the quality of the surfacing, the implications of the raising flood water for the condition of the

existing bridge and the wear and tear on the lane. With no input from the EA for on-going maintenance;

- Concerned that the flood waters will come dangerous close to our property (Lilling Green Farm);
- How will compensatory sites be secured for biodiversity?
- Concerns about the accuracy of the plans and their variance- the reasons for their changing over time;
- Query about property being within the red-outline of the application;
- Concerned about the use of 2007 data, as they have chosen the worst possible year for flooding- in terms of standing water, which does not reflect the situation the situation now;
- Implications for flooding upstream and hampering drainage ditch operation- detrimental to arable crop growing to the adjacent farms whose drainage ditches connect to the Foss;
- Damage to drainage ditches;
- Future maintenance of the drainage scheme has not been assured;
- East Lilling Grange already has problems with water in the cellar- this scheme will make that worse- issues in in 2007 with the flash flood and 2015 when the surface water was unable to discharge quickly enough;
- Detrimental effects of the scheme underestimated- already with no construction large areas of land have been under water at regular period within recent years- a situation that can only worsen with the proposed works;
- Other alternative long term management and maintenance proposals for the entire length of the River Foss should be developed;
- Increased traffic levels through West Lilling along narrow road and footpath, there are pinch points and a weak bridge- access route should be via the A64- Scotchman Lane- Bull Moor Lane-Rice Lane-Gennel Lane and Lilling Low Lane- which is a shorter route if the extra material is brought in;
- What about the remedial works necessary to the repair the roads;
- Flooding of Lilling Low Lane should not be permitted;
- Concern over safety of walkers and pets with the borrow pits- fencing;
- Hardstanding will need surveillance as a target for antisocial behaviour ;
- On-going maintenance of the structure;
- NYCC Ecologist critical of the scheme- need to reflect and respond to this;
- How are the borrow pits to be backfilled- concerns about soil quality and effects on soil structure;
- How will the normal flow of the river be changed? What is the normal flow? Would the plate restrict this?
- What is the actual area likely to flood is it 111ha or 130ha;
- Financial losses to agricultural land vs property are not fully addressed;
- The planning system should improve resilience to flood risk, but when determining any planning applications Local Planning Authorities should ensure that flood risk is not increased elsewhere;
- Food production loss due to flood storage have yet to be addressed by either York or Ryedale Development Plans;
- What about the clay which does not meet the specification;
- Unclear compensatory measures;
- Unclear- inability to delivery mitigation measures;
- The Programme for the eradication of Giant Hogweed and Himalayan Balsam is not in the Environment Assessment;
- The biodiversity net gains does not take account of the permanent loss of agricultural land;
- The implications for the impact from flooding will vary depending on the crop grown- and a much larger area is affected;
- Are the IDB prepared maintain and manage the watercourses;
- Storage area of water is 87ha- could be to 130 needs a full assessment as the loss is not 20ha;
- There are adjacent planning applications which are in close proximity to the application boundary;

- The references to contractors should also include the Environment Agency;
- The agricultural community need access to the land;
- The permanent borrow pits how will these effect surface water drainage and the compensation scheme;
- The bund will create a significant landscape impact;
- Request CEMP provided as part of the planning application;
- Why has separate minerals application not been provided;
- Gennell Lane should be the route for construction traffic. It is unclear why our views on traffic flow are ignored
- The area shown as at risk of flooding in a supplementary statement is more extensive than previous plans submitted with the application and is outside of the red line area. Concerned that the environmental impact will not have been properly assessed
- Do not accept that there will be no increase in flooding on the right hand bank for the 1 in 2 year flooding event. The modelling is incorrect and does not reflect the true loss of BMV soils
- Request an independent drainage strategy is undertaken
- Impact on soils from inundation is not properly assessed
- It has still not been determined that the material in the borrow pits is suitable

5.5 Civil matters and matters relating to wider legislation have also been raised as issues which the objectors attest should be considered material in relation to the planning application and these are summarised below. The Local Planning Authority has considered that civil matters can present a material consideration where the ability to impose conditions required to make the development acceptable is in effect infringed/fettered by a civil matter. This is considered within the body of the report where relevant.

- Who will own the dam type structure- this is not clear;
- The concerns about the nature of compensation;
- No contact with those in the Foss Catchment in the upstream area to the scheme;
- The objections also relate to the consent to discharge regime- submission of a Inclosure Act of Parliament 1769 and the blocking of drainage ditches being contrary to those provisions;
- The implications of the scheme on their ability to use their land and the consequential adverse implications for their loss of income and stymieing of their operations;
- Loss of property value;
- Stipulate a condition should be imposed which duly compensates landowners- immediate loss of value; the area taken for the dam structure; value of the mineral/clay taken from the land and diminution value payment over the whole farm to reflect the risk that the scheme creates;
- The issues with the postponement consultation events;
- Not right that a handful of rural businesses in Ryedale should pay the price for it;
- Concerned about the lack of detail regarding compensation payments and the 'right to flood';
- No agreement has been given by ourselves, as landowners, regarding the permanent borrow pit, and the habitat mitigation measures, management of the banks and tree planting and so they are not deliverable;
- No consultation regarding a different farming regime in relation to prevent slurry and fertilisers getting washed into the river in a flood

5.6 One representation was received prior to application's validation. Other have submitted more than one submission, either online or by post, or have sought the NFU or agent to represent them.

5.7 The Council has sought legal advice in relation to some of the issues which are raised and this is discussed in the relevant section of the report.

5.8 In relation to the further re- consultations, responses have been received from a range of statutory consultees including NYCC Highways, Natural England, NYCC Heritage Services, NYCC Ecology, Yorkshire Wildlife Trust, the Environment Agency as a Regulatory Body, The Highways Agency; the Minerals and Waste Authority and Internal Drainage Board. They are considered in the report in the relevant sections.

5.9 The NFU have sought to reiterate their initial comments, and objection to the applications. They further add- in summary;

- The change of 225m to 1.3 km of the Foss riverbank re-profiling will further increase the loss of farmland along the Foss;
- The benefits to farmland south of the scheme (29.8ha) has no correlation with the land affected up stream (130ha);
- The impact of the lower level berms will be compensated for, by increasing storage volume by slackening of the bank slopes and widening of the channel, it is not clear how this has been included in the modelling note summary held in July 2019;
- We are pleased to see the applicant acknowledge the fact that the Foss FSA will lock land drains and hold back on agricultural land- the evidence does not quantify the full extent of the agricultural land impacted;
- There is an increasing case for a soils and agricultural land assessment, which should identify and address the loss of productive land and effects on agricultural businesses- and which is referenced in the environmental statement.

6.0 APPRAISAL:

6.1 In the consideration of this application the following matters are considered to be the key issues raised by the development proposed. (As noted in the policy section above, the implications of the scheme for the York Green Belt have been considered by the CYC as no part of the Green Belt extends into this part of Ryedale)

- Principle of the Development including Flood Risk Management and Drainage
- Impact on agricultural land use and businesses and agricultural land and soil resources
- Ecological implications
- Highways implications and general accessibility
- Landscape Setting
- Minerals Considerations
- Archaeology and the Heritage Environment
- Amenity
- Further procedural considerations raised by consultees

i) Principle of the Development including Flood Risk Management and Drainage

6.2 The nature of this engineering operation, and what it seeks to achieve and the implications for flood risk are intrinsically linked. This scheme is designed to provide flood water storage capacity as needed, and then to allow the water to flow at a managed rate back into the Foss, in a manner which does not lead to flooding downstream. There will be a permanent loss of some agricultural land- which is considered in the following section. In particular, the formation of the bund, spillway, access tracks and permeant borrow pits and some elements of the ecological mitigation will result in the areas of the application site being no longer capable of being used for agriculture, post development.

6.3 The Vision of the Ryedale Plan- Local Plan Strategy is not itself policy, but it sets out the overarching aspirations for Ryedale going forward into the future. It provides an important contextual basis for the policies of the development plan. It states in the section on the Countryside:

"Our countryside will be an attractive, productive and multi-functional resource. Traditional activities such as food production, tourism, recreation and leisure will be accompanied by wider roles for flood storage and prevention and new forms of energy production".

6.4 The countryside has a key role to play in delivering a range of ecosystem 'services' including food production, flood alleviation, recreation, biodiversity and other ecosystem services. One of the specific aims of the Plan is to minimise the risk of flooding and increased resilience to climate change (Aim 3).

An objective of the plan (Objective 12) is to help Ryedale to adapt to the impacts of climate change through flood risk minimisation and enhancing Green Infrastructure opportunities. As part of minimising that risk, there is a recognition that in extreme weather events heavy rainfall will drain to rivers, and how this process is managed is of vital importance to reducing the risk of flooding to property wherever possible. Flood storage is part of that process.

6.5 Policy SP1 (General Location Development and Settlement Hierarchy), states that in the Open Countryside development will be "*restricted to that which is necessary to support a sustainable, vibrant and health rural economy and communities*". This is then expressed in more detail within Policy SP9 (The land Based and Rural Economy). Policy SP9 states that "*Ryedale's land based economy will be sustained and diversified with support for:*
"appropriate new uses for land including flood management..."

6.6 It is clear that as part of the general operations within the countryside and in recognition of the need to respond to mitigating the impacts of climate change; the formation of a flood storage areas within Ryedale for flood management is, in principle, a Plan-compliant use.

6.7 Policy SP17 (Managing Air Quality, Land and Water Resources) states the following

Flood risk will be managed by:

- *Requiring the use of sustainable drainage systems and techniques, where technically feasible, to promote groundwater recharge and reduce flood risk. Development proposals will be expected to attenuate surface water run off to the rates recommended in the Strategic Flood Risk Assessment. In addition, major development proposals within areas highlighted as having critical drainage problems in the North East Yorkshire Strategic Flood Risk Assessment (or future updates) as Critical Drainage Areas may, if appropriate, be required to demonstrate that the development will not exacerbate existing problems by modelling impact on the wider drainage system*
- *Ensuring new development does not prevent access to water courses for the maintenance of flood defences*
- *Undertaking a risk based sequential approach to the allocation of land for new development and in the consideration of development proposals in order to guide new development to areas with the lowest probability of flooding, whilst taking account of the need to regenerate vacant and previously developed sites within the towns. In considering development proposals or the allocation of land, full account will be taken of the flood risk vulnerability of proposed uses and the national 'Exception Test' will be applied if required.*

6.8 The NPPF (2019) post-dates the Ryedale Plan- Local Plan Strategy and is a significant material consideration in the decision-taking process. It has a section on 'meeting the challenge of Climate Change, Flooding and Coastal change'. Within that heading is an inherent recognition in national policy of the need to balance different priorities in relation to the interface between the human environment and natural systems and processes- whether they have been intensified by climate change or not. It is considered that no other section of the NPPF so explicitly recognises that difficult, balanced decisions are required in response to the need to create a more sustainable approach to water management in relation to development.

6.9 Paragraph 155 of the NPPF states that "*inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere*".

6.10 In making such an assessment in plan-making, Paragraph 157 of the NPPF states:

"All plans should apply a sequential, risk-based approach to the location of development - taking into account the current and future impacts of climate change - so as to avoid, where possible, flood risk to

people and property. They should do this, and manage any residual risk, by:

a) applying the sequential test and then, if necessary, the exception test as set out below;

b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

c) using opportunities provided by new development to reduce the causes and impacts of flooding (where appropriate through the use of natural flood management techniques); and

d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations."

6.11 It is considered that Policy SP17 of the Ryedale Plan is reflective of those objectives and fully compliant with national policy in this respect.

6.12 The NFU have stated the planning system should improve resilience to flood risk, but that when determining any planning applications Local Planning Authorities should "ensure that flood risk is not increased elsewhere". This statement is correct for the vast majority of planning applications a Local Planning Authority could be expected to consider. However, such as stance does not take account of the situation where there is no alternative but to increase temporary flooding within a given area, as an objective of the development in order to reduce flood risk in a much more sensitive location (a very much built up area).

