
Site Address: Havant Thicket, adjacent to Sir George Staunton Country Park, Middle Park Way, Havant

Proposal: Application for Non- Material Amendment under Section 96A of the Town and Country Planning Act 1990 (as amended) of the hybrid planning permission reference APP/20/00990 dated 15th October 2021 relating to revised southern embankment position; slight increases to excavation and embankment earthworks volume and small reduction in capacity and associated consequential changes relating to location of the Culvert, Valve Tower, Control House, Avenue Staircase and Viewing Platform moved to the north.

Application Type: Non-material change

Application No: APP/23/00979 Expiry Date: 05/01/2024

Applicant: Future Water (for Portsmouth Water)
Future Water (for Portsmouth Water)

Agent: Mr A Blaxland Case Officer: Narinder Lakhan
Adams Hendry Consulting Ltd

Ward: Warren Park

Recommendation: **GRANT PERMISSION**

1 Site Description

The Reservoir Site

- 1.1 The reservoir site has an area of approximately 160 hectares and comprises predominantly of open grassland with some woodland, vegetation and ditches. The site straddles the local authority boundary between HBC and EHDC, with the district boundary running through The Avenue woodland within the site.
- 1.2 At the centre of the reservoir site is an area designated as ancient woodland that runs from the south-east to north-west known as The Avenue. Three other areas of ancient woodland: Middle Clearing; Round Wood and Corsican Pine Plantation are located within the reservoir site. A Public Right of Way (bridleway) extends from east to west through the centre of the site. The bridleway runs from Manor Lodge Road in the east to Park Lane in the west, linking Rowlands Castle with Cowplain. There are further access points into the reservoir site from the public highway. These are as follows: a path off the corner of Swanmore Road; a path from Bitterne Close via the Country Park; Whichers Gate at the Manor Lodge Road/Whichers Gate Road junction; a path from Manor Lodge Road Park via the Forestry England car park and a logging track also off Manor Lodge Park Road.
- 1.3 The land in Staunton Country Park (SCP) is designated Open Access land, which includes a number of permissive paths within and adjoining the reservoir site, including along The Avenue. Within the Havant Thicket woodland to the north there is a mixture of gravel logging routes and grassed routes. A number of footpaths run adjacent to and in the proximity of the reservoir site to the south and east in Rowlands Castle and the country park. A cycleway runs along Swanmore Road immediately to the west of the reservoir site. To the east, National Cycle Route 22 runs from north to south and passes close by the farm at SCP.

Environmental and Heritage Designations

- 1.4 The historic environment within the reservoir site includes portions of the Grade II* Registered Park and Garden (RPG) at Leigh Park (Staunton Country Park) and the Sir George Staunton Conservation Area.
- 1.5 Within the reservoir site, The Avenue, Middle Clearing and Round Wood are classified as Ancient Semi-Natural Woodland (ASNW). The Corsican Pine Plantation is classified as Plantation on Ancient Woodland Sites (PAWS). A significant part of Havant Thicket woodland to the north is listed as PAWS. Bells Copse, located to the west, also located within the wider reservoir site is also listed as partly ASNW and partly PAWS. These woodland blocks are designated as Sites of Importance for Nature Conservation (SINC). In addition, four Priority Habitats are present within the reservoir site namely: purple moor-grass and rush pasture; lowland dry acid grassland; wet woodland; and lowland mixed deciduous woodland.
- 1.6 The majority of the reservoir site is located in a low flood risk area, Flood Zone 1. One section of the Site (southwest corner) is categorised as being in Flood Zone 2 and 3. Flood Zone 3 is the area of highest risk of flooding. There are three watercourses which enter the north of the reservoir site, named Headwater Streams 1-3, these converge into a single watercourse towards the southern boundary. There are also two shorter watercourses within the reservoir site (Headwater Stream 4 and 5). All watercourses are very narrow, typically around 1m in width, and are generally dry from May to October.

2 **Planning History**

- 2.1 The application site has been subject to planning applications, the more significant/relevant applications are listed below:
- 2.2 **APP/20/0090** - Hybrid Application (part full and outline) - 1) Full Planning permission for development of a reservoir for raw water storage, a pumped storage reservoir, with the minimum required total storage capacity of 8,700 million litres (Ml), to support the planned bulk supply transfer of at least 21Ml/d in extreme (currently defined as 1:200 year) drought conditions; Construction of an earth embankment adjacent to Staunton Country Park; Construction of an overflow discharge/spillway at the south-western side of the reservoir and associated works; Construction of a new junction on the B2149 Manor Lodge Road and a new junction on Swanmore Road. Provision of viewing areas on the southern embankment and western edge of the reservoir. 2) Outline permission for a control house partially incorporated within landscaped earth mounding adjacent to the south-west embankment; together with provision of other earth embankments. Construction of a visitor centre / cafe, with storage areas and welfare facilities to the northwest of the reservoir to be used for recreational and education purposes; Provision of picnic area(s) and children's play area(s). Access routes from both junctions to the visitor car park; visitor car park comprising 193 car parking spaces and between 70 and 75 overflow spaces plus spaces for staff, coach/minibus and disabled drivers sited to the north-west of the reservoir. Creation of a permanent wetland on the northern side of the reservoir and construction of bird watching hide/screen(s); Recreational facilities for public amenity. Provision of perimeter tracks and a network of bridleways, cycle paths and footpaths; Construction of a slipway on the western bank of the reservoir for operational use only and a small section of the proposed pipeline (210m). - Permission subject to conditions and a S106 legal agreement (15/10/21).

- 2.3 **APP/20/00991** - Outline application for (matters to be considered outlined in Table 2.2 in the submitted Development Specification) development of a new pipeline to transfer water from Bedhampton Springs to fill the reservoir in the winter and draw it off to treat and supply when needed in the summer comprising: Construction of an underground, bi-directional pipeline linking the reservoir with the existing pumping station at Bedhampton; Emergency drawdown discharge structure at Hermitage Stream; Upgrades to existing culverts; Washout and air valve chambers (typically below ground) - Permission subject to conditions and a S106 legal agreement (15/10/21).
- 2.4 **APP/23/00628** - Application for Non- Material Amendment under Section 96A of the Town and Country Planning Act 1990 (as amended) relating to the Southern Embankment of the hybrid planning permission reference 51680/001 dated 15th October 2021 - Withdrawn (21 November 2023).

