

North Yorkshire County Council

Business and Environmental Services

Planning and Regulatory Functions Committee

19 December 2017

C8/41/107A/PA - Planning Application for the purposes of the variation of Condition No's 1, 2, 3, 5, 6, 14, 18 & 20 of Planning Permission Ref. C8/2012/0035/CP dated 4 September 2012 for the continuation of tipping of colliery waste from Kellingley Colliery and soil materials from other locations for a further two years until 13 May 2018, revised tipping materials and revisions to the vehicle route, revised restoration scheme and landscaping on land at Womersley Quarry, Off Stubbs Lane, Womersley, DN6 9BB On Behalf Of Harworth Estates Mines Property Ltd (Selby District) (Osgoldcross Electoral Division)

Report of the Corporate Director – Business and Environmental Services

1.0 Purpose of the report

- 1.1 To determine a planning application for the variation of condition No's 1, 2, 3, 5, 6, 14, 18 & 20 of Planning Permission ref. C8/2012/0035/CP dated 4 September 2012 for the continuation of tipping of colliery waste from Kellingley Colliery and soil materials from other locations for a further two years until 13th May 2018, revised tipping materials and revisions to the vehicle route, revised restoration scheme and landscaping on land at Womersley Quarry, off Stubbs Lane, Womersley, DN6 9BB on behalf of Harworth Estates Mines Property Ltd.
- 1.2 This application is subject to three objections having been raised by local members of the public and local businesses (summarised in paragraphs 5.3 and 5.5 of this report) and is, therefore, reported to this Committee for determination.

2.0 Background

Site Description

- 2.1 The application site is a former magnesian limestone quarry and part restored colliery spoil disposal site and is approximately 4.5km to the south of Knottingley and approximately 5km south-east of Pontefract. The 94.6 hectare site is located to the north-west of Womersley village, to the south of Cridling Stubbs village and to the south-east of Darrington Quarry, all in Selby District. The District boundary with Wakefield MDC is 1.2km to the west of the site.
- 2.2 Access to the site is gained off Stubbs Lane to the north of the site. The M62 runs east-west approximately 1 kilometre to the north and the A1(M) is located approximately 2 kilometres to the west. Northfield Lane runs along the eastern boundary of the application site and Bank Wood Road is to the south west of the site. A branch line of the East Coast mainline is located to the immediate east of the northern part of the site. The Gale Common Ash Disposal site, which received ash from the Eggborough and Ferrybridge power stations, is 1.3 km to the north-east of the site.

- 2.3 The application site is set within a predominantly rural area with much of the surrounding land comprising arable farmland, punctuated by areas of wood and coppice. The site is located on the eastern edge of the Southern Magnesian Limestone ridge, an area of undulating landscape that falls gradually from 70 – 80 metres AOD in the west to between 35 – 40 metres AOD near to the site. To the east of the site, the topography is flat and low lying being between 5 – 20 metres AOD and Gale Common Ash Disposal site to the north east of the site, forms a man-made hill rising to approximately 70 metres AOD.
- 2.4 The broad 'lozenge' shape of the existing tipping site is punctuated by two distinct areas of land. In the northern section, a roughly rectangular 2.2 hectare area of land known as the former Womersley and Cridling Stubbs Quarry is a Site of Importance for Nature Conservation (SINC) (outside the application site boundary but under Applicant's ownership) and on the east side, and more centrally located, the former Northfield Quarry which is approximately 9 hectares and outside the application site boundary.
- 2.5 The site includes active tipping and restoration working areas within the majority of the central section of the site and restored areas to the central batter east (adjacent to the SINC) and the north and south. At the northern end of the site the restored areas are found to the east and west of the haul road which runs from Stubbs Lane through the centre of the site to the tipping areas. The restored areas include grassland and trees which are now reaching maturity and waterbodies at the south-eastern end of the site. The eastern flank of the central area has been built up to final levels and limestone fines were spread as part of the existing approved restoration plan.
- 2.6 In the southern part of the site are areas that have been restored. The restored areas are found to the south of two overhead power lines which cross the site north-east to south-west. The restored areas include grassland and pond/wetland after-uses. A water easement for the Yorkshire Derwent Aqueduct also crosses the southern section of the site. The site is entirely underlain by the Permian Magnesian Limestone principal aquifer, the top of which is exposed within a lagoon associated with former quarry workings to the east of Northfield Lane, now the home of the Blue Lagoon Diving Centre (operated by Above & Below (UK) Ltd) which is 220 metres from the application site.
- 2.7 The village of Womersley lies to the south east of the application site with some properties within 100 metres of the southern boundary of the application site. Cridling Stubbs is found to the north east and the nearest properties within the main settlement are approximately 350 metres from the site.
- 2.8 Aside from the residential properties within the main settlements of Cridling Stubbs and Womersley there are a number of residential properties in close proximity to the application site. The nearest being those properties found on Northfield Lane which runs along the eastern boundary of the application site. Spring Lodge Cottage (Crossing), east of the site and adjacent to the rail crossing on Northfield Lane is approximately 20 metres from the site at the nearest point.
- 2.9 The property known as Innisfree is to the south of Spring Lodge Cottage (Crossing) and is located directly adjacent to the former Northfield Quarry. The house itself is approximately 80 metres from the application boundary.

- 2.10 To north of Spring Lodge Cottage (Crossing) are Spring Lodge, The Paddock and Shepherds Cottage which are found to the east of Northfield Lane, an agricultural field and the railway line which bounds the site to the north east. The track has mature deciduous trees on each side. The distance between these properties and the application site is approximately 110 to 160 metres. The property known as Lanswood is further north of the other properties and stands approximately 100 metres from the site and is separated from the site by the railway line. There are a number of mature deciduous trees adjacent to the railway as well as within the garden of the property itself.
- 2.11 To the west of the site on Banks Wood Road are the properties comprising: Stapleton Cottages, Stonewall Cottage and Spinneys Edge. The closest cottage being approximately 190 metres from the site. To the south of the site also on Banks Wood Road is Rock House which shares a southern access with the Womersley site and also West Lodge, and Manor Farm which are approximately 20-60 metres from the site.
- 2.12 A Public Right of Way (Bridleway no. 35.25/5/1) follows the western site boundary to Stubbs Lane in the north and Bank Wood Road in the south. As shown on the attached plan, despite the Public Right of Way having been diverted on the ground and it functioning appropriately, the official records still identify the old route of the Public Right of Way crossing Womersley Quarry in the north.
- 2.13 The application site is within land designated as Locally Important Landscape Areas in the Selby Local Plan, 2005 ('saved' Policy ENV 15). This designation is related to landscape quality and characteristics of the Southern Magnesian Limestone Ridge. The whole of the site is located within the Selby Green Belt.
- 2.14 The former Womersley and Cridling Stubbs Quarry is designated as a Site of Importance for Nature Conservation (SINC) which was last surveyed in 2009 and records state that it *'contains vitally important original calcareous grassland, which is essential for natural regeneration of adjacent quarry areas when restored'*. The former Northfield Quarry was previously designated as a SINC until it was deleted in 2005. There are also areas of woodland along the western boundary of the application site adjacent to the bridleway which are deleted SINC's. The nearest site designated for its ecological value is Brockdale Site of Special Scientific Interest, which is located approximately 2.4 kilometres to the south west of the site.
- 2.15 The boundary of the Womersley Conservation Area is immediately to the south of the application site. All of Womersley village is within the Conservation Area, but the section of the Conservation Area adjacent to the application site, at its north western extent, is a wooded area. There are also a number of Grade II Listed structures within approximately 200 metres of the site to the south east, namely the Village Pump and Trough and Village Cross. Womersley Village has a number of other Grade I, II, II* Listed Buildings centrally within the village. The nearest site designated for cultural heritage or archaeological value is the Scheduled Ancient Monument 200 metres to the south of the site known as the Womersley medieval settlement remains and Victorian ice house in Icehouse Park (schedule date 28 September 1998).
- 2.16 A plan showing the application site is attached to this report at Appendix A.
- Planning History
- 2.17 The planning history relating to the proposed development site relevant to the determination of this application is as follows: -

- 2.18 Planning permission ref. C/8/41/23.G/PA was originally granted for colliery spoil disposal (from Kellingley Colliery) at Womersley Quarry on 14 May 1987. The Applicant was the National Coal Board and the permission included 34 planning conditions. Colliery spoil was produced in two forms which have very different properties and require different disposal solutions: (1) Coarse discard – solid lumps of spoil that can be excavated and moved by machine and which will support itself to form a stable landform when placed and compacted in layers; and (2) MRF cake – a paste of fine discard and water which can be contained within lagoons or cells or co-disposed in alternate layers with coarse discard. The spoil disposal scheme at Womersley accommodated both types of colliery spoil waste. Under the terms of Condition 2 tipping was permitted to be carried out until 13 May 2012. Revisions were then requested to the existing eastern storage bund and for the formation of a new soil making material storage bund on the western boundary, which was granted planning permission on 11 August 1999.
- 2.19 The application was then amended by a written submission by RJB Mining (UK) Ltd dated 4 November 1999 (relating to an amended restoration scheme) and subsequent written undertakings dated 1 March and 8 March 2000 (relating to highway improvements, an updated management plan, phasing and water protection). The amendments were approved on 18 April 2000 subject to the completion of a Legal Agreement (under Section 39 of the Wildlife and Countryside Act 1981) dated 17 May 2000 relating to the long term management of the site (up to 50 years) following restoration in the interests of ecology and biodiversity enhancement. It was confirmed by the County Planning Authority on 19 May 2000 that the Section 39 Legal Agreement (referring to the 'RJB Mining (UK) Ltd, Womersley Quarry- Management Plan' (version 3 dated 5 April 2000)) was complete and the amendments subsequently approved.
- 2.20 Planning permission ref. C8/2012/0035/CP was then granted on 4 September 2012 for the continuation of tipping of colliery waste at the site until 16 May 2016, without complying with condition No. 2 of planning permission ref. C/8/41/23.G/PA. The Applicant was UK Coal Mining Ltd and the permission included 27 planning conditions.
- 2.21 On 4 May 2012 planning application ref. C8/2012/0491/CPO (NY/2012//0100/ENV) was registered for an extension to the existing Womersley Quarry spoil disposal scheme involving the importation of colliery spoil including an increase in the height of the existing tip and creation of an altered landform, and extension of the landfill operations into two adjoining former limestone quarries (Womersley/Cridling Stubbs Quarry and Northfield Quarry) on land at Womersley Quarry, off Stubbs Lane, Womersley. The application was made on behalf of UK Coal Mining Ltd (UK Coal). The application was the subject of a Planning and Regulatory Functions Committee Members site visit on 11 October 2013 and was reported to Committee on 22 October 2013 and 25 March 2014. However the application was not determined and on 23 June 2015 the Applicant requested the withdrawal of the application which was subsequently confirmed by the County Planning Authority on 7 August 2015.
- 2.22 Kellingley Colliery, the source of the spoil used in the restoration of the former quarry, closed in December 2015 and the importation of colliery spoil into Womersley Quarry temporarily ceased until ownership of both sites reverted to Harworth Estates.

- 2.23 It should be noted that this planning application was registered with the Authority on 12 May 2016 prior to the expiry of planning permission ref. C8/2012/0035/CP on 16 May 2016. Due to the time that has passed since that date the proposal to extend the timescale for the completion of tipping and restoration for 2 years to 13 May 2018 is largely retrospective with the exception of the final 5 months of operations (Dec 2017-May 2018). The Applicant has advised that it would not be practical to cease works at the site whilst the application remains undetermined and therefore, current works at the site are unauthorised and the operating company are therefore in breach of condition 2 of the original permission, which is liable to enforcement action. Due to concerns with regard to the delay in restoration (the need for early re-vegetation of the tip surface) and drainage issues emanating from the site the County Planning Authority along with the Environment Agency, the local Parish Councils and local residents were made aware that restoration work was ongoing on site prior to the revised restoration scheme being approved. The matter before the Council is therefore to consider whether to grant planning permission to regularise the site and allow the development to be completed within the newly proposed timescale. Should the application to extend the length of time be refused, the operator would be required to cease works at the site and restore it to a new restoration landform, which would need to be agreed.
- 2.24 There have been no complaints to the County Council's Monitoring and Compliance Officer in relation to noise, odour, highways matters or drainage during the period the application has been under consideration by the Authority.

3.0 The Proposal

- 3.1 Planning permission is sought for the variation of condition No's 1, 2, 3, 5, 6, 14, 18 & 20 of Planning Permission ref. C8/2012/0035/CP dated 4 September 2012 for the continuation of tipping of colliery waste from Kellingley Colliery and soil materials from other locations for a further two years until 13th May 2018, revised tipping materials and revisions to the vehicle route, revised restoration scheme and landscaping on land at Womersley Quarry, off Stubbs Lane, Womersley on behalf of Harworth Estates Mines Property Ltd. The application is accompanied by an Environmental Statement.
- 3.2 This application relates to condition No's 1, 2, 3, 5, 6, 14, 18 & 20 of Planning Permission ref. C8/2012/0035/CP dated 4 September 2012. The full wording of the relevant conditions is contained within Appendix B attached to this report. It is proposed to vary the planning conditions which impose a time constraint on tipping and restoration operations at the site and those which determine the landscaping and restoration schemes. There are no proposals to increase the overall footprint of the site or tip spoil beyond that which has been previously consented. In summary the Applicant proposes the variation of conditions as follows:-

Condition No. 1 - To be varied to reflect the revised date for cessation of tipping, at 13th May 2018.

Condition No. 2 - To be varied to reflect the revised scheme as set out in this application and accompanying Environmental Statement.

Condition No. 3 - To be varied to reflect the revised scheme as set out in this application and accompanying Environmental Statement.

Condition No. 5 - To be varied to reflect the revised tipping materials to be imported to the site, and the revisions to the vehicle route.

Condition No. 6 - To be varied to reflect the revised materials to be imported to the site for tipping purposes.

Condition No. 14 - To be varied to reflect the revised restoration scheme / final landform proposals.

Condition No. 18 - To be varied to reflect the revised restoration scheme / final landform proposals.

Condition No. 20 - To be varied to reflect the revised restoration scheme / final landform proposals.

- 3.3 The closure of Kellingley Colliery in 2015 resulted in a shortfall of 1 million cubic metres of colliery discard required to achieve the approved final restoration landform which has generated a requirement for this proposed amendment of the restoration scheme for Womersley Quarry. The application seeks approval for an extension to the time required to complete restoration of the site until May 2018 and also approval of the restoration scheme to include the importation of soil forming materials as well as colliery spoil from Kellingley.
- 3.4 The Applicant proposes to complete the restoration of Womersley Quarry “to a safe and acceptable landform” and to achieve this it is proposed to reduce the volume of materials to be imported in order to restore the site.
- 3.5 To achieve the approved restoration scheme it would require 1,000,000m³ of entirely Kellingley Colliery spoil which cannot be achieved in light of the Colliery closure. At the time of the application submission (May 2016) it was confirmed that there was a significant part of the site which remained unrestored and required coarse colliery spoil discard to be imported and mixed with the existing MRF cake on site to enable the landform to be safely capped, drained and then restored. The planning application submitted in May 2016 proposed to import 300,000m³ (which equates to approximately 405,000 tonnes) of the colliery spoil remaining at Kellingley, but the Applicant later amended the proposal (in July 2017) to import only 30,000 tonnes of coarse colliery discard from Kellingley and this was completed in late Summer 2017. The remaining coarse colliery discard from Kellingley has been transported to Immingham, Lincolnshire for use in a land raising development.
- 3.6 The reason for this reduction was due to on site works that managed to create a landform and drainage contours using the material already on site at Womersley. However, the Applicant has confirmed that the reduced amount of coarse colliery discard material was still required to raise a low spot of the western side of the site, which would have resulted in standing water.
- 3.7 The order of working is generally in a south to north direction working out of site along with early restoration of eastern flanks. The works do not include any further importation of MRF cake. The dry coarse colliery discard was imported for use in the capping of existing areas of MRF cake and operational lagoon areas in order to provide a safe working area with effective drainage to enable the restoration of the site to be completed.
- 3.8 In addition to colliery spoil the proposal also includes the importation of 130,000 tonnes of soil forming materials comprising approximately 80,000 tonnes of organic based soil improver and 50,000 tonnes of lime rich substrates to assist in delivering the restoration of the site. The treatment of the surface layer with lime/organic material counters the onsite acidification arising from the colliery spoil substrate and enables quick establishment of vegetation on the spoil. The aim is to further stabilise the tip surface and buffer any potential for acid leachate production as water percolates through the mineral surface. This would reduce the acidity levels in the surface water run-off and the potential for polluting the surface water environment.

- 3.9 Prior to the spreading of soil forming materials the underlying spoil surface is scarified to 300mm depth to provide a key for soils and prevent the formation of a pan at the soil/spoil interface. The soil forming materials are then spread using bulldozer or tractor pulled incorporation equipment to incorporate lime directly to approximately 40cm depth. In addition heavy duty cultivation equipment is used to mix the materials in to the spoil substrate and in areas of tree planting greater depths are provided to ensure a large uncompacted zone for tree rooting. Once the restoration materials have been mixed in to the surface of the tip and subsequent levelling works completed the areas would be planted at the first appropriate season.
- 3.10 The revised restoration landform comprises a single, undulating ridge landform with a high point located within the western central sector adjacent to Rows Wood. The revised restoration scheme is shown at Appendix C. The highest point also reaches an elevation of approximately 40m AOD, slightly lower than the permitted scheme. The longitudinal slope gradients vary from the permitted scheme in that there is more of a plateau below 30m AOD to the north adjacent to the former Womersley and Cridling Stubbs Quarry. There is no second peak to the south but a continuous fall that is more gradual and sinuous in alignment leaving shallower “scarp” slopes on the west side. The reduction of colliery spoil into the site would result in a lowering of the final restoration contours and would enable the creation of two seasonal wet grassland areas along the western boundary of the site which would enhance the biodiversity interest.
- 3.11 The proposed restoration land cover is now a mixture of woodland, scrub and amenity grassland with the proposed calcareous grassland removed because of the issues with increased surface water run-off and the washed off fines blocking drainage channels. The woodland and scrub areas would form irregular belts around all the margins of the site. The proposed restoration scheme also includes a permissive bridleway (previously footpath) following a similar alignment along the ridge and apart from some minor amendments in the southern part of the site (following the comments of the local resident) provides the same access as the permitted scheme. The progress made to date and the phasing plan for completion is shown on the drawing attached to this report at Appendix D.