6.13 Paragraph 163 of the NPPF therefore states:

"When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;

b) the development is appropriately flood resistant and resilient;

c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;

d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

6.14 The application is supported by a Flood Risk Assessment, and it proposes to increase flooding in a given area. The maps show the changes in the extent of Flood Zone classification after the scheme would be operation in a 1:100 year event, and this area will be identified as being in Flood Zone 3. The Local Planning Authority is therefore required to perform the sequential test and exception test. This takes into account, as part of the FRA, why the development is proposed to be located where it is. The Design and Access statement sets out the site selection process both in terms of:

- Flood risk impact on vulnerable area;
- Technical; level of engineering
- Environmental impacts (which could also be cultural/amenity/heritage);
- The consent regimes;
- Economic impacts;

6.15 The chosen scheme offered the greatest level of flood risk reduction, with the ability to capitalise on the confluence of multiple upstream sources of flood risk, together with the opportunity to use indigenous clay resources on site. The scheme is also able capitalise on the geomorphology and topography, with a lack of structures and buildings. As such the scheme cannot be located elsewhere, and therefore proceeds to the Exception Test.

6.16 Parts of the scheme are within Flood Zone 3, with some areas of Flood Zone 2 and majority Flood Zone 1. Flood Control Infrastructure is confirmed as water-compatible development in the national Planning Practice Guidance (PPG) and therefore can take place, based on the Flood Risk Vulnerability Classification, in any Flood Zone Category. Water-compatible uses, should be designed and constructed to:

- remain operational and safe for users in times of flood;
- result in no net loss of floodplain storage;
- not impede water flows and not increase flood risk elsewhere.

6.17 A number of consultation responses raise concerns about the level and duration of flooding which would occur in the event of the operation of the Foss FAS. The scheme is designed to be operational and safe in times of flood; increases flood plain storage and is not increasing flood risk elsewhere but that required to deliver the flood storage capacity. By virtue of the word 'elsewhere' there is an implicit recognition that it does mean flood risk may very well increase within the site in question. This is to reflect the need to consider flood risk as a consequential aspect of what happens upstream. Water flows are not impeded by obstruction to the point they are blocked, but are regulated to allow a managed flow. The water will be held back and released at a maximum rate of 10 cubic meters per second. This means that up to 130ha of land may be needed in times of an extreme flood event, but only for c.27 hours once the flow volume subsides. (At 1 million cubic metres of water being released at 10 cubic metres a second). Officers agree that this figure would increase depending on the duration of the flood event, and so with the existing flow rate it would be c.36 hours but the water would built up over time.

6.18 The NPPF Paragraph 158 states that:

For the exception test to be passed it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Both elements of the exception test should be satisfied for development to be allocated or permitted.

6.19 Officers consider that test a) is satisfied. Rivers are historically often boundaries for administrative areas, but their catchment areas pay no heed to administrative boundaries. There is a real and pressing need to consider the benefits of the scheme beyond the boundaries of the District. Whilst this would increase the flood risk in the immediate operation of the scheme, on an area of agricultural land, it would reduce the flood risk for 490 properties (465 homes and 25 commercial buildings) and 28 ha of agricultural land downstream. The scheme is an engineering operation, and whilst it increases flood risk intermittently in its locality, it ultimately reduces flood risk in a much more sensitive location. As such it is considered to satisfy test b).

6.20 Criticisms have been levelled at the modelling work undertaken, such as the use of 2007 data (which was an extreme event on the Foss). The Environment Agency are the national, Government body for the management of water. They have undertaken detailed modelling of flooding events which represent robust, real-time data for an extreme event. This approach has then been assessed by the regulatory arm of the Environment Agency and is considered to be appropriate. Officers consider that in terms of modelling an event, it is appropriate to use data which shows extreme events to give robustness to the modelling. The scheme is, after all, expected to operate in extreme events.

6.21 Concern has been raised that the application area (red line) does not accurately include all of the areas liable to flood within a 1 in 100 year event and that this could then impact on the ecology of ponds outside of the application area. This response followed the production of more recent technical information submitted by the applicant to assess the impact of flood water inundation on soils. The applicant has responded to these concerns and has confirmed that the areas and ponds in question shown in the additional material are not part of the operational flood storage area. These are areas which already experience flooding and will continue to do so when the scheme is operational. The scheme will

not result in an ecological impact on the ponds in question.

6.22 Concerns have been raised around the implications for the operation of drainage ditches which currently feed into the Foss, including the locking of drains and the management of the drainage ditches. The applicant has undertaken significant modelling to assess the impact of the scheme on the key components of the drainage network and has concluded that at times of extreme flooding events when the scheme is operating at a maximum, land drains could be locked for a maximum of between 15-35 hours, depending on their position upstream of the control structure. A number of landowners dispute these findings although the applicant considers the modelling to be robust. It should be noted that the area of the application site is low lying and underlain with clay and that within this context, land drains will lock regularly under existing circumstances/ baseline conditions.

6.23 The York Drainage Consortium (Foss 2008 IDB) has commented on the planning application in detail. Their initial response (which has now been superseded by later responses), refers to the standard consent regime. It is supportive of the principle of the scheme but objects to elements of the application as it was initially presented for the following reasons:

"The Board is in general in support of the scheme as it appears the most practical option to reduce flood risk from the River Foss along with the improvements being made to the Foss Barrier. The Board does not want to hinder the progress of this work and none of the matters raised in this advice are new. However, the Board believes the applicant can easily address the above matters and if this is not possible, any remaining outstanding matters are potentially able to be addressed by appropriate conditioning of any approval granted. At this stage, the Board would therefore object to the application on the below basis:- Insufficient information has been provided by the applicant at this stage to determine the potential impact the proposals may have on the existing drainage systems."

6.24 These concerns covered a range of aspects from drainage implications, access, maintenance and management, drainage of impermeable area, discharge arrangements and control on drain down of the storage area, the designation of the River Foss, proposals to manage an extreme event if the flood storage area becomes full and maintenance of the borrow pits.

6.25 In response to the IDB's concerns, the applicant has prepared a detailed response to the matters raised. The IDB have now confirmed that in light of this response that they are in general support of the scheme, and that the additional information provided "*demonstrates that Agency is trying to address the boards concerns*". They do have some reservations about the ownership and whether the 1991 Water Resources Act applies to the proposals on privately owned land when they are remote from a Main River. The board now recommends that approval should include two conditions on the specification of the drainage works to be agreed and to clarify the method and intention of future maintenance of the scheme.

6.26 In terms of other statutory consultee responses, the Environment Agency have no objections to the scheme in respect of the flood risk. The Lead Local Flood Authority (LLFA) has no objections subject to compliance with their proposed conditions. The LLFA states that the submitted documents demonstrate a "reasonable approach to the management of surface water on the site" and has recommended a series of conditions concerning;

- Standard detailed drainage design condition;
- Details of the maintenance and responsibilities of each component on the scheme;
- Details of the exceedance flow routes;
- Details of the management of surface water during the construction phase;

6.27 One objector has called for the implementation of other alternative long term management and maintenance proposals for the entire length of the River Foss. However, the Environment Agency has looked at different schemes, and this scheme represents the most efficacious and cost effective means of delivering flood risk mitigation to properties downstream.

6.28 In terms of flooding and flood risk, the scheme, subject to conditions, is considered to be

acceptable taking account of:

- the views of the regulatory arm of the Environment Agency, and other statutory consultees;
- the spatial principles and objectives of the development plan and compliance with Policies SP1, SP9 and SP17 as outlined above;
- consideration of the NPPF as a material consideration in relation to development which increases flood risk in an area;
- the application of the sequential test and exception test for development in a flood plain,

ii) Impact on agricultural land use and businesses and agricultural land and soil resources

6.29 Policy SP20, which is concerned with Generic Development Management Issues, states that that in considering the impacts of proposed uses and activity, schemes will be expected to *"not prejudice the continued operation of existing neighbouring land uses"*.

6.30 The scheme will result in the permanent loss of some agricultural land. There will also be a temporary flooding of land. This will be both intermittent and unpredictable in its activity. Also it will cover a range of extents depending on the event in question. The implications for this are considered in the following section around agricultural land.

6.31 Responses from Lilling Green Farm and East Lilling Grange Farm have specifically raised concerns around their properties. The scheme does not proposed to increase flooding to an extent whereby existing buildings are compromised; as shown on the Location Plan which shows the "potential 1:100 year flood event outline post development". Lilling Green Farm also raised issues around the access track to their property. The level of existing flood risk already has the capacity to flood the access track that they use, which is in private ownership. The works proposed by the Environment Agency are as a one off event (given it is not adopted highway) to lift the section of road which would be subject to increased flooding in the occurrence of a 1:100 year event. This track is also a Public Right of Way, and so the works will indirectly improve the ability to pass and repass the road based on existing conditions. It is this access road which is will serve recently approved 6 holiday lodges, which is in Flood Zone1 currently, and will remain in Flood Zone 1 post operation of the Foss FSA scheme.

6.32 The land that is the subject of this application was Inclosed (Now Enclosed) in the late 18th Century. (which is around legal rights and ownership). As part of that the land was drained more extensively. Responses already indicate that areas of land currently within their workings already either seasonally flood or have a high water table. The Environment Agency has confirmed that as a result of the structure there will be less pressure on the surrounding drainage network (or it backing up from the Foss). The continued management of the drainage ditches and access to fields has been set out in the earlier sections on flooding. Objections were raised due to the agricultural community needing access to the land- and this has been addressed through the formation of a bridge over the north eastern (topmost) extent of the bund for a combine harvester- the largest type of equipment on a farm which is moveable.

6.33 There are adjacent planning applications which are in close proximity to the application boundary. Members may wish to note the above referenced planning application 20/00032/FUL. Future planning applications will need to be cognisant of the changes to the Flood Zone designations if the application is approved, but planning policies are generally against the development of isolated agricultural buildings away from the main farm complex and so it is unlikely to prevent a farming enterprise from expanding or diversify (subject to any prior approval procedures, general Development Plan Compliance and environmental permitting regimes).

6.34 It is perhaps not surprising that the majority of the objectors to scheme are the landowners who own the land that would flood or that would be directly lost to agricultural production through the construction of the earth embankment, areas of hardstanding and habitat creation. Whilst the maximum extents of flooding can be calculated, the timing of those events cannot. The value of an existing crop could be effected and that of a following year. The frequency of flooding may also effect the extent to which specific parts of the application area could continue to be used to grow specific products, including, for example, 'higher value' products such as turf.

6.35 The Environment Agency have identified that in terms of the modelling work up to 130ha could be inundated, in a 1:100 year event. The Environment Agency have also identified that water could be held for up to c.36 hours. But this is a worst case scenario and any flooding event is intermittent, making it hard to predict in its impacts. Furthermore, critically, it would not prevent the land from being brought back into agricultural use, in due course. Questions have been raised over the actual quantum of amount of land which could be made temporarily inactive. Officers consider that apart from the key modelling extents, which have set out the maximum extent expected, there is a spectrum of impact - a function of the amount of rainfall and current river level in combination with ground saturation.

6.36 The objectors to the scheme consider that the loss could be more significant. They disagree that the water will only remain for up to 36 hours, but even so depending on the crops, this will have a critical effect on the types of crops which can be planted. Flooded ground takes months to regenerate, and would affect the cropping rotation system from an arable perspective.

6.37 Officers agree that the impact of a flooding event on agricultural productivity at a point in time would depend very much on the timing of such an event. Influenced by what stage in the growing cycle the crops were affected, and any knock-on effects on planting schedules. This is not capable of being quantified in any firm manner because it is not known what stage the crop could be affected. It would also, fundamentally, not prevent the land from coming back in agricultural use in due course and is not an irreversible impact.

6.38 There is a common theme in the objections about the lack of detail regarding compensation payments and the Environment Agency's legal 'right to flood'. The National Farmers Union (NFU) have sought to stipulate a condition should be imposed which duly compensates landowners in respect of - immediate loss of value; the area taken for the dam structure; value of the mineral/clay taken from the land and diminution value payment over the whole farm to reflect the risk that the scheme creates. The impact/loss of income, whether directly or indirectly and loss of property value are not material planning considerations, accordingly, nor is the compensation payment scheme- and right to flood agreement. They are civil matters considered under different legislative regimes. Therefore the Local Planning Authority is unable to impose any such condition on the Environment Agency regarding compensation. This is noting that there is a compensatory framework which will be implemented as and when required.

6.39 It is considered that that the proposal does not raise any issues of policy compliance in respect of Policy SP20, in terms of material planning considerations as it does not directly, permanently prejudice the continued operation of existing neighbouring land uses in terms of existing operations, access rights or drainage provisions.