Reserved Matters Applications

- 2.5 Reserved Matters consent granted for the Phase 1 Northern Access Route approved (Planning Reference APP/22/00681).

Conditions

- 2.6 Discharged Conditions Under Reference APP/20/00990 approved 23 March 2023 comprise:
- Condition 4 - Phasing
 - Condition 5 - Construction Environmental Management Plan
 - Condition 6 - Construction Method Statement
 - Condition 9 - Construction Noise & Vibration Management Plan
 - Condition 10 - Assessment of Noise and Vibration
 - Condition 12 - Construction Traffic Management Plan
 - Condition 21 Archaeological Evaluation - Written Scheme Condition 22 Archaeological Evaluation - Programme and Condition 23 Archaeological Evaluation - Recording.
 - Condition 29 - Renewable Energy)
- 2.7 Discharged Conditions Under Reference APP/22/00681 approved 03 February 2023 comprise:
- Condition 13 - Site Access (Disabilities).
 - Condition 20 - Lighting Strategy.
 - Condition 27 - Landscaping Arb Work.
 - Condition 28 - Landscaping.
 - Condition 32 - Drainage.
 - Condition 36 - Ecology.
 - Condition 37 - Ecology Licences.
 - Condition 38 - Ecology Clerk of Works.
 - Condition 39 - Soil Management.

- 2.8 Discharged Conditions Under Reference APP/23/00990 approved 03 July 2023 comprise:

- Conditions 21, 22 and 23 - Archaeology.

3 Proposal

- 3.1 This Non-Material Amendment Application (NMA) is submitted by Adams Hendry Consulting Ltd on behalf of Future Water, who are undertaking the reservoir for Portsmouth Water.

Background to Submission

- 3.2 Future Water's detailed design is based on the outline design work undertaken by Portsmouth Water to secure the hybrid planning permission. The more detailed engineering and design work undertaken by Future Water includes design evolution, and it is this that is the subject of this NMA, as described below.

The main reservoir embankment earthworks

- 3.3 The detailed design for the main reservoir embankment will change from the outline design. The changes relate to the "southernmost embankment", and are summarised as follows:
- 3.4 Revised southern embankment position:
- Southern (external) toe moved further north near to the retained Ancient Woodland (away from the woodland by up to 45m - maintaining minimum 25m separation from the ancient woodland) and extended south in the south-west corner (to the west of the culvert and control house location). North-Eastern part of the Southern Embankment moved up to 55-60m to the north.
 - Northern (internal) toe moved further north as a consequence of the above by a variable distance.
 - Crest moved further north by up to 45m and extended in length to approximately 2,830m.
 - Slight increases to excavation and embankment earthworks volume, and small reduction in reservoir capacity but minimum capacity maintained at above 8,700 Million litres The embankment profile / gradients (both internal and external faces) remain as per the Hybrid permission (1:5 to 1:7 slopes).
- 3.5 In addition, as a result of the proposed earthworks embankment changes, other consequential changes will arise, with the location of the Valve Tower, Control House, Avenue Staircase and Viewing Platform moved to the north (by virtue of the embankment moving north).

Summary of NMA Changes

- 3.6 A review against the matters approved under the Hybrid permission (APP/20/00990) has been undertaken, as set out in the Table 1 below:

Hybrid Permission	Design Changes
Reservoir Capacity	
Minimum required total capacity 8,700 Million litres.	Total capacity reduced but minimum capacity maintained at above 8,700 Million litres. Top Water Level

Maximum capacity: at least 9,600 Million litres, up to a Top Water Level (TWL) of 39.5m AOD.	maintained at 39.5m AOD.
Embankment	
Maximum height 20m	No change
Crest level 40.5 AOD	No change
Length 2,770m	Increased to 2,830m
Inside slope: to range from 1:5 to 1:7	No change
Outside slope: majority 1:7 with local variations to 1:5 at Round Wood and the Avenue Woodland (see below)	No change
Outer toe (edge): +/- 2m horizontal range (north to south)	Embankment moved by up to 45m to the north, and protective distance (minimum 25m) to retained Ancient Woodland maintained.
North-eastern corner of southern corner	Moved up to 55-60m to the north
Crest line position: 0-37m horizontal range (to north) to accommodate any potential future need for reducing the outer face slope from 1:5 to 1:7	Embankment moved by up to 45m
Embankment adjacent to Staunton Country Park	
Toe (edge) of the embankment is fixed at a minimum of 25m from the edge of woodland along the southern boundary of the site (known as Hammond's Lands Copse)	No change - minimum 25m from woodland maintained
Length of embankment at 1:5 is approximately 185m along this stretch and 390m of embankment with slope varying from 1:5 to 1:7	No change
Staircase detail along alignment of The Avenue joining pedestrian access from Staunton Country Park with viewing area at the crest	Staircase detail same. Staircase location changed (moved north due to embankment moving north)

3.7 The NMA Application submission is supported by the following plans and documents:

- Adams Hendry Consulting Ltd letter dated 12th December 2023.

- Environmental Technical Note.
- Illustrative Plan 1 (Strategy Plan) - HTR-GHD-22-RE-DR-C-00002 REV A1
- Illustrative Plan 2 (Sections through embankment) - HTR-GHD-22-RE-DR-Z-00004 REV PO2
- Illustrative Plan 3 (Planning Strategy Key Plan) - HTR-GHD-ZZ-RE-DR-C-00002 REV A1

4 Policy Considerations

National Planning Policy Framework (2021)

Havant Borough Council Borough Design Guide SPD December 2011 .

Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011 .

