



# *The Heath & Hampstead Society*

The Society examines all Planning Applications relating to Hampstead, and assesses them for their impact on conservation and on the local environment.

## **To London Borough of Camden, Planning and Development Management**

Planning Reference	2014/4332/P	
Address	Hampstead and Highgate chains of ponds, Hampstead Heath, London	
Description	Dam engineering works etc. as described	
Case Officer	Jonathan Markwell	Date 6 August 2014
Response	<b>OBJECTION</b>	

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The Heath & Hampstead Society (the Society) has already been engaged in discussions and negotiations of these proposals with the applicants, the City of London Corporation (the City), for more than three years, a process which has received widespread publicity. The Society is one of a large number of amenity societies, residents associations, sports and swimming associations, community groups, and individual local residents and Heath users who, without exception, vehemently oppose these proposals.

Despite many suggestions on our part for substantial modification of the approach and proposals, the City has remained immovable. We therefore have no alternative but to **object** to the application, on the grounds set out below. The Society is also pursuing the matter in the High Court as a separate process. The council has been notified of this as an interested party.

### **1. The Reservoirs Act 1975 and statistical basis of the proposals**

We say that the basic criteria used to justify the works, interpreted from the Reservoirs Act 1975, are unrealistic and out of all proportion to the threat, if indeed a threat can be deemed to exist at all.

These criteria can be summarised as the greatest theoretically possible rainfall in the area, leading to failure by collapse of the existing dams, with consequent flooding and potential loss of life; the so-called Probable Maximum Flood (PMF). The City are advised by Atkins, one of the largest firms of consulting engineers in the country, who predict the annual probability of such an event as 1 in 400,000.

The Reservoirs Act 1975 was plainly drafted with much larger, commercial water supply reservoirs in mind. These structures are typically raised above the surrounding land and the largest contain up to 200 billion litres of water.

The Heath ponds, although originally constructed or extended in the 17th and 18th centuries as water supply reservoirs, are no longer used as such, and are on a minute scale

by comparison. Their current functions are solely as elements in the landscape of Hampstead Heath, and as public amenities for swimming and recreation. They resemble natural ponds, and it is noteworthy that, had they been entirely of natural origin, the Reservoirs Act would not have applied to them, irrespective of any danger of flooding.

The Act does not require that action must be taken other than for the assurance of reasonable public safety. It does not specify the statistical basis on which safeguarding work should be calculated. This appears to have been set by the City on the evidence of flooding run-off assessed by a number (we believe no less than five) successive hydrology reports, all conflicting so far as the statistical probability of dam failures and consequent flooding.

We say that, however the assessment is arrived at, it is on a common sense view unreasonable, disproportionate and, in its effects through the proposed engineering works, highly damaging to the character and appearance of Hampstead Heath.

We also say that the public safety hazards implicit in the proposals, which are said to arise from the provisions of this Act, are grossly exaggerated, as follows:-

- a. it is self-evidently disproportionate, indeed absurd, to take such elaborate precautions against an event with a probability of 1 in 400,000. No ordinary civil engineering project is predicated on anything like this remote possibility, the Thames Barrier for instance being said to be designed to cope with a 1 in 1,000 contingency; while prior to the Atkins study, the Camden Flood Risk Management Strategy noted that even a 1 in 10,000 contingency was 'highly unlikely'. The significance of these disparities becomes clear when the probability of flooding arising from other more likely causes is considered in the following paragraphs.
- b. the scenario outlined is one of dam collapse with flooding on an apocalyptic scale endangering inhabited areas to the south and east and causing loss of life. Long before this event happened, serious flooding, arising from exceptional rainfall, would have occurred throughout the area – if not most of London – arising from other causes. These are principally surface water run-off from the land following exceptional rainfall; consequent overflowing of the public sewerage system; and overtopping ie. overflowing of ponds and watercourses.

It is important to make clear that these elaborate, expensive and in our view unnecessary proposals are confined to preventing dam **collapse**, and will do nothing to prevent flooding due to other causes including overtopping, which would involve much greater risk to life and property, are much more likely, and would occur first. The consulting engineers themselves have stated that *this is not a flood alleviation scheme*.

- c. the event implied by the proposals would not be instantaneous, even if it happened at all. Long before collapse, probably several days, local and national authorities would have taken emergency action which might include evacuation, and would already be dealing with flooding arising from the other causes identified above.

- d. in August 1975 a severe storm with torrential rain occurred in Hampstead. It was the most severe storm since records for the area began with 150 mm of rain falling in two and a half hours. Even in these extreme circumstances, the flooding which ensued was

caused by rainwater run-off exceeding the capacity of the public sewerage system. None of the flood water came from the Heath, no dams collapsed and, most importantly of all, no lives were lost. This demonstrates that the existing pond enclosures – unlike other infrastructure – will safely cope with even these extreme conditions.

e . flood events within the bounds of reasonable probability can and should be dealt with by dam modification work on a much smaller scale, complemented by properly designed and functioning storm drainage systems in the downstream inhabited areas.

## **2. The Hampstead Heath Act 1871 and the preservation of the natural aspect and state of the Heath**

The Hampstead Heath Act was enacted to save Hampstead Heath, at the time under threat from development, and to protect it on a permanent basis. The provisions of the Act were designed to ensure that the Heath is preserved in perpetuity in its natural aspect and state (see Section 16 of the Act). In today's language, this also means that its ecosystems are protected.

Hampstead Heath is unique, both within London and elsewhere in Britain, for its preservation of wild natural countryside, with its wildlife habitat, in the heart of a high-density urban area. It is estimated that over seven million people visit it every year, drawn by its natural beauty and character exemplified by the ponds and their surroundings. It is unrivalled as a space where people can enjoy natural countryside within a major city, and is a social asset of inestimable value.

The Heath has existed in this form for several centuries and has been commemorated in art and literature by, among others, John Constable, Sir Arthur Conan Doyle and Wilkie Collins. As well as being by far the largest and most important open space in Camden, it is a national, indeed international, asset which must be preserved unharmed.

We say that the construction or enlargement of these dams, and other associated elements of the project, would damage the wild and natural character and appearance of the Heath seriously and irreparably. This damage would be most apparent in the vicinity of the works, but would also affect views into and across the Heath, which are one of its notable qualities.

The introduction of modern dam construction techniques and materials, replacing or modifying the earth dam construction of the existing structures, would destroy the present natural character permanently. It is clear that many of the proposed interventions would result in the ponds appearing as man-made reservoirs, rather than natural features. We say this notwithstanding the landscaping measures proposed by the City; they would be no substitute for the natural environment of the ponds as it exists at the moment, a characteristic which is much admired, and indeed loved by all visitors.

We appreciate that the scheme needs to be considered as a whole, and that all the detailed elements of the scheme are inter-dependent, but there are particularly objectionable aspects of it that must be highlighted:-

#### a. Model Boating Pond

A new raised dam, 2.5 metres higher than the existing earth dam, radically changing both long and short views of the pond surface, the pathway across it, and the surrounding landscape.

#### b. Mens' Bathing Pond

A new concrete dam one metre higher and, again, altering the landscape of the area.

#### c. New Catchpit close to the Mixed Bathing Pond

This enormous "dry dam" is over 100 metres long with a new 5.6 metre high earth dam and spillway. This is the largest of the proposed interventions and would form a particularly bleak new feature, gravely damaging the attractive natural appearance of this part of the Heath. The catchpit will not even contain water; except, that is, in the 1 in 400,000 contingency for which the City and its advisers are designing.

There are other proposals, smaller in scope, which we also oppose. Amongst these is the loss of trees, assessed by the City at around 160. The City's suggestions – and they are no more than that – for replacement planting are extremely vague. We do not need to emphasise how important trees are to the character of Hampstead Heath, and this is an enormous number to lose.

Hampstead Heath is classified as Metropolitan Open Land (MOL), and The London Plan (2013 revision incorporating REMA) is specific as to the protection to be accorded to London's MOL. Policy 7.17 states that:-

*The strongest protection should be given to London's Metropolitan Open Land and inappropriate development refused, except in very special circumstances*

In 2006, the Society took a case involving development on Metropolitan Open Land to the Court of Appeal. This case involved the Garden House in the Vale of Health, overlooking one of the ponds (Heath and Hampstead Society: London Borough of Camden; ref CO/1454/2006) where the Court found in favour of the Society in a Judicial Review. We say that the present proposals – not on the fringes of MOL, but at its heart – are not development appropriate or acceptable on Metropolitan Open Land, and require refusal on this basis alone.

The Society's view is further supported by the Statement of Significance for Hampstead Heath – produced by the City itself. The Statement begins as follows:-

*Hampstead Heath has been shaped over the centuries by the way humans have lived on it, farmed, exploited and enjoyed it. Despite these pressures the Heath has retained its 'natural' character and rare sense of 'ruralness', a unique find just four miles from the centre of London; a piece of encapsulated countryside in the city. The Heath's distinctive landscape has become nationally renowned, immortalised in the paintings of Constable and instantly recognised as one of the principal open spaces in London.*

The Statement continues by highlighting the importance of the Heath for its diverse mosaic of habitats that encompass Ancient Woodland and UK BAP habitats, and its

estimated 800 veteran trees. These habitats support European and UK protected species as well as national, regional and local rarities including bats, beetles, spiders, birds, fungi and invertebrates; and the Heath is designated in the London Plan as a Site of Metropolitan Importance for nature conservation. Much of this habitat will be threatened by these proposals.