6.40 A number of the objections have been concerned with the loss of best and most versatile agricultural land (grade 3a and above) (BMV). This is also a material consideration, within a general policy context of seeking where possible to minimise the irreversible loss of best and most versatile agricultural land. Policy SP17- Managing Air Quality, Land and Water Resources states that:

"Land resources will be protected and improved by "Prioritising the use of previously developed land and protecting the best and most versatile agricultural land from irreversible loss. New land allocations will be planned to avoid and minimise the loss of the Best and Most Versatile Agricultural Land. Proposals for major development coming forward on sites that are not allocated for development which would result in the loss of the Best and Most Versatile Agricultural Land will be resisted unless it can be demonstrated that the use proposed cannot be located elsewhere and that the need for the development outweighs the loss of the resource".

6.41 Policy 4/18 - Restoration to Agriculture- of the adopted, saved, Minerals Plan states that: *Where agriculture is the intended primary after use, the proposed restoration scheme should provide for the best practicable standard of restoration. Such restoration schemes should, where possible, include landscape, conservation or amenity proposals provided that these do not result in the irreversible loss of best and most versatile land.*

6.42 There is commonality with the emerging Joint Minerals and Waste Plan. Policy D12- Protection of agricultural land and soils - states that the Best and Most Versatile agricultural land will be protected from unnecessary and irreversible loss. Where development of best and most versatile agricultural land is justified proposals should prioritise the protection and enhancement of soils and the long term potential to recreate areas of best and most versatile land. Where relevant, development will be subject to aftercare requirements to ensure that a high standard of agricultural restoration can be achieved. Development proposals will be required to demonstrate that all practicable steps will be taken to conserve and manage on-site soil resources, including soils with environmental value, in a sustainable way. Development which would disturb or damage soils of high environmental value such as peat or other soil contributing to ecological connectivity or carbon storage will not be permitted. The latter aspect, in the case of this application, is not applicable.

6.43 The Development Plan and emerging Development Plan policies reflect key elements of national policy (NPPF Para 170) that requires planning decisions to recognise the economic and other benefits of best and most versatile agricultural land; of the need to protect and enhance soils and to prevent unacceptable soil pollution.

6.44 The Foss rises in the Howardian Hills, but is soon on the lower land of the Vale of York which subject to extensive draining- and this is what makes the River Foss subject to short, sharp inundations of water, what can be termed 'flashy'. Prior to the formation of these drainage ditches, there would have been increased flooding, and it one of the reasons why the soil quality in the Vale is given a BMV rating. Members are reminded that Best and most Versatile Agricultural Land (BMV) is land falling within Grades 1, 2 and 3A.

6.45 The proposed development will result in a direct loss of 18.87ha (updated to 19.4ha in recent supporting information) of agricultural land. At the time the application was submitted this included an unspecified proportion of Grade 2 and Grade 3 agricultural land. In view of the amount of BMV land potentially affected, Natural England initially confirmed that it considered that the application fell outside the legislative arrangements that require it to be consulted on BMV matters and advised that they:

"do not propose to make any detailed comments in relation to agricultural land quality and soils, although more general guidance is available in Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, and we recommend that this is followed. If, however, you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further."

6.46 The NFU has queried the amount of land directly lost given that the change of 225m to 1.3 km of the Foss riverbank being re-profiling will further increase the permanent loss of farmland along the Foss. They consider it to be in excess of 20ha and that an agricultural soil appraisal should be required as part of the application. Officers consider that the re-profiling of the river bank is necessary for river management. It is not considered to represent a materially significant loss of agricultural land because of its extreme proximity to the river, and as such would not be farmed in the first instance. The NFU also raised the point that the quality of agricultural land may also be affected by inundation by floodwater.

6.47 Members may recall that the in June of this year Natural England clarified its position following concerns (raised by the NFU and on behalf of landowners) that the scheme could have a greater impact on BMV agricultural land. Natural England confirmed that its previous advice had been incorrect and that the impact on soils and BMV land should also take account of the effects of flood inundation as well as direct loss. Natural England requested that an Agricultural Land Classification survey and an impact assessment on BMV soils be undertaken in order to establish the significance of the impacts in terms of the loss and/ or degradation of BMV soils and the scope for mitigation.

6.48 In response, the applicant undertook a desk-based study which modelled the impact of inundation across the application site and an Agricultural Land Classification survey to establish the amount of BMV land that would be directly lost as a result of the permanent elements of the scheme. The

information was included in an addendum to the Environmental Statement.

6.49 The further work concluded that the scheme would result in the permanent loss of 9.07 ha of BMV and that this would be in part mitigated by the relocation of BMV topsoil from the site of the permanent elements of the scheme to areas of lower quality – the temporary borrow pits. The desk based study assumed inundation at a frequency of a 1 in 10 year event and a worst case scenario that the application site was all grade 3a BMV. The study concluded that the effects of regular inundation across the site would not lead to a reduction in its agricultural land classification grade.

6.50 The EA addendum concludes that the scheme would result in a moderate negative impact on the BMV soil resource at the site, with a slight benefit to (22-33ha) agricultural land downstream as a result of a reduction in flooding.

6.51 Following the further work, Natural England has confirmed that it has no objection to the application subject to appropriate mitigation measures being secured.

6.52 One landowner has questioned the further work undertaken in relation to the impact on BMV soils. The landowner does not accept that the modelling (which indicates no increase in flooding on the right hand bank for the 1 in 2 year event) is accurate and does not reflect the true loss of BMV soils. In response, the applicant has confirmed that the modelling has followed best practice and industry accepted methodologies and has been validated by recent observed flood events. They are of the view that the work undertaken provides a high degree of confidence in modelled river and main land drain levels in the current baseline scenario and FOSS FAS scenario and are confident in the conclusions in respect of the impact on BMV soils.

6.53 The landowner has also pointed out that the work fails to properly consider the impact of inundation as the Agricultural land Classification survey was not undertaken for the whole site. The applicant has confirmed that the impact of inundation has been considered across the whole site and is confident in the desk based assessment that was undertaken to establish the impact on BMV soils on the land not affected by permanent structures. It considers the work to be robust and based on a worst case scenario.

6.54 The NFU have raised concerns about soil quality and effects on soil structure regarding the back-filling of the temporary borrow pits. These cover 4.95ha of land of which approximately half is BMV. Natural England has confirmed: that subject to conditions to undertake suitable soil handling and restoration scheme which safeguards soil resources and an appropriate aftercare scheme, that in its view, it should be possible to reinstate this land back to an equivalent land value. Natural England in their standing advice have referred to the need for an experienced soil specialist to advise on soil handling, to make the best use of soils on the site during and post construction. There will need to be a structured approach to the backfilling, and this can be set out in a Construction Environmental Management Plan, which is capable of being conditioned. This would also satisfy the policy requirements of Policy 4/18 of the adopted Minerals Plan.

6.55 Policy SP17 states the *"loss of the Best and Most Versatile Agricultural Land will be resisted unless it can be demonstrated that the use proposed cannot be located elsewhere and that the need for the development outweighs the loss of the resource."* The earlier section on flooding has identified why this engineering operation is to take place in this location, and cannot be undertaken upstream, nor within the built environment of the City of York. There are also aligned benefits regarding the use of indigenous clay resources- reducing the environmental impacts during construction. Whilst the NFU have identified that the benefits to farmland south of the scheme has "no correlation" with the land affected up stream, the benefit of protecting agricultural land downstream is a benefit, albeit not the reason for the scheme. The scheme is designed to provide longstanding protection to 465 homes and 25 commercial buildings from flooding, and will bring wider benefits as further properties would benefit due to the Foss levels being maintained into the Ouse. It is considered that this benefit of reducing flood risk to such a large number properties, significantly outweighs the loss/ degradation of BMV soils and the permanent loss of agricultural land and intermittent loss and disruption to agricultural productivity. In this respect the scheme is considered to comply with Policy SP17 of the adopted Development Plan and the relevant policies of the adopted and emerging Minerals and Waste Plans. (Policies 4/18 (

Restoration to Agriculture) and D10 (Reclamation and After-Use), D12 (Protection of Agricultural Land and Soils)

6.56 Wider implications regarding loss of food production and implications for quality assurance of food have been raised. The first is a potential consequence, although to what extent this would materially result in a loss of food is dependent on the timing of the event, as discussed earlier. There is also no direct correlation that there would be a direct consequential loss of quality assurance in relation to food as a result of this loss of agricultural land, both permanently, and intermittently.

6.57 The carbon footprint implications are also not quantifiable to any measured degree. However, Officers consider that the carbon footprint in replacing flood damaged cars, drying and repairing buildings, whitegoods, furniture and soft furnishing such as carpets for 465 properties (plus any commercial operations) would clearly be far greater, than a failed crop. Furthermore, in respect of the considerations around energy efficiency and carbon footprint, the proposal now seeks to fully use indigenous clay resources- which reduces vehicular trips by 460 journeys. This use of indigenous clay is very much with in the spirit of Policy SP18, which is concerned with the use of renewable and low carbon sources, and which also seeks to ensure that schemes adopt the principles of the Energy Hierarchy. This is concerned with reducing energy demands of a development in the first instance, whether this during construction or operation.

iii) Ecological Implications

6.58 S.40 of the NERC Act of 2006 places a duty on Local Planning Authorities to conserve biodiversity:

"the public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity...Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat."

6.59 The EIA screening request, concluded that it was an EIA application. The need for an EIA application related to the uncertainties around the impacts on the hydrological regime of the Strensall Common Special Area of Conservation (SAC) and SSSI so designated for its lowland heath, which are adjacent to the works. The impacts needed to be ascertained in a detailed manner to establish what the likely impacts could be, and in doing so establish any mitigation to ensure that the proposal will not have an adverse impact on the wider ecology of the SAC/SSSI. There is also a Ryedale SINC site (480m to the west of the red line boundary) so designated for its lowland fen habitat - which is again potentially susceptible to changes in the hydrology/surface water drainage regime.

6.60 Accordingly, the Environmental Statement was expected to be tailored to considering the ecological implications of the proposed development on the Strensall Common SAC/SSSI and the potential impact on the proximal SINC site. This approach has been followed, and is considered within the following paragraphs.

6.61 As discussed earlier in the report, a Habitats Regulation Assessment was prepared, and both Authorities have adopted the report. This is separate to the EIA requirements, due to its specific remit: considering the potential for Likely Significant Effects on the conservation objectives of the SAC designation alone. The HRA concluded that there would be no likely significant effects on the conservation objectives of the SAC as a result of the scheme. This was ascertained through the detailed hydrological modelling work undertaken in the Appropriate Assessment stage. Natural England were eventually satisfied with the HRA process undertaken, and agreed with its conclusions. Therefore given the modelling work has been conducted by a statutory body and assessed by another statutory body the Local Planning Authority do not consider it necessary to verify the modelling work.

6.62 Policy SP14 (Biodiversity) of the Ryedale Plan - Local Plan Strategy states:

Biodiversity in Ryedale will be conserved, restored and enhanced by, amongst other aspects which are relevant to this application:

- *Minimising the fragmentation of habitats and maximising opportunities for the restoration and enhancement of habitats and improving connectivity between habitats through the management of development and by working in partnership with landowners and land managers*
- *Maintaining, creating and improving ecological networks and Green Infrastructure routes to assist the resilience of habitats and species in the face of climate change*
- *Supporting, in principle, proposals for development that aim to conserve or enhance biodiversity and geodiversity through the prevention of loss of habitat or species and the incorporation of beneficial biodiversity features*
- *Requiring a net gain in biodiversity to be provided as part of new development schemes*
- *Resisting development proposals that would result in significant loss or harm to biodiversity in Ryedale*
- *Encouraging the use of native and locally characteristic species in landscaping schemes*

6.63 Policy SP15 is concerned with promoting *"A network of green open spaces and natural features will be created and managed across Ryedale"*

This will be achieved by protecting, enhancing, creating and connecting wider elements of Green Infrastructure including: Protecting and enhancing a range of aspects including:

- *Public Rights of Way;*
- *Informal open spaces, allotments, street trees, hedgerows, stream corridors and beck sides, woodlands, formal public open spaces, recreational and play space*
- *Biodiversity, wildlife corridors and buffer zones necessary to support these features or areas*
- *New habitats which reflect the locally distinctive habitat types included in Policy SP14*
- *Habitats to support the resilience of biodiversity.*

"New development will be managed in accordance with wider policies in this Plan, to assist the protection and improvement of Green Infrastructure assets and the connectivity between them. New development which would result in irreparable fragmentation of connections between green spaces will be resisted."

6.64 The Yorkshire Wildlife Trust raised a number of issues and concluded their first response to the application by stating

"...the development of a flood storage area on the Foss provides a unique opportunity to join up habitat in the area. Improved habitat creation, connecting up habitat within the farmed areas, and well-designed long term catchment habitat management could provide major gains for biodiversity. The Trust would urge the local authority to ask for improvements to the scheme."