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS14	(Efficient Use of Resources)
CS15	(Flood and Coastal Erosion)
CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
CS18	(Strategic Site Delivery)
CS19	(Effective Provision of Infrastructure)
CS2	(Employment)
CS20	(Transport and Access Strategy)
CS21	(Developer Requirements)
CS8	(Community Safety) DM10 (Pollution)
DM11	(Planning for More Sustainable Travel)
DM12	(Mitigating the Impacts of Travel)
DM14	(Car and Cycle Parking on Development (excluding residential))
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)

Havant Borough Local Plan (Allocations) July 2014 .

DM17	(Contaminated Land)
DM20	(Historic Assets)
AL1	(Presumption in Favour of Sustainable Development)
AL 2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)
AL 6	(Havant Thicket Reservoir Pipeline)
DM18	(Protecting New Development from Pollution)
AL2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)
CP26	(Water Resources/Water Quality)

Emsworth Neighbourhood Plan Post Examination Version 2020

N/A

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

[N.B. – Government Guidance “Flexible Options for Planning Permission” (March

2014) states “As this is not an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply”.]

5 Statutory and Non-Statutory Consultations & Community Involvement

5.1 As an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2015 provisions relating to statutory consultation and publicity do not apply. Therefore, local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views.

5.2 Section 96A applications are regulated by Article 10 of the Town and Country Planning Act (Development Management Procedure) (England) Order 2015 (DMPO) and notice must be given to any person (other than the Applicant) who is an owner of the land to which the application relates. However, there is no requirement in the DMPO for the LPA to publicise or undertake consultation with any person pursuant to an application under this Section.

5.3 Notwithstanding the legal position pertaining to the LPAs requirements for consultation, the Council notified interested parties who made representations on the NMA application APP/23/00990 and the applicant updated HTR Stakeholders of the intention to resubmit the current application. As a result of these notifications the Council received a total of **3 letters** setting out why it was considered the changes amounted to material amendments and these are summarised as follows (The planning considerations section (6) further examines these representations).

5.4 A detailed (6-page letter dated 7th January 2024) was also sent setting out why the proposal should be considered not material and further updated by email dated the 15th of February 2024. The reasoning is set out in the Table 3 below with LPA response (it must be noted that the comments have been summarised for the basis of this report).

5.5 Response to representations received 7th January and 15th February 2024

Comment	LPA Response
Changes go beyond scope of approved parameters (page 1 para 2).	Whilst this accepted is it reasoned that the changes would amount to non-material changes for the reasons set out in the main body of the report at Section 6.
More information is required to determine impact vis a vie visual & historic environment impacts, ecology, noise, vibration and air pollution (page 1 para 3/4)	Sufficient information has been provided to allow the LPA to determine whether the changes sought amount to non-material changes.
If the embankment changes were to be agreed as a non-material change this will <u>not</u> make the movement of the valve tower to an offshore location more likely (page 1 para 5).	This is not for considering under this NMA. Should any further changes be sought, these will be considered by the LPA at that stage whatever the type of application is made.
1. Visual Impacts (page 1-2):	• The LPA considers the changes to be non-material. Whilst they go beyond

• <i>The changes are substantive and go beyond the tolerances of change allowed for in the original hybrid planning application.</i> • <i>An experienced specialist landscape architect needs to consider the changes.</i> • <i>Application should be supported by cross-sections and photomontages.</i> • <i>Insufficient information has been submitted to assess the visual impact of the change in embankment position and how significant it is to local views, especially in terms of visibility of the Control House.</i> • <i>The south-west toe of the embankment will move about 40m further south along the streamline, closer to the residential properties at Winterslow Drive. This means more of the valley will be infilled by the visible southern slope of the embankment. No information has been submitted to substantiate that this change is not visually significant.</i> • <i>Vantage points from which views could change as a result of the proposed alterations to the embankment and control house locations.</i>	the tolerances allowed under the parameter plans, when weighed against the scale and the wider site they can be considered to be non-material. • The credentials of the consultant and the conclusions they make are not considered to be insufficient or lacking in expertise. • There are sufficient details set out in the supporting information for the LPA to make a reasoned judgment on the materiality of the amendments and their wider impacts on visual impacts, landscape and the historic environment. • The movement of the embankments SW toe will not impact the living conditions of the properties along Winterslow Drive over and above the assessments made under the hybrid consent or its visually significant compared to the impacts considered at outline stage. • The views of the embankment and its visual appearance will be considered under the RMA submission for that phase.
2. Historic Environment Impacts (page 2): • <i>View from further vantage points not considered.</i> • <i>The Terrace is a key viewpoint within the Grade II listed historic park and garden.</i> • <i>The top of the embankment is likely to be more visible from the Terrace viewpoint.</i> • <i>This impact has not been adequately assessed to determine that it is not material.</i> • <i>The Statement of Conformity has been provided by an environmental consultant, not by an experienced historic environment specialist, based on a full and proper evaluation of the proposed changes.</i> • <i>Will the Control House building be more visible from vantage points within the Grade II listed historic park and</i>	• The assessment of the impact of the changes have been considered on the historic environment and the views from these locations. Whilst views maybe more visible these must be considered in the context of the scale of the development, the ability of the scheme to blend into the landscape (whilst acknowledging that a degree of change will be inevitable. • The detailed of elements (including the control house) within the embankment will be subject to assessments under the RMA where further consultation will take place. • The consultant employed by the applicant has suitable credentials to make conclusions on the environmental impact of the amendments including inter alia historic environment. The ES Statement of Conformity whilst