Site Drainage

- 3.12 The revised restoration scheme includes updated surface drainage proposals. The recommendations contained within the Applicant’s DAB Geotechnics report have now been implemented on site and the clay lined drains along the eastern boundary of the site and under the route of the overhead power cables have been completed. The four clay lined settlement ponds have also all been completed and linked with outfall pipes as shown on the aerial photo attached to this report at Appendix E. The Applicant states that these works have all been carried out in consultation with the Environment Agency and been inspected at numerous points throughout the works including visits by Officers of the County Council. The Applicant proposes that management works will be carried out between September and October (to minimise disturbance to wildlife) and will involve general operations such as de-silting and clearance of leaf fall.

HGV movements

- 3.13 The colliery spoil at Kellingley was transported to the Womersley site by HGVs along public roads (Sudforth Lane, Beal Lane, Cobcroft Lane and Stubbs Lane) to the site entrance on Stubbs Lane.
- 3.14 In the application details submitted in May 2016 the Applicant proposed that the transportation of colliery spoil would take place during the drier summer months between March and October. The Applicant has confirmed that each HGV carried 18 tonnes and the HGV movements importing material from Kellingley were completed in late Summer - early Autumn 2017.

- 3.15 The imported soil forming material, which is spread over the top of the colliery discard, is sourced from various off-site locations. The HGVs carrying the non-colliery soil forming materials travel off the A1 onto Leys Road leading onto Stubbs Lane and onto the site entrance. This comprises the importation of approximately 80,000 tonnes of organic based soil improver and 50,000 tonnes of lime to counter act the existing acidity. In terms of numbers, the materials are split 50:50 between articulated HGVs (capacity 27 tonnes) and HGV rigid tippers (18 tonne payloads). The organics were imported at around 1,000 tonnes per week and for the lime at around 715 tonnes per week over 70 weeks (deliveries in 26 tonne payloads). The material imports were completed in their entirety by the end of October 2017.
- 3.16 The Applicant has confirmed that a wheel wash has remained in operation to ensure vehicles are clean and highways are not burdened by mud/detritus from the site. In addition a 'sheep dip' wheel washing facility is used to pre-treat HGVs leaving the Womersley site before they enter the existing wheel wash and exit onto public roads and also there is continued use of road sweepers on the haul route as and when required.

Hours of operation

- 3.17 The hours of working are as per those permitted for the existing operations. Spoil transport, tipping and restoration operations take place between 0730-1830 hours from Monday to Friday and 0730-1200 hours on Saturday, with no operations on Sundays or Bank/Public Holidays except in cases of emergency.

4.0 Consultations

The consultee responses summarised within this section of the report relate to responses to consultation undertaken on 25 May 2016 at which time the Applicant proposed the importation of 405,000 tonnes of colliery spoil. It also summarises the responses to the subsequent re-consultation (on 3 August 2017) following the receipt of further/amended information relating to a revised restoration scheme arising from the proposed reduction of colliery spoil imports to 30,000 tonnes. As required by the Regulations, notification of the Secretary of State (National Planning Casework Unit) of the planning application was undertaken on 13 May 2016.

- 4.1 **Selby District Council (Planning)**- responded on 22 June 2016 and confirmed that they have no objections or comments to make in respect of this application. Selby District Council have not responded to the reconsultation on the amended information.
- 4.2 **Selby District Council (Environmental Health)**- responded on 28 June 2016 and acknowledged the continued use of road sweepers and the sheep dip wagon washing facility to pre-treat wagons before they enter the existing wheel wash facility but did state a concern about the washing facilities used at the colliery site.
- 4.2.1 With regard to noise the EHO noted that the predicted noise levels at Stapleton Cottages cannot meet the Minerals Planning Guidance lower level for noise during the period of 7am to 7pm of the background level plus 10dBA. The EHO accepted that this activity is fundamental to the operation of the site and given that the scheme is now in its restoration phase, there is no opportunity to provide acoustic screening in the form of earth-bunding or create a larger buffer zone between site activity and the residential dwelling. The EHO requested confirmation of the time frame involved in the restoration of this area of the site and advised the Applicant to inform residents at Stapleton Cottages when the noise levels are to increase and over what time frame. With regard to peak or impulsive noise the EHO confirmed that if white noise reversing sirens are used on the mobile plant no further information is required in respect to this aspect.

- 4.2.2 With regard to air quality the EHO notes that a Dust Action Plan (DAP) was previously agreed and is presented in the application submission. The EHO acknowledges that the Dust Action Plan will not be implemented in full due to the reduced scale of the operations but requests to be consulted on any revision to the DAP.
- 4.2.3 On 9 August 2017, in response to reconsultation on the amended information, the EHO states that the document considers the issue of the noise level at Stapleton Cottages and informs that importation of colliery discard will take around 10 weeks and a further month to restore the site with soil forming materials. The EHO notes that the document suggests a noise limit of 51 dB Laeq1hr to be conditioned and agrees to this for the period of work in this area. The EHO states that if white noise sirens are to be used on mobile plant that is acceptable.
- 4.3 **Environment Agency (EA)**- on 7 June 2016 the Environment Agency's Land and Water Team responded to set out their position regarding the material that is to be used to cap the completed areas.
- 4.3.1 The response explains that Environment Agency Officers have previously investigated the cause of the pollution in the Blue Lagoon and concluded that the most likely source was contaminated groundwater from the tip site migrating into the Blue Lagoon due to the direction of groundwater flow.
- 4.3.2 The EA initially worked with UK Coal to find ways of preventing the impact from the tip site and to this end, lined toe drains were installed at the base of the tip heap between the tip and the Blue Lagoon in order to intercept contaminated surface water run-off, thus preventing it from reaching groundwater.
- 4.3.3 However, although the EA have seen some success using this method, the Blue Lagoon is still suffering pollution. The EA believe a major factor contributing to the problem is the requirement to use only limestone fines under the current planning consent. The limestone fines are physically unstable when it rains, leading to large quantities of material being washed off the slopes, exposing the spoil and settling in the toe drains. The drains fill with sediment causing blockages that cause contaminated water to spill over the sides and ultimately into groundwater.
- 4.3.4 The EA view is that the real key to preventing the contaminants reaching groundwater is the re-vegetation of the flanks on the tip so that rain cannot penetrate so easily into the spoil below. The EA *"feel it is imperative that this happens as quickly as possible, but the current approved limestone fines will take many years to re-vegetate, partly because they are nutrient poor and partly because there is no topsoil to prevent it being washed away when there is a rainfall event. This means that the re-vegetation process has to start from scratch each time there is such an event and is therefore, not a practical way forward"*.
- 4.3.5 The EA note that in order to address this issue, Harworth Estates propose to supplement the current approved limestone fines with a compost that will produce a material that is less likely to suffer from erosion and will re-vegetate significantly more quickly. For these reasons, the EA do not support the use of limestone fines alone, but do support the proposal by Harworth Estates to change the condition in the planning consent and allow them to supplement the limestone fines with a nutrient-rich compost.

- 4.3.6 On 29 June 2016 a response was received from the EA's Planning Advisor which states that the proposed use of soil making materials for restoration will require a new Environmental Permit and advises that the planning application and permit application are parallel tracked. The EA response includes advice on the permit requirements and highlights that further information will be required on the ratio of lime required to neutralise the acidification in the colliery spoil layer and details of the quantities and locations of spoil, limestone and compost like outputs (CLO).
- 4.3.7 On 1 September 2017 in response to reconsultation on the amended information, the EA confirmed no objections to the proposed continuation of activity. The EA states that the revised restoration plan takes into account discussions with Harworth Estates with respect to surface water and groundwater management. The EA highlight that ongoing management of the drainage system and monitoring of groundwater will be required to ensure performance is maintained as intended. The EA also draw attention to the additional advice provided in the previous response dated 29 June 2016.
- 4.4 **Natural England-** responded on 6 June 2016 with no objections. Natural England highlighted that the site is in close proximity to Brockadale Site of Special Scientific Interest (SSSI). However, Natural England were satisfied that the proposed development will not damage or destroy the interest features of the site and therefore the SSSI does not represent a constraint in determining the application. Natural England did not wish to comment in detail on the soils and reclamation issues arising from this proposal. Natural England stated that the application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. Natural England advised that the Authority should consider securing measures to enhance the biodiversity of the site from the Applicant (in accordance with paragraph 118 of the NPPF), if it is minded to grant permission for this application.
- 4.4.1 On 17 August 2017 in response to reconsultation on the amended information, Natural England confirmed that the development would not have significant adverse impacts on the designated site Brockadale Site of Special Scientific Interest (SSSI) and has no objection.
- 4.5 **Womersley Parish Council-** responded on 8 August 2016 and welcomed the intention to restore the tip site and to limit the importation of colliery spoil. The Parish Council also highlighted the benefits of continued restoration activity and observed that during periods of no activity there were instances of trespass, illegal bikes on site and malicious damage to the toe drains.
- 4.5.1 However, the Parish Council would prefer that no further importation of colliery spoil takes place and that the tip site is restored utilising the spoil currently on site and without further spoil importation for the following reasons:-
- “1. *The tipping of spoil at Womersley has already continued for many more years than was initially intended, numerous extensions to planning permissions and variations have been submitted and granted, despite the community objecting to this.*
 2. *There are serious pollution issues caused by the tipping of colliery spoil at Womersley and although some progress has been made, the Emissions Management Plan still does not fully control the pollutants from entering ground and surface water or the aquifer. The Environment Agency CAR form of January this year identifies failures of the drainage on the site and the Emissions Management Plan (EMP), this was identified as a category 3 breach and has still not been resolved, there was a further category 3 breach also at this time. These drains are a crucial part of the EMP and are currently non-*

functional and therefore allowing pollutants to enter the limestone and aquifer and ultimately the Blue Lagoon.

3. *Adequate lined collection ponds are still not in place despite the EA's recommendations.*
4. *Further delay in restoration, exacerbates the pollution, thereby allowing contaminated effluent to run off the surface of the tip site. The EA have determined that a key mitigating factor to the pollution is the prompt restoration of the tip site. There has been a failure to ensure that progressive restoration has taken place throughout the life of the tip site. There should be no further delay and restoration should be completed ASAP.*
5. *The neighbouring Northfield Lane Quarry continues to flood following heavy rain and no functional perimeter drains have been put in to prevent this.*
6. *Throughout the life of the tip site we have been requesting a restoration bond for the tip site; we are pleased that Harworth Estates as Landowners are taking on the restoration of the site, but feel a bond should have been put in place. We need a written, legally binding guarantee that this site will be fully restored within the two year planning permission applied for with no further extensions.*
7. *The monitoring/regulation of this site is very problematic and fragmented, with the Environment Agency, Planning enforcement, the Mines and Quarries inspectorate and Health and Safety legislation, all having different elements to monitor/enforce with no one body taking overall responsibility. This must be rectified prior to any determination.*
8. *The tip site suffers from illegal activity, which is made possible by inadequate perimeter fencing and security; this must be rectified prior to determination.*
9. *Inadequate conditions lacking rigorousness have made enforcement action very difficult to date; any planning extension must have new rigorous and enforceable conditions.*
10. *Throughout the life of the tip site there has been pollution of the water, surface and groundwater, noise pollution, air pollution and highways contamination, the community has had enough of this. These issues must be resolved”.*

4.5.2 The Parish Council also commented that a new set of rigorous conditions should be applied and, whilst they would prefer for the site to be restored as soon as possible, had concerns about the projected timescales for completion. The Parish Council also observed that the details on restoration of the site were vague and would benefit from more detail and note that a Section 39 agreement exists for the site which should be taken into account.

4.5.3 On 26 September 2017 in response to reconsultation on the amended information, Womersley Parish Council state that they appreciate Harworth Estate's efforts to keep the Parish updated and note that good progress has been made to restore the site and limit the importation of colliery spoil. The Parish Council comment that there has been an improvement visually and hope that the fast re-vegetation of the site will prevent further pollution impregnating the soil and ground water. The Parish Council support the recommendations made by the Environment Agency to consider alternative covering materials such as soil making materials. The Parish Council make the following comments on the supplementary information:-

1. The current bridle path has been diverted away from the site; any future reinstatement should be sited away from neighbouring quarries etc. to avoid trespass and illegal activity on private land. We are concerned that any footpath/bridle path does not run near to the water body (see 2 below)
2. The water body created to collect run off from the toe drains, which sits between the back of Northfield Quarry and the tip site is of concern as this area could be a dangerous attraction, resulting in potential for antisocial behaviour and risk of drowning. Although the water is not deep, any unprotected water body does create an attraction. We would like to see measures put in place to protect this area by whatever means are necessary in addition to diverting the

path away from this area and ensuring that the path does not allow access to this area.

3. Access to the site, via the 3 points will need to be managed to prevent unauthorised access to the tip site, there is a history of quad and motocross bikes on the site. We appreciate that this is difficult, balancing access for horses via the bridle path, whilst preventing bikes etc. access, but a solution needs to be found. In addition any path without fencing would allow unbridled access to the whole of the site, rather than access being constrained to the pathway which would be preferable. The consultation responses from highways, note only one access point, when there appear to be 3. Each access point creates a potential for unauthorised access which must be managed.
4. Security, since Harworth have taken over management of the site, the security company K9 have monitored the site which we believe has reduced the antisocial behaviour, we would welcome a similar system continuing indefinitely.
5. We welcome the potential for collaboration with Yorkshire Wildlife Trust, and hope that they may be willing to adopt appropriate areas of the tip site.
6. There will need to be some form of ongoing management of the site moving forward to ensure that the installed drainage system remains patent and functioning effectively and continued monitoring of the water bodies.
7. It is understood a Section 39 agreement will be put in place. Would this agreement incorporate the long term management of fences, access points and site security?
8. Pollution and monitoring, presumably the borehole monitoring would require a condition?
9. Perimeter fencing, despite a condition to this effect the perimeter fencing around the site has deteriorated and is none existent in places, this will need replacing and maintaining for the life of the tip site.
10. Future use of the site, discussions have taken place regarding possible future uses, it is understood that any future use, would require a full planning application.
11. It is understood that discussions between the owner of the neighbouring Northfield Lane Quarry continues with Harworth Estates to prevent flooding of the quarry.
12. Who will monitor the site and undertake the future management beyond May 2018?

4.5.4 On 2 December 2017 the Parish Council made additional comments welcoming the future involvement of the Yorkshire Wildlife Trust. The Parish Council have stated that they would welcome further information on the future management of the site, the subsequent financial implications and the potential for future use. The Parish Council state that *"it would be wonderful to see the site restored as an area of nature conservation"* and ask that the principles outlined by YWT are adopted as part of the future plans for the site and as part of this planning application.

- 4.6 **Cridling Stubbs Parish Council**- responded on 1 July 2016 with no objection to the planned restoration and wished to see it completed as quickly as possible. The Parish Council were pleased to note that the number of lorry journeys per day will be reduced and that the lorries will not operate during the winter months. The Parish Council highlighted that there were problems with the previous operator and that the surface of the road became dangerous as a result of the road-washing. The Parish Council stated that the road must remain safe and would hope that this matter will be kept under review. The Parish Council requested conditions to cover the following:-
- lorries should be washed before proceeding onto the highway to remove any excess dirt and coal dust –the proposal is to hand-wash the lorries rather than simply drive them through a wheel wash
 - the wagons should be covered to reduce the dust polluting the atmosphere

- if there is a need to wash the highway it should be done in such a way as not to saturate the road surface and allow excess water containing coal dust to be washed into the roadside ditches.
- 4.6.1 Cridling Stubbs Parish Council has not responded to the reconsultation on the amended information.
- 4.7 **Stapleton (Selby) Parish Council**- has not responded to consultation or the reconsultation on the amended information.
- 4.8 **Network Rail - Minerals & Waste Apps**- responded on 21 July 2016 and had no comments to make but noted that the route of HGVs goes over two crossings, Sudforth Lane (WAG1 61/08) and Cridling Stubbs (KWS 60/45). Network Rail stated that the lorries should be covered when full of spoil and that a water run-off ditch within the site should catch the run off from the vehicle washing to prevent run off to the crossing track bed.
- 4.9 **NYCC Heritage - Principal Landscape Architect (PLA)**- responded on 2 August 2016 following a meeting with the Applicant on 25 July 2016. The PLA confirmed no objections in principle to an extension of time to allow for restoration and had no objections to the new landform proposed. The PLA requested more information on the nature and quantities of the imported recycled soil/compost materials and lime. The PLA also recommended that consideration be given to the control of surface water through increasing the number and length of contour drains or other methods to reduce erosion before the vegetation cover has been fully established.
- 4.9.1 The PLA also stated a concern that the proposals for re-vegetation would conflict with the key nature conservation objective of establishing calcareous grassland based on using nutrient poor limestone fines already on site. This would conflict with the key landscape aim of restoring local landscape character as the site is located within the Magnesian Limestone ridge and adjoins former limestone quarries.
- 4.9.2 The PLA acknowledged the need to establish a vegetation cover as quickly as possible including the use of soil ameliorants and/or nurse species to promote faster growth. The PLA advised that a short term compromise may be necessary to speed up stabilisation but the long term objectives should still be achievable through an integrated programme of establishment, aftercare maintenance and appropriate management.
- 4.9.3 The PLA requested further details of the future land uses and management and observed that arable use of the restored tip would not be appropriate, and currently this is underlined by the need to ensure long term stabilisation of the surface. The PLA notes that 41 hectares of mixed woodland and scrub are now proposed, an increase over the approved scheme, and would have no objections to also varying the layout if there were benefits e.g. increasing the amount of woodland on steeper slopes particularly those facing the Blue Lagoon to provide increased stability and reduction in the rate of runoff.
- 4.9.4 On 24 August 2017 in response to reconsultation on the amended information, the Principal Landscape Architect confirmed that as the tipping is at a very advanced stage and can be completed by May 2018 it is recommended that this aspect of the application is approved.