The Statement goes on to refer to the ponds specifically as follows (our emphasis):-

*The strings of ponds are a significant hydrological resource and collectively form **an essential part of the character of the Heath**. The ponds serve a wide range of functions including acting as reservoirs, contributing to the Heath's diversity of wildlife habitats, whilst also providing a highly popular and nationally renowned recreational resource. The natural bathing ponds have been enjoyed for centuries and are the only life-guarded open-water swimming facilities in the UK open to the public every day of the year. **The ponds are also importantly valued for their visual amenity** for example as the setting for the Grade II Listed Viaduct Bridge.*

### **3. Presentation of the proposals by the applicant: "Before" and "After" images**

The Society is extremely concerned at the misleading nature of the "before" and "after" photographs provided by the City in connection with the planning application. In many, if not most cases, these photographs are taken at a great distance from the site of the actual engineering works and so have the effect of concealing the scale of the "unnatural" changes which are proposed.

We have produced "before" and "after" photographs in respect of:

1. The dam at the Model Boating Pond;
2. The dam at the Mens Bathing Pond;
3. The dry dam at the Catch Pit;
4. The dam at the Mixed Pond

The photographs in respect of 1 and 4 were prepared by KeanLanyon. The photographs in respect of 2 and 3 were prepared by Wilmac Geomatics. These images will be forwarded to the council separately along with a copy of Wilmac Geomatics' report.

You will see that, in relation to the dam at the Mens Bathing Pond, the "after" picture submitted by the City does not clearly identify the one metre high concrete wall proposed to be built along the top of that dam. You will also note that the "after" pictures prepared by the City in respect of the Catch Pit effectively conceal the size of the new dry dam which will be 100 metres long, 40 metres wide, 5.6 metres high and have a slope of 1-in-3.

We therefore insist that Camden require the production of proper geomatic photovisuals by a firm experienced in this type of work, and which are fully auditable. Only such images will show the true extent of the disfigurement of the Heath, as we have already done for the instances cited. It should be for the applicant, and not us, to produce these for every location.

#### **4. Construction operations and collateral environmental damage**

The disruption due to construction operations is recognised as a planning issue and is covered in the LDF and supplementary planning guidance. These policies, which were written primarily for works in already developed areas, become even more important when the level of disruption to the Heath, its landscape and ecosystems is considered.

This is a major project, the construction cost of which alone is estimated at more than £17 million. Although the works themselves will take place at particular sites, we estimate that a far larger area of the Heath will be blighted by these operations with surrounding residential areas also being adversely affected. The operations will include heavy goods vehicle movements to remove excavated spoil and to deliver plant and bulk materials and heavy plant movements to and from the site and while operating; all with associated noise, fumes and dust as well as damage to the landscape. This will result in loss of amenity; restrictions on public access and use for recreation and other purposes; and collateral damage to habitats and ecosystems. In particular, swimming in the ponds – a very popular pastime at all times of year – will be interrupted for an extended period.

We have looked at one instance by way of example, namely the dry dam at the Catch Pit (see section 2c above) which is to be formed as an earth bank. We calculate that this feature will require well in excess of 3,500 cubic metres of earth requiring more than 500 heavy goods vehicle (HGV) movements to bring it to site. One movement is one journey in and out, so this is more than 1,000 HGV journeys along local residential roads and across the Heath to construct this feature alone.

In conjunction with the Highgate Society, we have made considerable efforts to prevent damage to the Heath from construction traffic in cases such as Fitzroy Farm where our position was supported by the ensuing planning decisions. Hence we find it particularly regrettable that construction access on a far more damaging scale is now proposed by the Heath's guardians, the City itself, in pursuit of this misconceived proposal.

#### **5. Planning policies, guidance and other material considerations**

The following elements of national and local planning policy support our objection (this list is not exhaustive). We have not quoted these policies in full here since they are a matter of record, and will be readily available to the planning authority:-

- o National Planning Policy Framework, especially Section 9, Protecting green belt land<sup>1</sup> ; Section 11, Conserving and enhancing the natural environment; and Section 12 Conserving and enhancing the historic environment.
- o The London Plan (2013), especially policy 2.18A Green Infrastructure; 7.17 Metropolitan Open Land; 7.21 Trees and Woodlands.
- o Camden Local Development Framework:
  - Core strategy introduction, especially paragraphs 17 and 22
  - Core Policies CS15, Protecting and improving our parks and open spaces and encouraging biodiversity; especially CS15 (k) to (p) which refer specifically to

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<sup>1</sup> Metropolitan Open Land is the equivalent of Green Belt land

Hampstead Heath and its MOL designation.

Core policy CS16, Improving Camden's health and well-being.

Development Policy DP26, Managing the impact of development on occupiers and neighbours.

Development Policy DP31, Provision of and improvements to public open space and outdoor sport and recreation facilities.

- o Supplementary Planning Guidance:
  - CPG 3 Sustainability; especially Section 13, Biodiversity
  - CPG 6 Amenity, especially Section 8, Construction management plans and Section 11, Open space, outdoor sport and recreation facilities
- o Statement of Significance (Corporation of London), especially Natural Landscape; Hydrology; and Public Open Space etc (see also Section 2 above)

## **6. Mitigation**

We have said, in discussions with the City, that the proportionate response to protect public safety called for in the Reservoirs Act, could be implemented with substantially less environmental harm to the Heath, if a more rational approach to risk was adopted. Negotiations between us and the City to achieve such mitigation have been unsuccessful, and this is an important factor in the challenge we are currently mounting in the High Court.

We attach with this objection the Society's Judicial Review pre-action protocol letter dated 30 June 2014 addressed to the City which seeks rescission of the City's decision to proceed with these proposals on the following principal grounds:-

- o That the City's interpretation of its duties under the Reservoirs Act 1975 is flawed and must be read as subject to and qualified by the City's statutory duties under the Hampstead Heath Act 1871 and the environmental consequences for the Heath generally.
- o That the City is taking an irrational and unlawful approach to risk in view of the extreme improbability of an event causing dam collapse and the likelihood of flooding due to other causes occurring first.

In addition, we say that even if the City were right in its interpretation of the Reservoirs Act, the balance of the arguments calls for refusal, inasmuch as the harm, in planning terms, is simply too great given the remote possibility of the risk identified actually eventuating.

## **7. Public opinion; the DamNonsense campaign**

The public criticism of these proposals, both in quality and quantity, is very nearly without precedent in the Society's long history, and is indicative of the alarm with which these proposals are viewed by the voting public. This is evidenced by the overwhelming support given by thousands to the DamNonsense campaign sponsored by us (see [www.damnonsense.org.uk](http://www.damnonsense.org.uk)), and the generous financial support it has received from many individuals. This public response is in spite of a persuasively presented public relations

campaign mounted by the City.

We draw particular attention to the articles by Richard Morrison in The Times in January 2014, and by Sir Simon Jenkins, a patron of the Society, who wrote in the Evening Standard in March 2014 asking *'Why spoil all this to build dams that nobody will need?'*

#### **8. Timing of decision on planning application; prematurity**

In the circumstances of the current Judicial Review instigated by us, and now in progress, we consider that a decision on this planning application would be premature, and that it should be postponed accordingly. In particular, the City seeks to justify the enormous harm in planning terms that these proposals would cause by reference to what it believes to be its duties pursuant to the Reservoirs Act 1975. It would therefore be premature for Camden to determine the application until the Court has ruled on the meaning of the statute.

We have to inform the Council that, subject to legal advice, if eventually a decision is taken to grant planning permission, we must reserve our position regarding a second Judicial Review in relation to that decision.

The grave and irreversible damage that would be caused to the Heath by these proposals is too important a matter for us to ignore, given that our primary object as a Registered Charity is the protection of Hampstead Heath in its wild and natural state, having regard to the provisions of Section 16 of the 1871 Act.

#### **9. Enclosures with this objection**

Letter dated 30 June 2014 from Scott Fowler, the Society's solicitors, to the City of London Corporation.

The Times 17 January 2014 *It's Heath (sic) and Safety gone mad in Hampstead.*

London Evening Standard 4 March 2014 *Why spoil all this to build dams that nobody will need?*

#### **To follow**

Before and After images 1, 2, 3 and 4 and report by Wilmac Geomatics referred to in section 3 above.

Signed



for The Heath & Hampstead Society

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# It's Heath and Safety gone mad in Hampstead

## Richard Morrison



**D**am nonsense! No, that's not a lamentable misspelling. It's the name of a website ([damnonsense.org.uk](http://damnonsense.org.uk), to be specific) set up to object to a scheme that would radically alter and (in the view of many critics) disfigure the greatest open space in London.

Namely, Hampstead Heath. And yes, the title is literally apt. At the heart of the proposed scheme is a series of hefty new dams, as high as 5.6 metres.

They would enclose the much-loved chain of ponds on the Highgate side of the Heath. These lakes aren't natural; they were created as reservoirs 300 years ago to store the water of the River Fleet for drinking purposes while it was still relatively pure. Yet they have a wonderfully natural look, fringed by trees and grassy banks. Swimming and picnicking there is one of the perennial joys of the London summer, and thousands flock there every warm weekend.

Quite a few hardy souls also swim there in midwinter, though my own masochistic urges don't extend that far. And though the segregation of the sexes may seem quaint in 2014 (there are still separate men's and women's ponds) it is surprisingly popular, especially with the gay community.

The ponds won't disappear if the proposed scheme goes ahead, but the objectors — led by the formidable Heath and Hampstead Society — say that the dams would destroy their

rustic charm, ruin landscapes beloved of painters through the ages and make them "look like municipal waterworks". Apart from the long-term damage, the scale of the building work would blight the ponds for years.