<i>gardens (including from The Terrace and path approaching it), or from the designated historic Conservation Area?</i> <i>• The impact of the change does need to be reassessed by a specialist to determine the significance of the change in embankment position on the designated historic site and conservation area.</i>	prepared by an environmental specialist was informed by consideration of the different topics by relevant technical specialists. • The conclusions held in respect of impact on the historic environment still hold good and were set out in paragraphs of the officer committee report these included the impact upon the character and appearance of the landscape including on Ancient Woodland, Conservation Area and Registered Park and Gardens and setting of Staunton Country Park and the South Downs National Park. • At paragraph 7.109 of the committee report it was held that <i>“that there would be harm caused to the Conservation Area and Registered Park and Gardens. All are considered to be <u>less than substantial harm</u> in regard to the tests set out in the NPPF”</i>. This harm was weighed against the public benefits that the scheme delivered, and it was held at paragraph that 7.113 that the <i>“public benefits do outweigh the harm identified to the heritage assets, whether balanced on an individual basis or cumulatively, in accordance with paragraph 196 of the NPPF. Having regard to the requirements of Section 66 and 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 the proposal is therefore considered acceptable in this regard and in accordance with adopted East Hampshire District Council policy CP26, Havant Borough policies CS18, CS19 and emerging policy KP9 of the Havant Borough Local Plan”</i>. • It is considered that the level of harm would not be raised above less than substantial which is already established under the hybrid consent.
3. Information to substantiate why the substantive changes are necessary (page 3)	The applicant has set out why the changes are necessary. The LPA has determined these changes are non-material on the planning grounds set out in the report. The assessment is for the LPA to determine whether the

	changes are within the scope of a S96 application.
4. Control House Building (page 3)	The control house is proposed to move northwards with the embankment, however, there are no changes to the slope of the embankment proposed in the NMA, nor to the extent that the control house protrudes from the embankment (horizontally or vertically). The control house also remains within the parameters set by the hybrid planning permission" (i.e. Max width of frontage 33m, max height 6m, total area 430m² excluding courtyard). The NMA does not propose any changes to the scale or design of the control house. It is solely that as the embankment moves north, so too does the control house. The details of the control house will be subject to a future RMA application and its visibility design will be subject to consultation and review by 3rd parties. The comments and suggestions set out in the letter have been passed onto the applicant to aide their future submissions.
5. Proposed culvert and valve tower changes (page 3-4)	This application is not making any amendments to the valve tower. It is noted the previous NMA submission was withdrawn. The location of the valve tower and its potential visibility will be subject to assessment under a separate submission should it be pursued by the applicant. 3rd parties will be consulted on such changes. The LPA cannot comment on this aspect of the scheme at this stage. The means of access to the valve tower is a matter for the applicant to consider. The culvert detail was consented in outline and its detailed design will be the subject to RMA application. It is the location of the culvert below the embankment that is being amended under this application. The NMA does not propose any changes to the draw off pipe levels. These were not shown on the corresponding Section C drawing under the Hybrid Permission.

6. Impact on trees and landscaping (page 4)	Objector makes comments that the changes could provide for more opportunities for tree planting to the north of Round Wood and The Avenue peninsula which have added benefits for ecology and wildlife. A graded woodland edge would have more benefit for wildlife. These comments are noted and have been conveyed to the applicant. Detailed landscape plans would be required under condition 28 (part ii and iii). The Implementation Plan includes four Action Plans for the main elements of the overall mitigation package: Woodland Creation, Southleigh Forest, Ephemeral Streams, and Capital Grants Scheme.
7. Loss of potential to create wet grassland/ BAP habitat (page 4-5).	A wetland mitigation strategy is secured by condition 36 and S106 obligation (Detailed Biodiversity Mitigation and Compensation Strategy and Ecological Mitigation and Management Plan) linked to the hybrid planning application.
8. Noise, vibration and air pollution (page 5)	The ES Statement of Conformity was informed by consideration of the different topics by relevant technical specialists. The NMA would not lead to material or likely significant effects different from those assessed in the original ES. Applications for the discharge of conditions will include detailed noise and other effects and mitigation measures.
The northernmost extent of the eastern part of the southern embankment would be positioned further to the north. This a material change and the applicant should provide further information to demonstrate that there will be sufficient space left to the east of the extended embankment to accommodate a path for multi users; vehicle turning head, retention of existing vegetation and allow for future planting and Retaining ditches for existing and future path drainage (comments made in email of 15th February 2023).	The northernmost extent of the eastern part of the southern embankment would be positioned further to the north (upto 60m). This is identified on the supporting application plans (Illustrative Plan 3 shows the hybrid permission embankment in yellow shading, and the proposed position of the embankment as a magenta solid line). When comparing the two lines it shows clear differences to the position of the embankment in a number of specific locations including that eastern part of the embankment, as well as the southwestern corner and western parts of the embankment, as well as the

	re-alignment of the southern and northern toes of the main embankment. Having regard to the details shown on Illustrative Plan 3, the northernmost part of the eastern embankment would extend north by between 55-60m from the hybrid embankment position, although the embankment at this location would be low in height given the existing ground levels in that area. The application and the Environmental Statement of Conformity has been prepared on the basis of the embankment changes as shown on the submitted plans. The conclusions reached by Future Water and by the environmental specialists at RHDHV that the changes were non-material were considered on that basis. This included the proposed change to the eastern embankment as part of this consideration. The full details of the embankment design in this location, and the associated details of the footpath, cycleway, landscaping and other details will be considered as part of the future Reserved Matters submissions.
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Havant Climate Alliance (HCC) and Havant Friends of the Earth (HFOE)

Raise **no objection** to the NMA changes to the embankment. However, we would object if the subsequent Section 73 planning amendment was for the Valve Tower to be situated away from the embankment, within the water body of the reservoir. As previously stated, this would be because of the location of the reservoir so close to Leigh Park and the risk that this could lure individuals to attempt to swim out to it. Such a decision should be subject to the scrutiny of the Local Authority Planning Committee.

LPA Response: The comment on the NMA is noted. The comments in respect of the S73 are not relevant to the consideration of this application. The HCC and HFOE will be formally consulted any future S73 Minor Material Amendments and material planning comments will be addressed at determination stage which will be at a formal planning committee.

Councillor P Gray

This new proposal is much more acceptable than the original revision, with the control tower moved into the reservoir, but I am concerned, firstly, that the amended design may make it more likely that the control tower will have to be moved into the reservoir at a later stage in the design process and, secondly, that there is insufficient detail on

this application to allow residents to fully understand the impact of the changes. Given the local concerns about the reservoir construction, I believe that this should be treated as a **material change** so that it can be scrutinised in public, and residents allowed to ask questions and express their concerns.