- 4.9.5 The PLA acknowledges the urgency of creating a vegetation cover to avoid acceleration of the erosion and gully over the winter which has previously occurred and so to reduce silting of drains and potential wider pollution. The PLA accepts that the application is now largely retrospective with changes to landform, drainage, capping of colliery spoil, soil forming materials and seeding already taken place on a large scale and continuing.
- 4.9.6 The PLA states that the proposed reduction in maximum height compared with the previously permitted height is acceptable in principle, but there is a more noticeable break of slope between the existing steep east slopes and the gentler slopes above which is less satisfactory.
- 4.9.7 The PLA also confirmed that the proposed additional drainage scheme and new water bodies are clearly necessary and are welcomed.
- 4.9.8 The PLA acknowledges that the majority of the work has now taken place so the best approach would be to identify, protect and enhance those areas of existing species rich habitat or with potential for improvement under the right management, and make the most of those. They would include the southern part of the site, the area of spread topsoil within Northfield Quarry and the smaller quarry to the north, areas of earlier restored grassland and the peripheries of the site.
- 4.9.9 The PLA observes that although dealing with finalising landfill, dealing with drainage problems and stabilising bare ground have been priorities, attention also needs to be given to amenity since the site lies within a Locally Important Landscape Area in the Selby Local Plan. The PLA states that conditions should be included to cover detailed landscape proposals needed in future together with details of aftercare and managing access.
- 4.9.10 The PLA states that proposed permissive footpath within the site is acceptable but it seems likely that in practice many users would follow a route along the top of the ridge. The PLA states that the Section 39 agreement needs to be revised and no future land use has been identified and it appears that the use of municipal green waste now precludes grazing.
- 4.10 **NYCC Heritage - Ecology**- responded on 3 August 2016 following a meeting with the Applicant on 25 July 2016. The County Ecologist noted that the proposal is due to be revised and resubmitted for consideration prior to determination and endorsed the comments made by the Principal Landscape Architect.
- 4.10.1 The County Ecologist stated concerns relating to biodiversity as the Applicant's approach appears to be moving away from nature conservation objectives and would necessitate a revision of the existing Section 39 Agreement. The County Ecologist confirmed that more detailed comments would be provided once the revised details are submitted.
- 4.10.2 On 11 September 2017, in response to reconsultation on the amended information, the County Ecologist highlighted the long-standing agreement (Section 39 agreement) that the quarry would be restored to a mixture of woodland and limestone grassland, with higher ground safeguarded for potential agricultural use in future. Limestone fines stockpiled from the original quarrying operation were to be used in the creation of new species-rich grassland. The County Ecologist acknowledges that due to ongoing problems with ground-water contamination from colliery spoil leachate, it is proposed to revise this approach and restoration to species-rich grassland or grassland with potential for more productive agricultural use are no longer objectives.

- 4.10.3 The County Ecologist understands that the Applicant proposes capping the site with a suitable growing medium to achieve rapid vegetation cover, thereby reducing infiltration of the colliery spoil by rainwater. Combined with construction of a clay-lined surface-water drainage system (now in place), this is expected to minimize contamination of the neighbouring Blue Lagoon diving lake. The majority of the site will be restored to species-poor amenity grassland with irregular belts of broadleaved woodland and scrub.
- 4.10.4 The County Ecologist notes that the revised scheme represents a loss of opportunity for nature conservation. In this context, the County Ecologist emphasises that it is important to ensure that remaining ecological assets are protected and restored.
- 4.10.5 The County Ecologist notes that the new amenity grassland is likely to have limited value for biodiversity, at least in the near-future. However, this may change over time and management should be subject to periodic review such as the annual aftercare meetings. In addition the woodland scrub proposals are acceptable subject to minor changes to the tree and grass seed mix (removal of Ash).
- 4.10.6 The County Ecologist also suggested the submission of up-to-date information on the status of Protected Species on the site and the requirement for a Biodiversity Enhancement and Management Plan (secured via a legal agreement) setting out how relevant areas will be conserved, restored or re-created. The County Ecologist has identified four existing or potential nature conservation assets which represent approximately 12 hectares, some of which could be restored to magnesian limestone grassland or a mosaic of grassland and scrub.
- 4.10.7 The County Ecologist also highlights that the existing biodiversity assets should not be damaged by encroached upon by current operations as securing favourable long-term management of these areas will depend on maintaining viable and accessible areas of habitat.
- 4.11 **NYCC Heritage – Archaeology-** responded on 15 June 2016 and confirmed that the proposed development has no known archaeological constraint.
- 4.11.1 On 15 August 2017 in response to reconsultation on the amended information, the County Archaeologist confirmed no objection to the proposal and has no further comments make.
- 4.12 **Coal Authority-** responded on 14 June 2016 and observe that whilst the application site falls within the defined coalfield, it is located outside of the defined Development High Risk Area. The Coal Authority confirmed that there is no requirement for the Applicant to submit a Coal Mining Risk Assessment, or equivalent, in support of this application and the Authority has no objection to this proposal. The Coal Authority requested that an ‘unrecorded coal mining related hazards’ informative is included on any permission granted.
- 4.12.1 On 18 August 2017 in response to reconsultation on the amended information, the Coal Authority repeated their previous request for the inclusion of their Standing Advice on the decision notice.
- 4.13 **Highway Authority-** responded on 14 June 2016 and requested confirmation that appropriate visibility splays were currently provided which was subsequently confirmed by the Applicant.

- 4.13.1 On 18 August 2016 the LHA provided a further response which requested the inclusion of conditions to cover a restriction on access to only via the existing access at Stubbs Lane which shall be reconstructed with a drainage system installed, maintenance of visibility splays, highway improvement works to verges, road markings and signage, installation of wheel wash facilities, a highway condition survey and an agreement on the route of HGV traffic.
- 4.13.2 On 15 August 2017, in response to reconsultation on the amended information, the LHA repeated the conditions previously requested and state that *“the agreed vehicle route has become somewhat damaged by use of the existing operation and the LHA would seek a contribution to improving the condition of the existing route towards the A1. The 90 degree bend on the Stubbs Lane west of the quarry access shows signs heavy use. The kerb line and carriageway edge has been damaged by over running vehicles and will need repair to allow the operation to continue”*.
- 4.13.3 On 17 October 2017 the LHA were informed that, in light of the stage of the development, only the conditions that are relevant and necessary to the remaining works up to the end of May 2018 will apply such as the standard conditions on use of the existing access only and wheel cleaning for the remaining vehicles movements. No further comments have been received.
- 4.14 **NYCC Public Rights of Way Team-** responded on 8 August 2017 and comment that an informative is included advising that existing Public Right(s) of Way on the site must be protected and kept clear of any obstruction until such time as any alternative route has been provided and confirmed under an Order made under the Town and Country Planning Act 1990.
- 4.15 **Yorkshire Water Services Ltd-** responded on 21 June 2016 and commented that a large diameter strategic water mains crosses through the application site boundary. YW requested that no obstruction encroaches within 6 metres on either side of the mains i.e. protected strip widths of 12 metres. YW state that from the details shown on the 'Proposed Restoration Plan' compared to the 'Approved Restoration Plan', it appears the water mains are unlikely to be affected by levels, however, to be certain, YW request the line of the water mains is shown on the proposed restoration plan drawing, with requested stand-off distance shown at each side of the pipes. Additionally, there should be no new tree planting within the stand-off.
- 4.15.1 On 23 August 2017 in response to reconsultation on the amended information, YW highlighted that in their original response they requested that the water supply infrastructure located towards the south of the site was shown on the revised restoration plan.
- 4.16 **Yorkshire Wildlife Trust-** responded to consultation on 9 November 2017 and confirmed that they had met with representatives of Harworth Estates at Womersley Quarry and discussed restoration and the potential recreational uses of the quarry. The YWT made the following comments:-
- “The Trust understands that the first stage of the restoration is necessary in order to stabilise the slopes of the spoil piles as rapidly as possible to reduce sediment runoff. The Trust supports the comments by Martin Hammond (NYCC Ecologist) of NYCC on the restoration.*
- The Trust is supportive of the suggested approach for the initial restoration. However there are some issues which have not been resolved, some of which are very important. Some brief comments follow:*

- *There may be potential for increasing the value of the amenity grassland to give a more diverse sward. Even if the area cannot be restored to magnesian limestone grassland as originally planned, grassland made up of more than a few species of common grasses would be more valuable for biodiversity than what is proposed.*
- *There may also be potential for improving the value of the new ponds for biodiversity.*
- *Due to the way in which the quarry has been infilled and is to be restored, species rich grassland will not be created. This means that there will be a major loss of potential biodiversity on a very large portion of the site. It is therefore vital that the remaining areas of high quality grassland are maintained and managed correctly into the future. The Trust did not see sufficient detail in the present application to give confidence that this will be the case. At 1.1.12 in the Supplementary Environmental Information from July 2017 it is stated that: 'The Applicant is currently reviewing long term management of the site and any after use opportunities for the site which may have implications on the restoration of the site. However, these would be subject to a separate grant of Planning permission and are not considered further in this submission.'*
The Trust would like to see more detail of how management of the areas of high quality grassland will be carried out and funded. This will need to be secured either within this planning application, if further information is provided, or within a separate application. The Trust does not want the issue of long term management of the high quality areas of habitat to be delayed as this could lead to scrubbing over of grassland and the loss of species richness.
- *Womersley quarry does have potential in the long term to provide a resource for involving people in nature conservation, environmental education, and outdoor exercise using the lower grade habitat areas as well as the biodiverse grassland. The Trust's Potteric Carr reserve for example <http://www.ywt.org.uk/potteric-carr> provides a wide range of activities for all ages, although there are constraints due to the high environmental value of the SSSI. Womersley quarry with adequate planning and funding could be a remarkable resource for the surrounding community and also support wildlife and biodiversity.*

The Trust would consider being involved in management of the site although this would need to be financially viable and after a suitable restoration was in place. The Trust would want to be involved in the detail of the final restoration as issues such as access for machinery or grazing animals, and public use of the site would all need to be resolved at an early date".

4.17 **National Grid-** has not responded to consultation.

Notifications

4.18 **County Cllr. John McCartney-** has been notified of the application by letter.

5.0 Advertisement and representations

5.1 This application has been advertised by means of six Site Notices posted on 24 May 2016 (responses to which expired on 14 June 2016). The Site Notices were posted in the following locations: the main entrance; adjacent to the Blue Lagoon, the Colliery entrance, Womersley, Cridling Stubbs and Stapleton. A Press Notice appeared in the Selby Times/Post on 2 June 2016 (responses to which expired on 16 June 2016).

5.2 A total of 119 neighbour notification letters were sent in June 2016. The neighbour notification letters were sent to properties on the following roads/streets in Womersley, Cridling Stubbs and Stapleton: Northfield Close, Northfield Lane, Cobcroft Lane, Croft Lea, Hanover Green, Wrights Lane and Banks Wood Road.

- 5.3 A total of three representations (locations shown on plan attached at Appendix F) were received in June 2016 in response to the original proposal which, whilst being supportive of the principle of site restoration, raised objections on the grounds of:-
- Further years of disruption and a further 400,000 tonnes of waste
 - Noise, dust and hazards that the tipping
 - Dangerous roads
 - Loss of the varied flora and fauna
 - Flooding of adjacent lower land from rainwater run-off and inadequate drainage
 - Contamination and pollution from the material being deposited and the leach through the ground, contaminating the strata beneath and potentially also the aquifer
 - Inadequate boundary fence and relocation of footpath adjacent to neighbouring land could allow public to access private land
 - A stringent water management strategy is needed to prevent further pollution to the Blue Lagoon
 - Planning conditions should back up the Environment Permit requirements
 - the capture and treatment of water should be via lined lagoons and discharged at the South-Eastern end of the site in the original 'settlement and sedimentation' pond with all areas prior to this discharge point being adequately constructed and lined to prevent any leakage, and associated groundwater contamination.
 - Due to the size of the site and the inclusion of all the additional toe drains that surround the site into one water body it should be ensured that this body can cope with the heavy rainfall events. If the final settlement pond floods the lagoons further back up the chain there is considerable risk of groundwater contamination, resulting in further pollution and discolouration of the Blue Lagoon, even during a single flooding event.
 - The restoration plan of the site should include the clean-up and restoration of the Blue Lagoon back to its water quality prior to tipping. This should include removing the sediment that has accrued over the previous years of tipping and its own water management plan to deal with the contaminants that have already been deposited in the water body as a receptor to the tip site. The plan should also include ongoing water management issues such as further water treatment, flooding from the tip site and responsibilities for remedial works well into the future.
- 5.4 In accordance with Regulation 22 of the Town and County Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regs. 2011) following the receipt of further environmental information relating to the Environmental Statement (revised restoration scheme dated July 2017) the County Planning Authority re-publicised the application by way of six Site Notices posted on 10 August 2017 (responses to which expired on 31 August 2017) and a Press Notice which appeared in the Selby Times/Post on 10 August 2017 (responses to which expired on 31 August 2017). In addition the members of the public previously notified and also those who made representations to the Authority on the application were notified of the further environmental information.
- 5.5 A total of three representations were received in response to reconsultation in the further environmental information. The representations were from the owners/occupants of the former Northfield Quarry (objection), the Blue Lagoon Diving Centre/Spring Lodge Lake (objection) and Innisfree (observations). The following is a summary of the responses received:-
- It is noted that a mid-level drain has been installed adjacent to the southern boundary of the former Northfield Quarry but there are no proposals to install a toe drain or other method of preventing water ingress and flooding from below the new mid-level drain or to prevent any water which may overtop the new mid-level drain;

- no steps have been taken to clean up the Blue Lagoon from the last spoil tipping;
- there has been no reduction in the pollution levels either within the Blue Lagoon or from the borehole readings between the sites;
- The waters in the Blue Lagoon are still too toxic to support aquatic life and visibility has been reduced from around 14 metres to approximately 30 cm;
- There has been job losses and financial loss to the Blue Lagoon diving business;
- There should be penalties if pollution levels not rectified and a bond to ensure they are completed satisfactorily;
- There has been some odour from the soil making materials but it is understood that it is necessary for quick re-vegetation of the site;
- partnerships with Yorkshire Wildlife and other conservation bodies may be beneficial to the long term management of the site;
- pollution of the groundwater (and therefore the Blue Lagoon) has been an ongoing issue, which is understood may be improving slowly (bore hole monitoring data) but long term measures should be put in place to ensure that this improvement continues that the drainage system is maintained and that there is no further deterioration in the groundwater quality; and
- perimeter fencing should be considered and the new path could be bordered by a hedge or fence.

6.0 Planning policy and guidance

National Planning Policy

- 6.1 The policy relevant to the determination of this particular planning application provided at the national level is contained within the National Planning Policy Framework (NPPF) (published March 2012) and also the National Planning Policy for Waste (published October 2014).

National Planning Policy Framework (NPPF)

- 6.2 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied.
- 6.3 The overriding theme of Government policy in the NPPF is to apply a presumption in favour of sustainable development. For decision-making this means approving development proposals that accord with the development plan without delay (if plans are up-to-date and consistent with the NPPF). The Government has set down its intention with respect to sustainable development stating its approach as *"making the necessary decisions now to realise our vision of stimulating economic growth and tackling the deficit, maximising wellbeing and protecting our environment, without negatively impacting on the ability of future generations to do the same"*. The Government defines sustainable development as that which fulfils the following three roles:
- An economic role – development should contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation;
 - A social role – development supporting strong, vibrant and healthy communities; and,
 - An environmental role – development that contributes to protecting and enhancing the natural, built and historic environment and as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution and mitigate and adapt to climate change including moving to a low carbon economy.

- 6.4 The NPPF advises that when making decisions, development proposals should be approved that accord with the Development Plan and when the Development Plan is absent, silent or relevant policies are out of date, permission should be granted unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this framework indicate development should be restricted.
- 6.5 This national policy seeks to ensure that there are positive improvements in people's quality of life including improving the conditions in which people live, work, travel and take leisure.
- 6.6 Paragraph 17 of the NPPF states that core land-use planning principles should underpin both plan-making and decision taking. The 12 principles listed in the NPPF state that land-use planning should:
- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
 - not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
 - proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating
 - sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;
 - always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
 - take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
 - support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy);
 - contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
 - encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
 - promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);
 - conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;

- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
 - take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.
- 6.7 Paragraph 32 within Section 4 (Promoting sustainable transport) of the NPPF states that plans and decisions should take account of whether opportunities for sustainable transport modes have been taken up depending on the nature and location of the site; safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network that cost effectively limits the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 6.8 Paragraph 58 within Section 7 (Requiring good design) of the NPPF identifies 6 objectives that planning policies and decisions should aim to ensure that new developments:
- *“function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
 - *establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;*
 - *optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks;*
 - *respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;*
 - *create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and*
 - *are visually attractive as a result of good architecture and appropriate landscaping.”*
- 6.9 Section 9 of the NPPF sets out the planning guidance aimed at protecting Green Belt Land. The fundamental aim of the Green Belt Policy is to prevent urban sprawl by keeping land permanently open and its openness and permanence which are the essential characteristics of the Green Belt (Paragraph 79 NPPF).
- 6.10 Paragraph 80 of the NPPF defines the five purposes of Green Belt which are:
- to check the unrestricted sprawl of large built up areas;
 - to prevent neighbouring towns merging into one another;
 - to assist in safeguarding the countryside from encroachment;
 - to preserve the setting and special character of historic towns; and,
 - to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 6.11 Paragraph 87 states “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. “Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations” (Paragraph 88). Substantial weight is therefore to be given to the Green Belt. Paragraph 90 of the NPPF (2012) states that *“Certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are:*

- *Mineral extraction;*
 - *Engineering operations;*
 - *Local transport infrastructure which can demonstrate a requirement for a Green Belt location;*
 - *The re-use of buildings provided that the buildings are of a permanent and substantial construction; and*
 - *Development brought forward under a Community Right to Build Order”.*
- 6.12 Within Section 11 of the NPPF it is clear that the effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account.
- 6.13 Paragraph 103 of the NPPF states that when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where.
- 6.14 Paragraph 109 within Section 11 (Conserving and enhancing the natural environment) of the NPPF states that the planning system should contribute to and enhance the natural and local environment by:
- protecting and enhancing valued landscapes, geological conservation interests and soils;
 - recognising the wider benefits of ecosystem services;
 - minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
 - preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
 - remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.
- 6.15 Paragraph 118 within Section 11 (Conserving and enhancing the natural environment) of the NPPF sets out a number of principles for determining planning applications which aims to conserve and enhance biodiversity. Paragraph 118 states: *“When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles (inter alia): if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”.*
- 6.16 Paragraph 120 within Section 11 (Conserving and enhancing the natural environment) of the NPPF states that *“To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner”.*