So why is the scheme being proposed? The answer is that the City of London Corporation, the local authority that owns and runs Hampstead Heath, claims that without the new embankments there is a risk of the ancient reservoir walls collapsing in a flood, leading to potentially catastrophic loss of life in Kentish Town and Gospel Oak. What's more, the City maintains that the health and safety requirements of the Reservoirs Act 1975 allow it no legal option except to build new dams.

The objectors say this is, well, dam nonsense. They claim that although there is occasional flooding in those salubrious streets below the Heath, it has nothing to do with the ponds. It is caused, they maintain, by sewers unable to cope with torrential downpours. In their 300-year history, the ponds' dams have never been breached.

They also accuse the City of stoking up irrational public fears by postulating ludicrous worst-case scenarios: a once-in-400,000-years storm probability, for instance, in which every dam round the ponds is breached simultaneously and a biblical flood drowns 1,400 people. Far better, cheaper and less disruptive than this huge project, they argue, would be an upgrade to early-warning and civil emergency procedures.

I hesitate to be too critical of the City. It gamely took on the Heath when the Greater London Council was abolished, even though the verdant vales of Hampstead lie well outside the Square Mile. And it has hitherto been a model custodian. At a time when cash-strapped local authorities across Britain have allowed many parks to become overgrown, the Heath's 900-odd acres have been scrupulously tended. Of course, with most of the capital's lawyers, bankers and media grandees living around its borders, that doesn't come as a total surprise, but at least millions of ordinary Londoners also benefit.

This overblown dam scheme, however, strikes me as being an example of a local authority being led up the garden path — rather literally, in this case — by engineers and planners intent on creating years of lucrative work for their own profession. The 1871 Hampstead Heath Act requires its guardians to maintain its "natural aspect and state". If you feel that the new dams contravene this stipulation — or even if you think they will be a marvellous addition to London's *rus in urbe* — go to the City's website ([cityoflondon.gov.uk/pondsproject](http://cityoflondon.gov.uk/pondsproject)). You have until February 17 to state your view.

## In-street art lo

Since devoted week's column clothing I have added to all unlikely e-r Girls and b PR industry. I gently breathe devastating I'm not very in fashion? may seem but we just live with it.

On the other I was fascinated learn of an by a company Selfridges, I believe run department Festival of which started yesterday, v emporia with and other showcasing social communication and scientific Admirable and learn!

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I just hope the Whitworth in the autumn don't find it a reciprocal it is stuffed furnishing and frocks



# Scott Fowler

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City of London Corporation  
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**BY EMAIL : [michael.cogher@cityoflondon.gov.uk](mailto:michael.cogher@cityoflondon.gov.uk) AND PERSONAL SERVICE**

Dear Sir

**Judicial review pre-action protocol letter requiring urgent attention**

**Re: Decision 09.06.2014 to proceed with "Chosen Options" for "Ponds Project"**

**Introduction**

1. We are instructed by the Heath & Hampstead Society ("the Society") to challenge the decision of the City of London Corporation ("the City"), acting through Committee, taken on 09.06.2014, the draft minutes of which were published on 17.06.2014, that the City approve and proceed with specific "Chosen Options" for flood defence works to and associated with the ponds ("the Ponds") on Hampstead Heath, London ("the Decision"). The City has termed the entirety of the works proposed "the Ponds Project". We will refer to the works as "the Proposals".
2. The Proposals are intended to address what the City believes are its legal obligations under the Reservoirs Act 1975 ("the RA 1975"), as regards the risk that one or more of the Pond dams might be breached through overtopping generating erosion sufficient to cause the dam to fail and water to escape uncontrolled, leading to a flood affecting residents downstream. The Proposals will result in the Heath being subject to significant engineering works, including the construction of a new dry dam at a natural valley known as "the Catchpit", the raising of the existing dams on four of the Ponds and the excavation of sizeable reinforced spillways. It will result in drawn-out disruption to the Heath. It will also, of course, involve the expenditure of large sums of money by the City, the current budget being in excess of £17,000,000.
3. The Society has, as the City will be well aware, been concerned for some time as to whether the Proposals are being promoted on a sound legal basis, in particular on a correct understanding of the RA 1975.
4. Having taken advice from counsel, Mr Stephen Tromans QC and Mr James Burton of Thirty Nine Essex Street Chambers, we consider that the Decision is unlawful on a number of grounds:

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- (1) The Decision is based on an erroneous interpretation of the words “in the interests of safety” in section 10 of the RA 1975.
  - (2) The Decision is based on an irrational and/or unlawful approach to risk.
  - (3) The Decision is the result of a process that ought lawfully to have been subject to strategic environmental assessment in accordance with Directive 2001/42/EC (“the SEA Directive”), but has not been.
5. We are writing to the City now to invite it to rescind the Decision and to take any further decisions regarding the Ponds and its duties under the RA 1975 on the correct legal basis. If the City declines to rescind the Decision then, subject to anything the City may say in response that materially affects our understanding of the position, we will advise our client to institute proceedings for judicial review seeking a quashing order and declaratory relief.

### **The Claimant**

6. Our client is the Heath & Hampstead Society, a charity founded in 1897 whose charitable objects include the preservation of the Heath in its wild and natural state, and the promotion and maintenance of the amenities and characteristics of the environs of the Heath.
7. Further information regarding the Society, including its patrons and committee members, is available at [www.heathandhampstead.org.uk](http://www.heathandhampstead.org.uk).

### **The Decision under challenge**

8. The Decision under challenge is the City’s decision of 09.06.2014, which the draft Minutes indicate was taken on the City’s behalf by its Hampstead Heath, Highgate Wood & Queen’s Park Committee (“the Heath Management Committee”), to:
  - (1) Approve “Chosen Options” recommended by the City’s officers for the “Ponds Project”, namely “Option 6” for the Highgate Chain and “Option M” for the Hampstead Chain, together comprising the Proposals; and
  - (2) Authorise the submission of a planning application to Camden London Borough Council for those Proposals.
9. The Decision also made provision for associated budgetary matters and matters of delegation.
10. We understand that the reasoning for the Decision is that found within the joint report of the City’s Director of Built Environment and Director of Open Spaces prepared for the meeting of the Heath Management Committee on 09.06.2014 (“the Joint Report”).

### **Facts and statutory framework**

#### *Hampstead Heath and the Ponds*

11. The Heath is a unique area of natural open space within inner London, enjoyed by millions of visitors every year. It is a stretch of varied countryside surviving within one of the largest urban areas of the world, a *rus in urbe*, providing quiet enjoyment and contact with nature. The Heath’s variation, both in flora and fauna, derives from its mixed geology and sub-soil. It straddles the Hampstead-Highgate ridge of Bagshot Sand, then passes across a strata of Claygate Beds as it descends onto London Clay. Each type of sub-soil has produced its own ecology and many springs arise where water, after draining through the sand, encounters the clay. The Heath’s

qualities are such that it is of national importance. It extends beyond Spaniards Road to Sandy Heath, the West Heath and the Heath Extension. Kenwood House and grounds is not formally part of the Heath (though in practice the visitor perceives the two as a coherent whole).

12. The Ponds are man-made, constructed centuries ago (in the latter part of the 17<sup>th</sup> century and subsequently) and initially served as reservoirs for the supply of water to the metropolis. Their reservoir use ceased long ago (ending altogether in the 19<sup>th</sup> century) and the Ponds' function since has been aesthetic, recreational and ecological. Three of the Ponds are in active and regular use for swimming, one is a bird sanctuary, one is used for model boating, several are for fishing, and all support a wide range of flora and fauna. The Ponds are an integral part of the Heath and a key element of its natural aspect and beauty.
13. The Proposals are concerned with the 11 Ponds on the "main" Heath, which are split between two Pond "chains"; the Hampstead Chain on the west side of the Heath and the Highgate Chain on the east side of the Heath. The two chains are fed by a combination of natural springs rising on the Heath and surface water run-off from rainfall (together, "the Catchment"). The five Ponds on the Hampstead Chain which are the subject of the Proposals are those known as Vale of Health, Viaduct, Mixed Bathing, Hampstead No.2 and Hampstead No.1. The natural valley known as the Catchpit is upstream from the Mixed Bathing Pond. The six Ponds on the Highgate Chain which are the subject of the Proposals are those known as Stock, Kenwood Ladies' Bathing, Bird Sanctuary, Model Boating, Men's Bathing and Highgate No.1. The Ponds on both chains are linked by overflow pipes, and the last Pond in each chain (Hampstead No.1 on the Hampstead Chain and Highgate No.1 on the Highgate Chain) discharges into the culverted River Fleet. Ultimately, then, the entire Catchment is drained into the sewerage system.
14. So far as the Society is aware, none of the Pond dams has ever been breached through overtopping generating erosion sufficient to cause the dam to fail and water to escape uncontrolled (the risk that the City believes the Proposals are required to address) in their centuries of existence.

#### *The Hampstead Heath Act 1871*

15. The Heath enjoys statutory protection pursuant to its proprietary Act of Parliament, the Hampstead Heath Act 1871 ("the Heath Act"), which Act followed decades of lobbying to protect and preserve the Heath. The area of land protected by the Heath Act has expanded over time.
16. By section 16, the Heath Act has at its core the requirement that the body in whom for the time being the Heath is vested (at the time the Heath Act was passed the Metropolitan Board of Works, presently the City):

...shall at all times preserve, as far as may be, the natural aspect and state of the Heath, and to that end shall protect the turf, gorse, heather, timber and other trees, shrubs, and brushwood thereon.
17. We note that it is common ground that the "natural aspect and state" of the Heath includes the Ponds.
18. Section 16 of the Heath Act is supported by section 12, which requires that the City:

...shall for ever keep the Heath open, uninclosed and unbuilt on, except as regards such parts thereof as are at the passing of this Act inclosed or built on, and shall by all lawful means prevent, resist and abate all encroachments and attempted encroachments on the Heath, and protect the Heath, and preserve it as an open space, and resist all proceedings tending to the inclosure or appropriation for any purpose of any part thereof.
19. There are other provisions within the Heath Act that complement sections 12 and 16, but they are the most important for present purposes.
20. The Heath also enjoys protective designations under other regimes. For instance, Hampstead Heath Woods is a designated site of special scientific interest ("a SSSI"), and the Heath as a whole is Metropolitan Open Land.