LPA Response: Future Water is intending to submit a 'Section 73' application for the approval of the valve tower as a change to the permitted Hybrid planning permission, alongside a reserved matters application for the approval of details relating to the embankment and valve tower. Future Water is considering a number of options relating to secondary means of access to the Valve Tower (which could be a bridge or could be secured by other means) and intends to submit any necessary applications for that secondary access at a later date. When these applications are submitted local residents and other statutory consultees will be consulted formally and it is likely the decision will be made by committee where the merits can be discussed. The changes will be scrutinised in public, and residents allowed to comment and express their concerns. The position on the materiality of the changes have been weighed in the planning assessment of the application. No changes are being proposed to the siting of the valve tower within the embankment (other than it moving in line with the embankment move) and other than this, it does not form part of this application.

Other Comments

9. Changes will result in the southern embankment being closer to properties along Winterslow Drive.
10. *LPA Response: There is sufficient separation (260m) between the embankment and this location that no material impacts will arise that were not considered at the planning stage.*
- If approved this application would not lead to the valve tower being located offshore.
11. *LPA Response: The location of the valve tower is considered to be a non-material change to the parameter plan (please refer to paragraphs of the report 6.23 to 6.25).*
- The impact on historic environment (George Staunton Country Park and garden is a grade 11 and also set in Conservation Area) cannot be assessed without a proper assessment.
12. *LPA Response: The impact on the historic environment is considered at Table 2 of paragraph 6.34 below.*
- An important viewpoint within the park is the Terrace and with the proposed changes the embankment is more likely to be visible to the thousands of visitors both from there and from the path leading to it.
13. *LPA Response: The visual appearance of the embankment will be subject to detailed design review under a future reserved matters application. Visual impact was considered under the hybrid planning application and the changes would not be material when viewed in the context of the application site and its location.*
- Information needs to be provided regarding if the Control House building will be visible from vantage points within Staunton Country Park or the Conservation Area.
14. *LPA Response: The visual impact of the control tower will be determined at*

the RMA stage when the siting, appearance and design will be considered, and 3rd parties will be afforded an opportunity to comment.

- More information is needed to determine whether the changes are material.
- 15. *LPA Response: Sufficient detail has been provided including supporting EIA Technical Note for the LPA to determine whether the changes are material considering the guidance set out in "Flexible Options for Planning Permission" (March 2014).*
- The changes go beyond the tolerances set out in the original approved parameter plans.
- 16. *LPA Response: Whilst this accepted, the materiality of the changes has been considered and concluded that they amount to non-material changes for the reasons set in the planning assessment section of the report.*
- 17.
- What is now proposed is substantially different to that with the southern toe of the embankment moving north by up to 45m, south by up to 40m in the SW, with the embankment crest moved 45m north and now proposed to be 60m longer.
- 18. *LPA Response: Whilst the comments are noted, it is the LPA contention that the changes (whilst acknowledged to be different to what was set out in the approved parameters and development specification) and their materiality have been considered and it is concluded that they amount to non-material changes within in the context of the scheme as a whole.*
- There is no indication that the potential impacts of these substantial changes have been assessed by subject specialists in relation to visual & historic environment impacts, ecology, noise, vibration, and air pollution.
- 19. *LPA Response: The changes are not considered to be substantial in the context of the overall scheme. The applicant has submitted an EIA Technical Note which considers those topics set out in the original Atkins ES statement (see paragraphs 6.34 below).*
- The following reports should be provided: A visual impact assessment; Historic environment impact assessment; Ecological impact assessment, including impacts on the mitigation strategy; noise, vibration, and air pollution impact assessment.
- 20. *LPA Response: Please refer to section 6 (paragraphs 6.31 to 6.36).*
- Reassurance needs to be provided by the applicant to the LPA to confirm that if the embankment changes were to be agreed as a non-material change this will not make the movement of the valve tower to an offshore location more likely.
- 21. *LPA Response: The only changes under consideration are those summarised in the "Proposals Section 3" of the report. Any future changes will need to be secured through a formal planning submission which will be subject to consultation and comment.*

6 Planning Considerations

(i) Legal Background

- 6.1 The Government's Planning Practice Guidance ("PPG") contains some commentary on section 96A of the 1990 TCPA under the heading: "Flexible options for planning

permission. Options for amending proposals that have planning permission".

- 6.2 The guidance states that *new issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 ... will need to be submitted. Where less than substantial changes are proposed as in this case, there are the following options for amending a proposal that has planning permission:*
- 6.3 Section 96A of the TCPA 1990 provides, so far as material, as follows: "96A Power to make non-material changes to planning permission ..." (1) A local planning authority may make a change to any planning permission ... relating to land in their area if they are satisfied that the change is not material. (2) In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission ... as originally granted.
- 6.4 *There is no statutory definition of 'non-material' and this will be dependent on the context of the overall scheme and an amendment that is non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990 ..."*
- 6.5 There is a body of case law dealing with the test for identification of material planning considerations, and the courts had already recognised an informal power in LPAs to accept immaterial amendments to a planning permission without requiring a further application, prior to the enactment of Section 96A (see - R (Midcounties Cooperative Ltd) v Wyre Forest DC [2009] EWHC 964 (Admin), per Ouseley J at paras.66-70). It is also the case that Section 55 of the 1990 Act itself requires consideration of materiality when deciding whether a change of use is development and whether works amount to development.
- 6.6 The approach to materiality in the context of planning considerations is encapsulated by the decision of the Court of Appeal in *R (Kides) v South Cambridgeshire DC [2002] EWCA Civ 1370*; (2003) 1 P&CR 19. At paragraph 121 Jonathan Parker LJ stated:
- "In my judgment a consideration is "material", in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues".*
- 6.7 That explanation assists in understanding the correct approach to the words "non-material" in Section 96A. If the changes proposed would not "tip the balance to some extent" because they do not have "weight in the decision-making process" then they will be non-material and may be dealt with under Section 96A. If, however, the changes do have weight in the decision-making process such that they alter the planning balance then Section 96A could not be engaged.
- 6.8 Crucially, whether a change is "non-material" for the purposes of Section 96A is a matter of "planning judgment" for the local planning authority. In this case the effect of

the changes would be non-material in that their nature and substance would not create new planning considerations already assessed under the extant planning permission and the effect of the changes, individually or cumulatively, would be non-material, which was not consulted upon, assessed or debated at planning committee. The rationale for this conclusion is set out in the planning assessment below.