6.65 Similar concerns were raised by NYCC Ecology. During the course of the application, the scheme has been modified to address concerns raised by both these organisations regarding the ecological mitigation measures proposed to bring net benefits to the site (as required by the NPPF and Policy SP14 of the Ryedale Plan - Local Plan Strategy). The regulatory arm of the Environment Agency also proposed specific conditions, which they consider are necessary to ensure that the scheme complies with Water Framework Directive.

6.66 Natural England, whilst not verifying the matrix provided, have endorsed the biodiversity net gain in each of the units in light of revisions to the mitigation measures. NYCC Ecology welcomed the provision of Biodiversity Impact calculations, and noted uplift for hedgerows and for habitats in terms of biodiversity units. They note the uplift for river habitat is low but note that the scheme is expected to provide significant improvement in ecological quality through provision of a more natural channel form. As such, it meets the over-all policy objective of biodiversity net gain.

6.67 The NFU have stated that the Programme for the eradication of Giant Hogweed and Himalayan Balsam is not in the Environment Assessment, and the biodiversity net gains does not take account of the permanent loss of agricultural land. The YWT and NYCC Ecology are satisfied that, subject to detailed conditions, that the scheme would be appropriately considering biodiversity implications of agricultural land. This includes measures for farmland birds, known as "conservation headlands" which are strips at the periphery of a cropped field where inputs (herbicides, insecticides,

fertilisers) are reduced or avoided to provide more favourable habitat for farmland birds, especially improved chick-food resources (weed seeds, invertebrates). The applicant has confirmed that these are to be delivered in the short to medium term during construction and would be able to commit to longer term management, and this will be discussed in consultation with the landowners. This is considered in more detail below.

6.68 Given the complexity of the biodiversity considerations, key consultees have stated that they are content that sufficient information is provided at this stage to understand key principles, and they are able to recommend conditions. Measures are to be set out in detail in a Construction Environmental Management Plan and a Landscape and Environmental Management Plan. The Environment Agency, as applicant, have confirmed their agreement to conditions and the submitted Plans will be subject to further consultation with the Environment Agency, NYCC Ecology and Yorkshire Wildlife Trust.

6.69 Objections have been received concerning the imposition of a different farming regime in relation to preventing (pig) slurry and fertilisers getting washed into the river in a flood. Conversely concerns have been raised about whether such pollution can indeed be prevented/mitigated by the Yorkshire Wildlife Trust. The Environment Agency have advised the Foss FAS is within a Nitrate Vulnerable Zone. Such pollution incidences and land-use considerations are subject to the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018. This means that land use decisions and operations will need to reflect the anticipated hydrology associated with the operation of the FAS. They further state that activity which leads to a pollution incident that could have reasonably been foreseen or avoided would be an offence. This is out with the planning system.

6.70 Habitat and biodiversity mitigation measures are integral to the scheme's ability to not just mitigate its impact, but to bring biodiversity gains. The landowners involved in the scheme's construction have stated that they have not consented to the various mitigation measures imposed, and as such they are not deliverable. The Environment agency have confirmed, as the applicant, that they are legally in a position to both undertake and maintain the ecological mitigation measures that are proposed for the scheme, and would be subject to conditions:

"If planning permission is granted for the Foss FSA then the Environment Agency (EA) would expect a condition or conditions to be imposed which required the carrying out and subsequent maintenance of the compensatory habitat measures shown on the revised landscape master plan revision P05 dated 11th February 2020. We would expect that such condition or conditions would be drafted in such a way as to prohibit activities which harmed or destroyed the compensatory habitat, and if such harm or destruction took place, that the compensatory habitat would be reinstated."

"The EA has powers under the Water Resources Act 1991 to carry out and maintain flood risk management works. The EA also has a power under Section 37 of the Environment Act 1995 to do anything which, in its opinion, is calculated to facilitate or conducive or incidental to, the carrying out of its functions. The EA's functions include its powers under the Water Resources Act 1991. Therefore, the EA could undertake the compensatory habitat measures and maintain them pursuant to its power under s 37. To do so would be calculated to facilitate, and would be conducive to, the carrying out of the Foss FSA scheme. The imposition of a condition or conditions which required the carrying out and subsequent maintenance of the compensatory habitat measures would reinforce this position."

6.71 It is therefore considered that, subject to the imposition of the detailed conditions, as set out by statutory consultees, that this EIA application is policy compliant in respect of Policy SP14 of the Development Plan, concerning biodiversity mitigation and net gain and compliant with saved policies of the North Yorkshire Minerals Plan. As part of this increased habitat diversity, connectivity and resilience, it is also in accordance with Policy SP15, which is concerned with the enhancement of Green Infrastructure. Also, inter-alia the Environmental Statement and the Habitats Regulations assessment have confirmed that the Strensall Common SAC and SSSI will not be affected by the scheme.

iv) Highways implications and general accessibility

6.72 The principal source of vehicular movements, particularly in terms of HGVs is during the construction phase. Maintenance will be sporadic, and operation of the orifice control can be done

remotely. A total of 12 trips per year is anticipated to be generated. As such, in terms of the operation of the scheme, the levels of vehicles generated does not raise any implications for the highway network.

6.73 The Transport Statement sets out four phases of construction, lasting a period of two years. The submitted access arrangements are to travel via the A64, turning at the Scotchman Lane junction, pass through the villages of Flaxton and West Lilling (Goose Track Lane) then turning left on to the Sheriff Hutton Road and then onto the site access to the left of the Sheriff Hutton Road at Bridge Farm and Lilling Low Lane (to undertake the works to Ings Lane). In the submitted details the return journey would follow the same route. It would off the main road utilise existing tracks and a new section of track.

6.74 Vehicular movements are broken down into personnel and material onto the site. Personal movements are expected to result in a maximum of 36 two-way daily trips throughout the construction phase. Material deliveries would correspond with phase of delivery- and are predicated on the need for clay to be externally provided. A maximum of 71 two-way trips would take place over a three week period in the set up stage, with then a worst case scenario of 107 two way trips per day with car trips included.

6.75 The rationale for the route was to capitalise on the upgraded A64 Scotchman Lane Junction, and to reduce overall the impact on local communities: Flaxton and West Lilling being smaller settlements than Strensall. In terms of the Strategic Road Network, Highways England have made no objections to the scheme.

6.76 A Construction Traffic Management Plan (CTMP) would be required to be approved as a condition on the granting of any approval, and produced post decision to set out in detail and passing points of widenings at road bends. This would be considered in conjunction with both Local Highway Authorities (City of York and North Yorkshire County Council) and Highways England.

6.77 Objections have been received from the local community of West Lilling. They are concerned that the frequency and size of vehicles will be significantly more disturbing for them due to the narrowness of the road, and the general absence of general space (such as front gardens, grass verges, wider pavements) through the village when compared to Flaxton or Strensall. Concerns have been raised about the road infrastructure being used to facilitate these trips. They are also concerned by the narrowness of the road and the two pinch points, one in the centre of the village, the other the bridge over Howl Beck. They have indicated that they would prefer no traffic to pass through the village.

6.78 Within the NYCC LHA area, concerns were identified with aspects of the submitted routing. This was in relation to the following aspects:

- Concerns raised about the impact on settlements such as West Lilling. Aligned to this was concerns about the lack of exploration of using either an alternative route or a one-way system which spread the vehicular movements.
- Further details of the proposed works to Gennell Lane & Lilling Low Lane, which will be the routes required to access the road raising works for Ings Lane, the highway strengthening works along Lilling Low Lane and the access / car park etc. to be provided off it at the north-eastern extremity of the proposed embankment barrier.
- The Goose Track Lane pinch point at the bridge over Howl Beck and any left turn out onto Sheriff Hutton Road is quite tight due to the small junction radius. An alternative from West Lilling would be to use the Finkle Street junction south of Sheriff Hutton village. It is also advised that temporary direction signing be placed to encourage this route and / or be specifically mentioned as part of the required Construction Traffic Management Plan (CTMP).
- Further details regarding speed restrictions, signage, passing places and traffic movement breakdowns were sought.

6.79 These concerns became the subject of a formal objection from the Local Highway Authority. This was because the applicant was concerned that the alternative routes would have involved going through greater areas of population (as set out above). The objection to the level of traffic using the proposed route was very much influenced by the level of heavy goods vehicle movements which would

be required in order to deliver the import of Clay (2,300m³).

6.80 The Applicant has however, been able to re-examine their construction timelines/schedule and the need for the clay has now become unnecessary. It has submitted an addendum to the Transport Assessment which sets out that without this increased volume of traffic it has removed c.230 delivery trips and c.460 total journeys. The applicant is also comfortable for the use of a condition which precludes the importation of clay. The Local Highway Authority and the Parish Councils of Flaxton and Lillings Ambo were re-consulted.

6.81 The Local Highway Authority have advised that

"The removal of the concentrated HGV movements during the lead-in period, and abandonment of the construction route via Gennell Lane / Lilling Low Lane (save for any construction works which can only be undertaken via access along this route alone), enables the highway authority to reconsider its earlier recommendations of refusal in its consultation response dated 2nd April 2020.

Whilst it is acknowledged that construction / delivery traffic for the scheme will, for the main, access the site along the route off the A64 and through Flaxton & West Lilling villages, the aggregated daily movements (now exclusive of the activities associated with the clay fill importation originally proposed), are not thought to constitute a materially detrimental effect on that route over the time-span of the construction phase.

Furthermore, the applicant is prepared to accept a planning condition to ensure a comprehensive Construction Traffic Management Plan is prepared and implemented to cover the whole works construction programme, including an agreement to splitting any additional HGV traffic arrival / delivery routes in the unlikely event of any extraneous circumstances arising."

6.82 The Local Highway Authority has sought to impose the following conditions;

- The specification of the access at Lilling Low Lane;
- The specification of the off-site highway mitigation measures; and
- The development of a Construction Environmental Management Plan for each phase of the project.

6.83 Therefore, for the avoidance of doubt, Officers proposed a condition which precludes the importation of clay, unless approved in writing by the Local Planning Authority. The applicant is accepting in principle of such a condition- as they are confident that there is sufficient indigenous clay reserves to construct the scheme. The avoidance of the importation of clay has resulted in highway objections being lifted to the scheme, and so this is very much a material consideration. Officers have been prepared to accept the approach on the basis that the applicant is confident that imported clay is not required.

6.84 A further consideration is the implications for accessibility and use of Public Rights of Way (PROW). Lillings Ambo Parish object to the temporary closures of Centenary Way and other foot paths. Concern is also raised over safety of walkers and pets with the borrow pits- if there is to be no fencing. The PROW is not to be permanently diverted. There is a separate consent regime for any formalised diversions as a result of temporary obstructions. NYCC, who manage PROWs have requested that a condition is imposed regarding this and works which indirectly or directly affect the PROW. The scheme does provide an alternative route which would only be required in a major flood storage event. This also involves measures which ensure the safety of those using the PROW. It is considered that the proposal will not result in the sustained/permanent loss of the Public Right of Way, and as such the proposal is neither contrary to the provisions of Policy SP10, which seeks to improve connectivity of Rights of Way, nor to Policy SP20 which seeks to ensure safe movement within a site by pedestrians.

6.85 Concerns have also being raised regarding the flooding of Lilling Low Lane, in principle and the measures to warn people and diversions. Also the remediation of the roads in relation to wear and tear as a result of the vehicular movements. They are concerned that the hardstanding will need

surveillance, as it will be a target for antisocial behaviour. The likelihood of such an inundation is a 1 in 30 year event, and is a lightly trafficked country lane and so if and when diversions are required, they will not generate significant impacts on the diversion route network. The applicant would be required to make good any roads which were damaged as a result of the vehicular movements during construction. The antisocial behaviour potential is not capable of being substantiated, and would, if it did occur, be addressed through other legislative regimes. The applicant would, through general maintenance, be able to monitor activity, as would the local community. As such, these aspects are not considered to undermine the benefits of the scheme.

6.86 In conclusion, the implications of the proposed scheme for the operation of the highway and public rights of way are considered to be capable of being policy compliant.

v) Landscape Setting

6.71 Concerns have been raised regarding the landscape impact of the bund. As referred to earlier, detailed matters concerning the Green Belt are the consideration of the City of York Council. The area of the site in Ryedale is not located within the York Green Belt and it is considered that the development of the site in Ryedale would not result in harm to the Green Belt. Most of the works proposed as part of this application will have sub-surficial implications. Although there are some key implications regarding the embankment as the sole elevated, engineered feature, and the landscaping of the scheme.