21. The Decision has come about because the City believes that the Proposals are required by the RA 1975, as presently in force as amended by the Flood and Water Management Act 2010 ("the FWMA 2010").

22. The RA 1975 provides for a safety regime for "large raised reservoirs". It repealed the first such statute, the Reservoirs (Safety Provisions) Act 1930. Section A1 to the RA 1975 presently defines "large raised reservoirs" as follows:

A1 "Large raised reservoir": England and Wales

(1) In this Act "large raised reservoir" means—

- (a) a large, raised structure designed or used for collecting and storing water, and
- (b) a large, raised lake or other area capable of storing water which was created or enlarged by artificial means.

(2) A structure or area is "raised" if it is capable of holding water above the natural level of any part of the surrounding land.

(3) A raised structure or area is "large" if it is capable of holding [25,000] cubic metres of water above the natural level of any part of the surrounding land.<sup>1</sup>

...

23. RA 1975, section 1 defines "undertakers" for the purposes of the Act:

1.— Ambit of Act and interpretation.

...

(4) In relation to any reservoir "undertakers" means for purposes of this Act—

(a) in the case of a reservoir that is or, when constructed, is to be managed and operated by the Environment Agency, the Natural Resources Body for Wales (the "NRBW") or a water undertaker, the Environment Agency, the NRBW or, as the case may be, the water undertaker; and

(b) in any other case—

(i) if the reservoir is used or intended to be used for the purposes of any undertaking, the persons for the time being carrying on that undertaking; or

(ii) if the reservoir is not so used or intended to be used, the owners or lessees of the reservoir.

(4A) The "area" of the Environment Agency, in its capacity as a relevant authority for purposes of this Act, is the whole of England...

24. Although the Ponds have no use as commercial reservoirs and form no part of a commercial enterprise, the City is their "undertaker" by virtue of section 1(4)(b)(ii).

25. Large raised reservoirs must be registered with the Environment Agency by the undertaker (see section 2(2B)).

26. Section 4 of the RA 1975 establishes a panel of civil engineers for the purposes of the act ("the Panel Engineers"), to be appointed by the Secretary of State for the Environment after consultation with the Institution of Civil Engineers ("the ICE").

<sup>1</sup> The figure of 25,000m<sup>3</sup> in subparagraph (3) was replaced by a figure of 10,000m<sup>3</sup> from 30.07.2013 (see the Flood and Water Management Act 2010 (Commencement No. 2, Transitional and Savings Provisions) (England) Order 2013/1590, Arts. 3 and 4).

27. Section 7, 8 and 9 of the RA 1975 make provision for construction or alteration of large raised reservoirs, and that such works are to be certified by a qualified civil engineer ("the construction engineer").
28. Section 10 of the RA 1975 provides for inspection of large raised reservoirs by a qualified civil engineer, the "inspecting engineer", who shall report and whose report shall be acted upon by the undertaker. In so far as that action includes works, those works are to be supervised by a qualified civil engineer ("the supervising engineer"). The most relevant parts of section 10 are as follows:

**10.— Periodical inspection of large raised reservoirs.**

(1) The undertakers shall have any high-risk reservoir inspected from time to time by an independent qualified civil engineer ("the inspecting engineer") and obtain from him a report of the result of his inspection.

...

(3) As soon as practicable after an inspection under this section, the inspecting engineer shall make a report of the result of the inspection, including in it any recommendations he sees fit to make as to—

- (a) the time of the next inspection;
- (b) the maintenance of the reservoir;
- (c) any measures required in the interests of safety and the period within which those measures must be taken.

...

(4) An inspecting engineer shall consider the matters (if any) that need to be watched by the supervising engineer during the period before the next inspection of the reservoir under this section, and shall include in his report a note of any such matters.

(5) An inspecting engineer, when he makes his report, shall also give a certificate stating that the report does or does not include recommendations as to measures to be taken in the interests of safety or as to the maintenance of the reservoir, if it includes a recommendation as to the time of the next inspection, stating also the period within which he recommends the inspection should be made.

(5A) The undertaker must comply with a recommendation made under subsection (3)(b), unless the recommendation is the subject of a reference under section 19 and the reference has not been determined.

(6) Where an inspecting engineer includes in his report any recommendation as to measures to be taken in the interests of safety, then subject to any references of the matter to a referee in accordance with this Act the undertakers shall, within the period specified in the report, carry the recommendation into effect under the supervision of a qualified civil engineer; and that engineer shall give a certificate, as soon as he is satisfied it is so, that the recommendation has been carried into effect.

...

(9) For purposes of this Act "independent" when used of a civil engineer in relation to a reservoir means —

- (a) that he is not in the employment of the undertakers otherwise than in a consultant capacity; and
- (b) that he was not the engineer responsible for the reservoir or any alteration to it as construction engineer, nor is connected with any such engineer as his partner, employer, employee or fellow employee in a civil engineering business.

The reference in this subsection to a construction engineer includes an engineer acting under section 8 or 9 above.

29. Section 19 makes provision for an undertaker to refer disputed recommendations made by the inspecting engineer to a referee.
30. The Ponds were last inspected by an inspecting engineer in 2007, at which time no recommendations were made in the interests of safety, let alone for the Proposals or anything similar to the Proposals.
31. Section 12 makes provision for the supervision of large raised reservoirs by a supervising engineer, who shall if appropriate recommend to the undertaker that a section 10 inspection be carried out (see section 12(3)).
32. The City has presently appointed Dr Andy Hughes as supervising engineer for the Ponds. As Dr Hughes is an employee of Atkins, the engineers who the City has appointed to design and supervise the Proposals, Dr Hughes may also be considered the construction engineer for the purposes of the Proposals.
33. Section 12A to the RA 1975 empowers the Secretary of State to direct that an undertaker prepare a flood plan for a large raised reservoir.
34. By section 16 the relevant enforcement authority may intervene in the event a large raised reservoir is unsafe and immediate action is required to protect persons or property from an escape of water, and recover the costs from the undertaker:

**16.— Emergency powers.**

(1) Where it appears to the enforcement authority, in the case of any large raised reservoir, that the reservoir is unsafe and that immediate action is needed to protect persons or property against an escape of water from the reservoir, they may take at the reservoir such measures as they consider proper to remove or reduce the risk or to mitigate the effects of an escape.

...

(6) Where an enforcement authority exercise the powers conferred by this section, the undertakers shall pay them the amount of the expenses reasonably incurred by them in the exercise of those powers.

35. By section 22, breach of certain of the requirements of the RA 1975, and of the regulations made under it, is a criminal offence.
36. Various provisions of the FWMA 2010 that further amend the RA 1975 have yet to come into force.

*The Civil Contingencies Act 2004*

37. By the Civil Contingencies Act 2004 ("the CCA 2004") certain bodies, including the City, the London Borough Councils and the police, must plan appropriately for emergencies. By section 2(1) of the CCA 2004, they must, amongst other things:

...

(f) arrange for the publication of all or part of assessments made and plans maintained under paragraphs (a) to (d) in so far as publication is necessary or desirable for the purpose of—

- (i) preventing an emergency,
- (ii) reducing, controlling or mitigating the effects of an emergency, or
- (iii) enabling other action to be taken in connection with an emergency, and
- (g) maintain arrangements to warn the public, and to provide information and advice to the public, if an emergency is likely to occur or has occurred.

38. The CCA 2004 defines "emergency" at section 1, as follows:

1 Meaning of "emergency"

(1) In this Part "emergency" means-

- (a) an event or situation which threatens serious damage to human welfare in a place in the United Kingdom,
  - (b) an event or situation which threatens serious damage to the environment of a place in the United Kingdom, or
  - (c) war, or terrorism, which threatens serious damage to the security of the United Kingdom.
- (2) For the purposes of subsection (1)(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause–
- (a) loss of human life,
  - (b) human illness or injury,
  - (c) homelessness,
  - (d) damage to property,
  - (e) disruption of a supply of money, food, water, energy or fuel,
  - (f) disruption of a system of communication,
  - (g) disruption of facilities for transport, or
  - (h) disruption of services relating to health.
- (3) For the purposes of subsection (1)(b) an event or situation threatens damage to the environment only if it involves, causes or may cause–
- (a) contamination of land, water or air with biological, chemical or radioactive matter, or
  - (b) disruption or destruction of plant life or animal life.

...

39. Schedule 1 to the CCA 2004 identifies the persons and bodies charged with preparing emergency plans, including Camden London Borough Council and the Common Council of the City of London.