Section 55 of the TCPA

6.9 So far as the incorporation of a test of materiality within Section 55 itself is concerned, this is found both in relation to change of use and also for certain forms of operational development as follows:

6.10 *55 - Meaning of "development" and "new development"*

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

(1A) For the purposes of this Act "building operations" includes: -

(a) demolition of buildings.

(b) rebuilding.

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land: -

(a) The carrying out for the maintenance, improvement or other alteration of any building of works which: -

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground.

6.11 The correct approach to S55(2)(a) and what constitutes a "material affect (to) the external appearance of (a) building" for the purposes of subsection (ii), is a matter of fact and degree. The subsection was dealt with comprehensively in *Burroughs Day v Bristol City Council* [1996]1 PLR 78. Where it was stated as follows:

6.12 *What must be affected is "the external appearance", not merely "the exterior". The alteration must be one which affects the way in which the exterior of the building is or can be seen by an observer outside the building.*

A. Alterations which can be seen from any vantage point on the ground or in or on any neighbouring building or buildings would be capable of affecting the "external appearance" of the building in question. The external appearance must be "materially" affected. This involves a judgment as to the degree to which the particular alteration affects the external appearance.

B. The effect must be more than de minimis. Whether the effect of an alteration is "material" or not must depend in part on the degree of visibility.

C. *Whether the external appearance of a building is "materially affected" is likely to depend on both the nature of the building and the nature of the alteration.*

- 6.13 The approach taken to Section 55(2)(a) in *Burroughs Day v Bristol* is of assistance in the understanding of "non-material" in Section 96A. However, it is the LPAs contention that the best guidance is found in the courts' approach to identification of material considerations, set out in *Kides* above, appropriately modified to reflect the nature of Section 96A; whether the changes carry weight in the decision making process so as to tip the planning balance in a manner adverse to a grant.
- 6.14 Crucially, whether a change is "non-material" for the purposes of Section 96A is a matter of "planning judgment" for the local planning authority.

(ii) Planning Assessment of Proposed Changes

(A) Assessment of changes to reservoir embankment earthworks

- 6.15 In assessing the changes, the context of the approved outline in respect of parameters set out in the extant planning permission and Condition 33 (requirement to accord with parameters of Table 2.2 of the Development Specification) therein has been considered. Whilst the rationale for the changes have been noted they do not form a determining set of factors in the assessment of materiality. In summary the embankment changes comprise:

1. Revised southern embankment position (southern (external) toe moved further north near to the retained Ancient Woodland and extended south in the south-west corner (to the west of the culvert and control house location) and north-eastern part of southern embankment moving 55-60m to the north.
2. Revised southern embankment position (northern (internal) toe moved further north as a consequence of the above)
3. Slight increases to excavation and embankment earthworks volume, and small reduction in reservoir capacity
4. The embankment profile/gradients (both internal and external faces) remain as per the Hybrid permission (1:5 to 1:7 slopes).

- 6.16 As a result of the above changes this will result in changes to Phase 3 and 4 as follows:
- Location of Culver, Valve Tower and Control House moved to the north (by virtue of the embankment moving north).
 - Location of Avenue staircase and viewing platform moves to the north (by virtue of the embankment moving north).

- 6.17 Table 1 of this report sets out a summary of the main changes and the officer report/assessment sets out a commentary below on the aspects where a change is highlighted:

(i) Reservoir Capacity - The total capacity will be reduced but the minimum capacity is maintained at above 8,700 million litres, Top Water Level will be maintained at 39.5m AOD. This amounts to a non-material change and would not result in any new significant material planning issues.

(ii) Embankment - The length of the embankment will be increased from 2770m to 2830m (+60m), which is considered "de-minimis" when compared to the overall scale and size of the proposal site and the location of the change in respect of adjoining

sites and sensitive heritage and environmental receptors.

- 6.18 The proposed change to the outer toe (edge): The Embankment will move on average up to 45m-60m to the north, but with the necessary protective distance to retained Ancient Woodland maintained, this is a non-material amendment as there will be no movement towards the ancient woodland.
- 6.19 Crest line position: The current parameter allows a 0-37m horizontal range (to north) to accommodate any potential future need for reducing the outer face slope from 1:5 to 1:7. The change that Future Water are proposing here goes beyond this max parameter by 8m+ (45m) and is again considered non-material as there is no significant material impact on nearby heritage and environmental receptors from the max 8m northward movement of the crest line when having regard to the scale of the reservoir development as a whole
- 6.20 (iii) Embankment Adjacent to Station Country Park - The toe (edge) of the embankment is fixed at a minimum of 25m from the edge of woodland along the southern boundary of the site (known as Hammond's Lands Copse) and this distance is maintained. The staircase detail along the alignment of The Avenue joining the Staircase remains and the only minor change here is the location which moves north and a result of the embankment moving north which is considered a non- material amendment.

Conclusions on Embankment Changes

- 6.21 It is considered that the proposed "embankment changes" (bulleted (i) to (iii) above) can be treated as non-material under S96 of the TCPA. When compared back to the environmental effects under the Hybrid planning permission, the detailed design changes would not give rise to new or materially different significant effects on the environment from those previously assessed or debated at planning committee. Given the limited scale of the differences/changes and expected limited effects on the environment from those previously assessed, they could be capable of being consented via a S96A approval.
- 6.22 It is noted that hybrid application tested environmental impacts and the proposed embankment changes remain within the worst-case scenario assessed in the original Environmental Statement. It is also the case that the scale of the change is limited when seen in the overall context of the reservoir development.