- 6.17 Paragraph 121 states that *“Planning policies and decisions should also ensure that:*
- *the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;*
 - *after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
 - *adequate site investigation information, prepared by a competent person, is presented”.*
- 6.18 Paragraph 122 states that *“In doing so, local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities”.*
- 6.19 Paragraph 123 within Section 11 (Conserving and enhancing the natural environment) of the NPPF states that *“Planning policies and decisions should aim to:*
- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
 - *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
 - *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and*
 - *identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason”.*
- 6.20 Section 13 of the NPPF is titled ‘Facilitating the Sustainable Use of Minerals’. Within Section 13 it states at paragraph 144 that *“When determining planning applications, local planning authorities should (inter alia): provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards”.* Paragraph 147 within Section 13 states that *“Minerals planning authorities should also (inter alia) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable”.*

National Planning Policy for Waste (published October 2014)

- 6.21 The National Planning Policy for Waste (NPPW) replaced ‘Planning Policy Statement 10: Planning for Sustainable Waste Management’ (PPS 10) published in 2006.
- 6.22 Paragraph 1 of the NPPW states that the Government’s ambition is to *“work towards a more sustainable and efficient approach to resource use and management”.* The NPPW sets out the *“pivotal role”* that planning plays in delivering the country’s waste ambitions with those of relevance to this application being as follows:
- *“delivery of sustainable development and resource efficiency, including provision of modern infrastructure, local employment opportunities and wider climate change benefits, by driving waste management up the waste hierarchy (see Appendix A of NPPW);*

- *ensuring that waste management is considered alongside other spatial planning concerns, such as housing and transport, recognising the positive contribution that waste management can make to the development of sustainable communities;*
 - *providing a framework in which communities and businesses are engaged with and take more responsibility for their own waste, including by enabling waste to be disposed of or, in the case of mixed municipal waste from households, recovered, in line with the proximity principle;*
 - *helping to secure the re-use, recovery or disposal of waste without endangering human health and without harming the environment; and*
 - *ensuring the design and layout of new residential and commercial development and other infrastructure (such as safe and reliable transport links) complements sustainable waste management, including the provision of appropriate storage and segregation facilities to facilitate high quality collections of waste”.*
- 6.23 Paragraphs 2 to 6 of the NPPW relate to the preparation of Local Plans in respect of the evidence base, identification of need in Local Plan making, identifying suitable sites and Green Belt protection and are not directly relevant to the determination of this planning application.
- 6.24 In relation to the determination of planning applications, Paragraph 7 of the NPPW states that Waste Planning Authorities should:
- *“only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In such cases, waste planning authorities should consider the extent to which the capacity of existing operational facilities would satisfy any identified need;*
 - *recognise that proposals for waste management facilities such as incinerators that cut across up-to-date Local Plans reflecting the vision and aspiration of local communities can give rise to justifiable frustration, and expect applicants to demonstrate that waste disposal facilities not in line with the Local Plan, will not undermine the objectives of the Local Plan through prejudicing movement up the waste hierarchy;*
 - *consider the likely impact on the local environment and on amenity against the criteria set out in Appendix B and the locational implications of any advice on health from the relevant health bodies. Waste planning authorities should avoid carrying out their own detailed assessment of epidemiological and other health studies;*
 - *ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located;*
 - *concern themselves with implementing the planning strategy in the Local Plan and not with the control of processes which are a matter for the pollution control authorities. Waste planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced;*
 - *ensure that land raising or landfill sites are restored to beneficial after uses at the earliest opportunity and to high environmental standards through the application of appropriate conditions where necessary”.*
- 6.25 The criteria set out in the first two bullet points are not material to the determination of this application, as the Local Plan (2006) pre-dates current national policy (2014). Paragraphs 8 and 9 of the NPPW relate to planning applications for non-waste development and the monitoring and reporting of waste and are not directly relevant to the determination of this application.
- 6.26 Appendix A of the NPPW comprises a diagram of the ‘Waste Hierarchy’ which is unchanged from that included in PPS10.

6.27 Appendix B of the NPPW sets out the 'Locational Criteria' to be assessed by Local Planning Authorities in determining applications for waste management facilities, as follows:-

- a. *“protection of water quality and resources and flood risk management;*
- b. *land instability;*
- c. *landscape and visual impacts;*
- d. *nature conservation;*
- e. *conserving the historic environment;*
- f. *traffic and access;*
- g. *air emissions, including dust;*
- h. *odours;*
- i. *vermin and birds;*
- j. *noise, light and vibration;*
- k. *litter; and,*
- l. *potential land use conflict”.*

6.28 It is considered that criteria a, b, c, d, e, f, g, h, j and l are relevant to the determination of this application and these are set out in full below:

- a. *protection of water quality and resources and flood risk management*
Considerations will include the proximity of vulnerable surface and groundwater or aquifers. For landfill or land-raising, geological conditions and the behaviour of surface water and groundwater should be assessed both for the site under consideration and the surrounding area. The suitability of locations subject to flooding, with consequent issues relating to the management of potential risk posed to water quality from waste contamination, will also need particular care.
- b. *land instability*
Locations, and/or the environs of locations, that are liable to be affected by land instability, will not normally be suitable for waste management facilities.
- c. *landscape and visual impacts*
Considerations will include (i) the potential for design-led solutions to produce acceptable development which respects landscape character; (ii) the need to protect landscapes or designated areas of national importance (National Parks, the Broads, Areas of Outstanding Natural Beauty and Heritage Coasts) (iii) localised height restrictions.
- d. *nature conservation*
Considerations will include any adverse effect on a site of international importance for nature conservation (Special Protection Areas, Special Areas of Conservation and RAMSAR Sites), a site with a nationally recognised designation (Sites of Special Scientific Interest, National Nature Reserves), Nature Improvement Areas and ecological networks and protected species.
- e. *conserving the historic environment*
Considerations will include the potential effects on the significance of heritage assets, whether designated or not, including any contribution made by their setting.
- f. *traffic and access*
Considerations will include the suitability of the road network and the extent to which access would require reliance on local roads, the rail network and transport links to ports.

- g. *air emissions, including dust*
Considerations will include the proximity of sensitive receptors, including ecological as well as human receptors, and the extent to which adverse emissions can be controlled through the use of appropriate and well-maintained and managed equipment and vehicles.
- h. *odours*
Considerations will include the proximity of sensitive receptors and the extent to which adverse odours can be controlled through the use of appropriate and well-maintained and managed equipment.
- j. *noise, light and vibration*
Considerations will include the proximity of sensitive receptors. The operation of large waste management facilities in particular can produce noise affecting both the inside and outside of buildings, including noise and vibration from goods vehicle traffic movements to and from a site. Intermittent and sustained operating noise may be a problem if not properly managed particularly if night-time working is involved. Potential light pollution aspects will also need to be considered.
- l. *potential land use conflict*
Likely proposed development in the vicinity of the location under consideration should be taken into account in considering site suitability and the envisaged waste management facility”.

6.29 It should be noted that the National Planning Policy for Waste does not contain any guidance on dealing with unallocated sites.

National Planning Practice Guidance (NPPG) (2014)

6.30 On 6 March 2014 the Department for Communities and Local Government (DCLG) launched the National Planning Practice Guidance (NPPG) web-based resource. This was accompanied by a Written Ministerial Statement which includes a list of the previous planning practice guidance documents cancelled. The NPPG supports the national policy contained within the NPPF. The guidance relevant to the determination of this application is contained within the following sections of NPPG and detailed in the subsequent paragraphs of this report: -

- Air Quality
- Design
- Flood Risk and Coastal Change
- Health and Wellbeing
- Natural Environment
- Noise
- Waste

Air Quality

6.31 In terms of possible mitigation for an impact on air quality, the NPPG states that mitigation options will be “*locationally specific*” and “*proportionate to the likely impact*”, and that these can be secured through appropriate planning conditions or obligations.

Design

6.32 The guidance states “*Good design responds in a practical and creative way to both the function and identity of a place. It puts land, water, drainage, energy, community, economic, infrastructure and other such resources to the best possible use – over the long as well as the short term*”.

- 6.33 When determining applications, the NPPG advises that *“Local planning authorities will assess the design quality of planning proposals against their Local Plan policies, national policies, and other material considerations”*. Where buildings *“promote high levels of sustainability”*, the NPPG advises that planning permission should not be refused on the basis of concerns about whether the development is incompatible with an existing townscape, if good design can mitigate the concerns.
- 6.34 In general, the NPPG states that *“Development should seek to promote character in townscape and landscape by responding to and reinforcing locally distinct patterns of development...while not preventing or discouraging appropriate innovation”*.
- 6.35 In relation to landscape impacts, the NPPG advises that development can be integrated into the wider area through the use of natural features and high quality landscaping. In addition, the NPPG promotes the creation of green spaces and notes that high quality landscaping *“makes an important contribution to the quality of an area”*.

Flood Risk and Coastal Change

- 6.36 The guidance states *“Developers and applicants need to consider flood risk to and from the development site, and it is likely to be in their own best interests to do this as early as possible, in particular, to reduce the risk of subsequent, significant additional costs being incurred. The broad approach of assessing, avoiding, managing and mitigating flood risk should be followed”*.

Health and Wellbeing

- 6.37 The NPPG advises that health and wellbeing should be taken into consideration by Local Planning Authorities in their decision making, including *“potential pollution and other environmental hazards, which might lead to an adverse impact on human health”*.

Natural Environment

- 6.38 This section explains key issues in implementing policy to protect biodiversity, including local requirements. It reiterates that *“the National Planning Policy Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature, and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment and reducing pollution”*.

Noise

- 6.39 This section advises on how planning can manage potential noise impacts in new development. In terms of decision taking on planning applications its states that Authorities should take account of the acoustic environment and in doing so consider whether or not a significant adverse effect is occurring or likely to occur; whether or not an adverse effect is occurring or likely to occur; and whether or not a good standard of amenity can be achieved. It also states that *“neither the Noise Policy Statement for England nor the National Planning Policy Framework (which reflects the Noise Policy Statement) expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development”*.

Waste

- 6.40 With regard to the Waste Hierarchy the guidance states that *“driving waste up the Waste Hierarchy is an integral part of the National Waste Management Plan for England and national planning policy for waste”* and *“all local planning authorities, to the extent appropriate to their responsibilities, should look to drive waste management up the hierarchy”*.

- 6.41 The guidance states, in respect of the use of unallocated sites for waste management facilities, that applicants should be able to demonstrate that the envisaged facility will not undermine the waste planning strategy through prejudicing movement up the Waste Hierarchy. If the proposal is consistent with an up to date Local Plan, there is no need to demonstrate 'need'.
- 6.42 With regard to expansion/extension of existing waste facilities the guidance states that "the waste planning authority should not assume that because a particular area has hosted, or hosts, waste disposal facilities, that it is appropriate to add to these or extend their life. It is important to consider the cumulative effect of previous waste disposal facilities on a community's wellbeing. Impacts on environmental quality, social cohesion and inclusion and economic potential may all be relevant".
- 6.43 The guidance includes advice on the relationship between planning and other regulatory regimes. On this matter it states "The planning system controls the development and use of land in the public interest. This includes consideration of the impacts on the local environment and amenity taking into account the criteria set out in Appendix B to National Planning Policy for Waste. There exist a number of issues which are covered by other regulatory regimes and waste planning authorities should assume that these regimes will operate effectively. The focus of the planning system should be on whether the development itself is an acceptable use of the land and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under other regimes".
- 6.44 The guidance states that "the role of the environmental permit, regulated by the Environment Agency, is to provide the required level of protection for the environment from the operation of a waste facility. The permit will aim to prevent pollution through the use of measures to prohibit or limit the release of substances to the environment to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health".

The Development Plan

- 6.45 Whilst the NPPF is a significant material consideration, under Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning authorities continue to be required to determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise. The Development Plan for the determination of this particular application comprises the following:
- The extant 'saved' policies of the North Yorkshire Minerals Local Plan (adopted 1997);
 - The extant 'saved' policies of the North Yorkshire Waste Local Plan (adopted 2006);
 - The extant policies of the Selby District Core Strategy Local Plan (2013); and
 - The 'saved' policies of the Selby District Local Plan (2005).
- 6.46 Emerging local policies may also be afforded weight in the determination process, depending on their progress through consultation and adoption. In this respect, it is worth noting that the following document contains emerging local policies that may be of relevance to this application:
- Minerals and Waste Joint Plan (North Yorkshire County Planning Authority, the City of York Council and North York Moors National Park Authority) ; hereafter referred to as the MWJP.
- 6.47 The application site is neither proposed, nor included, as a preferred allocated or safeguarded site. The most relevant emerging policy is Policy M20: Deep coal and disposal of colliery spoil which states that "*Proposals to remediate and restore the Womersley Spoil Disposal Site will be permitted where they would be consistent with the development management policies in the Joint Plan*". The draft MWJP was

published in November 2016 for representations and public consultation on a schedule of proposed changes took place over the summer 2017 prior to the submission of the Minerals and Waste Joint Plan for Examination in Public (in November 2017). The MWJP was submitted to the Secretary of State for Communities and Local Government on 28 November 2017 for independent examination which is expected to take place in the New Year. At the current stage, it would not be appropriate to give any significant weight to this emerging document in respect of the development proposed in this planning application.

- 6.48 The NPPF states that for the purposes of decision-taking, the policies in the Local Plan should not be considered out of date because they were adopted prior to the publication of the NPPF. However, the policies contained within the NPPF are material considerations which local planning authorities should take into account from the day of its publication.
- 6.49 If, following the 12 month transitional period given to local planning authorities to ensure compliance of their Local Plans with the NPPF, a new or amended plan has not been adopted, due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (paragraph 215 of the NPPF). The closer the policies in the plan, to the policies in the NPPF, the greater the weight that may be given. In addition paragraph 216 of the NPPF states that *“From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:*
- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
 - *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
 - *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.*
- 6.50 The relevant policies within the NPPF have been set out above and within the next section the relevant ‘saved’ policies from the North Yorkshire Minerals Local Plan (adopted 1997), North Yorkshire Waste Local Plan (adopted 2006) and the Selby District Local Plan (adopted 2005) are outlined and the degree of consistency with the NPPF is considered. This exercise is not applicable to the policies contained within the ‘Selby District Core Strategy Local Plan’ (adopted 2013) as the Local Plan Strategy is a post-NPPF adoption and has been deemed to be in compliance with the general aims of the NPPF.
- North Yorkshire Minerals Local Plan (NYMLP) (adopted 1997)
- 6.51 The Planning and Compensation Act 1991 placed a duty on each County Council in England and Wales to prepare a Minerals Local Plan. The North Yorkshire Minerals Local Plan was adopted in 1997 under the 1991 Act. In the absence of an adopted MWJP and in accordance with the provisions of the Planning and Compulsory Purchase Act 2004 as of 27 September 2007 only the ‘saved’ policies continue to form part of the statutory ‘development plan’ and provide an important part of the current local policy framework for development control decisions for minerals related development.
- 6.52 The ‘saved’ policy relevant to the determination of this application is set out below:
- 6/4 – Colliery Spoil Disposal

'Saved' Policy 6/4 – Colliery Spoil Disposal

- 6.53 This Policy states:
"The Mineral Planning Authority will require proposals for the disposal of colliery spoil to:-
- i) utilise voids or, if not available, derelict or degraded land, wherever possible;*
 - ii) provide a detailed justification for proposals which, in exceptional circumstances, seek to utilise agricultural land;*
 - iii) demonstrate that waste arising from the development and requiring surface disposal is kept to a minimum;*
 - iv) be designed to comprise a compatible landscape feature, or features, upon restoration; and*
 - v) incorporate detailed measures to mitigate the impact of operations on local amenity and the environment.*

6.54 This 'saved' Policy is consistent with the NPPF and NPPW.

North Yorkshire Waste Local Plan (NYWLP) (adopted 2006)

6.55 In the absence of an adopted MWJP and in accordance with the provisions of the Planning and Compulsory Purchase Act 2004 as of 27 September 2007 only the 'saved' policies can now be considered as comprising of the Development Plan. The 'saved' policies relevant to the determination of this application are:

- 4/1 – Waste Management Proposals
- 4/3 – Landscape Protection
- 4/10- Locally Important Sites
- 4/18 – Traffic Impact
- 4/19 – Quality of Life
- 4/20 - Open Space, Recreation and Public Rights of Way
- 4/21- Progressive Restoration
- 4/22- Site Restoration
- 4/23- Aftercare

'Saved' Policy 4/1 – Waste Management Proposals

- 6.56 This Policy states:
Proposals for waste management facilities will be permitted provided that:
- a) the siting and scale of the development is appropriate to the location of the proposal;*
 - b) the proposed method and scheme of working would minimise the impact of the proposal;*
 - c) there would not be an unacceptable environmental impact;*
 - d) there would not be an unacceptable cumulative impact on the local area;*
 - e) the landscaping and screening has been designed to effectively mitigate the impact of the proposal in a way that is sympathetic to local landscape character;*
 - f) where appropriate, adequate provision is made for the restoration, aftercare and management of the site to an agreed afteruse;*
 - g) the proposed transport links are adequate to serve the development; and,*
 - h) other environmental and amenity safeguards would effectively mitigate the impact of the proposal;*
 - i) it can be demonstrated that the proposal represents the Best Practicable Environmental Option for dealing with the waste;*
 - j) the location is geographically well located to the source of the waste thereby according with the proximity principle.*

- 6.57 This 'saved' Policy of the NYWLP is directly relevant to the development currently under consideration. In accordance with paragraph 214 of the NPPF, an analysis of consistency shows the NPPF to be silent on matters raised in criteria a), b), i) and j). With regard to criterion f), Paragraph 144 of the NPPF states that when determining planning applications, local planning authorities should provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards, through the imposition of appropriate conditions, where necessary.
- 6.58 As the NPPF does not provide specific waste policies, the NPPW has also been reviewed in relation to the proposed development in terms of compliance with criteria a), i) and j). There is nothing specifically related to criteria b) and f) within the NPPW.
- 6.59 With regard to criterion a) this is consistent with the NPPW which sets out locational criteria for waste management facilities and states that the type and scale of the facility should be taken into account when deciding on appropriate locations.
- 6.60 In terms of criterion i), the Best Practicable Environmental Option (BPEO) is a set of procedures with the goal of managing waste and other environmental concerns. BPEO assessment is a method for identifying the option that provides "*the most environmental benefit*" of "*least environmental damage*". The technique is not reflected in NPPW or the NPPF, but the principles of putting forward the most sustainable option i.e. movement of waste up the waste hierarchy is set out in NPPW. Therefore, although criterion i) does not conflict with the provision of NPPW it should be given less weight for this reason. NPPW reflects the proximity principle set out in criterion j), therefore, this point should be given weight.
- 6.61 'Saved' Policy 4/1 g) is consistent with the provisions of the NPPF insofar as supporting the adequacy of transport links, however, there are differences in the objectives that criterion g) states that transport links should be adequate, whereas the NPPF states that improvements to the transport network should be considered. Therefore, the NPPF guidance should be given more weight in this instance because it goes a step further in supporting those developments comprising improvements to transport links.
- 6.62 In terms of criteria c), d) and h) of 'saved' Policy 4/1 the NPPF states that developments should contribute to and enhance the local environment, not give rise to unacceptable risks from pollution, and that cumulative effects should be taken into account. The wording in 'saved' Policy 4/1 states that there should not be unacceptable impacts and that safeguards should mitigate the impacts. Although there is a slight difference in emphasis the provisions of the policy are generally consistent with the NPPF and should be given weight.
- 6.63 Criterion e) of 'saved' Policy 4/1 requires that landscaping and screening should mitigate the impact of the development, being sympathetic to local landscape character. Therefore, it is considered that the policy is consistent with the relevant policies of the NPPF, but more emphasis should be given to protecting and enhancing valued landscapes. Greater weight should therefore be given to the NPPF in this instance because it goes a step further in protecting and enhancing valued landscapes.
- 'Saved' Policy 4/3 – Landscape protection
- 6.64 This 'saved' policy advises that waste management facilities will only be permitted "where there would not be an unacceptable effect on the character and uniqueness of the landscape. Wherever possible, proposals should result in an enhancement of local landscape character".