6.73 Policy SP13 (Landscapes) is concerned with seeking to ensure that the quality, character and value of Ryedale's diverse landscapes is protected and enhanced. It expresses this through encouraging new development and land management practises which reinforce the distinctive elements of landscape character within the District's broad landscape character areas. Development proposals are expected to contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences, natural features and aesthetic qualities including, amongst other matters:

- The pattern and presence of distinctive landscape features and natural elements (including field boundaries, woodland, habitat types, landforms, topography and watercourses);
- Visually sensitive skylines, hill and valley sides;
- The ambience of the area, including nocturnal character, level and type of activity and tranquillity, sense of enclosure/exposure

It further states that *"The Council will work with landowners and statutory agencies to encourage land management practises that will protect and reinforce landscape character across the District and proposals which seek to restore areas of degraded landscape or individual landscape elements will be supported"*.

6.74 The site is within the Vale of York National Character Area (NCA). This is generally described as being an area of relatively flat, low-lying land; surrounded by higher land to the north, east and west. NCA Profile notes a key feature of the NCA is the rivers that drain surrounding higher land and run southwards through the Vale on towards the Humber basin. Food and water provision and the regulation of water flow and water quality are described as the key ecosystem services provided by this NCA. Key aspects of the landscape character for this part of the Vale of York are:

- Predominantly agricultural land use, with medium- to large-scale arable fields defined by hedgerows (which are often low and intermittent with sparse hedgerow trees) and fences. Large dispersed farmsteads and small villages on higher land are set within a quiet rural landscape;
- Some areas of heathland remaining on poorer sandy soils (for example Strensall, Stockton and Allerthorpe commons), along with small scattered broadleaved woodlands and larger conifer plantations;
- The settlement patterns of the NCA, which broadly follow that of linear villages, with buildings (built with traditional materials of mottled brick and pantile roofs) set back behind wide grass verges and village greens, and dispersed large farmsteads.

6.75 The NCA profile also identifies that there are opportunities for improved flood storage, to

restore wetland habitat within river corridors to alleviate fast water flows. It should be noted that the Foss is a highly modified river, and 'restoration' of river systems will also maintain and improve natural soil fertility for productive agriculture, improve the ecological networks and strengthen the ability of biodiversity to adapt to current - and future - pressures.

6.76 The 2011 North Yorkshire and York Landscape Characterisation Project defines this area as being within Vale Farmland with Plantation Woodland and Heathland. In terms of key characteristics it describes the area as having:

- A patchwork of low lying, predominantly arable fields, often delineated by a network of mature hedgerows and interspersed with patches of regular-shaped mixed and coniferous plantation woodlands;
- Large heathlands are key features on sandy soils;
- Distant visual containment is provided by higher Landscape Character Types to the east and west;
- Strong sense of openness throughout much of this Landscape Character Type;
- Scattered settlement pattern of towns, villages and farmsteads within the landscape around the main historic City of York (which forms part of the Urban Landscapes Primary Landscape Unit);
- A network of trunk roads linking the larger settlements and towns.

6.77 Within the description of the LCA type is identified that there are: "large rivers (such as the Ouse, Foss, Kyle and Derwent) and small stream corridors are also key landscape and ecological features." In terms of sensitivity to change, it describes it as being of "Moderate visual sensitivity" overall. Whilst there is a strong sense of openness within much of the farmland as a result of the flat or gently undulating topography, patches of plantation woodland disrupt views to adjacent Landscape Character Types in places.

6.78 In the section on "Guidance for Managing Landscape Change", one of the key aspects is around physical and ecological character:

- Manage, restore and thicken hedgerows for landscape structure and biodiversity;
- Replace and plant new hedgerow trees;
- Retain and bring back into active management existing copses, shelterbelts and small woodlands to improve carbon storage levels and aid water infiltration;
- Plan for the significant extension and enhancement of riparian and wetland habitats assisting the adaptation of biodiversity to climate change and aid flood management;
- Seek opportunities for wetland creation and restoration.
- Ensure effective catchment management to sustain water quality;
- Encourage conservation of existing key habitats and landscape features and expand the resource through habitat restoration and re-creation guided by ecological networks;
- Seek opportunities to revert arable farmland to permanent pasture, particularly in floodplains or areas of archaeological interest;

6.79 Further objectives which are of relevance to the consideration of this proposal are:

- Conserve open views along and across the river floodplains towards adjacent Landscape Character Types;
- Protect and enhance public enjoyment of the landscape, including appreciation of the sense of escapism it provides, through identifying opportunities to create new circular routes or links to existing public rights of way.

6.80 There is some degree of undulation to the south of the Foss, but to the north the land is relatively flat, up to Lilling Low Lane, where the land begins to rise to the village of West Lilling. The height of the embankment is 2.89 metres, from existing ground level. For comparison, this is lower than a single storey dwelling, such as a bungalow. It would have an access track of between 4- 5 metres width, and the 1:4 slope would be covered with topsoil and grassed with grasscrete which will help to hold the soil in place. The overall width of the embankment would be between 25- 30 metres wide. As such the embankment would be clearly visible within the landscape. The embankment would represent a new feature within what is currently an area largely absent of any landform undulation. However,

given the modest height of the structure in combination with the gentle slope profile and its overall width, the feature would not represent a significant intrusion within the landscape. Importantly, views to higher ground would still be readily achieved from the PRoW and other public vantage points. Maintaining the intervisibility across the Vale of York LCA is a key objective in the Landscape Characterisation Project.

6.81 The City of York's qualified Landscape Architect has commented on the proposed scheme. She has noted that it is the flood bank which will alter the open vista where the Foss and Centenary Way walks meet at the bridge of the River Foss, presenting an 'artificial interruption' and blocking out lower portions of parts of the existing open vista across the valley bottom in northern and eastern aspects, and also in a south easterly direction along the Ebor Way, but at that point it would be read as grassland. She also notes that in blocking out the lower valley vista to the north and north east- in doing so it would "screen much of the less attractive giant sheds at East Lilling House".

6.82 She further comments that: "The scattering of trees along the west bank of the river Foss will pick out the line of the river in the landscape which will be an appealing addition to the scenery, and also draw attention away from the new flood bank."

6.83 The ecological mitigation will increase the presence of ponds and trees, and will enhance current landscape features. It will reinforce those elements of landscape character identified, such as the restoration of field ponds, tree planting generally, and support for enhancing habitat for farmland birds. The City of York Landscape Architect has also sought further clarification via a detailed planting schedule- which would be conditioned- as would the Landscape Masterplan and Landscapes Areas Plans.

6.84 It is considered that the embankment in the landscape will represent a new feature, and will alter some lower level vistas. However, the distanced views, will still be achieved, and the tree planting and screening of large, modern farm buildings will help to provide mitigation for the landscape impact as a result of the embankment. It is considered that in relation to the requirements and objectives of Policy SP13 the scheme would result in changes within the immediate landscape setting in relation to the loss of the lower valley views. But, in totality will:

- Enhance the pattern and presence of distinctive landscape features and natural elements through the tree planting and enhancing the appearance of the River Foss as a watercourse with the ability to condition habitat types;
- Still preserve visually sensitive skylines and longer distance views- which are a key element of the landscape character; and
- Accepting the noise and general activity during construction, the ambience of the area, will be sustained.
-

6.85 Furthermore, it is considered that the integration of the landscaping/ecology represents a significant landscape character benefit through the restoration of a significant section of the land surrounding the River Foss with planting. As such it is considered that the proposal complies with the objectives of Policy SP13 of the Ryedale Plan- Local Plan Strategy.

vi) Minerals considerations

6.86 There are reserves of sand and gravel and clay within the application area. The proposed development will involve the extraction of circa 112,000m³ of clay from borrow pits and as part of the excavation of the proposed embankment and some sand and gravel as part of the excavation of the southern part of the embankment.

6.87 This is not a minerals application although the implications of the proposed development on mineral resources require consideration against relevant policies of the relevant adopted and emerging Development Plan. An objector has questioned why a separate minerals application has not been provided. This is because the scheme is an engineering operation which is to result in a flood storage area, in a flood alleviation scheme. It proposes to utilise indigenous clay resources which are of a

suitable nature. It is not proposing to release clay resources for other projects. Therefore the extraction of the resource is solely in connection with the scheme for which planning permission is sought.

6.88 The adopted Development Plan is the saved policies of the North Yorkshire Minerals Local Plan. This is supplemented by the material considerations of the NPPF and the emerging Minerals and Waste Joint Plan which post-date this Minerals Local Plan. The relevant policies are listed in Section 4 of this report. It should be noted that the 'development management' policies in the minerals local plans are, for the most part only applicable to those elements of the application that relate to mineral extraction at the site. These are therefore referred to in other sections of this report.

6.89 Although it is contained in the aggregates section of the plan, saved Policy 5/6 of the North Yorkshire Minerals Local Plan establishes the criteria to be considered in relation to proposals for Borrow Pits. These are addressed in order below:

- i) It is not feasible to use secondary materials. The proposed borrow pits have construction and operational requirements which require their usage.
- ii) The site is located adjacent to the major construction or engineering project it is intended to supply. This is the case with this application.
- iii) The proposal would result in overriding environmental benefits compared with obtaining the material from existing sources. This is considered to be the case as the use of borrow pits will support a significant reduction in vehicular movements and the habitat creation opportunities for the permanent borrow pits.
- iv) The site can be restored within the associated project timescale to the satisfaction of the Mineral Planning Authority; and
- v) The use of the site will minimise or avoid use of public roads in the area. This is considered in the section concerning transport.

6.90 The use of borrow pits is also included in the emerging Joint Plan. It indicates that Borrow Pits are mineral workings used to supply material solely in connection with a specific construction or engineering project. They are typically located on the site of, or immediately adjacent to, the project to avoid or substantially reduce traffic associated with importation of minerals on public roads. Sometimes the voids created are backfilled with surplus or unusable material from the project and the land restored under a much shorter timescale than for a conventional quarry. Often, they can be restored within the timescale of the associated construction works. In some circumstances, borrow pits can be a sustainable form of development by reducing transportation impacts compared with supply from other sources. They can also help to prevent sterilisation of the resource, ensure higher quality materials are not used for a lower grade use and also reduce the need for new or expanded conventional quarries.

6.91 Policy M25 of the emerging Joint Plan states: that proposals for borrow pits, where permission is required, will be permitted where the required mineral cannot practicably be supplied by secondary or recycled material of appropriate specification from a source in close proximity to the construction project, and; where all the following criteria are met:

- i) The site lies on, or immediately adjoins, the proposed construction scheme so that mineral can be transported from the borrow pit to the point of use without significant use of the public highway system;
- ii) The site can be landscaped and restored to a high standard within an agreed timescale and to an agreed end-use without the use of imported material other than that generated on the adjoining construction project.

6.92 It is considered that in respect of the borrow pits, Policy 5/6 is satisfied and Policy M25 (i) is satisfied, and through the submission of evidence to support the application, and the subsequent production of a Construction Environmental Management Plan (CEMP), policy arm ii) is also capable of being satisfied.

6.93 Requests have been made that the Construction Environmental Management Plan (CEMP) be provided as part of the planning application. The production of a CEMP would be a condition of a planning permission in this case and required as part of discharging any -pre-commencement conditions, and as such is established prior to any development taking place.

6.94 Saved policy 4/18 also requires that where restoration to agriculture is proposed, that the best practicable standard of restoration is undertaken. Emerging policy D10 of the Joint Plan also covers reclamation and land use. Two of the proposed borrow pits are proposed to be restored to pre-existing levels and use and as noted above, with an appropriate CEMP, which includes soil storage, the requirements of these policies will be satisfied.

6.95 Queries have been raised over whether the clay to be used from the site is of a suitable specification for the construction of the embankment. The applicant has confirmed that the on-site resource is of a suitable specification and quantity to meet requirements.

6.96 In terms of the emerging Minerals and Waste Joint Plan Policy M01: Broad Geographical Approach to Supply of Aggregates in the Joint Minerals and Waste Plan indicates that NYCC area will be the main focus for the extraction of aggregate sand and gravel. It should be noted that the application site is not allocated for extraction of sand and gravel in the joint plan. In addition, the site is not allocated as a site for the extraction of clay. Policy M13- Continuity of Supply of Clay- criteria iv) indicates that working of unallocated brick clay resources will be permitted where it can be demonstrated that the mineral is needed to maintain an adequate supply to existing manufacturing facilities in line with national policy, where sufficient mineral cannot be provided from sites or preferred areas allocated in the Joint Plan and subject to compliance with relevant development management policies in the Joint Plan. The scheme proposes to use in-situ resources as part of the development and not to contribute to a wider manufacturing supply. It is considered that the proposal will not increase pressure on identified resources/supply.