#### *The Proposals and the Decision*

40. By the Proposals, the City will effect works the core of which will be the provision of a new dry dam across the Catchpit, the raising of the dams around four of the Ponds by one or more metres, the reinforcement of the dams elsewhere and the excavation of spillways at all but one of the Ponds in the Highgate Chain (the Bird Sanctuary) and most of the Ponds in the Hampstead Chain. In addition, the City predicts that the Proposals will cause the loss of up to 70 trees on the Highgate Chain and up to 82 trees on the Hampstead Chain.
41. The new dry dam in the Catchpit natural valley in the Hampstead Chain will be up to 5.6m high and 40m wide. The dam at the Model Boating Pond in the Highgate Chain will be raised by 2.5m. The excavated spillways will range in size, with some up to 25m wide at their base (and the top of the spillways will inevitably be wider than their bases due to the incline of the side slopes). Borrow pits on the Heath are also proposed, though their locations have yet to be identified.
42. The Proposals have been designed on the basis that the system must be a “passive” one, with no reliance on any mechanical system or human intervention. We understand this is because Dr Hughes considers that the City lack appropriately qualified or experienced staff to manage a system requiring intervention (see Joint Report paragraph 5, fourth bullet, and paragraph 6). The result is a highly engineered set of Proposals.

43. In addition to the hard engineering proposed, certain offsetting measures to improve biodiversity and water quality are proposed.
44. Some of the background to and, as we understand it, all of the reasons for the Decision are set out in the Joint Report. As the Joint Report explains within its opening summary and at paragraphs 1 and 4 of its main body:

#### Summary

...It is important to understand that the Ponds Project is a response to the City's statutory duties under reservoir legislation, and it is specifically concerned with preventing dam breach. The primary concern is that in a flood event, water could overtop the dams causing erosion and ultimately failure. To prevent overtopping a combination of increased dam heights and the introduction of reinforced grass-covered spillways is proposed....the scheme is concerned with dam breach rather than preventing surface water flooding.

...

#### Main report

1....The aims of the Ponds Project as set out in July 2011 are to reduce the risk of pond overtopping, embankment erosion and failure; to comply with the Reservoirs Act 1975 and the Flood and Water Management Act 2010; and to improve water quality...It has in addition always been recognised that the City has statutory obligations under the Hampstead Heath Act 1871 that are relevant to the Ponds Project.

...

4....it is important to note that fundamentally the Ponds Project is concerned with protecting those downstream from the potential for dam breach – it is not a flood alleviation scheme. The City is acting in its capacity as a reservoir undertaker whereas the London Borough of Camden is the Lead Local Flood Authority for the area with statutory responsibilities in relation to surface water flooding.

45. As the summary to the Joint Report also explains:

...At the very start of the design process it was determined that the designs should satisfy the industry standard engineering requirements set out in *Floods and Reservoir Safety*<sup>2</sup> whilst minimising as far as possible any negative impact on the Heath's landscape, amenity and ecology in compliance with the Hampstead Heath Act 1871.

46. The decision that the Proposals should satisfy the engineering requirements set out in the ICE's *Floods and Reservoir Safety* ("the ICE Guidance") means that the City is interpreting its duties under the RA 1975 as requiring it to "virtually eliminate" the probability of dam/embankment failure. As Dr Hughes explained in his Position Paper Regarding Quantitative Risk Assessment for the Hampstead Heath Ponds Project, prepared in/around August 2013 ("the Position Paper"):

Currently in UK the risk presented by dams is assessed in accordance with Flood and Reservoirs Safety; An Engineering Guide, 1996, which acts as supporting guidance to the Reservoirs Act 1975. Dams are categorised into four types (Category A to D), depending on the likelihood of a breach causing damage and/or endangering life, with Category A dams having the highest consequence of failure. The assessment of population at risk, made by the Inspecting Engineer under Section 10 of the 1975 Act, is often based on his/her judgment supported by the guidance and any inundation mapping that may be available. Where lives in a community (generally 'considered to be not less than about 10 persons') are considered to be endangered, Category A dams are required to be able to safely pass the design flood. The design flood for Category A reservoirs is the Probable Maximum Flood (PMF) and the dam is required to pass the routed outflow of the PMF.

<sup>2</sup> *Floods and Reservoir Safety* (3<sup>rd</sup> edition, 1996) Institution of Civil Engineers.

It should be noted that the recently implemented part of the Flood and Water Management Act, 2010 has revised the categorisation of reservoirs to “high risk” and “not high risk”. High risk reservoirs are those which endanger the life of at least one person.

This is a standards based approach; if there are lives which can reasonably be seen to be endangered the dams should be designed or modified to “virtually eliminate” the probability of collapse. To avoid failure, the excess water which the dam cannot retain in a flood must be passed safely by a spillway, or over and around the dam, without causing the dam to collapse. To virtually eliminate probability of collapse, the PMF has been used as the benchmark for Category A dams since if this extreme low probability event can be safely accommodated it is reasonable to state that probability of collapse has been virtually eliminated.

We all live with risk all the time in our normal lives. In some other areas of life a more risk based approach has been adopted, where an explicit balance, or trade-off, is made between the probability of endangering life and the cost which may be incurred to reduce or remove that risk. The concept of a tolerable level of risk implies that such a balance can be arrived at. Currently the Inspecting Engineer is relied upon to use his/her judgment as to the risk but not to make an explicit trade-off.<sup>3</sup>

...

The City of London, as the owner or undertaker for the reservoirs, some of which are currently covered by the 1975 Act, and all of which may be covered by the Flood and Water Management Act 2010, needs to virtually eliminate the probability of collapse. It is noted that eliminating the probability of collapse will not eliminate flooding downstream from overtopping during extreme events, which could in such events lead to loss of life.<sup>4</sup>

47. Contrary to that final sentence quoted from Dr Hughes’ Position Paper, the greater risk presented by the kind of weather event that might conceivably result in dam breach is in fact the risk, which would eventuate long before any dam breach, of flooding from the overwhelming of the sewerage system by surface water. That flooding, which would include but not be limited to surface water from the Catchment flowing off the Heath, would inundate residents downstream of the Ponds long before any dam breach. It is our understanding that the sewerage undertaker, Thames Water, is required to build its system to withstand no more than 1:70 year probability storms.
48. The Joint Report further explains Dr Hughes’ advice and the ICE Guidance at paragraphs 100-107. As the Joint Report acknowledges, the City has estimated the probability of the PMF that the Proposals are designed to counter as 1:400,000 years (see paragraph 105 of the Joint Report).
49. The essence of much of the dispute between the Society and the City, which has been extensively trailed, is summarised at paragraph 98 of the Joint Report.

## **Grounds**

### **1. Flawed interpretation of “in the interests of safety” in section 10 of the Reservoirs Act 1975**

50. The Decision is based on a flawed interpretation of the words “in the interests of safety” in section 10 of the RA 1975. It is the Society’s view that, contrary to the interpretation adopted by the City and its advisers, in particular Dr Hughes, section 10 of the RA 1975:
  - (a) is concerned with reasonable safety, not absolute safety;
  - (b) is to be read as subject to and qualified by the City’s statutory duties to preserve the natural aspect and state of the Heath pursuant to the Hampstead Heath Act 1871;

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<sup>3</sup> Page 1.

<sup>4</sup> Page 4.

- (c) does not exclude consideration of safety measures in place under regimes other than the RA 1975 itself. It also requires consideration of the historical, social, ecological and even economic value of the Heath that will be disturbed or harmed by the Proposals.
51. As with any statutory language, the word “safety” in section 10 is to bear its ordinary meaning unless a contrary intention is apparent on the face of the statute. The ordinary meaning of “safety” is not absolute safety but “reasonable” safety. What is reasonable will depend on the full range of circumstances.
  52. It is entirely possible that for a commercial reservoir with limited amenity and ecological benefit an engineered solution that “virtually eliminates” that risk will represent “reasonable safety”, and the untrammelled application of the ICE Guidance will be appropriate. But in the case of a reservoir whose intrinsic value to London residents and to the nation lies in its natural beauty and amenity, that factor must be weighed in the balance when deciding upon what is required in the interests of safety. The Ponds are the paradigm of reservoirs valued for their natural beauty, and in their case the mechanistic application of the ICE Guidance by the City and its supervising engineer Dr Hughes misconstrues the statute by giving safety an absolute and inflexible meaning. The decision-making process should not exclude, when assessing “reasonable safety”, circumstances which fall outside the ambit of Dr Hughes’ professional training, and go beyond the ICE Guidance.
  53. Further, the section 10 test and what is required in the “interests of safety” cannot be construed in isolation from the City’s statutory obligation to preserve the natural aspect and state of the Heath, including the Ponds, pursuant to section 16 of the Heath Act. There is no doubt that the Proposals will affect the natural aspect and state of the Heath. The section 16 Heath Act duty is not one to be considered after Dr Hughes and the City have decided upon the steps to be taken “in the interests of safety”, which is the approach the City has taken to date, but at the same time and as part and parcel of the section 10 RA 1975 test. Contrary to the City’s approach, section 16 of the Heath Act positively informs what is required “in the interests of safety” under section 10 RA 1975.
  54. One possible example of the effect the section 16 Heath Act duty might have on the City’s decision making under the RA 1975 is that it might have caused to reconsider Dr Hughes’ insistence upon a “passive” system, in so far as a “passive system” results in a greater degree of engineering that disturbs the natural aspect and state of the Heath than a system that relies on some suitably trained human intervention.
  55. Further, there is nothing in section 10 of the RA 1975 to suggest that the City must or should ignore other measures that would help to ameliorate any risk from dam failure outside the physical engineering envisaged by the ICE Guidance when considering what is required “in the interests of safety”. The City’s own Strategic Risk Framework contains a risk numbered “SR11” that addresses the risk of flooding from dam breach at the Heath. SR11 lists controls that include a telemetry system enabling early warning, which the notes to SR11 advise has been successfully tested, along with liaison with the local authority (Camden London Borough Council). If plans for other measures, such as early warning and evacuation, are or should be in place under such as the CCA 2004 or otherwise, then they must be taken into account when deciding whether hard physical measures are required, if at all.