(B) Consequential Changes (Culvert, Valve Tower, Control House, Avenue Staircase and Viewing Platform moved to the north - "structures").

- 6.23 As a result of the proposed earthworks embankment changes, other consequential changes will arise, with the location of the Culvert, Valve Tower, Control House, Avenue Staircase and Viewing Platform moved to the north (by virtue of the embankment moving north).
- 6.24 Outline permission was granted for the above structures and the details are to be submitted as part of Reserved Matters submissions. In assessing the changes, the LPA are only concerned as to whether they amount to material changes. It is noted that these are not new features, and it is unlikely that their reposition within the embankment moving north would give rise to new or materially different significant effects on the environment from those previously assessed.

- 6.25 Based on the above, the LPA considers the consequential changes can be considered as non-material changes. Given the limited scale of the differences and expected limited changes to effects on the environment from those previously assessed, they can be capable of being consented in this manner subject to the detail being assessed under any subsequent Reserved Matters Application.

(C) 3rd Party Comments and LPA Response

- 6.26 This NMA application does not include changes to the Valve Tower or any means of access, it solely relates to the position of the embankment. If this NMA application is approved, it would not pre-determine the Council's proper consideration of the valve tower or secondary means of access should this be pursued under a S73 amendment or a RMA. Stakeholders will also have a proper opportunity to comment on those proposals in later applications and they would be considered by HBC's Planning Committee.
- 6.27 Future Water is intending to submit a 'Section 73' application for changes to approved design of the valve tower as a change to the permitted Hybrid planning permission, alongside a reserved matters application for the approval of details relating to the embankment and valve tower. Future Water is considering a number of options relating to secondary means of access to the Valve Tower (which could be a bridge or could be secured by other means) and intends to submit any necessary applications for that secondary access at a later date.
- 6.28 The embankment position, and thus the control house position, is proposed to move to the north under the NMA. In the context of the scale of the reservoir and control house as a whole, this is not considered to be a significant change from that approved under the Hybrid planning permission. Royal Haskoning DHV in its Environmental Statement of Conformity has considered the environmental effects in relation to the proposed NMA, including in relation to landscape and visual impacts, concluding that the effects were minor.
- 6.29 The control house is proposed to move northwards with the embankment, there are no changes to the slope of the embankment proposed in the NMA, nor to the extent that the control house protrudes from the embankment (horizontally or vertically). The control house also remains within the parameters set by the hybrid planning permission. The principal means of access for operation and maintenance would be provided through the control house and culvert.
- 6.30 The details of the NMA applied for are considered to be 'non-material' both in terms of the physical extent of the changes and the environmental effects associated with them. The 3rd party comments in many respects are considered to more appropriately relate to matters of detail that will appropriately be considered through the subsequent reserved matters application. As a result, the request for additional detailed assessments of various matters is not considered to be appropriate or necessary for this NMA application.

(D) Environmental Impacts

- 6.31 The hybrid consent was supported by an Environmental Statement (2020) prepared by Atkins. The Environmental Statement prepared in 2020 assessed the potential for significant effects arising from the Scheme with respect to: air quality, historic environment, biodiversity, ground conditions, landscape and visual, noise and vibration, traffic and transport, material resources and waste, water (flows, quality and

groundwater) climate, climate change vulnerability, population and human health, cumulative effects and vulnerability to major accidents and disasters. As by definition the changes sought will be non-material there are unlikely to be effects which would need to be addressed under the EIA Regulations 2017.

- 6.32 The Environmental Statement of Conformity submitted with the NMA application has been co-ordinated by Environmental Specialist's at Royal Haskoning DHV, with inputs received from technical specialists. Royal Haskoning DHV have undertaken a qualitative review to consider the implications on the findings of the 2020 Environmental Statement and the potential for any new, or materially different significant effects to arise as a result of the proposed changes.
- 6.33 3rd Party representations contend that there is no indication that the potential impacts of these substantial changes have been assessed by subject specialists in relation to visual & historic environment impacts, ecology, noise, vibration, and air pollution. It is further considered that reports should be provided in respect of: A visual impact assessment; Historic environment impact assessment; ecological impact assessment, including impacts on the mitigation strategy; noise, vibration, and air pollution impact assessment. J
- 6.34 In this respect the conclusions, which are supported by the LPA, on why the changes would not have a significant impact on the environment are as follows (which reflect the areas highlighted by 3rd parties' responses) (in summary):

Table 2 – Environmental Assessment

Topic	Comments
Landscape and Visual Impact	Overall, the impacts on viewpoints (including SCP and nearby CA) will be minimal when set against the overall scale of the development and the location of the changes within the application boundary. The southernmost embankment would move by up to 45m further to the north and would therefore move further from the registered park and garden of Staunton Country Park, which is also a Conservation Area. Consequently, Views of the amended position of the southern embankment will appear marginally nearer and the change to the view will be small in extent, or there will be no discernible views at other visual receptors due to intervening screening. The crest level will not change in height compared to the outline design submitted for hybrid planning permission. In terms of the landscape there would no significant impact of the established landscape character areas. Where the southernmost embankment moves further from the registered park and garden of Staunton Country Park, which is also a Conservation Area, it can be considered there would be an improvement as more space would be created for a woodland buffer and recreation/habitat zone.
Historic Environment	The proposed changes would not materially change the construction phase footprint, operations, nor associated visual impacts upon the setting of the Staunton Country Park or the Sir George Staunton Conservation Area. The