6.97 The emerging Minerals and Waste Joint Plan does not identify the application site area as being within an areas safeguarded for aggregates. NYCC has confirmed that the reserves of sand and gravel are not considered to be of suitable quality and to warrant safeguarding. However, emerging Policy S02- Developments proposed within Minerals Safeguarding Areas - is of relevance to this application as the emerging Plan identifies the application area as being within a safeguarded clay resource.

6.98 Policy SO2 states in Part 1) - *Surface mineral resources that within Surface Minerals Safeguarding Areas shown on the Policies Map, permission for development other than minerals extraction will be granted where:*

- i) It would not sterilise the mineral or prejudice future extraction; or*
- ii) The mineral will be extracted prior to the development (where this can be achieved without unacceptable impact on the environment or local communities), or*
- iii) The need for the non-mineral development can be demonstrated to outweigh the need to safeguard the mineral; or*
- iv) It can be demonstrated that the mineral in the location concerned is no longer of any potential value as it does not represent an economically viable and therefore exploitable resource; or*
- v) The non-mineral development is of a temporary nature that does not inhibit extraction within the timescale that the mineral is likely to be needed; or*
- vi) It constitutes 'exempt' development (as defined in the Safeguarding Exemption Criteria list).*

Applications for development other than mineral extraction in Minerals Safeguarding Areas should include an assessment of the effect of the proposed development on the mineral resource beneath or adjacent to the site of the proposed development.

6.99 The applicant has submitted details which set out the resources proposed to be used on the site. The scheme demonstrates compliance with the following policy requirements.

- i) for vast majority of the site is not sterilised. Only the clay resource beneath the embankment and limited areas of hardstanding would not be available for future extraction
- ii) the borrow pits will be used to extract clay for use at the site and ensures the utilisation of indigenous resources
- iii) is simultaneously considered in respect of the specific location parameters and the need for the development in that location as part of the wider consideration of the application. It should be noted that each of those factors is mutually exclusive- i.e. only one of the policy criterion needs to be satisfied.

6.100 The Minerals and Waste Assessment which draws on information provided as part of the Environmental Statement, estimates that approximately 1 billion cubic metres of clay will be present within the application site area and that the development will utilise approximately 0.011 % of the clay resource.

6.101 This is not a minerals application, but its subsurface/minerals safeguarding implications require consideration against relevant policies of the adopted and emerging Development Plan considerations in respect of minerals resources. In this regard the scheme is considered to comply with both adopted and emerging policy. The Minerals and Waste Authority has reminded the Local Planning Authority of the relevant policy framework and has confirmed that the Minerals and Waste Assessment is satisfactory but has provided no comment on the merits of the scheme.

vii) Amenity

6.102 The operation of the structure will be negligible on the amenity of adjacent properties. It does not generate noise, nor significant vehicular movements in terms of operation and general maintenance and management. The embankment structure is not insignificant in size, but does not affect any residences in so far as creating adverse living conditions due to its distance from properties. Construction will result in increased vehicular movements which are close to Bridge Farm and properties along Goose Track Lane at West Lilling. This will result in some increased disturbance, although it is understood that the route into the site past Bridge Farm is regularly used by heavy agricultural vehicles accessing the surrounding land. In addition, Goose Track Lane at West Lilling is a route which currently experiences regular traffic movements without restriction by a range of vehicles including heavy vehicles. The increase in the type and frequency of vehicle movements during construction will result in some reduced amenity. However, within the context of the existing use of the road; the reduced vehicular movements as a result of changes to the scheme with no importation of clay; and the essentially temporary nature of the construction traffic and activity, the impact is considered to be acceptable. As such, in this regard the scheme complies with Policy SP20- Generic Development Management Issues- which is concerned with- amongst other matters protecting residential amenity, and also the saved policies of the North Yorkshire Minerals Plan.

viii) Archaeology and the Heritage Environment

6.103 The site is subject to only non-designated heritage asset considerations. There are no designated heritage asset considerations either within the site or within the context of any setting considerations. Archaeological investigation has focused on the former course(s) of the River Foss. The site has been subject of interim archaeological investigations, and the production assessment report prepared by the York Archaeological Trust. In due course the report will be revised with the results of a geo-archaeological borehole survey and environmental assessment of deposits as soon as is possible. The Heritage Services at NYCC have advised that it would be usual to wait until these results were available to fully understand the significance of the archaeological deposits before making a planning recommendation. In this regard, paragraph 189 of the NPPF requires that "local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting."

6.104 It further requires that the level of detail should be *"proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance"*. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

6.105 This has been undertaken to a level where the statutory consultee is able to make an informed judgement. NYCC Heritage Services advise, it is possible to make some assumptions about the significance based on the information in the trial trenching report and the earlier Geotechnical Trial Pit

Monitoring report: *"Both reports have demonstrated preservation of organic remains in areas of the site associated with former courses of the Foss. These consist of organic silts and clays with some wood fragments noted. As these deposits are fluvial or alluvial there is less likelihood of direct association with human occupation than, for example, lake edge deposits."*

"The trial trenching produced several archaeological features, the majority appear to be drainage gullies or land divisions and are likely to be later rather than earlier in date. There was a single pit with a high organic content (samples awaiting processing) that may be of interest, but this was an isolated example. It would not appear that extremely significant deposits are present, and if they are they will be limited in extent and along the line of the proposed embankment rather than the borrow pit areas where greater impact is expected. The organic deposits beneath the route of the embankment are at least 1.2m below existing ground level so direct impact is unlikely. The pit, at the very southern end of the embankment is just beneath the topsoil so impact would be expected on this type of feature."

6.106 The NYCC Archaeologist has advised that:

"Based on the information I have and knowledge of the types of archaeological deposits expected I recommend that further mitigation may be necessary during topsoil stripping in areas of shallow archaeological features and potentially during engineering works that might impact more deeply buried organic deposits. The extent of this mitigation would need to be agreed following receipt of the revised archaeological report."

I advise that via a condition a scheme of archaeological mitigation recording is undertaken in response to the ground disturbing works associated with this development proposal, to be followed by appropriate analyses, reporting and archive preparation. This is in order to ensure that a detailed record is made of any deposits/remains that will be disturbed."

6.107 Paragraph 197 of the NPPF requires:

"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

6.108 In taking into account the available evidence and the nature of the deposits found to date and expert advice, it is considered that there would be very much less than substantial harm as a result of the scheme. Although not a primary consideration, mitigation recording is achievable in principle, based on the assets identified. As such, the consideration of archaeological remains is as required by the NPPF, the scheme does not raise issues of compliance concerning archaeology. The scheme is therefore in accordance with Policy SP12 of the Ryedale Plan- which seeks to protect features of local historic value and interest throughout Ryedale having regard to the scale of any harm or loss and the significance of the heritage asset.

ix) Further procedural considerations raised by consultees

6.109 Concerns about the accuracy of the plans and their variance have been raised- the reasons for their changing over time, particularly since consultation events. Officers are aware that the plans have undergone revisions over time, and this is a common feature of applications that they are modified prior to their submission and altered during the course of the applicant's consideration. The application has been subject to a further re-consultation in the course of the application's consideration in a manner which is proportional to the matters which it covers.

6.110 One of the landowners (Lilling Green Farm and Lilling Green Cottage) queries why their property was included in the site red-outline. According to their submission, the applicant stated it did not need to be in and would be removed. This has then not occurred. It should be noted that this particular part of the site shows no change post development in terms of flood risk. The correct certificates were completed by the applicant. The applicant would have had to submit revised plans, and since there is no material change in the planning considerations, it would have amounted to unnecessary revisions.

Conclusions

6.111 The Foss Flood Storage Area has been assessed against all relevant Development Plan Policy considerations, and material considerations of the NPPF, relevant legislation and emerging Development Plan Policy. It has also been subject to specific procedural assessment considerations around Environmental Impact Assessment and Habitats Regulations Assessment. The scheme will bring significant benefits in terms of reducing the risk of flooding to 465 homes and 25 businesses. The benefits of the scheme are considered to significantly outweigh the identified impacts associated with the development, which primarily relate to limited disruption to agricultural productivity and some limited reduction in the amenity of local residents, during the temporary construction period. As outlined in the report, the identified impacts of the scheme can be satisfactorily mitigated. Subject to the application of and compliance with a series of detailed conditions, this development is considered to comply with the provisions of the adopted Development Plan. Accordingly, Policy SP19 of the Ryedale Plan- Local Plan Strategy requires that in relation to the 'Presumption in Favour of Sustainable Development' "*Planning applications that accord with the Policies this Local Plan...will be approved without delay*". Furthermore no material considerations have indicated that this approach is not justified. As such this application is therefore recommended for conditional approval.

RECOMMENDATION: Approval subject to the following conditions

- 1 The development hereby permitted shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

- 2 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

Site Location Plan:

ENV0000381C-CAA-00-00-MP-EN-C0400:9 Rev P06

General Arrangement Plan:

ENV0000381C-CAA-00-00-DR-C- I0500_23 (Rev P02) dated 10/02/2020

Black Dike Re-Alignment Plan and Section:

ENV0000381C-CAA-00-00- DR-C- I0500_36a (Rev P02) dated 27/01/2020

River Foss Re-Profiling South Locations:

ENV0000381C-CAA-00-00-DR-C-I0500_41 Rev P01 dated 08/11/2019

River Foss Re-Profiling North Locations:

ENV0000381C-CAA-00-00-DR-C-I0500_40 Rev P01 dated 08/11/2019

Flow Control Structure Sections:

ENV0000381C-CAA-00-00-DR-C-I0500_36 Rev P01 dated 08/11/2019

Outlet Channel Plan and Section:

ENV0000381C-CAA-00-00-DR-C-I0500_35 Rev P01 dated 08/11/2019

Inlet Channel Plan and Section:

River Foss Re-Profiling South Locations:

ENV0000381C-CAA-00-00-DR-C-I0500_34 Rev P01 dated 08/11/2019

Flow Control Structure Plan and Sections

River Foss Re-Profiling South Locations:

ENV0000381C-CAA-00-00-DR-C-I0500_33 Rev P01 dated 08/11/2019

Embankment Cross Sections:

ENV0000381C-CAA-00-00-DR-C-I0500_31 Rev P01 dated 08/11/2019

Embankment Long Section:

ENV0000381C-CAA-00-00-DR-C-I0500_30 Rev P01 dated 08/11/2019

Spillway General Arrangement:

ENV0000381C-CAA-00-00-DR-C-I0500_29 Rev P01 dated 08/11/2019

Earthworks Borrow Pit P1 Plan and Sections:

ENV0000381C-CAA-00-00-DR-C- B1301_22 Rev P03 dated 07/02/2020
Earthworks Borrow Pit P1 Plan and Sections:
ENV0000381C-CAA-00-00-DR-C- B1301_23 Rev P03 dated 07/02/2020

Site Access, Compound Area and Temporary Works:
ENV0000381C-CAA-00-00-DR-C-I0500_24 Rev P02 dated 02/12/2019
Services and Boreholes:
ENV0000381C-CAA-00-00-DR-C-I0500_25 Rev P01 dated 08/11/2019
Access Tracks:
ENV0000381C-CAA-00-00-DR-C-I0500_26 Rev P01 dated 08/11/2019
Ings Lane Raising Plan and Sections
ENV0000381C-CAA-00-00-DR-C-I0500_28 Rev P01 dated 08/11/2019
Landowner Access Ramp:
ENV0000381C-CAA-00-00-DR-C-I0500_32 Rev P01 dated 08/11/2019
Insitu Concrete Overrun Edge Repair:
Laxxxxxx/Patch/01 Rev 0 dated 28/06/2019

Landscape Masterplan:
ENV0000381C-CAA-00-00-DR-L-C0700_36 Rev P05 dated 11/02/2020
Landscape Area A:
ENV0000381C-CAA-00-00-DR-L-C0700_37 Rev P05 dated 11/02/2020
Landscape Area E Borrow Pit Proposals:
ENV0000381C-CAA-00-00-DR-L-C0700_41 Rev P05 dated 11/02/2020
Landscape Area D:
ENV0000381C-CAA-00-00-DR-L-C0700_40 Rev P02 dated 02/12/2019

Planting Schedule:
ENV0000381C-CAA-00-00- DR-L-C0700_43 Rev P04 dated 11/02/2020
Tree Constraints Plan:
ENV0000381C-CAA-1-XX-DR-C-001 Rev P01 dated 31/07/2019
Landscape Cross Sections:
ENV0000381C-CAA-00-00- DR-L-C0700_42 Rev P02 dated 02/12/2019

Reason: For the avoidance of doubt and in the interests of proper planning. To ensure that the proposal complies with:

Policy SP1 General Location of Development and Settlement Hierarchy
Policy SP9 The Land-Based and Rural Economy
Policy SP10 Physical Infrastructure
Policy SP12 Heritage
Policy SP13 Landscapes
Policy SP14 Biodiversity
Policy SP15 Green Infrastructure Networks
Policy SP17 Managing Air Quality, Land and Water Resources
Policy SP18 Renewable and Low Carbon Energy
Policy SP19 Presumption in Favour of Sustainable Development
Policy SP20 Generic Development Management Issues
All of the adopted Ryedale Plan - Local Plan Strategy.