## **2. Irrational and unlawful approach to risk**

56. The Decision is based on an irrational approach to risk which approach, amongst other examples of irrationality: assumes that residents downstream of the Ponds would have no warning in the event of dam breach at one or more of the Ponds.<sup>5</sup> This approach unlawfully disregards a number of material considerations, including:

<sup>5</sup> See the Quantitative Risk Assessment “interim report” prepared for the City in 2013, at p.11, para.5.3 and elsewhere.

- (1) the warning mechanisms that are and must be in place, including under the CCA 2004, which mechanisms will provide warning of possible flood and dam breach far in excess of the 40 minute time frame that has led the City to proceed on the basis of “no warning”;<sup>6</sup>
  - (2) that the City’s own assessment is that breach will not occur immediately but will take several hours;<sup>7</sup> and
  - (3) the fact that in the event of rainfall sufficient to cause dam breach, surface water would have already overwhelmed the sewerage system, causing widespread flooding, as would run off from the Catchment as a whole. These events would occur significantly before any dam breach at the Ponds and would pose an equal or greater risk to life. It is inconceivable that this prior flooding would not itself have already prompted warning and evacuation measures, long before any dam breach at the Ponds.
57. As regards (1) above, the City identifies such mechanisms as “controls” against the risk identified as SR11 within its current Strategic Risk Framework, yet ignores them when considering its duties under the RA 1975.
58. As regards (3) above, Dr Hughes has himself at least partially acknowledged the point we make as accurate in his Position Paper (we have quoted the relevant extract above), but despite that acknowledgement this fact has been excluded from his and the City’s approach to the risk of dam breach.
59. Further, and as indicated under Ground 1 above, the City’s approach to risk and its approach to the assessment of risk also has no regard for the intrinsic qualities of the Heath that will be affected and harmed by the Proposals.

### **3. Failure to carry out Strategic Environmental Assessment**

60. Directive 2001/42/EC (“the SEA Directive”) is aimed at providing “a high level of protection of the environment”, contributing to “the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development” by ensuring that “an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment” (Art.1).
61. The UK has transposed the SEA Directive through the Environmental Assessment of Plans and Programmes Regulations 2004 (“the SEA Regulations”). The SEA Regulations apply to plans and programmes that relate to England, either solely or together with any other part of the UK. Generally, though, it is sufficient to look to the words of the Directive alone.
62. By Art.2(a) the SEA Directive provides that “plans and programmes” means plans and programmes which are:
- ... subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure...
  - (and)
  - ... which are required by legislative, regulatory or administrative provisions.
63. In the case of the Decision, the City has made clear that it is pursuing the Proposals because it believes they are “required” by the RA 1975.
64. Article 3(1) provides that an environmental assessment be carried out for “plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects”. The terms “plan” and “programme” are not defined in the Directive, but will be given a broad and purposive interpretation. As the Advocate General explained in Joined Cases C-105/09 and C-

<sup>6</sup> Ibid.

<sup>7</sup> See the Quantitative Risk Assessment “interim report”, p.23, Table A.2.

110/09, *Terre Wallonne ASBL v. Région Wallonne and Inter-Environnement Wallonie ASBL v. Région Wallonne*, the focus should primarily be on whether the measures in question may have significant environmental effects and a broad approach is necessary in the light of the history and aims of the Directive.<sup>8</sup>

65. So far as relevant, Art.3(2) explains that, subject to Art. 3(3), an environmental assessment “shall” be carried out for all plans and programmes:
- (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II of (the EIA Directive)...
66. The Proposals are concerned with both water management and town and country planning, at least. They will also have significant environmental effects. Subject to the question of whether the Decision “sets the framework for future development consent of projects listed in...(the EIA Directive)”, the Decision plainly falls within Art.3(2).
67. As to that final question, in *Terre Wallonne* (see above), Advocate General Kokott noted that it was unclear how strongly the requirements of plans and programmes must influence individual projects in order for those requirements to set a framework, and that they may influence the development consent process in many different ways: consequently the concept is very broad and must be construed flexibly. At issue there were programmes for the management of nitrogen in agriculture. The Advocate General emphasised that action programmes on nitrates will be relevant to the provision of storage facilities for manure on intensive livestock installations and the disposal of such manure, which must be considered as part of the development consent process both in terms of the operating conditions of such installations and their location. The action programmes did accordingly set a framework in SEA Directive terms. The Court of Justice endorsed that reasoning.
68. In the case of the Proposals, the fact that the City has termed them collectively “the Ponds Project” cannot disguise the fact that the Decision sets the framework for future development consent for a series of extensive Pond-specific works to the 11 individual Ponds and the Catchpit. Many if not all of those works would of themselves be EIA development. The Decision is a “framework” plan or programme for the purposes of the SEA Directive, and so is subject to it.
69. By Art.5(1), the SEA Directive requires preparation of an environmental report that includes the identification, description and evaluation of the “reasonable alternatives” to what is proposed.
70. In the case of the Decision, no such environmental report has been prepared. This is of particular significance given the reasonable alternatives could, and we consider should, have included the full range of non-physical interventions, such as inspection and if necessary intervention by qualified staff and early warning systems.
71. The City’s failure to comply with the SEA Directive is a further reason the Decision is unlawful.

### **Action the City is asked to take**

72. The City is asked to rescind the Decision, to undertake to construe its obligations under the RA 1975 in accordance with our interpretation set out above and to pay our client’s costs.
73. If the City will not consent then, subject to anything said in the City’s response, we anticipate we will be instructed to pursue a claim for judicial review of the Decision. In that regard, the City is asked to indicate whether it would agree to such a claim being expedited and dealt with by way of a rolled-up hearing, with the question of permission and the substantive hearing dealt with at the same time.

<sup>8</sup> See paras.29-35.

74. We confirm that our client would not seek expedition at the expense of the availability of the City's preferred legal representation, but in the event the City will not concede the claim we would invite the City to provide detail of its legal representation, and any known dates of non-availability (or the person from whom such dates may be obtained) in its response.

#### **Details of the Claimant's legal representatives**

75. This firm is dealing with our client's claim, with the assistance of counsel, Mr Stephen Tromans QC and Mr James Burton of Thirty Nine Essex Street Chambers, London, WC2R 3AT.
76. This firm's address and reference is at the header to this letter.

#### **Interested Parties**

77. We consider that Camden London Borough Council as the local planning authority may be an interested party and are also serving DEFRA and the Environment Agency on the basis that they may possibly be interested parties.

#### **Information sought**

78. We do not believe any further information is necessary at present but in responding to this letter doubtless the City will provide any further material which it regards as relevant and wishes to draw to the Society's attention.

#### **Aarhus and costs**

79. This is an Aarhus Convention claim within CPR r. 45.41(2). Accordingly, it is subject to the costs limits prescribed by CPR r.45.43, set out in the Practice Direction to Part 45 at 5.1 and 5.2.
80. As such, our client's exposure to adverse costs will be capped at £10,000.
81. Please confirm that you agree.

#### **Address for reply and service of court documents**

82. To this firm at the address at the header to this letter.

#### **Time for reply**

83. We request that the City reply substantively within 14 days, so before 4pm on Monday 14.07.2014. We believe that the City has had ample pre-warning of our client's arguments and trust that this time period will not cause the City difficulty. We also believe that it will be in both our clients' interests that the legal disputes between them are brought to a speedy resolution through the Courts, and hope that if the City does decide to resist the claim it will be on the basis of cooperation regarding costs, expedition and a rolled-up hearing as outlined above.

## **Interim relief**

84. It would not be the Society's intention to seek interim relief at this stage. Obviously it is for the City to decide the extent it wishes to submit and pursue a planning application which the Society believes is predicated on a wrong view of the law.

Yours faithfully,

**Scott Fowler, Solicitors**

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Letters

## Simon Jenkins: Why spoil all this to build dams that nobody will need?

Highgate Ponds did not flood last month nor ever have done. It is folly to ruin them with £15m of 'safety' works



Pond life: huge construction will "spoil the look of Hampstead Heath", creating a "municipal waterworks" (Picture: Alamy)

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SIMON JENKINS



The war of Hampstead Heath is joined again. Consultation closed last week on whether to raise the dams enclosing the dozen large ponds that descend the heath on either side of Parliament Hill, the Highgate and Hampstead "chains". Ever since Victorian rimovs mercifully saved the heath from becoming another Regent Park, it has seen one battle after another. Now it has an enemy who should know better, the heath's own custodian, the City of London.

Nowhere in London conveys nature more serene than Highgate Ponds. They spring from the woods, glide round the contours and drop gently south, as a visual carpet to London floating in the distance. They are still remarkably wild and un-manicured. Dickens took them as the epitome of useless research by having Pickwick "Speculating on the Source of the Hampstead Ponds".

Since their formation as London reservoirs in the 17th century, the ponds have been used variously for bathing, model boating, bird-watching and, above all, peaceful contemplation. They are often surreal. One has a notice "For Mused Bathing. No swimming. No diving". It must be reserved for drowning.

The ponds pose no conceivable menace to the people of London. They survived the great Hampstead storm of 1975 without overflowing. They were unmoved by last month's downpours. They are fed by no mighty river or wide catchment area and have passed regular inspection with flying colours, the last being in 2007 and 2012. There were reported to be "no recommendations as to measures to be taken in the interests of safety". Dams are required to be subject to a once-in-a-century risk of failure, occasionally once in 10,000 years for worst-cases.

To the amazement of local residents and heath users, the City of London in 2013 commissioned a separate report under the controversial 2010 Flood and Water Management Act. This was from the engineering firm of Arup, which advises councils on

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risk and designs and builds dams. I make no suggestion this might involve a conflict of interest.