	minor and imperceptible changes in operational landscaping/visual amenity effects would be consistent and fall within the granularity and flexibility of the published Environmental Statement methodology, which both acknowledged and allowed for a degree of detailed design development. As such, no new, or materially different significant effects on the historic environment would arise as a result of the proposed changes to the design. Consequently, there would no change to the significance of effects reported in the 2020 Environmental Statement.
Ecology	No change to the significance of effects reported in the 2020 Environmental Statement. It is noted that a minimum 25m separation would be maintained from the ancient woodland to the south. As such, there would be no new effects on ancient woodland or veteran trees arising from the proposed design changes. There would also be no additional loss of existing habitat beyond that assumed within the 2020 Environmental Statement and would be in line with the Biodiversity Mitigation and Compensation Strategy.
Noise & Vibration	The construction works, intensity, and plant would remain unchanged by the proposals. The slight change in location of the embankment would remain within the broad assumptions utilised for the published environmental assessment. As such, no change to the significance of effects reported in the 2020 Environmental Statement is anticipated for properties to the south (e.g. on Winterslow Drive) and the users of the registered park and garden of Staunton Country Park to the south.
Air Pollution	The 2020 Environmental Statement reported that temporary localised construction phase changes in air quality were not considered likely to result in significant indirect impacts on ancient woodland with appropriate mitigation measures in place. Although the design changes include the southernmost embankment moving by up to 45m further to the north, the construction processes, intensity, and plant would remain unchanged by the proposals. The slight change in location of the embankment would remain within the broad assumptions utilised for the published environmental assessment. As such, no change to the significance of effects are anticipated from air emission and dust sources during construction on ecological/arboricultural receptors in the retained woodland to the south.
<u>Other Matters</u> Vulnerability to major accidents and disasters; Cumulative effects; Vulnerability to climate change; Climate; Water (flows, quality and groundwater; Material	It is considered that the proposed changes would not raise any significant impacts which were not considered at the hybrid planning approval stage and the assessment and conclusions held therein in respect of the topics listed. The LPA would concur that there would be no change to the significance of effects reported in the 2020 Environmental Statement.

resources and waste; Traffic and transport; Population and human health	
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- 6.35 As this is a NMA application the assessment is whether the changes amount to being non-material. Whilst the 3rd party comments state that the further information should be submitted in respect of the impacts, the LPA contend that the changes by their nature and within the context of the scale of the wider site do not result in any significant environmental impacts in respect of visual & historic environment impacts, ecology, noise, vibration, and air pollution. The outline hybrid consent was the subject to detailed assessments on these matters and where matters were consented in outline, they will be subject to further submissions under reserved matters and conditions.
- 6.36 The reasons why the LPA consider the changes to be non-material are set out in the report and summarised in section 7 below.

7 Conclusion

- 7.1 It is concluded that the changes set out the details section of the report would not be likely to give rise to new or materially different environmental effects from those already assessed under the hybrid planning consent, and not give rise any other significant impacts. The changes when considered in the round fall within the scope of the hybrid-outline planning permission and the description of development would not be affected.
- 7.2 The proposed amendments do not result in any floorspace totals exceeding the relevant caps set out in the approved Development Specification and associated planning conditions. When compared against the entirety of the HTR site the proposed amendments are considered non-material. In addition, none of the other phases of the permitted scheme are affected. Therefore, the changes, when considered in the context of the overall HTR site, are non-material in scale.
- 7.3 Applying the tests (A) to (C) at paragraph 6.12, the proposed changes (individually and cumulatively) are considered to be non-material and would not affect the purpose of the Embankment (at its southern location) its functionality or design quality (which will also be the subject of a future RMA) which was established by the hybrid planning consent which is not undermined, eroded or diminished.
- 7.4 The changes would not result in any new significant planning considerations which were not considered under the outline hybrid consent including impact on biodiversity, ecology, visual character, heritage assets, ancient woodland, and environmental impacts (including noise, daylight, sunlight and overshadowing, dominance or overbearing and outlook).
- 7.5 The proposal complies with the following key tests of whether an alteration to a planning permission is considered to represent a non-material amendment:
- The proposed changes are not significant in terms of their scale in relation to the original hybrid approval as there is no significant increase in footprint, height (which has been assessed) and floorspace.
 - The proposed changes would not result in a detrimental impact in either visually amenity or in terms of residential amenity (the space remains as per its original

- function).
 - The interest of a third party or the decision-making body that participated in or were informed of the original decision would not be disadvantaged (the LPA have responded to, considered and addressed the 3rd party comments and concluded that the changes be non-material).
- 7.6 To conclude, given the information presented above it is considered that the amendments to the proposed development will not give rise to any new or materially different significant environmental effects. As such it is considered that no further information under the EIA Regulations 2017 (as amended) is required.
- 7.7 It is the officer's conclusion that the planning balance will not be altered ie Members/officers would not have refused rather than granted the permission on the basis of these alternative designs (as summarised above) - as such, the requested changes would not have weighed significantly in the decision making process either individually and cumulatively.
- 7.8 The changes are of a magnitude that they provide alternative and detailed design refinements and would not detract from the approved scheme, without having any demonstrable harm to the character and appearance (including any designated or non-designated heritage assets) of the surrounding area or the amenities of adjoining occupiers.
- 7.9 It is considered that the amended scheme under Section 96A would be the same "in substance" as, so not as to constitute a "fundamental alteration" of, the already permitted scheme, in accordance with the Wheatcroft line of authority.

7 RECOMMENDATION:

That the Head of Place be authorised to **GRANT PERMISSION** for application APP/23/00979 subject to the following conditions:

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Adams Hendry Consulting Ltd letter dated 8th December 2023

Technical Note – Environmental Statement of Conformity
(HTR-RHD-P2-RE-TN-Z-0001 FINAL)

Illustrative Plan 1 (Proposed Reservoir Works Key Plan) -
HTR-GHD-ZZ-RE-DR-C-00002 REV A1

Illustrative Plan 2 (Embankment Landscape Sections B and C) -
HTR-GHD-ZZ-RE-DR-Z-00004 REV PO2

Illustrative Plan 3 (Proposed Reservoir Works Key Plan (overlayed to show changes) - HTR-GHD-ZZ-RE-DR-C-00002 REV A1

Reason: - To ensure provision of a satisfactory development.