6.65 In its reasoned justification, 'saved' Policy 4/3 advises that in considering development proposals, the Authority will expect developers to respect and enhance the special character and distinctiveness of features which make specific landscapes locally important. Where waste management proposals are determined to be compatible with the local landscape by virtue of siting, scale and design, possibilities for the enhancement of the character of the local landscape should also be explored.

6.66 This specific 'saved' policy is considered to be relevant and full weight can be given to 'saved' Policy 4/3 as the NPPF makes clear that the effects of development on the landscape, including the potential sensitivity of an area to adverse landscape impacts, should be taken into account. The NPPF (paragraph 109) promotes the protection and enhancement of valued landscapes and Appendix B (Locational Criteria) of the NPPW encourages development to respect landscape character.

'Saved' Policy 4/10 Locally Important Sites

6.67 'Saved' Policy 4/10 Locally Important Sites, states that proposals for waste management facilities will only be permitted where there would not be an unacceptable effect on the intrinsic interest and, where appropriate educational value of Local Nature Reserves, Sites of Importance for Nature Conservation (SINC), UK Biodiversity Action Plan priority species or key habitats, other wildlife habitats and the habitat of any animal or plant species protected by law. The NPPF does not have specific guidance in relation to SINCs, however, it states that impacts on biodiversity should be minimised. The 'saved' Policy is, therefore, considered consistent.

'Saved' Policy 4/18 – Traffic impact

6.68 This 'saved' Policy addresses transport issues and advises that waste management facilities will only be permitted where the level of vehicle movements likely to be generated can be satisfactorily accommodated by the local highway and would not have an unacceptable impact on local communities.

6.69 'Saved' Policy 4/18 does not conflict with the aims and objectives of the NPPF, however, there are differences in that the NPPF states that improvements to the transport network should be considered, therefore, the NPPF guidance should be given more weight in this instance.

'Saved' Policy 4/19 – Quality of life

6.70 This 'saved' Policy seeks to ensure that waste management facilities will be permitted only where there would not be an unacceptable impact on the local environment and residential amenity.

6.71 It is considered that full weight can be given to 'saved' Policy 4/19 as the NPPF makes clear that the effects of pollution on the natural environment or general amenity, and the potential sensitivity of the area to adverse effects from pollution, should be taken into account.

'Saved' Policy 4/20- Open space, Recreation and Public Rights of Way

6.72 The Policy states that *"The development of waste management facilities will not be permitted where there would be an unacceptable impact on recreational amenity of the area, on open spaces with recreational value or on the enjoyment of the Public Rights or Way network. Proposals for waste management facilities which would interrupt, obstruct or conflict with use of a public right of way will only be permitted where satisfactory provision has been made, in the application, for protecting the existing right of way or for providing acceptable alternative arrangements both during and after working"*.

6.73 It is considered that full weight can be given to 'saved' Policy 4/20 as the NPPF makes clear that planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users.

'Saved' Policy 4/21- Progressive Restoration

6.74 'Saved' Policy 4/21 Progressive Restoration, states that planning applications for waste disposal should demonstrate that wherever possible and practicable, progressive restoration will be undertaken to a high standard to achieve a prescribed after-use or combination of after-uses.

'Saved' Policy 4/22- Site Restoration

6.75 'Saved' Policy 4/22 Site Restoration, states that proposals for waste disposal should demonstrate that the restoration proposals will restore and enhance, where appropriate, the character of the local environment.

'Saved' Policy 4/23- Aftercare

6.76 'Saved' Policy 4/23 Aftercare, states that planning permissions which are subject to conditions requiring restoration to agriculture, forestry or amenity uses will additionally be subject to an aftercare requirement seeking to bring the restored land up to an approved standard for the specified after-use.

Selby District Core Strategy (2013)

6.77 The Selby District Core Strategy is the long-term strategic vision for how the District will be shaped by setting out a number of broad policies to guide development. The policies relevant to the determination of this application are:

- SP1 - Presumption in Favour of Sustainable Development
- SP3 – Green Belt
- SP15 - Sustainable Development and Climate Change
- SP18 - Protecting and Enhancing the Environment
- SP19 - Design Quality

Policy SP1: Presumption in Favour of Sustainable Development

6.78 Policy SP1 of the Selby District Core Strategy states *'When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area. Planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise. Where there are no policies relevant to the application or relevant policies are out of date (as defined by the NPPF) at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking into account whether:*

- *Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or*
- *Specific policies in that Framework indicate that development should be restricted'.*

Policy SP3: Green Belt

6.79 Policy SP3 of the Selby District Core Strategy states *"In accordance with the NPPF, within the defined Green Belt, planning permission will not be granted for inappropriate development unless the applicant has demonstrated that very special circumstances exist to justify why permission should be granted"*.

Policy SP15: Sustainable Development and Climate Change

6.80 Policy SP15 of the Selby District Core Strategy relates to Sustainable Development and Climate Change and specifically Part B is of relevance to this application, and states (inter alia):

"B. Design and Layout of Development

In order to ensure development contributes toward reducing carbon emissions and are resilient to the effects of climate change, schemes should where necessary or appropriate:

- d) Protect, enhance and create habitats to both improve biodiversity resilience to climate change and utilise biodiversity to contribute to climate change mitigation and adaptation;*
- e) Include tree planting, and new woodlands and hedgerows in landscaping schemes to create habitats, reduce the 'urban heat island effect' and to offset carbon loss"*

Policy SP18: Protecting and Enhancing the Environment

6.81 Policy SP18 of the Selby District Core Strategy seeks to sustain the high quality and local distinctiveness of the natural and manmade environment. A number of points within Policy SP18 are of relevance to the proposed development, as follows:
"The high quality and local distinctiveness of the natural and man-made environment will be sustained by (inter alia):

- 1. Safeguarding and, where possible, enhancing the historic and natural environment including the landscape character and setting of areas of acknowledged importance...*
- 3. Promoting effective stewardship of the District's wildlife by:*
 - a) Safeguarding international, national and locally protected sites for nature conservation, including SINCS, from inappropriate development.*
 - b) Ensuring developments retain, protect and enhance features of biological and geological interest and provide appropriate management of these features and that unavoidable impacts are appropriately mitigated and compensated for, on or off-site*
 - c) Ensuring development seeks to produce a net gain in biodiversity by designing-in wildlife and retaining the natural interest of a site where appropriate...*
- 7. Ensuring that new development protects soil, air and water quality from all types of pollution".*

Policy SP19: Design Quality

6.82 *"Proposals for all new development will be expected to contribute to enhancing community cohesion by achieving high quality design and have regard to the local character, identity and context of its surroundings including historic townscapes, settlement patterns and the open countryside.*

Where appropriate schemes should take account of design codes and Neighbourhood Plans to inform good design. Both residential and non-residential development should meet the following key requirements:

- a) Make the best, most efficient use of land without compromising local distinctiveness, character and form.*
- b) Positively contribute to an area's identity and heritage in terms of scale, density and layout;*
- c) Be accessible to all users and easy to get to and move through;*
- d) Create rights of way or improve them to make them more attractive to users, and facilitate sustainable access modes, including public transport, cycling and walking which minimise conflicts;*
- e) Incorporate new and existing landscaping as an integral part of the design of schemes, including off-site landscaping for large sites and sites on the edge of settlements where appropriate;*

- f) *Promote access to open spaces and green infrastructure to support community gatherings and active lifestyles which contribute to the health and social well-being of the local community;*
- g) *Have public and private spaces that are clearly distinguished, safe and secure, attractive and which complement the built form;*
- h) *Minimise the risk of crime or fear of crime, particularly through active frontages and natural surveillance;*
- i) *Create mixed use places with variety and choice that compliment one another to encourage integrated living, and*
- j) *Adopt sustainable construction principles in accordance with Policies SP15 and SP16.*
- k) *Preventing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water, light or noise pollution or land instability.*
- l) *Development schemes should seek to reflect the principles of nationally recognised design benchmarks to ensure that the best quality of design is achieved”.*

‘Saved’ Policies of the Selby District Local Plan (2005)

6.83 Notwithstanding the adoption of the Selby District Core Strategy Local Plan in 2013, referred to above, some of the policies in the existing Selby District Local Plan (adopted in 2005 and saved in 2008 by Direction of the Secretary of State) remain extant. As these policies pre-date the adoption of the NPPF, weight can be afforded to them depending on their consistency with the NPPF. Those of relevance to this application and the weight that can be attached to them are discussed in turn below. The ‘saved’ policies considered relevant to the determination of this application are:

- ENV1- Control of Development
- ENV2 - Environmental pollution and Contaminated land
- ENV9- Sites of Importance for Nature Conservation
- ENV15- Conservation and Enhancement of Locally Important Landscape Areas
- ENV21- Landscaping Requirements
- T1- Development in Relation to the Highway network
- T8- Public Rights of Way

‘Saved’ Policy ENV1- Control of Development

- 6.84 This policy states that “...development will be permitted provided a good quality of development would be achieved” and sets out a number of points which the District Council will take account of in considering proposals for development:
- 1) *The effect upon the character of the area or the amenity of adjoining occupiers;*
 - 2) *The relationship of the proposal to the highway network, the proposed means of access, the need for road/junction improvements in the vicinity of the site, and the arrangements to be made for car parking;*
 - 3) *The capacity of local services and infrastructure to serve the proposal, or the arrangements to be made for upgrading, or providing services and infrastructure;*
 - 4) *The standard of layout, design and materials in relation to the site and its surroundings and associated landscaping;*
 - 5) *The potential loss, or adverse effect upon, significant buildings, related spaces, trees, wildlife habitats, archaeological or other features important to the character of the area;*
 - 6) *The extent to which the needs of disabled and other inconvenienced persons have been taken into account;*
 - 7) *The need to maximise opportunities for energy conservation through design, orientation and construction; and*
 - 8) *Any other material considerations”.*

- 6.85 It is considered that limited weight can be attached to 'saved' Policy ENV1 as the NPPF makes clear that the effects of pollution on the natural environment or general amenity, and the potential sensitivity of the area to adverse effects from pollution, should be taken into account. However, with regards to transport, the NPPF states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe and, therefore, only limited weight may be given in this instance.

'Saved' Policy ENV2 - Environmental pollution and Contaminated land

- 6.86 This policy states that
- A) *Proposals for development which would give rise to, or would be affected by, unacceptable levels of noise, nuisance, contamination or other environmental pollution including groundwater pollution will not be permitted unless satisfactory remedial or preventative measures are incorporated as an integral element in the scheme. Such measures should be carried out before the use of the site commences.*
 - B) *Where there is a suspicion that the site might be contaminated, planning permission may be granted subject to conditions to prevent the commencement of development until a site investigation and assessment has been carried out and development has incorporated all measures shown in the assessment to be necessary".*

- 6.87 This Policy is generally considered to be compliant with Section 11 of the NPPF.

'Saved' Policy ENV9- Sites of Importance for Nature Conservation

- 6.88 This policy states that "Proposals for development which would harm a local nature reserve, a site of local importance for nature conservation or a regionally important geological/geomorphological site, will not be permitted unless there are no reasonable alternative means of meeting the development need and it can be demonstrated that there are reasons for the proposal which outweigh the need to safeguard the intrinsic local nature conservation value of the site or feature".

- 6.89 This policy is considered broadly consistent with the NPPF's objectives or protecting Conserving and Protecting the Natural Environment as outlined within Chapter 11 of the NPPF. Therefore, full weight is given to this policy in the determination of this application.

'Saved' Policy ENV15- Conservation and Enhancement of Locally Important Landscape Areas

- 6.90 This policy states that "Within the locally important landscape areas, as defined on the proposals map, priority will be given to the conservation and enhancement of the character and quality of the landscape. Particular attention should be paid to the design, layout, landscaping of development and the use of materials in order to minimise its impact and to enhance the traditional character of buildings and landscape in the area".

- 6.91 This policy is considered broadly consistent with the NPPF's objectives or protecting Conserving and Protecting the Natural Environment as outlined within Chapter 11 of the NPPF, specifically in relation to paragraph 109 which outlines the importance of protecting valued landscapes. Therefore, full weight is given to this policy in the determination of this application.

'Saved' Policy ENV21 – Landscaping Requirements

This policy states that

"A) Where appropriate, proposals for development should incorporate landscaping as an integral element in the layout and design, including the retention of existing trees and hedgerows, and planting of native, locally occurring species.

B) The District Council may make tree preservation orders, impose planting conditions, or seek an agreement under Section 106 of the Town and Country Planning Act 1990 to ensure the protection and future maintenance and/or replacement of existing trees, hedgerows and proposed new planting".

6.92 This Policy is generally considered to be compliant with Section 11 of the NPPF.

6.93 'Saved' Policy T1- Development in Relation to the Highway network
'Saved' Policy T1 of the Selby District Local Plan (2005), states that development proposals should be well related to the existing highways network and will only be permitted where existing roads have adequate capacity and can safely serve the development, unless appropriate off-site highway improvements are undertaken by the developer. It is considered that 'saved' Policy T1 is consistent with the NPPF and should be given full weight in the determination of this application. This is because the objectives in the NPPF state that improvements to the transport network should be considered.

6.94 'Saved' Policy T8, states that development which would have a significant adverse effect on any route in the district's Public Rights of Way network will not be permitted unless the following can be achieved:

- 1) Satisfactory and attractive alternative routes are provided; and
- 2) Adequate sign posting is provided; and
- 3) As far as is reasonable, the new route can make provision for walkers, horse riders, cyclists and people with sight or mobility problems; and
- 4) In the case of new reasonable development, such development must replace extinguished rights of way with attractive highway infrastructure which is equally capable of accommodating appropriate users of the original Right of Way.

6.95 This Policy is considered to be consistent with the NPPF as it states that Public Rights of Way should be protected and enhanced.

7.0 Planning considerations

7.1 Section 73 of the Town and Country Planning Act 1990 provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue.

7.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each planning application in accordance with the planning policies that comprise the Development Plan unless material considerations indicate otherwise. In light of the abovementioned policies the main considerations in this instance are the principle of the development and the need, the landscape, visual impact, and the Green Belt, the impact upon local amenity (noise and air quality/dust), flood risk, site drainage and groundwater quality, ecology, highways impact, public access and site security.

Principle of the proposed development and the need

- 7.3 The principle of developing a colliery waste tip at the former quarry site was first established under the original planning permission (ref. C/8/41/23.G/PA) for the site in 1987 and the permission was extended by four years in 2012. Therefore the principle of the development has been previously established over the last 30 years and it is a highly material planning consideration that there is permission for spoil disposal at the application site, which has been implemented but not yet completed. Therefore, Members are advised that it would be inappropriate to revisit the principle of the entire development. Members are advised to focus their attention on national (NPPW & NPPG), development plan policies and guidance or other material considerations that may have changed since the original grant of permission, as well as the changes sought.
- 7.4 The site remains incomplete and with the closure of Kellingley colliery will not be restored to the levels originally envisaged due to the shortfall of colliery spoil. Presently there is no planning permission for tipping at the site (since expiry on 16 May 2016) and therefore the operator is carrying out operations without the benefit of planning permission.
- 7.5 This planning application made under Section 73 of the Town and Country Planning Act 1990 seeks consent for the continuation of tipping at the site until May 2018. This would result in the completion of site restoration and create an amended landform compared to that previously approved. There are no proposals to increase the overall footprint of the site or tip spoil beyond that which has been previously consented.
- 7.6 The majority of the remaining coarse colliery discard at Kellingley is being moved up the 'waste hierarchy' through its use in a land raising development in Immingham, Lincolnshire. It is acknowledged that the disposal of coarse colliery discard at the Womersley site is the least preferred option in so far as the 'waste hierarchy', but it represents the only reasonable option to achieve completion of the site to an acceptable landform. This application involved the importation of only 30,000 tonnes of coarse colliery discard from Kellingley which was completed in late Summer 2017.
- 7.7 In respect of local planning policy, whilst the need for waste management facilities is acknowledged, there are no specific 'saved' policies in the NYWLP (2006) that address the principle of providing waste disposal facilities for colliery spoil. 'Saved' policy 6/4 of the NYMLP (1997) relates to colliery spoil disposal and the proposal complies with the aims of the policy in that it relates to a former void and degraded land, the waste disposed of has been kept to a minimum and will create a compatible landscape feature without having a detrimental impact upon local amenity and the environment.
- 7.8 The proposed development is consistent with national planning policy contained within the NPPF (paragraphs 144 & 147) which advise MPAs to provide for restoration and aftercare at the earliest opportunity and to be carried out to high environmental standards and also indicate areas where disposal of colliery spoil may be acceptable as per the emerging draft policy M20 of the MWJP. Similarly paragraph 7 of the NPPW states that Waste Planning Authorities should ensure that land raising or landfill sites are restored to beneficial after uses at the earliest opportunity and to high environmental standards.
- 7.9 Since the closure of Kellingley in 2015 the tipping site at Womersley has entered a post operational phase of the development which centres on final restoration works to complete the site to a satisfactory landform. Without the extension of time and continued restoration operations the majority of the site would remain unrestored with open lagoons and wet colliery discard remaining on-site in an unsatisfactory state. It is considered that the extension of time is needed to complete the works to create a safe and acceptable landform within an appropriate timeframe.