This firm put forward a wholly different scenario. It ignored the centuries of safety and satisfactory inspections that instead applied the test of failure once in an extraordinary 400,000 years, which seems so absurd as to be comical. It considered the possibility of a progressive collapse as one pond poured into the next, bursting each dam in turn like balworks on the Titanic. This "could" produce a tsunami, a wall of water descending on Gospel Oak and Kensal Tower, wiping out, says the computer model, 1,400 people. It would indeed be terrible.

I am surprised the computer did not add fire, plague and the Norman Conquest to the horrors of which Hampstead's ponds were capable. Why not imagine Kenwood silting down to South End Green, the old Fleet River spewing rats from bursting sewers and Armageddon descending on Camden Town, with only local hero Jude Law to hold it back?

Atkins advised that the pond dams be raised, some by six to eight feet, diversions dug and embankments reinforced all round, at a cost of £15 million. Locals have been mystified. The Heath and Hampstead Society's chairman, Tony Hillier, complains that the massive construction "will completely spoil the look of the heath". It would become a "municipal waterworks".

The City replies that it is legally required "to minimise the risk to the public from the dams", matter closed. I should have thought there was a stronger argument for closing Tower Bridge to "minimise the risk" of it being hit by a plane.

There has never been an overflow of the Highgate and Hampstead ponds, no massive escape of water and certainly no death in all their 300 years of existence. The apocalyptic tone of the Atkins report and the massive spending required seems out of proportion to any conceivable risk.

More to the point, one of the lessons now being learned about flood management is the crucial importance of upland water retention. If there were a danger of flooding on the heath, plant more vegetation, have more trees, put in more ponds.

The reason the ponds do not overflow is that there is not that much water above them. Such rare flash floods as do occur on London streets arise from torrential downpours overwhelming incompetently maintained sewers, as happened last week in Kennington, not Hampstead ponds.

Something strange has happened to the City. A peer review of the Atkins report from another engineer, ARCOM, came as near as professionalism allows to rubbishing it. There was nothing in the modeling, it said, that seemed to justify so drastic an increase in the chance of failure, let alone the extraordinary imagined death rate.

From reading the documents I find it hard not to believe that the City Corporation was simply blown away by Atkins. It is a splendid firm famously successful at lobbying public organisations for work. It was behind the Metronet consortium that went bust trying to run half the Tube network, at huge cost to the taxpayer. The 2010 act, produced with heavy lobbying by the dam industry, looks suspiciously like legislation to make work for a profession long adept at winding public bodies round its little finger. Atkins may have seen the well-heeled City of London as a soft touch. It was right.

The ponds lie amid their encircling trees as one of the glories of London. Locals may feud over mixed or nude bathing, over precedence to model boats or waterfowl, but the topography of the ponds themselves is precious and timeless. In an age of obsessive health and safety the scaremongers may have the best tunes and sing loudest. But that is no reason for hanged Heath to be sacrificed to a dam-builder's job-creation scheme.

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# *The Heath & Hampstead Society*

The Society examines all Planning Applications relating to Hampstead, and assesses them for their impact on conservation and on the local environment.

## **To London Borough of Camden, Planning and Development Management**

Planning Reference	2014/4332/P	
Address	Hampstead and Highgate chains of ponds, Hampstead Heath, London	
Description	Dam engineering works etc. as described	
Case Officer	Jonathan Markwell	Date 12 September 2014
Response	<b>SUPPLEMENTARY OBJECTION</b>	

The Society refers to its **Objection** dated 6 August 2014.

In section 3 of our Objection we referred to photographs (visualisations) which the Society had had prepared in connection with the proposals.

In its planning application to Camden Council, the City has included a document entitled "Planning Drawings and Design – Verified Views (Photomontages)" (the "City's Photomontages"). The pictures in this document show the sites affected by the Projected Works before and after the works are carried out. Some of the "after" pictures are, in the Society's view, accurate. Others, in its view, are misleading, in some cases seriously, and visually understate the scale and impact on the landscape of the Projected Works.

The Society has commissioned some "before" and "after" pictures of its own, from KeanLanyon (a design agency with a specialism in digital image editing) ("KeanLanyon") and from Wilmac Geomatics Limited, a geomatic company ("Wilmac"). The Society has chosen the three sites which, in its view, are the most seriously and adversely affected, in landscape terms, by the Projected Works: the Model Boating Pond, the Highgate Men's Bathing Pond and the Catchpit. Digital rendering is an expensive process, and it should be for the applicant and not the Society to prepare "after" images to an equivalent standard for all the sites.

The work commissioned from KeanLanyon and Wilmac is described in their letters to the Society enclosed. It is essential to note that, in the electronic visualisations prepared by Wilmac, it was not programmatically possible to portray the loss or preservation of particular trees on the site by reference to the detail in the City's Tree Protection Plans. Therefore the appearance of trees in the "before" and "after" sections of the visualisations is impressionistic only. The purpose of the visualisations has rather been to demonstrate the scale and appearance of the proposed constructions. There are also enclosed with this letter screen shots from the electronic visualisations.

## **Stock Pond**

Pages 6 and 7 of the City's Photomontages of the Stock Pond accurately show the extent of the loss of 23 trees following the City's decision to construct the large spillway, also clearly shown, on the south-west corner of the Stock Pond. The Projected Works at the Stock Pond – one of the smallest Ponds – were unanimously opposed by the representatives on the Ponds Project Stakeholder Group: see page 8 of notes of PPSG meeting on 26 June 2014.

## **Model Boating Pond**

Pages 17 to 31 of the City's Photomontages contain "before" and "after" pictures of the Model Boating Pond. Page 21 and page 31 (but not page 27) give some realistic idea of the change in the landscape to be effected by the large crescent-shaped dam to be constructed around the southern end of the Pond and its reservoir-like appearance. However, only the "after" picture of the southernmost part of the dam prepared by KeanLanyon (enclosed) gives a close-up view of the height of the dam itself. Page 23 of the City's Photomontages does give a realistic representation of the unnatural "parkification" of the Model Boating Pond resulting from the proposed large excavation of the west side of the Pond.

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## **Highgate Men's Bathing Pond**

Page 37 of the City's Photomontages purports to show the "after" picture of the (southern) dam on Men's Bathing Pond after construction of the one-metre high wall of sheet piling. The picture is taken from such a distance away, on the north bank of the Pond, that the wall is barely visible. The first part of the electronic visualisation prepared by Wilmac (item (4) of enclosures) shows the dam at the Highgate Men's Bathing Pond before – with the existing wooden picket fence – and after – with the wall – the works. Although the new wall is proposed to be clad, possibly with wood, it is nothing other than an unnatural and unsightly addition to the Heath landscape designed in disregard of the prohibition on enclosing or building upon the Heath contained in section 12 of the 1871 Act. The visualisation shows in particular how the wall will appear to swimmers.

## **Catchpit**

Pages 61 and 63 of the City's Photomontages purport to show "after" pictures (viewed looking eastwards and westwards respectively) of the new "dry" dam at the Catchpit. Again, in the Society's view, the pictures are misleading in that, being taken from a distance, they visually understate the scale of the new dam (100 metres long and 40 metres wide). Indeed the dam is shown as "peeping" through the tree canopy. The second part of the electronic visualisation prepared by Wilmac (item (4) of enclosures) shows the site before and after the dam, to scale and relative to the height of walkers along its base. As Wilmac noted in its letter to the Society (enclosed), both the City's Photomontages are misleading in their depiction of the extent of tree preservation on either side of the dam. The scale of the works will entail extensive tree removal on either side of the dam, as is confirmed in the Development Management Forum Summary prepared by the City.

None of the Projected Works will preserve or enhance the natural aspect and state of the Heath. Indeed, it may be said of the works at the Model Boating Pond, the Highgate Men's

Bathing Pond and the Highgate No 1 Pond that they will give the affected sections of the chains of Ponds a visual appearance closer to a series of commercially-designed reservoirs by reason of the raised dams. This is true of the Mixed Bathing Pond where the existing dam will be raised by one metre despite the objection of the Mixed Pond Association.

#### **Enclosures with this Supplementary Objection**

- (1) Letter to Society from KeanLanyon (26 August 2014).
- (2) KeanLanyon photos of Model Boating Pond dam.
- (3) Letter to Society from Wilmac Geomatics Ltd (11 August 2014).
- (4) Wilmac electronic visualisations of Catchpit and Highgate Men's Bathing Pond dam (memory stick – viewable on QuickTime (.mov) or Windows Media Video (.mp4)).
- (5) Screen shots from (4).
- (6) Notes of PPSG meeting on 26 June 2014.

#### **Visualisations and Deferral of Determination**

We repeat our request that Camden require the production of proper geomatic visualisations in respect of the affected sites and, in any event, that determination of the application be deferred until determination by the High Court of the judicial review, proceedings in respect of which were commenced on 5 September 2014.

Signed



for The Heath & Hampstead Society

The Heath & Hampstead Society, PO Box 38214, London NW3 1XD [info@heathandhampstead.org.uk](mailto:info@heathandhampstead.org.uk)

# Kean Lanyon

Marc Hutchinson  
The Heath & Hampstead Society  
P.O. Box 38214  
London  
NW3 1XD

Tuesday 26th August 2014

You instructed KeanLanyon in December 2013 to provide a photomontage visual of how the Model Boating Pond dam would look should the City of London's proposals for dam works be carried out.

The background information for these montages was from

1. The content and visuals of the Aktins Preferred Option's report volume 1, October 2013
2. Poles placed by the City's Heath staff to indicate the proposed new height and width of the raised dam
3. A tour of the site with yourself, at which I took new photos
4. Extensive research into the visual appearance of similar earthworks
5. Expert comments (by Jeremy Wright, MICE, C.Eng. Trustee of the Heath & Hampstead Society) on our initial visuals, which were then revised.