- 3 Development shall not commence until a scheme detailing surface water drainage has been submitted to and approved in writing by the Local Planning Authority, in consultation with the Local Lead Flood Authority and the Internal Drainage Board. The scheme will make provision for sustainable drainage unless it can be demonstrated that this is inappropriate. The works shall be implemented in accordance with the approved surface water drainage scheme and maintained thereafter for the lifetime of the development. The development shall not be brought into use until the approved drainage works have been completed.

Reason: To ensure the provision of adequate and sustainable means of drainage in the interests

of amenity and flood risk, in accordance with Policy SP17 of the adopted Ryedale Plan – Local Plan Strategy

- 4 Prior to the commissioning of the development, an appropriate exceedance flow plan for the flood storage area shall be submitted to and approved in writing by the Local Planning Authority.

Reason: to prevent flooding to properties during extreme flood events and to mitigate against the risk of flooding on and off site in accordance with Policy SP17 of the adopted Ryedale Plan – Local Plan Strategy

- 5 No development shall take place until details of the means of operation, management, repair and maintenance of the flood storage area, associated apparatus/embankments and borrow pits have been submitted to and approved by the Local Planning Authority to meet the reasonable satisfaction of the Foss Internal Drainage Board's maintenance requirements. Details to include; plans and schedules showing the flood storage areas, associated apparatus/embankments and borrow pits to be vested with the relevant Statutory Undertaker/s, land owner and highway authority with a clear understanding of who will operate, repair and maintain at their expense, and any other arrangements to secure the operation and maintenance of the approved scheme. The development shall be carried out in accordance with the approved details.

Reason: To prevent the increase risk of flooding and to ensure the future maintenance of the scheme throughout the lifetime of the development in accordance with Policy SP17 of the adopted Ryedale Plan – Local Plan Strategy.

- 6 No development shall take place until details have been submitted to, and approved by the Local Planning Authority showing how surface water will be managed during the construction phase. Unless otherwise agreed in writing with the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.

Reason: To prevent the increased risk of flooding during the construction period and to ensure that the Local Planning Authority may be satisfied that no surface water discharges take place until proper provision has been made for their disposal in accordance with Policy SP17 of the adopted Ryedale Plan- Local Plan Strategy.

- 7 Ecological mitigation & compensatory habitat for the Black Dike
In accordance with the planning documents submitted, to mitigate the impact of the proposed physical modifications and prevent the deterioration of WFD water body status, the proposed development must include the provision and management of adequate ecological mitigation or compensatory habitat on the The Syke from Source to River Foss (GB104027063530) water body. The scheme for mitigation must be implemented as approved. The ecological mitigation and compensatory habitat shall include, but not necessarily be limited to:
As per drawing I0500_36a P02 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, measures to mitigate the impact of the Black Dike channel realignment - including the creation of a 119m two-stage meandering (sinuous) channel with alternating low level berms, a natural bed substrate and vegetated banks using locally appropriate water-dependent species.

Reason: These conditions are required to ensure any such impacts with the potential to contribute to deterioration of water body status are appropriately mitigated in order that no deterioration occurs as a result of the development, in accordance with the Water Framework Directive and the NPPF, and also therefore in accordance with Policies SP14 (Biodiversity) and SP17 (Managing Air Quality, Land and Water resources) of the adopted Ryedale Plan-Local Plan Strategy

- 8 Ecological mitigation & compensatory habitat for the River Foss

In accordance with the planning documents submitted, to mitigate the impact of the proposed physical modifications and prevent the deterioration of WFD waterbody status, the proposed development must include the provision and management of adequate ecological mitigation or compensatory habitat on the Foss from Farlington Beck to the Syke (GB104027063540) water body. The scheme for mitigation must be implemented as approved. The ecological mitigation and compensatory habitat shall include, but not necessarily be limited to:

As per Table 2 and Table 4 of the WFD Compliance Assessment, drawings I0500_40, I0500_41 and I0500_23 P02 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, measures to mitigate the impacts of flow impoundment on sediment transport continuity associated with the operation of the proposed control structure - including bank re-profiling and the creation of a two-stage channel cross-section with alternating low level berms on the inside of meander bends over a total length of 1.3km of the River Foss from the control structure to the borrow pits.

As per Table 2 and Table 4 of the WFD Compliance Assessment, measures to mitigate the loss of soft and semi-natural river bank and bed associated with the embankment and new control structure - including the removal of existing failing hard engineered bank protection within the scheme's boundary.

As per Table 2 and Table 4 of the WFD Compliance Assessment and drawings I0500_34 P01 and I0500_35 P01, the provision of a natural channel bed substrate through the reaches immediately up and downstream of the proposed control structure.

As per Table 2 and Table 4 of the WFD Compliance Assessment, drawing C0700_36 P05 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, the creation of marginal and riparian habitat and channel shading through the planting of trees and shrubs along the upper, mid and lower banks of the channel from the control structure up to the borrow pits.

As per Table 2 and Table 4 of the WFD Compliance Assessment, drawings C0700-41 P05, C0700-42 P02, C0700_36 P05 and the Geomorphology and WFD mitigation measures for the Foss Flood Storage Area Technical Note, the creation and retention of water dependent habitat and wetland areas within the two permanent borrow pits. These habitats must be hydrologically connected to the River Foss via open channels. The shoreline and surrounding area of the borrow pits must be graded and planted with native vegetation including reed beds, marginal planting and trees.

Reason: These conditions are required to ensure any such impacts with the potential to contribute to deterioration of water body status are appropriately mitigated in order that no deterioration occurs as a result of the development, in accordance with the Water Framework Directive and the NPPF, and also therefore in accordance with Policies SP14 (Biodiversity) and SP17 (Managing Air Quality, Land and Water resources) of the adopted Ryedale Plan-Local Plan Strategy.

- 9 No works shall take place until a Construction Environmental Management Plan (CEMP) is submitted to and approved in writing by the Local Planning Authority. The CEMP shall include -
- i. Risk assessment of potentially damaging construction activities
 - ii. Identification of biodiversity protection zones, e.g. areas which require protective fencing or signage during construction
 - iii. Farmland Bird Mitigation Plan to provide details of the temporary mitigation habitat during the construction period
 - iv. Method statements covering avoidance measures and sensitive working practices to minimise dangers to at-risk habitats and species; these should include procedures to follow if protected species mitigation licenses need to be obtained
 - v. Identification of where and when ecologists need to be present on-site to oversee works
 - vi. Responsible persons and lines of communication

vii. Role and responsibilities of an ecological clerk of works (ECoW) or similar person
The approved CEMP shall be adhered to and implemented throughout the construction period in strict adherence with the approved details, unless otherwise agreed in writing by the local planning authorities.

Reason: These conditions are required to ensure net gains to biodiversity are achieved in accordance with the NPPF, and also therefore in accordance with Policies SP14 (Biodiversity) and SP17 (Managing Air Quality, Land and Water resources) of the adopted Ryedale Plan-Local Plan Strategy.

10 A Landscape and Ecology Management Plan (LEMP) shall be submitted to and be approved in writing by the local planning authority before the end of the first earthworks season prior to commencement. This should be based on the LEMP previously submitted (November 2019) but updated to include the following;

Revisions to the tree planting in proximity to the Borrow Pit P2;

Formation of Conservation Headlands for compensation and precautionary measures for secured for farmland birds and detailed planting schedules.

It shall also reflect any updated ecological surveys (Water Vole) and the scheme of aquatic planting of local provenance.

Reason: These conditions are required to ensure net gains to biodiversity are achieved in accordance with the NPPF, and also therefore in accordance with Policies SP14 (Biodiversity) and SP17 (Managing Air Quality, Land and Water resources) of the adopted Ryedale Plan-Local Plan Strategy.

11 Within the first survey season after the development commences, the applicant will
a) undertake an ecological survey of all ponds within the footprint of the scheme using a recognised methodology such as PSYM and including species-level identification of aquatic macro-invertebrates where possible. A report including proposals for mitigation and enhancement should be submitted to the Local Planning Authority for approval in conjunction with North Yorkshire County Council (NYCC). Once approved, the applicant shall be responsible for implementing the recommendations within a timescale which has been agreed with NYCC.

b) A monitoring survey should be undertaken five years after completion of the scheme using the same methodology. A report shall be submitted to the authority for approval and the applicant shall be responsible for implementing any recommendations thereafter.

Reason: This information will allow important ponds to be identified and appropriate management undertaken to safeguard their biodiversity value. It will also allow for future monitoring of ecological quality. This will be part of contributing to ensuring net gains to biodiversity are achieved in accordance with the NPPF, and also therefore in accordance with Policies SP14 (Biodiversity) and SP17(Managing Air Quality , Land and Water resources) of the adopted Ryedale Plan-Local Plan Strategy.

12 A) No demolition/development shall commence until the post-excavation assessment report (for the archaeological work undertaken in December 2019 and January 2020) has been completed and submitted to the Local Planning Authority, in accordance with the previously approved Written Scheme of Investigation. The report will be accompanied by an assessment of the impact of the proposed development on any of the archaeological remains identified in the evaluation. The report shall also be deposited with the Historic Environment Record.

B) Where archaeological remains cannot be preserved in-situ, no demolition/development shall commence until a further Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:

1. The programme and methodology of site investigation and recording
2. Community involvement and/or outreach proposals

3. The programme for post investigation assessment
4. Provision to be made for analysis of the site investigation and recording
5. Provision to be made for publication and dissemination of the analysis and records of the site investigation
6. Provision to be made for archive deposition of the analysis and records of the site investigation
7. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

C) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (B).

D) The post investigation assessment, completed in accordance with the Written Scheme of Investigation approved under condition (B), shall be submitted to the Local Planning Authority within six months of the completion of the site investigation, and provision shall be secured for analysis, publication and dissemination of results and archive deposition. The report shall also be deposited with the Historic Environment Record.

Reason: The site lies within an area of archaeological interest. An investigation is required to identify the presence and significance of archaeological features and deposits and ensure that archaeological features and deposits are either recorded or, if of national importance, preserved in-situ, in accordance with Policy SP12 of the Ryedale Plan- Local Plan Strategy and Section 16 of the NPPF.

- 13 The existing Public Right of Way on the site must be protected and kept clear of any obstruction at all times with the exception of any section of the existing PROW which is the subject of a temporary diversion order.

Reason: To ensure that connectivity and accessibility is maintained to the established Public Right of Way network, in accordance with Policies SP10 and SP20 of the adopted Ryedale Plan- Local Plan Strategy

- 14 By the end of the first earthworks season, a detailed planting schedule shall be submitted to and approved in writing by the Local Planning Authority. This shall include the species, stock size, density (spacing), and position of trees, and other plants; and seed mixes, sowing rates and mowing regimes where applicable. It will also include details of ground preparation and tree planting details. This scheme shall be implemented within a period of six months of the practical completion of the development. Any trees or plants which within a period of five years from the substantial completion of the planting and development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing.

Reason: So that the Local Planning Authority may be satisfied with the variety, suitability and disposition of species of the proposed planting and to comply with Policies SP13 (Landscapes) and SP14 (Biodiversity) of the Ryedale Plan – Local Plan Strategy.

- 15 The development must not be brought into use until the access to the site at LILLING LOW LANE has been set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works" published by the Local Highway Authority and the following requirements:

The crossing of the highway verge and/or footway must be constructed in accordance with the approved details as shown on Drawing Number ENV0000381C-CAA-00-00-DR-C-10500_26 Revision P01 and/or Standard Detail number E10 Rev. A CONCRETE FIELD CROSSING and the following requirements.