- 7.10 The acceptability in principle has already been established, however, any potential adverse impacts on the environment and amenity arising from the continuation of tipping and restoration operations need to be considered in detail and the main considerations are addressed in the subsequent sections of this report.

Landscape, visual impact and the Green Belt

- 7.11 The site comprises areas of deposited colliery spoil and restored areas, a mixture of woodland/scrub, grassland, and waterbodies. The magnesian limestone ridge is designated as a Locally Important Landscape Area which is to be conserved and enhanced within the Selby District Local Plan and the site falls within the Green Belt.
- 7.12 It is noted that the site is located within the locally important limestone ridge and adjoins former limestone quarries and the Principal Landscape Architect highlighted a degree of conflict with the nature conservation objective of establishing calcareous grassland. However the revised proposal has been assessed to have a “*slight beneficial effect due to the lower landform*” which is further enhanced by the quicker establishment of grass cover and ‘greening-up’ through the use of soil forming materials and any adverse effect on local landscape character is outweighed by the benefits of establishing an improved drainage system (considered later in this report). There have been short term visual impacts arising from the HGV movements importing material and earth moving machinery during tipping and levelling work but in the long term the completed landform would integrate appropriately with the wider landscape.
- 7.13 The visual envelope is relatively closed but there are isolated residential properties and visual receptors close to the site although the impact would not change significantly compared to the scheme previously approved and in the long term is likely to result in visual improvements once the final landform and features are established. The phased progress made to date and the phasing plan for completion is shown on the drawing attached to this report at Appendix D.
- 7.14 The final restoration of the site would enable safe public access to/across the site, as well as areas of amenity and woodland. The Principal Landscape Architect is satisfied with the proposal to complete tipping and the revised landform subject to the inclusion of conditions to cover detailed final landscape proposals and aftercare (Conditions 15, 17, 18 & 20) and also a mechanism for an annual review throughout the aftercare management period (Condition 23).
- 7.15 It is considered that if the site was left as an unrestored landform it would have a detrimental effect upon the local landscape character and an adverse impact upon local visual amenity including that of the Green Belt. The NPPF and Selby District Core Strategy attach importance to Green Belts and inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
- 7.16 When considering applications within the Green Belt, in accordance with the NPPF (2012), paragraph 90 states that engineering operations are not inappropriate providing that development preserves the openness of the Green Belt and does not conflict with the purposes of including land in Green Belt. The current application does not include any built development proposals. The principle of the operations at the site within the Green Belt have been established for a number of years and there are no proposals to increase the overall footprint of the site or tip beyond that which has been previously consented. It is considered that the proposed engineering operations to complete final restoration of the site would allow the land to return to a use, form and appearance in keeping with the landscape character of the area and would create amenity grassland with public access. It is considered that the proposed development is not inappropriate development within the Green Belt due to the development comprising temporary engineering works to complete the final

restoration of the tip. It is considered that the proposed development would not materially harm the character and openness of the Green Belt and would not conflict with the purposes of including the land in the Green Belt, and would, therefore, be in accordance with the NPPF (2012) and would comply with Policy SP3 of the Selby District Core Strategy Local Plan (2013).

- 7.17 The final restored landform would comprise a mosaic of woodland, scrub, grassland and wetland whose species composition reflects the character of semi-natural habitats in the vicinity. The site would be visually compatible with the local landscape and would not result in any unacceptable adverse visual impact or detrimental effect on the character and uniqueness of the Locally Important Landscape Area in compliance with 'saved' policies 4/1(a, b, e & f), 4/3 and 4/22 of the NYWLP (2006), policies SP15 and SP19 of the Selby District Core Strategy (2013) and 'saved' policies ENV1, ENV15 and ENV21 of the Selby District Local Plan (2005).

Local amenity (noise)

- 7.18 The application includes an assessment of the noise impact which details the background and predicted noise levels at four receptor locations. The EHO highlighted that the nearest residents that may be impacted by noise from the operations are at Stapleton Cottages to the west of the site. The Applicant's assessment indicates that the most significant source of potential site noise at Stapleton Cottages is from the bulldozer activity spreading the colliery discard and levelling the material to final restoration levels which is a fundamental part of the latter phase of the development. The EHO notes that the predicted noise levels at Stapleton Cottages cannot meet the Planning Practice Guidance lower level for noise during the period of 7am to 7pm of the background level plus 10dBA.
- 7.19 The Applicant acknowledges that due to the phase of the work (final restoration) it is not feasible to construct acoustic screening bunds between the site activity and the residential receptors. However, the Applicant has highlighted that machinery is regularly maintained and fitted with silencers to limit the noise impact.
- 7.20 The Authority has received no noise related complaints from any of the local residents during the latter phase of the operational period. If permission is granted a condition will set the noise limits at each of the four nearby residential receptors (Condition 6). The EHO noted the short time scales involved to complete the importation of colliery discard and restore the site with soil forming materials and recommended the inclusion of a noise limit of 51 dB Laeq1hr to be conditioned (Condition 6) for the period of work near to Stapleton Cottages.
- 7.21 It is concluded that, subject to appropriate planning conditions, the proposed development is not likely to have an adverse impact at nearby noise sensitive receptors. In light of the above it is considered that it is in accordance with 'saved' policies 4/1(b & h) and 4/19 of the NYWLP (2006), and complies with policy SP18 of the Selby District Core Strategy Local Plan (2013) and 'saved' policies ENV1 and ENV2 of the Selby District Local Plan (2005).

Local amenity (dust)

- 7.22 The primary air quality impact which arises from the tipping and quarry restoration operations is the generation of mineral dusts. These typically arise at mineral sites through excavation, transportation, tipping and processing activities. The latter phase of the development has involved the continuation of the importation of colliery spoil and to import other soil forming materials to complete the revised restoration scheme for the site.

- 7.23 The EHO acknowledges that within the application it confirms that the previously agreed Dust Action Plan will not be implemented in full due to the reduced scale of the operations. The Applicant's Air Quality and Dust Assessment states that the nearest sensitive receptors to the site are unlikely to experience any increase in dust levels from the continued operations. If permission is granted a condition shall be included to require continued dust monitoring and management (Condition 7) to be carried out in accordance with Section 2.5 of the Air Quality Assessment dated April 2016 and dust control measures employed including the use of a wheel wash, water cannon and mobile bowser to damp down materials, open areas and access routes when required.
- 7.24 It is considered that with the continued implementation of the abovementioned existing dust control measures, secured by planning condition, dust emissions from the site can be controlled to a standard that ensures that the proposed development will not result in a significant impact with respect to nuisance relating to dust. In light of the above, it is considered that it is in accordance with paragraph 120 of the NPPF, and complies with 'saved' policies 4/1(b & h) and 4/19 of the NYWLP (2006), policy SP18 of the Selby District Core Strategy Local Plan (2013) and 'saved' policies ENV1 and ENV2 of the Selby District Local Plan (2005).

Flood risk, Site drainage and groundwater quality

- 7.25 The site is within the Environment Agency's Flood Zone 1 (annual flood probability of less than 0.1%) which is land at the lowest risk of flooding. The proposed extension of time for tipping and the revised restoration scheme does not increase the current flood risk vulnerability of flooding downstream. The restoration scheme, including establishing vegetative cover, would reduce the risk of flooding downstream and on the site itself.
- 7.26 At the time planning application ref C8/2012/0035/CP was determined at Planning Committee in August 2012 it was reported on site drainage that there was no evidence or record of any pollution events having occurred at or as a result of the tipping operations of the site. However, in recent years, concerns have been raised by the owners of the adjacent Blue Lagoon Diving Centre and the former Northfield Quarry about poor drainage and pollution to ground water. The monitoring boreholes around the tip site have shown that colliery spoil has been impacting upon groundwater.
- 7.27 The Applicant has submitted a technical hydrological report to inform the proposed drainage scheme for the final landform. The report took the issues of off-site discharges, flooding and groundwater pollution into consideration. The Environment Agency have previously confirmed that investigations into the potential cause of pollution in the adjacent Blue Lagoon have concluded that the most likely source was contaminated groundwater from the tip site migrating into the diving centre due to the direction of groundwater flow (generally in an easterly direction). The behaviour of surface water and groundwater is now better understood and has been assessed and the Applicant has incorporated mitigation measures into the design of the scheme.
- 7.28 The previous operator installed plastic lined toe drains at the base of the tip in order to intercept contaminated surface water runoff, thus preventing it from reaching the groundwater. However there was only limited success with this method and the drains were subject to vandalism. As stated by the Environment Agency a major factor contributing to the issue was the requirement to use limestone fines as part of the approved restoration scheme. It was found that the limestone fines were physically unstable when it rained, leading to large quantities of material being washed off the slopes, exposing the spoil and settling in the toe drains. Subsequently the drains filled with sediment causing blockages that caused contaminated water to spill over the sides and eventually into groundwater.

- 7.29 The Applicant states that addressing the drainage problems and stabilising bare ground through early re-vegetation have been the priorities in the last year and the remedial work, informed by the Hydrological and Hydrogeological Assessment, had to commence prior to the application being determined. There was a need for vegetation cover to stabilise the surface, particularly the flanks, to avoid acceleration of the erosion and gulying which had previously occurred and so to reduce silting of drains and potential wider pollution. The previously placed bare limestone fines were exposed and would take many years to vegetate, partly because they are nutrient poor and partly because there was no topsoil to prevent it being washed away when there was a rainfall event. In response the Applicant has amended the previously approved scheme so that areas containing limestone fines are mixed with soil making materials that will produce a material that is less likely to suffer from erosion and will re-vegetate significantly more quicker.
- 7.30 In response to ongoing concerns about drainage issues at the site the Applicant has completed on-site work comprising the construction of a clay-lined surface-water drainage system (now in place and shown in the aerial photo at Appendix E) including the lining of lagoons with clay to at least 1 metre above the intended final water level to prevent uncontrolled infiltration or overspill. The remedial drainage measures are expected to minimise contamination of the neighbouring Blue Lagoon diving lake. The proposed improved drainage scheme and new water bodies are justified and supported and are in line with the Environment Agency recommendations.
- 7.31 It was concluded that by completing the proposed restoration works, improving the drainage system, establishing early vegetative cover and reducing infiltration the impact of the previously tipped colliery spoil from Kellingley upon the quality of groundwater can be curtailed. If permission is granted it would include mechanisms to secure the continuation of on-site drainage maintenance and management (Condition 22) which would continue through the extended after care period (10 years) to ensure performance is maintained as intended in line with the Environment Agency's recommendation. The scheme would also include monitoring of groundwater and the taking of any steps as may be necessary to prevent the pollution of adjoining land, groundwater or watercourse. It is considered that subject to the inclusion of the abovementioned condition and legal agreement the development is consistent with the national planning policy contained within paragraph 103 of the NPPF and Appendix B(a) of the NPPW.

Biodiversity, habitats, nature conservation and protected species

- 7.32 The site is not immediately adjacent to any Site of Special Scientific Interest (SSSI) or similar international/national-level protective designations. The closest is Brockdale SSSI which is 2.4 kilometres south-west of the site. The former Womersley and Cridling Stubbs Quarry is designated as a Site of Importance for Nature Conservation (SINC) which was last surveyed in 2009 and records state that it *'contains vitally important original calcareous grassland, which is essential for natural regeneration of adjacent quarry areas when restored'*.
- 7.33 It is acknowledged that restoration to species-rich grassland or grassland with potential for more productive agricultural use are no longer objectives. This alteration has resulted from the ongoing problems with ground-water contamination from colliery spoil leachate and the need to urgently revise the approach to site restoration. As identified by the Environment Agency there was a pressing need to stabilise the surface of the tip and curtail the use of limestone fines. The limestone fines were being washed off the slopes, exposing the spoil and settling in the toe drains leading to overspills of contaminated water eventually reaching groundwater. This has meant the revised proposal no longer includes the creation of further limestone grassland areas.

- 7.34 The County Ecologist supports the creation of a Biodiversity Enhancement and Management Plan (BEMP), to be secured by Condition 21, setting out how relevant areas will be conserved, restored or re-created. The County Ecologist has identified four existing or potential nature conservation assets (including the existing SINC) which represents approximately 12 hectares, some of which could be restored to magnesian limestone grassland or a mosaic of grassland and scrub and these would be included in the BEMP. The four areas are shown on the drawing attached to this report at Appendix D. The Applicant has submitted an outline Ecological Management Plan the purpose of which is to manage and improve the conservation interests of the habitats within each of the four areas. The Plan presents the outline management prescription for each area with recommendations for further surveys to inform the detailed BEMP. The detail management plan would guide management of the site during the 10 year aftercare period (to be secured by legal agreement).
- 7.35 The Applicant has assessed the habitat and species on-site and it has been established that the proposals are not expected to impact on protected species. In the medium to long term the final restored site will provide habitats of value at a local level which will support existing populations of protected species and will significantly increase the proportion of the site covered by habitats suitable for protected species.
- 7.36 There is unlikely to be an impact on any statutory designated sites, protected species or notable habitats. Whilst some concerns have been expressed about the change in the restoration scheme the reasons for the amendments are understood and there are no ecological objections to the development. It is considered that the proposed development would not result in loss or significant harm to any sites of ecological value or be detrimental to existing nature conservation interests.
- 7.37 There is a degree of conflict with paragraph 109 of the NPPF in that the revised restoration will not offer the previously approved habitat and biodiversity enhancements arising from the limestone grassland, however, this is outweighed by the need to stabilise the tip surface and 'green up' the site in the interests of improved site drainage and pollution control. There are some limited opportunities for management and preservation of existing areas of habitat and areas of nature conservation as identified by the County Ecologist (shown at Appendix D) and this will be secured by condition and legal agreement.
- 7.38 It is considered that subject to securing the detailed BEMP for the previously restored areas of magnesian limestone grassland there is no significant conflict with the aims of 'saved' policies 4/1 (b & c) and 4/10 of the NYWLP (2006), policies SP15 and SP18 of the Selby District Core Strategy (2013) and 'saved' Policy ENV9 of the Selby District Local Plan (2005) and the national planning policy contained within Appendix B(d) of the NPPW.

Highways impact

- 7.39 The on-site importation works are largely complete and work is now in a post operational restoration phase. As of October 2017 HGV movements were down to two HGVs per day which travel to the site from the A1. The HGV movements carrying the colliery spoil from Kellingley (via Sudforth Lane, Beal Lane, Cobcroft Lane and Stubbs Lane) were completed in August- September 2017 so there will be no more HGV movements associated with this development using that route.
- 7.40 The transportation of colliery spoil took place during the drier summer months between March and October and the wheel wash and the 'sheep dip' wheel washing facility have been, and continue to be, utilised to ensure vehicles are clean and highways are not burdened by mud/detritus from the site. In addition there has been continued use of road sweepers on the haul route as and when required and the Authority has received no complaints about the condition of the public highway during the period the application has been under consideration by the Authority.

- 7.41 The recommendations of the Local Highway Authority are noted however it would only be lawful to apply the planning conditions that are relevant and necessary to the remaining works up to the end of May 2018 and beyond for aftercare management matters. The original permission was granted with no controls limiting the number of HGV movements and during its peak the colliery spoil disposal operation generated between 600-1000 HGV trips per week. The number of HGVs has reduced significantly in light of the early closure of Kellingley and it would not be reasonable to require highway improvement works at this stage of the development as the route and access is no longer used by HGVs associated with colliery spoil disposal, prior to which only 30,000 tonnes was imported from Kellingley as part of this application. It is considered that the standard conditions on the use of the existing access only and wheel cleaning for the remaining vehicles movements should apply to any permission granted and the Local Highway Authority has raised no objections to this approach.
- 7.42 It is considered that the development would not result in any adverse impact to the surrounding highway network nor would it have a detrimental effect on highway safety and capacity. The NPPF, at paragraph 32, advises that development should only be prevented on transport grounds where the impacts are 'severe' and it is considered that there are no reasons to refuse the application on such grounds. The traffic generated can be satisfactorily accommodated in compliance with 'saved' policies 4/1(g) and 4/18 of the NYWLP (2006), 'saved' Policy T1 of the Selby District Local Plan (2005) and the national planning policy contained within Appendix B(f) of the NPPW and paragraph 32 of the NPPF.

Public Access

- 7.43 The existing bridleway which links Stubbs Lane to the north with Bank Wood Road to the south would not be directly affected any more than has occurred historically. The bridleway is located within the site boundary, much of which is along the boundary itself and therefore on the periphery of tipping and restoration operations.
- 7.44 The route of the proposed permissive footpath was amended early this year in response to concerns from adjacent landowners. The proposed permissive footpath would be formed with 200mm compacted limestone fines laid directly onto compacted overburden or colliery spoil. The completion of restoration and the creation of public access via a permissive footpath along the ridge on the western side of the site would enhance and complement the existing path network in the area.
- 7.45 The County Public Rights of Way department, in their response, have requested that the existing public right of way is protected and kept clear of any obstruction and if permission is granted an informative will be included to ensure that the nearby PRoW is not obstructed. There are no objections from the County Public Rights of Way department and, in light of the above, it is considered that the potential for conflict is limited and would not give rise to any unacceptable adverse impacts upon users of public rights of way in the area and complies with the NPPF, 'saved' policy 4/20 of the NYWLP (2006) and 'saved' Policy T8 of the Selby District Local Plan (2005).

Site security

- 7.46 It is noted that concerns have been raised by the Parish Council and local residents about site security and access. It is proposed to retain the existing access track to the north of the site for future management of the site. The Applicant proposes that the site entrances would be secured by a combination of stock proof fencing and farm access gates. The final detail would be secured by planning condition (Condition 24).

Legal Agreement

- 7.47 It is proposed that the existing Section 39 agreement, which related to the previously approved landform and nature conservation after use, shall be terminated and a new Section 106 agreement shall be completed. The new agreement would secure a restoration and aftercare management period (statutory 5 years plus 5 years additional), a programme of Biodiversity Enhancement and Management and the management and maintenance of the drainage system and monitoring of groundwater.

Planning conditions

- 7.48 With reference to the existing planning conditions as listed in Appendix B of this report it should be noted that Condition numbers 3, 7, 10, 14, 22, 25 and 26 are to be deleted on the basis of no longer being relevant to the development as amended. All other remaining conditions have been subject to updates to incorporate the amended details or set out requirements for updated or new schemes.

8.0 Conclusion

- 8.1 The principle of the development is already established and this variation seeks to complete the restoration of the site to a revised landform which arises from the cessation of the disposal of spoil from Kellingley Colliery. Once established the vegetation cover across the site will increase infiltration of water, decrease run-off, increase the water holding capacity, reduce soil erosion and the vegetation cover will improve the visual appearance of the site. Whilst there are opportunities for management and preservation of existing areas of habitat and areas of nature conservation it is acknowledged that there is a degree of conflict with paragraph 109 of the NPPF in that the revised restoration will not offer the previously approved habitat and biodiversity enhancements arising from the limestone grassland. However, this is outweighed by the need to stabilise the tip surface and 'green up' the site in the interests of improved site drainage and pollution control. The revised proposal is considered necessary and would create an acceptable afteruse within an appropriate timeframe. It is considered that given the limited extension period proposed together with the reduction in on site activity and HGV movements and in light of the controls to manage the final development of this site, it would be difficult to justify a reason for refusal.
- 8.2 There are no material planning considerations to warrant the refusal of this application for the variation of condition No's 1, 2, 3, 5, 6, 14, 18 & 20 of Planning Permission ref. C8/2012/0035/CP dated 4 September 2012 for the continuation of tipping of colliery waste from Kellingley Colliery and soil materials from other locations for a further two years until 13th May 2018, revised tipping materials and revisions to the vehicle route, revised restoration scheme and landscaping.

9.0 Recommendation

- 9.1 For the following reasons:

- i) The development is in accordance with 'saved' Policy 6/4 of the North Yorkshire Minerals Local Plan (1997), 'saved' policies 4/1, 4/3, 4/10, 4/18, 4/19, 4/20, 4/21, 4/22 and 4/23 of the North Yorkshire Waste Local Plan (2006), policies SP1, SP3, SP15, SP18 and SP19 of the Selby District Core Strategy Local Plan (2013), the 'saved' policies ENV1, ENV2, ENV9, ENV15, ENV21, T1 and T8 of the Selby District Local Plan (2005) and overall is consistent with the NPPF (2012) and NPPW (2014);
- ii) The proposed extension of time would facilitate the completion of the restoration of the site to an acceptable landform in accordance with paragraph 144 of the NPPF (2012) and paragraph 7 of the NPPW (2014);

- iii) The proposal does not conflict with the abovementioned policies as it is considered that the existing highway network is capable of handling the volume of traffic generated by the development, the visual impact of the proposed development can be mitigated through condition, the environmental impacts of the proposed development can be controlled, neighbouring residential properties will not be adversely affected and there are no other material considerations indicating a refusal in the public interest;
- iv) The imposition of planning conditions will further limit the impact of the development on the environment, residential amenity and the transport network; and
- v) Having taken into account all the environmental information submitted as part of this planning application included within the Environmental Statement

That, subject to prior completion of a Legal Agreement for a restoration and aftercare management period, a programme of Biodiversity Enhancement and Management and the management and maintenance of the drainage system and monitoring of groundwater **PLANNING PERMISSION BE GRANTED** subject to the following conditions:

Conditions

1. The development hereby permitted is valid only until 13th May 2018 by which date all tipping of waste materials shall have ceased, all surface installations together with mobile and fixed plant removed and the land shall enter final restoration and aftercare in accordance with the approved scheme of restoration and landscaping, as specified at conditions 15 & 17.
2. The development hereby permitted shall be carried out in accordance with the revised method statement dated October 1986, Environmental Statement submitted 21 May 2012 and the application details and Environmental Statement dated 4 May 2016 as amended by the Supplementary Environmental Information (revision to the restoration scheme) dated July 2017, the list of 'Approved documents' at the end of this Decision Notice and the following conditions which shall at all times take precedence.
3. There shall be no access or egress between the highway and the application site by any vehicles other than via the existing access with the public highway at Stubbs Lane. The access shall be maintained in a safe manner throughout the course of the development.
4. The materials to be disposed of at the site shall be transported to the site via the prescribed route identified on the application drawing number PB/274/JB/8 dated October 1986 or with regard to soil forming materials travelling from the A1 onto Leys Road and Stubbs Lane. Vehicles involved in the transportation of materials shall be thoroughly cleaned so that no mud, dust or waste is deposited on the public highway.
5. The materials to be disposed of at the site shall consist of mineral waste arising from the extraction of coal from Kellingley Colliery together with the waste products arising from the coal preparation plant at Kellingley Colliery and soil forming materials.
6. At all times, noise mitigation measures shall be employed at the site in accordance with the details set out in Section 6 of Technical Appendix C 'Assessment of the Environmental Impact of Noise', dated 15 April 2016 and noise from the site shall not exceed the limits set out as follows:-.

Location	Recommended Site Noise Limit (dB LAeq,1h) Free-Field
Stapleton Cottages	51
Quarry Bungalow	47
Garthdale	51
Innisfree	46

7. Dust monitoring and management shall be carried out in accordance with Section 2.5 of the Air Quality Assessment dated April 2016 and dust control measures shall include the use of a wheel wash, sheeting of HGVs, water cannon and mobile bowser to damp down materials, open areas and access routes when required.
8. No scrap materials or other non-mineral waste or disused equipment shall be allowed to accumulate on site.
9. No vehicles involved in the transport of waste to the site shall be allowed to park overnight on any part of the site.
10. Precautions, including if necessary the provision of additional vehicle cleaning (wheel washing) facilities, shall be taken and maintained to ensure that all vehicles leaving the site are in a clean condition such that no dirt and/or mud are deposited on the public highway by vehicles travelling from the site. Should it be determined by the County Planning Authority, in consultation with the County Highways Authority, that vehicles exiting the site are causing mud, debris or other detritus to foul the highway, the transport of material to the site shall cease until the matter has been remedied to the satisfaction of the County Planning Authority, in consultation with the County Highways Authority.
11. Unless detailed on the Environmental Statement dated May 2016, the processed cells shall be constructed in accordance with Drawing No. P.B.64/274/JB/4 (as amended April 1987). In the floor of the cells the construction materials shall consist of pressed tailings, quarry waste, marl, or other materials with properties similar to those detailed in the British Coal Yorkshire Regional Laboratory Report Nos. 13393 (dated March 1981) and 13694 (dated June 1981) and the compacted thickness will be not less than 1 metre. The cell walls will be formed from coarse colliery discard or colliery waste. All of the above materials shall be compacted so as to reduce the air void of the material to less than 10% when tested in accordance with BS1377.
12. Except for those already constructed, planted or established no building, hardstanding, tree planting or other obstruction shall encroach within 6 metres either side of the Yorkshire Water mains (i.e. protected strip widths of 12 metres) as shown on the 'Revised Restoration Scheme' drawing ref. W12_LAN_001_REV Edated July 2017 and the plan attached to the letter from Yorkshire Water Ltd dated 21 June 2016. The stand-offs shall be maintained at all times.
13. No materials shall be burned on site.
14. No tipping, site preparation works or transportation of materials to the site for tipping for restoration purposes shall be carried out except between the following times:-
7.30 am to 6.30 pm Monday to Friday
7.30 am to 12.00 midday Saturday
No such operations shall take place on Sundays or Bank Holidays except in cases of emergency when the physical well-being of persons or property may be at risk.

15. Landscaping of the site shall be carried out in accordance with the landscaping scheme contained within the Supplementary Environmental Information (revision to the restoration scheme) dated July 2017 and the 'Revised Restoration Scheme' drawing ref. W12_LAN_001_REV E dated July 2017. All tree and shrub planting shall take place during the first planting season following restoration. Such planting shall take place into the ground that has previously been prepared to the satisfaction of the County Planning Authority. Such preparation shall as necessary include the following: (a) Ripping, (b) Topsoil or other approved organic material spreading, (c) Cultivation, (d) Herbicide application, (e) Green manuring and (f) scraping/screening/strimming of vegetation.
16. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compounds shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank or the combined capacity of the inter-connected tanks plus 10%. All filling points, vents and gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.
17. Restoration of the site shall be completed in progressive phases as soon as reasonably practicable in the following manner: the surface of the colliery waste shall be levelled and graded in accordance with the details contained within the Environmental Statement dated May 2016 as amended by the Supplementary Environmental Information (revision to the restoration scheme) dated July 2017 and the 'Revised Restoration Scheme' drawing ref. W12_LAN_001_REV E dated July 2017.
18. Restoration of the site shall be completed in progressive phases in accordance with the 'Phased restoration and nature conservation plan' ref. 007/WOM/NAT/A1 dated 17/11/17.
19. All operations involving soil handling and cultivation shall be carried out when the soil is in a dry, friable condition.
20. Within 3 months from the date of this permission a detailed aftercare scheme shall be submitted to the County Planning Authority for approval. Aftercare of the site shall be carried out in accordance with the approved scheme which shall provide for such steps as may be necessary to bring the land restored in accordance with conditions 15 & 17 to the required standard for the approved after use. The submitted scheme shall provide for, among other matters, the following:-
 - (a) an initial five year aftercare period commencing 14 May 2018 (plus further 5 year period as per legal agreement)
 - (b) the type of crops to be established
 - (c) regular soil analysis immediately following restoration and during the course of the aftercare period
 - (d) the application of appropriate fertilizers resulting from the soil analyses
 - (e) cultivation methods
 - (f) stone picking of the restored land
 - (g) subsoiling of the restored land
 - (h) the drainage of the restored land
 - (i) crop management
 - (j) weed control
 - (k) the provision of fences, gates, hedgerows, field access points and field water supply

21. Within 3 months from the date of this permission a detailed Biodiversity Enhancement and Management Plan, based on the Ecological Management Plan produced by Applied Ecological Services Ltd, dated 20/11/17 shall be submitted to the County Planning Authority for approval. Aftercare of the site shall be carried out in accordance with the approved Plan which shall provide for such steps as may be necessary to restore the land shown on the 'Revised Restoration Scheme' drawing ref. W12_LAN_001_REV E dated July 2017 and the 'Phased restoration and nature conservation plan' ref. 007/WOM/NAT/A1 dated 17/11/17 to the required standard for natural conservation purposes.
22. Within 3 months from the date of this permission a detailed scheme for the ongoing management and maintenance of the drainage system and monitoring of groundwater shall be submitted to the County Planning Authority for approval. The scheme shall set out the monitoring locations and frequency of monitoring. The development shall be carried out in accordance with the approved scheme which shall provide for such steps as may be necessary to prevent the pollution of adjoining land, groundwater or watercourse by the entry of leachate, polluted water or any other pollutant. If pollution occurs, the effects of that pollution shall be rectified and further pollution shall be prevented.
23. During the first week of October every year during the aftercare period (or at such other times as may be agreed with the County Planning Authority) a review of the previous 12 months restoration works (including fencing and drainage), seeding, planting and aftercare shall be carried out in conjunction with a representative of the County Planning Authority. The review shall take account of any departure from the phases of restoration shown in the submitted drawings, any areas of seeding that have failed to establish, any trees that have failed to survive or any unforeseen occurrence having taken place on the site and shall provide for the taking of such steps as might be necessary to continue with the satisfactory restoration and landscaping of the site including re-seeding and re-planting with whatever species appear appropriate at the time of each review and the taking of additional soil samples and treatment with required nutrients. The agreed steps shall be implemented to the satisfaction of the County Planning Authority.
24. Within 3 months from the date of this permission a detailed scheme for site access management and security shall be submitted to and approved in writing by the County Planning Authority. The scheme shall include the erection and maintenance of (where necessary) secure perimeter fencing. Once approved, any fencing deemed necessary shall be erected within 2 months from the date of the approval, in accordance with the approved details and maintained in accordance with the approved maintenance details and retained until the end of the aftercare period as a minimum.

Reasons

1. To reserve the rights of control by the County Planning Authority to ensure restoration of the land with the minimum of delay in the interests of amenity.
2. To reserve the rights of control of the County Planning Authority and to ensure that the development is carried out in accordance with the application details.
- 3 & 4. In the interests of highways safety and amenity.
5. In the interests of amenity and to prevent pollution.
- 6-9. In the interests of amenity.
10. In the interests of amenity and highways safety.

11. In the interests of amenity, to prevent pollution and to ensure the satisfactory restoration of the site.
12. To safeguard the Yorkshire Derwent Aqueduct.
- 13 & 14. In the interests of amenity.
15. In the interests of amenity, to prevent pollution and to ensure the satisfactory restoration of the site.
16. In the interests of amenity and to prevent pollution.
17. In the interests of amenity, to prevent pollution and to ensure the satisfactory restoration of the site.
18. In the interests of amenity and to secure a satisfactory and prompt restoration of this site.
19. To safeguard the soil resource at the site in the interests of amenity.
20. In the interests of amenity and to ensure the satisfactory restoration of the site.
21. In the interests of nature conservation and enhancement.
22. To prevent pollution and maintenance of appropriate drainage.
23. To ensure a satisfactory restoration of the site.
24. In order to secure the site and prevent unauthorised access.

Informatives

Coal Authority

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at www.coal.decc.gov.uk Property specific summary information on past, current and future coal mining activity can be obtained from the Coal Authority's Property Search Service on 0345 762 6848 or at www.groundstability.com

Landscaping (Condition 15)

The amenity grassland mix of bent and two fescues could be more diverse and beneficial to wildlife, and include a percentage of wildflower species. Ash should not be included in the woodland mix and specification for trees and shrubs. It is suggested to move Aspen (*Populus tremula*) from the Woodland Edge Mix into the Woodland Mix and add grey willow (*Salix cinerea*) to the Woodland Edge Mix instead. This would also help with the rapidity of vegetation establishment.

Public Rights of Way

The existing Public Right(s) of Way on the site must be protected and kept clear of any obstruction until such time as any alternative route has been provided and confirmed under an Order made under the Town and Country Planning Act 1990. Applicants are advised to contact the County Council's Access and Public Rights of team at County Hall, Northallerton via paths@northyorks.gov.uk to obtain up-to-date information regarding the line of the route of the way. The applicant should discuss with the Highway Authority any proposals for altering the route.

Approved Documents

<u>Ref.</u>	<u>Date</u>	<u>Title</u>
---	May 2016	Environmental Statement & Appendices
005/WOM/NAT/A0	10/05/16	Location Plan
001/WOM/NAT/A0	18/04/16	Figure 2 – Location Plan
W12_LAN_001_REV E	July 2017	Revised Restoration Scheme
---	July 2017	Supplementary Environmental Information: Further Revision to the Restoration Scheme
007/WOM/NAT/A1	17/11/17	Phased restoration and nature conservation plan
---	20/11/17	Ecological Management Plan produced by Applied Ecological Services Ltd

Statement of Compliance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

In determining this planning application, the County Planning Authority has worked with the applicant adopting a positive and proactive manner. The County Council offers the opportunity for pre-application discussion on applications and the applicant, in this case, chose to take up this service. Proposals are assessed against the National Planning Policy Framework, Replacement Local Plan policies and Supplementary Planning Documents, which have been subject to proactive publicity and consultation prior to their adoption. During the course of the determination of this application, the applicant has been informed of the existence of all consultation responses and representations made in a timely manner which provided the applicant/agent with the opportunity to respond to any matters raised. The County Planning Authority has sought solutions to problems arising by liaising with consultees, considering other representations received and liaising with the applicant as necessary. Where appropriate, changes to the proposal were sought when the statutory determination timescale allowed.

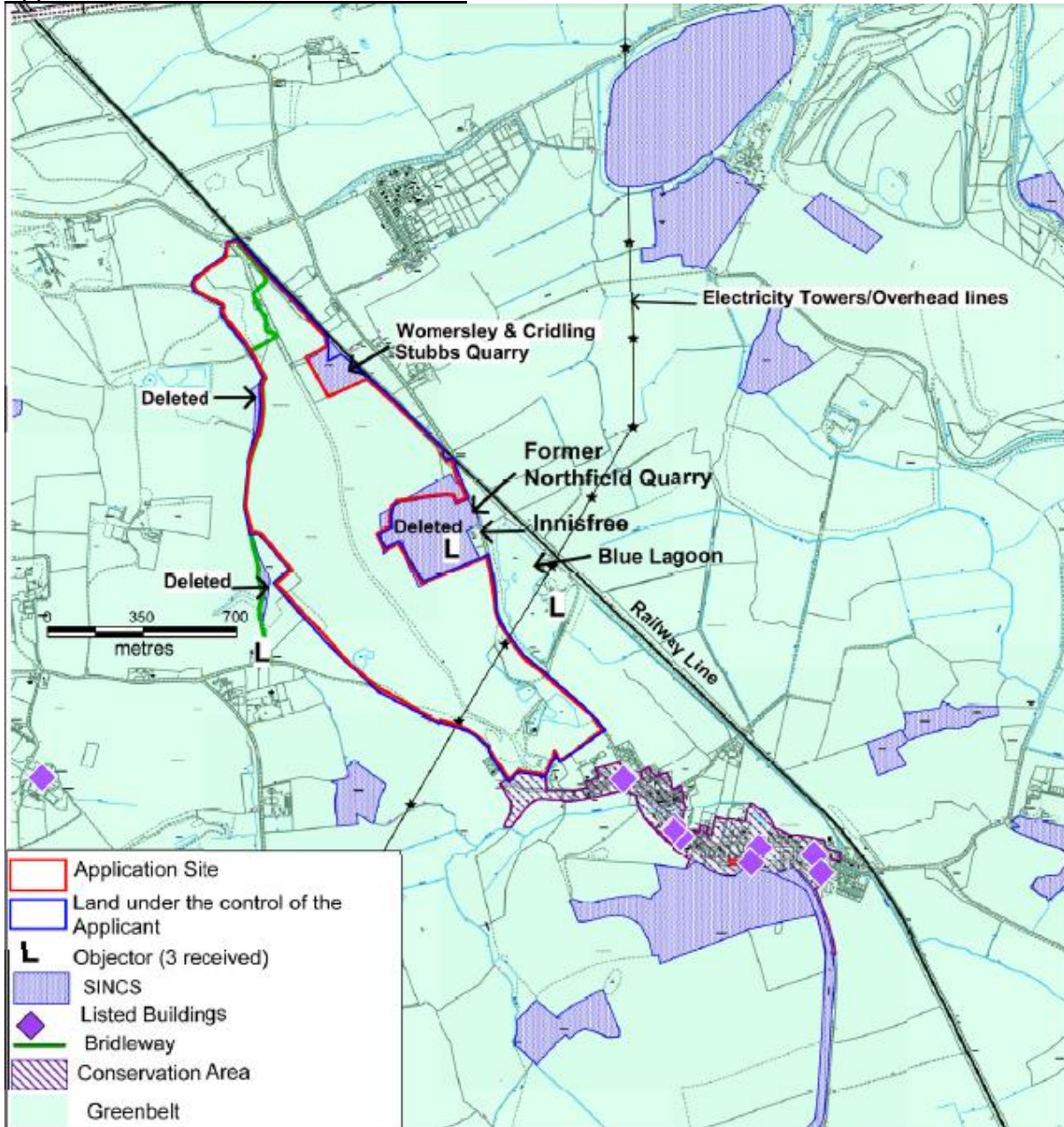
DAVID BOWE
Corporate Director, Business and Environmental Services

Author of report: Alan Goforth

Background Documents to this Report:

1. Planning Application Ref Number: C8/41/107A/PA (NY/2016/0073/ENV) registered as valid on 12 May 2016. Application documents can be found on the County Council's Online Planning Register by using the following web link:
<https://onlineplanningregister.northyorks.gov.uk/register/>
2. Consultation responses received.
3. Representations received.