- Any gates or barriers must be erected a minimum distance of 8 metres back from the

carriageway of the existing highway and must not be able to swing over the existing or proposed highway.

- That part of the access extending 8 metres into the site from the carriageway of the existing highway must be at a gradient not exceeding 1 in 30. Provision to prevent surface water from the site/plot discharging onto the existing or proposed highway must be constructed in accordance with the approved details shown on drawing number (as above) and maintained thereafter to prevent such discharges.
- The final surfacing of any private access within 8 metres of the public highway must not contain any loose material that is capable of being drawn on to the existing or proposed public highway.
- Measures to enable vehicles to enter and leave the site in a forward gear.

All works must accord with the approved details.

Reason: To ensure a satisfactory means of access to the site from the public highway in the interests of highway safety and the convenience of all highway users. This is in accordance with Policy SP20 of the adopted Ryedale Plan-Local Plan Strategy.

16 The following schemes of off-site highway mitigation measures must be completed as indicated below:

- Edge repair works to Lilling Low Lane to Drawing Number 'Insitu Concrete Overrun Edge Repair LAXXXXXX/Patch/01 Rev. 0' at location shown on Drawing Number General Arrangement Plan ENV0000381C-CAA-00-00-DR-C-10500_23 Rev. P02 prior to the development proposed being brought into use or as otherwise in advance as detailed on the construction programme.

For each scheme of off-site highway mitigation, except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of any scheme of off-site highway mitigation or any structure or apparatus which will lie beneath that scheme must take place, until full detailed engineering drawings of all aspects of that scheme including any structures which affect or form part of the scheme have been submitted to and approved in writing by the Local Planning Authority.

An independent Stage 2 Road Safety Audit carried out in accordance with GG119 - Road Safety Audits or any superseding regulations must be included in the submission and the design proposals must be amended in accordance with the recommendations of the submitted Safety Audit prior to the commencement of works on site. A programme for the delivery of that scheme and its interaction with delivery of the other identified schemes must be submitted to and approved in writing by the Local Planning Authority prior to construction works commencing on site.

Each item of the off-site highway works must be completed in accordance with the approved engineering details and programme.

Reason: To ensure that the design is appropriate in the interests of the safety and convenience of highway users, in accordance with Policy SP20 of the adopted Ryedale Plan- Local Plan Strategy.

17 No development for any phase of the development must commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority and the Highways Agency. Construction of the permitted development must be undertaken in accordance with the approved Construction Management Plan.

The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

1. Details of any TEMPORARY SPEED LIMIT TRAFFIC REGULATION ORDER AND WORKS DETAILS AT THE construction access to the site including measures for removal following completion of construction works;
2. restriction (EXCEPT FOR PROPOSED WORKS THAT CANNOT BE ACCESSED FROM ANY OTHER ROUTE) on the use of LILLING LOW LANE & GENNELL LANE access for construction purposes, INCLUDING TEMPORARY ROAD CLOSURES;
3. Details of any abnormal load vehicles and arrangements for agreeing abnormal loads with Highways England in advance of these occurring
- 4 Details of construction timescales, start and finish times and associated periods of traffic movements to the site
5. wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway
6. the parking of contractors' site operatives and visitor's vehicles;
7. areas for storage of plant and materials used in constructing the development clear of the highway;
8. measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas;
9. details of the volume and routes to be used by HGV construction traffic and highway condition surveys on these routes to include the A64/ Scotchman Lane junction, timescale for re-inspection and details of reinstatement
10. protection of carriageway and footway users at all times during demolition and construction;
11. protection of contractors working adjacent to the highway;
12. details of site working hours;
13. erection and maintenance of hoardings including decorative displays, security fencing and scaffolding on/over the footway & carriageway and facilities for public viewing where appropriate;
14. means of minimising dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
15. measures to control and monitor construction noise;
16. an undertaking that there must be no burning of materials on site at any time during construction;
17. removal of materials from site including a scheme for recycling/disposing of waste resulting from demolition and construction works;
18. details of the measures to be taken for the protection of trees;

19. details of external lighting equipment;
20. details of ditches to be piped during the construction phases;
21. a detailed method statement and programme for the building works; and
22. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason: To manage construction impacts in the interests of public safety, the safe and efficient operation of the strategic and local highway network and amenity, in accordance with Policy SP20 of the adopted Ryedale Plan- Local Plan Strategy.

- 18 There shall be no importation of clay to the site for the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority. This shall be in considered in conjunction with the relevant Local Highway Authorities.

Reason: For the avoidance of doubt and to ensure that the proposed construction traffic route is not unduly pressured, with consequential impacts on infrastructural capacity and amenity. In accordance with Policy SP20, of the adopted Ryedale Plan Local Plan Strategy.

- 19 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, in accordance with Policy SP20 of the Ryedale Plan – Local Plan Strategy.

- 20 Prior to the commencement of the development, a scheme of soil movement, stripping and storage should be submitted to and approved in writing by the Local Planning Authority in consultation with the Minerals Planning Authority. Construction work shall not commence in areas where restoration work to return the land to agricultural use is required until a Soil Restoration and After Care Method Statement is submitted to and approved by the Local Planning Authority in consultation with the Minerals Planning Authority. The method statement shall cover activities relating to the working, restoration and aftercare of all areas to be restored to agricultural use; the statement shall include details of:

- i. the areas to be restored;
- ii. arrangements to prevent spread of soil-borne diseases;
- iii land drainage arrangements;
- iv soil replacement including cultivation and seeding;
- vi. management of differential settlement;
- vi. removal of rocks and other materials capable of impeding cultivation;
- vii. detailed aftercare programme and
- viii. timetable for implementation including phasing.

The measures in the method statement shall be implemented in their entirety unless otherwise approved in writing by the Local Planning Authority in consultation with the Minerals Planning Authority.

Reason: To protect soil resources and the soil quality of the land to be returned to agricultural

use in accordance with SP17 (Managing Air Quality, Land and Water Resources) of the Ryedale Plan and Policy 4/8 (Restoration to Agriculture) of the North Yorkshire Minerals Plan.

- 21 No development shall take place until a scheme for ground water monitoring has been submitted to and approved in writing by the local planning authority. The monitoring shall be carried out in accordance with the approved scheme and the results submitted to the local planning authority.

Reason: To monitor ground water levels at the protected sites on Strensall Common in accordance with Policy SP14 (Biodiversity) of the Ryedale Plan – Local Plan Strategy.

INFORMATIVES

Ethylene Pipeline

You are advised that the verge stabilisation works, at c.41 metres from the Ethylene Pipeline fall within the 50m notification zone as required by operators of Major Accident Hazard Pipelines. Prior to commencement, any work within the zone would need approval from SABIC UK Petrochemicals UK.

Overhead Power Lines

National Grid's Overhead Line/s is protected by a Deed of Easement/Wayleave Agreement which provides full right of access to retain, maintain, repair and inspect our asset.

- National Grid requires 3D drawings to be provided at the earliest opportunity (DWG, DGN or DXF)
- Statutory electrical safety clearances must be maintained at all times. National Grid recommends that no permanent structures are built directly beneath our overhead lines. These distances are set out in EN 43 – 8 Technical Specification for “overhead line clearances Issue 3 (2004) To view EN 43 – 8 Technical Specification for “overhead line clearances Issue 3 (2004).
http://www.nationalgrid.com/uk/LandandDevelopment/DDC/devnearohl_final/appendixIII/appIII-part2
- The statutory minimum safety clearance is 7.6 metres to ground and 8.1 metres to a normal road surface. Further detailed information can be obtained from the Energy Networks Association's (www.energynetworks.org.uk) Technical Specification E-43-8 for “Overhead Line Clearances”, Issue 3 (2004)
- Any changes in ground levels which are proposed either beneath or in close proximity to our existing overhead lines would serve to reduce safety clearances. Safety clearances to existing overhead lines must be maintained in all circumstances.
- To view the Development Near Overhead Lines Document and Sense of Place Document.
[www.http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=23713](http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=23713)
[www.http://www2.nationalgrid.com/UK/Services/Land-and-Development/A-sense-of-place/](http://www2.nationalgrid.com/UK/Services/Land-and-Development/A-sense-of-place/)
- The relevant guidance in relation to working safely near to existing overhead lines is contained within the Health and Safety Executive's (www.hse.gov.uk) Guidance Note GS 6 “Avoidance of Danger from Overhead Electric Lines.”
- Plant, machinery, equipment, buildings or scaffolding should not encroach within 5.3 metres of any of our high voltage conductors at the point where the conductors are under their maximum ‘sag’ or ‘swing’ conditions. Overhead Line profile drawings should be obtained using the above contact details.
- If a landscaping scheme is proposed as part of the proposal, we request that only slow and low growing species of trees and shrubs are planted beneath and adjacent to the existing overhead line to reduce the

risk of growth to a height which compromises statutory safety clearances.

- Drilling or excavation works should not be undertaken if they have the potential to disturb or adversely affect the foundations or “pillars of support” of our towers. These foundations extend beyond the base of the tower. Pillar of Support drawings should be obtained using the contact details above.

- Due to the scale, bulk and cost of the transmission equipment required to operate at 275kV or 400kV we only support proposals for the relocation of existing high voltage overhead lines where such proposals directly facilitate a major development or infrastructure project of national importance which has been identified as such by government.

- To promote the successful development of sites crossed by existing overhead lines, and the creation of well-designed places, National Grid has produced ‘A Sense of Place’ guidelines, which look at how to create high quality development near overhead lines and offer practical solutions which can assist in avoiding the unnecessary sterilisation of land in the vicinity of high voltage overhead lines.

- Further information regarding our undergrounding policy and development near transmission overhead lines is available on our website at: <http://www.nationalgrid.com/uk/LandandDevelopment>

Public Right of Way

There is a Public Right of Way or a ‘claimed’ Public Right of Way within or adjoining the application site boundary. If the proposed development will physically affect the Public Right of Way permanently in any way an application to the Local Planning Authority for a Public Path Order/Diversion Order will need to be made under S.257 of the Town and Country Planning Act 1990 as soon as possible. Please contact the Local Planning Authority for a Public Path Order application form.

If the proposed development will physically affect a Public Right of Way temporarily during the period of development works only, an application to the Highway Authority (North Yorkshire County Council) for a Temporary Closure Order is required. Please contact the County Council or visit their website for an application form.

The existing Public Right(s) of Way on the site must be protected and kept clear of any obstruction until such time as an alternative route has been provided by either a temporary or permanent Order.

It is an offence to obstruct a Public Right of Way and enforcement action can be taken by the Highway Authority to remove any obstruction.

If there is a “claimed” Public Right of Way within or adjoining the application site boundary, the route is the subject of a formal application and should be regarded in the same way as a Public Right of Way until such time as the application is resolved.

Where public access is to be retained during the development period, it shall be kept free from obstruction and all persons working on the development site must be made aware that a Public Right of Way exists, and must have regard for the safety of Public Rights of Way users at all times.

Applicants should contact the County Council’s Countryside Access Service at County Hall, Northallerton via CATO@northyorks.gov.uk to obtain up-to-date information regarding the exact route of the way and to discuss any initial proposals for altering the route.

Highways

Applicants are reminded that in addition to securing planning permission other permissions may be required from North Yorkshire County Council as Local Highway Authority. These additional permissions can include, but are not limited to: Agreements under Sections 278, 38, and 184 of the Highways Act 1980; Section 38 of the Commons Act 2006, permissions through New Roads and Streetworks Act 1991 and Local Authorities’ Traffic Orders (Procedure) (England and Wales) Regulations 1996 (as amended and including all instruments, orders, plans, regulations and directions).

Further information on these matters can be obtained from the Local Highway Authority. Other permissions may also be required from third parties. It is the applicant's responsibility to ensure all necessary permissions are in place

Notwithstanding any valid planning permission for works to amend the existing highway, you are advised that a separate licence will be required from North Yorkshire County Council as the Local Highway Authority in order to allow any works in the existing public highway to be carried out. The 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by North Yorkshire County Council as the Local Highway Authority, is available to download from the County Council's web site:

https://www.northyorks.gov.uk/sites/default/files/fileroot/Transport%20and%20streets/Roads%2C%20highways%20and%20pavements/Specification_for_housing___ind_est_roads___street_works_2nd_edition.pdf

City of York

The applicant is advised to read this decision in conjunction with the decision issued by the City of York Council. Where relevant, all conditions imposed will need to be discharged by each planning authority.