Appendix A- Site Location & Constraints



Appendix B- Relevant conditions on permission ref. C8/2012/0035/CP dated 4 September 2012

Conditions:

1. The development hereby permitted is valid only until 13th May 2016 by which date all tipping of waste materials shall have ceased, all surface installations together with mobile and fixed plant removed and the land restored in accordance with the approved scheme of restoration and landscaping, as specified at condition 18.
2. The development hereby permitted shall be carried out entirely in accordance with the application details dated 6 January 2012 and Environmental Statement received 21st May 2012, as supplemented by the application details dated 27th October 1986.
3. The development hereby permitted shall be carried out in accordance with the revised method statement dated October 1986 and Environmental Statement submitted 21st May 2012, together with the included application drawings and except as those details may be modified by this schedule of conditions which in all cases shall take precedence.
4. Access to the site shall be via the access shown on application drawing number PB/274/JB/2 dated September 1986 and no other access shall be used for any purpose connected with the development hereby permitted without the prior written approval of the County Planning Authority.
5. The materials to be disposed of at the site shall be transported to the site via the prescribed route identified on the application drawing number PB/274/JB/8 dated October 1986. Vehicles involved in the transportation of waste leaving Kellingley Colliery shall be thoroughly cleaned such that no mud, dust or waste is deposited on the public highway; such vehicles having discharged their loads at the application site shall return to the colliery by the prescribed route.
6. The materials to be disposed of at the site shall consist only of mineral waste arising from the extraction of coal from Kellingley Colliery together with the waste products arising from the coal preparation plant at Kellingley Colliery.
7. Soil Storage shall only occur on site in accordance with drawing no. 2284.03 (Dated May 2012).
8. At all times, noise mitigation measures shall be employed at the site in accordance with the details set out in paragraph 9.9 of the Environmental Statement.
9. Effective measures shall be taken to prevent the occurrence of windblown dust as a result of the operations hereby permitted, as set out in detail in paragraphs 10.14 to 10.26 of the submitted Environmental Statement accompanying this application.
10. Within 3 months from the date of this planning permission, an updated 'Dust Action Plan' shall be submitted to and approved in writing by the County Council. Thereafter, operations associated with the approved development shall be carried out at the site entirely in accordance with the approved Dust Action Plan.
11. No scrap materials or other non-mineral waste or disused equipment shall be allowed to accumulate on site.

12. No vehicles involved in the transport of waste to the site shall be allowed to park overnight on any part of the site.
13. Precautions, including if necessary the provision of additional vehicle cleaning facilities, shall be taken and maintained to ensure that all vehicles leaving the site are in a clean condition such that no dirt and/or mud are deposited on the public highway by vehicles travelling from the site.
14. The proposed cells shall be constructed in accordance with drawing No. P.B. 64/274/JB/4 (as amended April 1987). In the floor of the cells the construction materials shall consist of pressed tailings, quarry waste, marl, or other materials with properties similar to those detailed in British Coal Yorkshire Regional Laboratory Report Nos. 13393 (dated March 1981) and 13694 (dated June 1981) and the compacted thickness will be not less than 1 metre. The cell walls will be formed from coarse colliery discard or waste and the cells will be capped with pressed tailings, coarse colliery discard or colliery waste. All of the above materials shall be compacted so as to reduce the air void of the material to less than 10% when tested in accordance with BS1377.
15. No permanent works shall be carried out within the 32 metre-wide easement of the Yorkshire Derwent Aqueduct and all crossings of the easement by plant and equipment shall be via the agreed route.
16. No materials shall be burned on site.
17. No tipping, site preparation works or transportation of materials to the site for tipping shall be carried out except between the following times:-

7.30 am to 6.30 pm Monday to Friday
7.30 am to 12.00 midday Saturday

No such operations shall take place on Sundays or Bank Holidays except in cases of emergency when the physical well-being of persons or property may be at risk.
18. Landscaping of the site shall be carried out in accordance with the landscaping scheme indicated on application drawing PB 64/274/JB/3 dated September 1986.

All tree and shrub planting shall take place during the first planting season following restoration. Such planting shall take place into the ground that has previously been prepared to the satisfaction of the County Planning Authority. Such preparation shall as necessary include the following:-
 - (a) Ripping
 - (b) Topsoil or other approved organic material spreading
 - (c) Cultivation
 - (d) Herbicide application
 - (e) Green manuring
 - (f) scraping/screefing/strimming of vegetation
19. Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compounds shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank or the combined capacity of the inter-connected tanks plus 10%. All filling points, vents and gauges and sight glasses must be located within the

bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

20. Restoration of the site to a condition suitable for agricultural use shall be completed in progressive phases as soon as reasonably practicable in the following matter:-
- (a) The surface of the colliery waste shall be levelled and graded in accordance with the 'Revised Restoration Masterplan' drawing 2096.3 (dated July 1999) such that the restored site shall conform with the contours of the surrounding land and shall be free from any risk of ponding or erosion
 - (b) The top 150mm of colliery waste shall be chemically tested and appropriate chemical ameliorants applied
 - (c) The upper 400mm depth of colliery waste shall be ripped with a heavy duty ripper such that there is:-
 - (1) no stones or boulders or other material capable of preventing or impeding normal agricultural or land drainage operations including further ripping or ploughing
 - (2) No wire, rope, cable or other non-mineral waste
 - (3) No excessively compacted zone
 - (4) A graded, uncompacted surface suitable for receiving subsoil
 - (d) All stones and other deleterious material shall be removed from site or buried on site at a depth in excess of 2 metres
 - (e) Subsoil/overburden shall be spread to achieve a total thickness of material overlying the colliery waste, including topsoil, of 1 metre after settlement. No layer of replaced soil to be over 450mm before ripping takes place which shall penetrate at least 150mm into the underlying layer
 - (f) The subsoil/overburden shall be ripped in accordance with (c) above
 - (g) All stones and other deleterious material shall be removed from site or buried on site at a depth in excess of 2 metres
 - (i) After the satisfactory spreading and replacement of subsoil, a minimum thickness of 150mm of topsoil shall be spread evenly over the land to be restored to agriculture
 - (j) The topsoil shall be ripped in accordance with (c) above
 - (k) The replaced topsoil shall be chemically tested and appropriate chemical ameliorants applied.
21. Within 6 months of the date of this permission, details showing a phased scheme of progressive restoration shall be submitted to the County Planning Authority for Approval. Once approved, the restoration at the site shall be carried out in accordance with the approved scheme, including its timeframe.
22. All operations involving soil handling and cultivation shall be carried out when the soil is in a dry, friable condition.
23. Not later than six months before topsoil is replaced on any part of the site a detailed aftercare scheme shall be submitted to the County Planning Authority for approval. Aftercare of the site shall be carried out in accordance with the approved scheme which shall provide for such steps as may be necessary to bring each phase of the land restored in accordance with condition 20 to the required standard for arable

agricultural use. The submitted scheme shall provide for, among other matters, the following:-

- (a) a five year aftercare period commencing with the date that any phase of the land restored in compliance with condition 20
- (b) the type of crops to be established
- (c) regular soil analysis immediately following restoration and during the course of the aftercare period
- (d) the application of appropriate fertilizers resulting from the soil analyses
- (e) cultivation methods
- (f) stone picking of the restored land
- (g) subsoiling of the restored land
- (h) the drainage of the restored land
- (i) crop management
- (j) weed control
- (k) the provision of fences, gates, hedgerows, field access points and field water supply

24. During the first week of October every year (or at such other times as may be agreed with the County Planning Authority) a review of the previous 12 months tipping, restoration (including fencing and drainage), seeding, planting and aftercare shall be carried out in conjunction with a representative of the County Planning Authority. The review shall take account of any departure from the phases of restoration shown in the submitted drawings, any areas of seeding that have failed to establish, any trees that have failed to survive or any unforeseen occurrence having taken place on the site and shall provide for the taking of such steps as might be necessary to continue with the satisfactory restoration and landscaping of the site including re-seeding and re-planting with whatever species appear appropriate at the time of each review and the taking of additional soil samples and treatment with required nutrients. The agreed steps shall be implemented to the satisfaction of the County Planning Authority.
25. In the event of tipping ceasing on the site for a period in excess of 12 months before the completion of the development hereby permitted, a scheme showing the final restoration contours shall be submitted to the County Planning Authority for approval within six months of such cessation. The scheme shall also include a revised programme of restoration, seeding, planting, and fencing. Once approved, all further works of restoration and landscaping shall be carried out in accordance with the agreed scheme to an agreed timescale.
26. Should it be determined to the satisfaction of the County Planning Authority, in consultation with the County Highways Authority, that vehicles exiting the site are causing mud, debris or other detritus to foul the highway, the transport of material to the site shall cease until the matter has been remedied to the satisfaction of the County Planning Authority, in consultation with the County Highways Authority.
27. Within 6 months from the date of this permission a detailed scheme for the maintenance and erection of (where necessary) secure fencing around the site shall be submitted to and approved in writing by the County Planning Authority. Once approved, the fencing shall be erected around the site in within 3 months from the date of the approval, in accordance with the approved details and maintained in accordance with the approved maintenance details and retained until restoration and aftercare is complete.

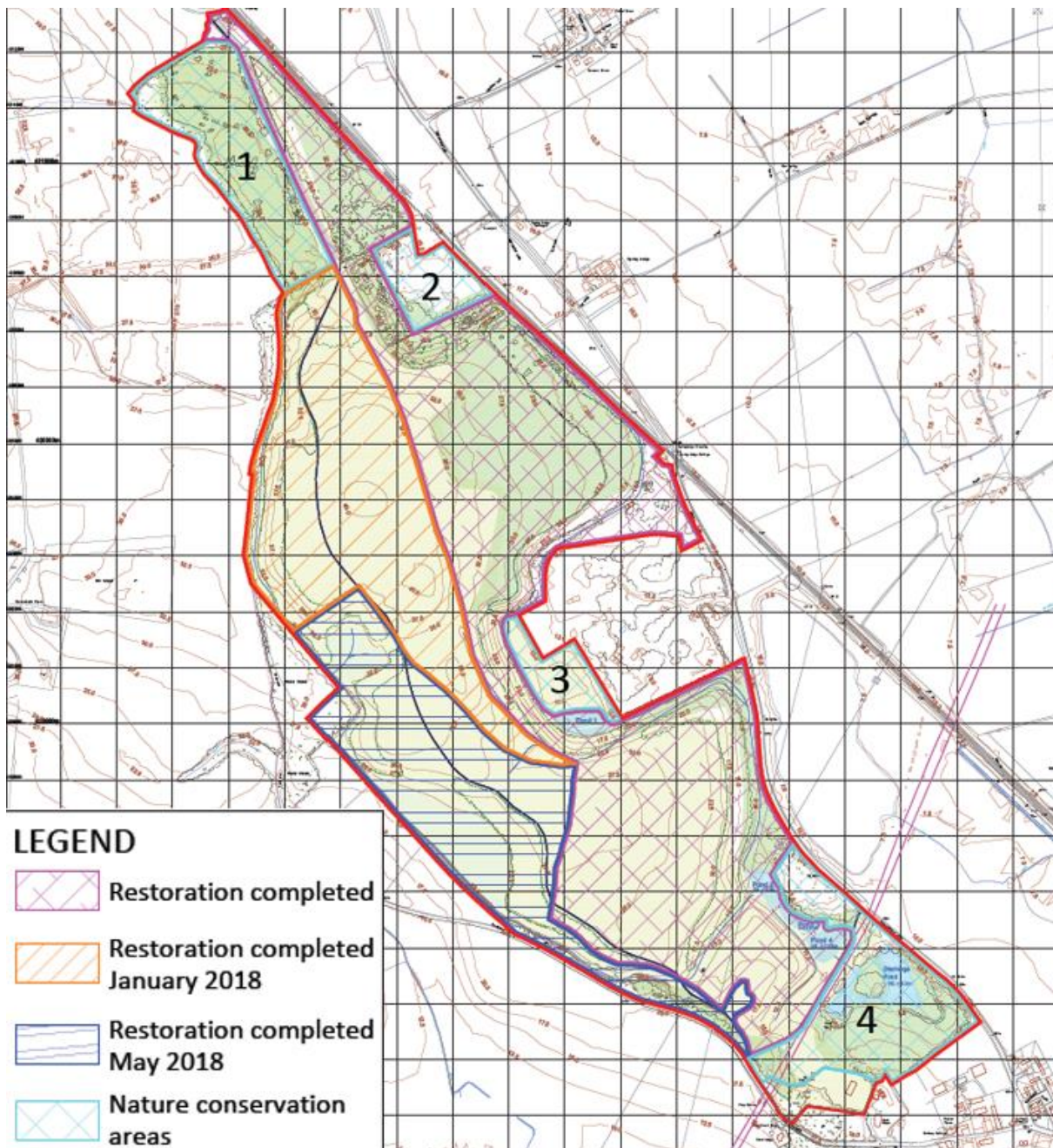
Appendix C- Revised Restoration Scheme



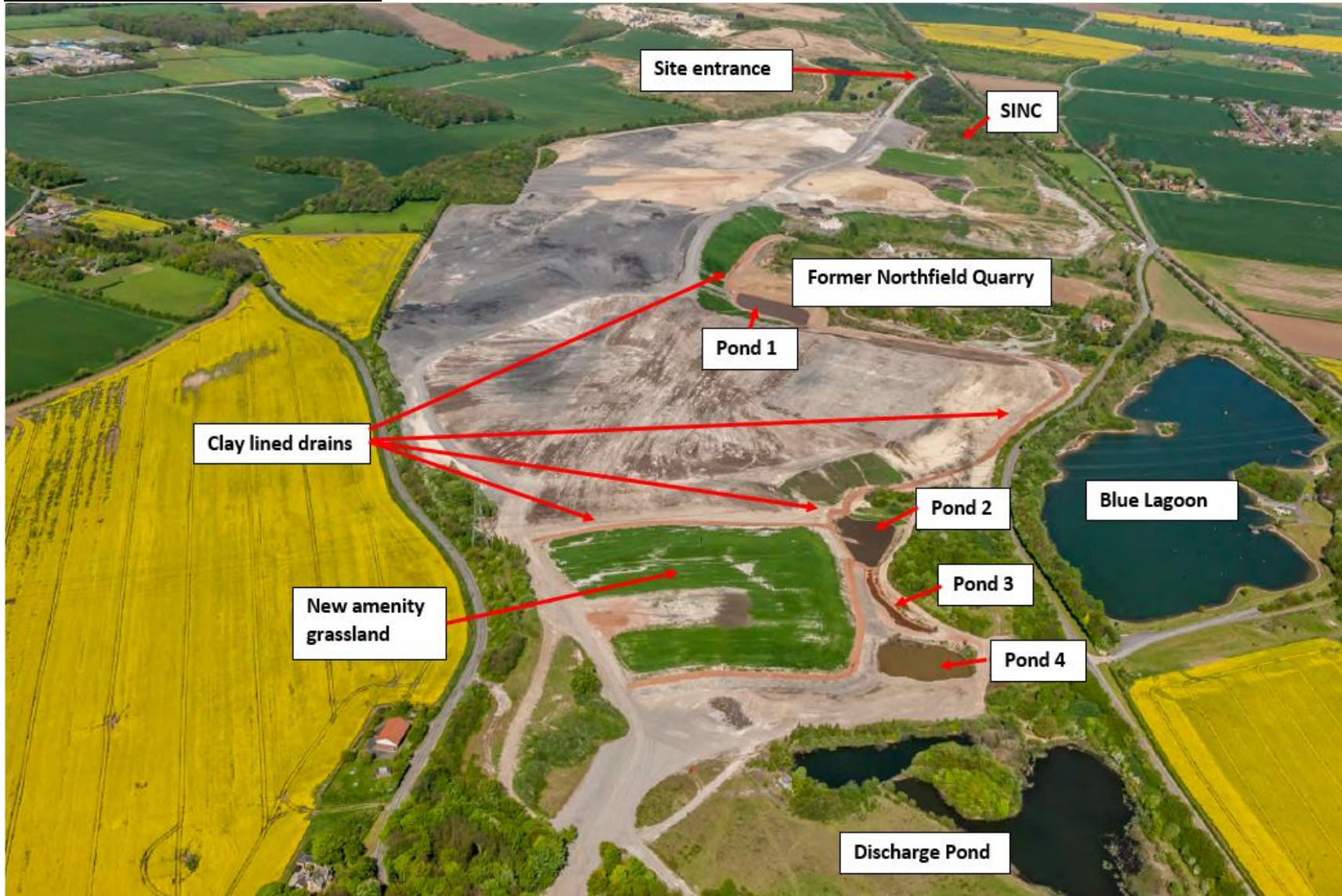
LEGEND

	Application Area Boundary		Proposed permissive bridleway
	Existing and proposed contour		Existing and proposed contour
	Existing tree, shrub and woodland		Proposed wet grassland
	Existing restored grassland		Proposed woodland planted into previously restored grassland
	Existing and proposed water body and ditch		Proposed woodland planted into new restoration profile
	Existing public footpath/bridleway		Yorkshire Water Mains

Appendix D- Phased restoration and nature conservation plan (Nov 2017)



Appendix E- Aerial photo (May 2017)



Appendix F- Site Location & representations