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North Road  
London  
N7 9DP

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keanlanyon.com

The specific methodology was to digitally adapt the original photo I had taken, and to add digital information from other photos I had taken to create a composite image that was then reviewed by Jeremy Wright and then further edited.

Yours sincerely



Iain Lanyon





Ref: 588-0714-3DV  
Date 11<sup>th</sup> August 2014



Mr. Marc Hutchinson.  
The Heath & Hampstead Society  
P.O. Box 38214  
London  
NW3 1XD

Re: Impact Visualisations - Animations

You have instructed us, in the context of the decision by the City of London to proceed with engineering works on Hampstead Heath, to prepare 3D visualisations of two sites on the Heath showing the landscape "before" and "after" the relevant works.

The two sites we have worked on are referred to as:

- Catch Pit
- Men's Bathing

We have created the visualisations according to the scaled plans contained in the Environmental Masterplans for the Catch pit and the Men's Bathing Pond published by the City in April 2014 which you provided to us. We have also looked at the document entitled "Planning Drawings and Design - Verified Views (Photomontages)" submitted by the City to Camden Council as part of its planning application, which contains "before" and "after" photomontages of those sites.

Using a combination of 360 degree photography and traditional topographical survey work, we have produced two animations in order to depict the existing and proposed earth works and attenuation schemes at Hampstead Heath.

It was important to measure both sites accurately, as the visualisations would require this to show the reality of the proposed works.

The topographical survey was measured in 3D on site, so that a contoured map of the site could be produced to aid the visualisation for the animations. A survey team used reflectorless total stations on site to carry out topographical surveys. Levels were taken at 5m intervals, fences banks and infrastructure were also surveyed and all levels were used to build an accurate 3 dimensional model. The levels and orientation were then linked to the plans shown in the Environmental Masterplans to ensure an accurate comparison. Animations were then produced to demonstrate the impact that the proposals would have on the Heath from the perspective of the visitors.

We have provided you the visualisations in electronic form. The animated visualisation at each site begins with an aerial view of the site to indicate its relationship to the surrounding landscape and its relative size. There follows, in sequence, an animated "before" and "after" visualisation: before the creation of the works, and after the creation of the works. Each sequence views the works from a different angle. At the Catch pit, you asked us to create an accurate visualisation of the size of the new dry dam. At the Men's Bathing Pond, you asked us to create an accurate visualisation of the concrete wall to be placed around the dam on the southern end.

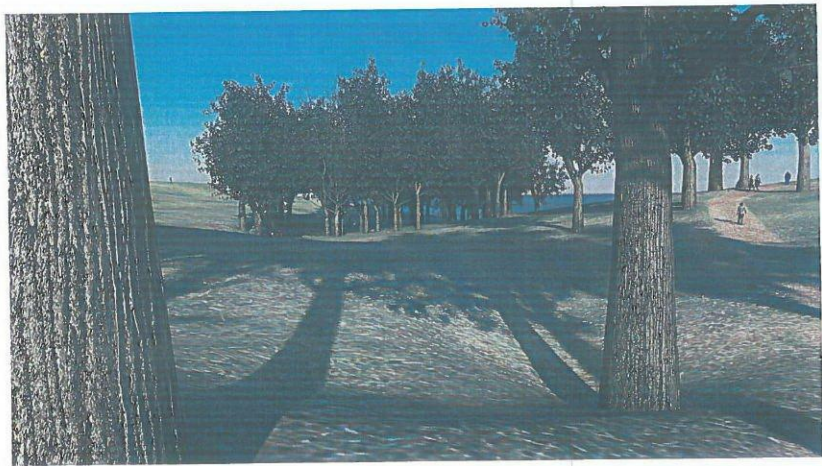
As regards the trees, we should point out that the trees indicated in the visualisations are representative only. It would be impossible to create, tree by tree, all the trees which will, at the site, survive the works. Therefore the visualisations should not be regarded as representing tree loss. Nevertheless, we do not see how the "after" photographs of the Catch pit included with the City's planning application (pages 59 and 61 of the verified views (Photomontages)) could correctly show the trees which would survive the large scale earth works required to build the dam at the Catch pit.

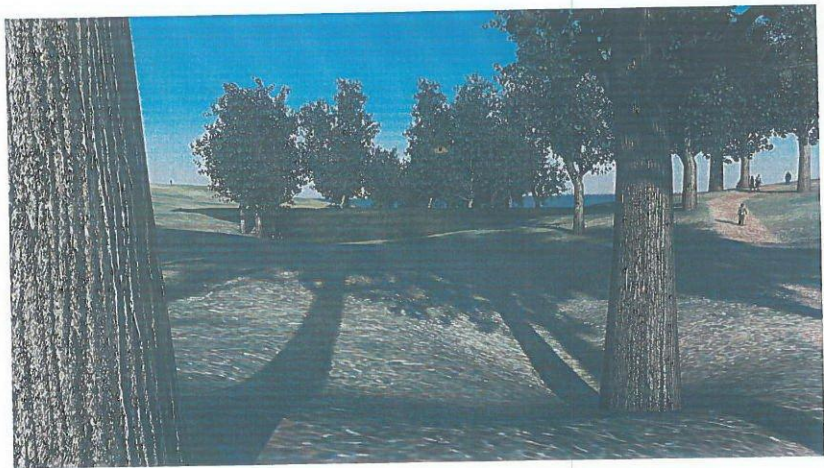
Yours sincerely

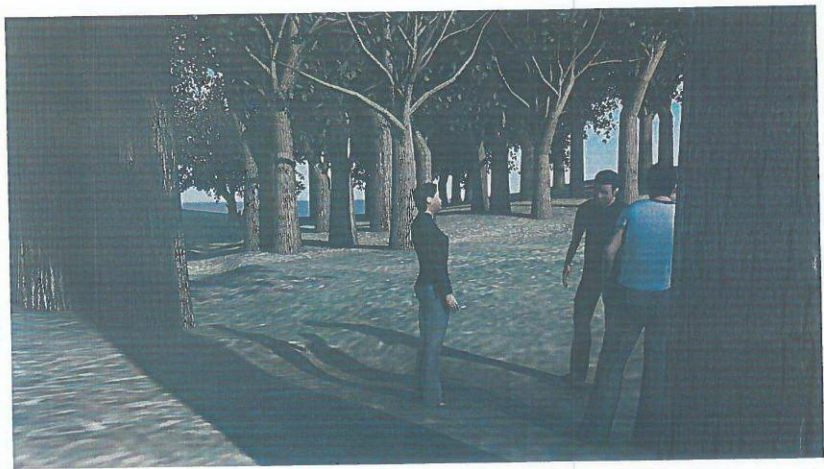
Rich Wills  
Wilmac Geomatics Ltd.  
Embankment Studios  
The Embankment  
London  
SW15 1LB (m) 07974 716854

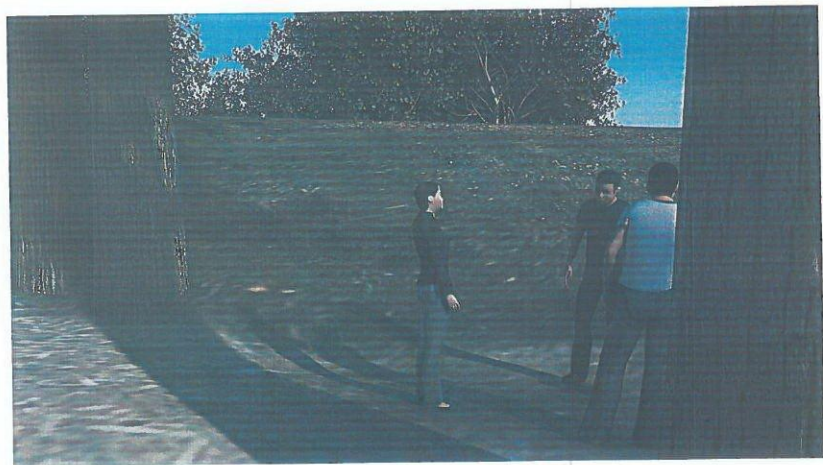


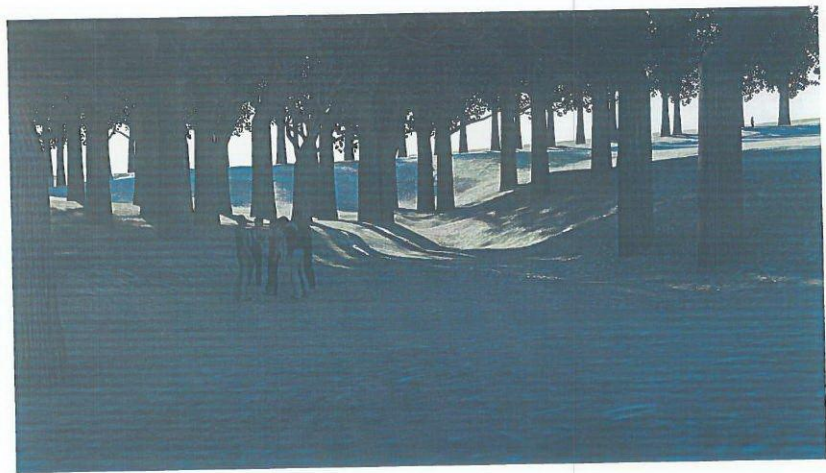
45a High Street, Shrewsbury, SY1 1ST  
land@wilmac.co.uk | www.wilmac.co.uk  
tel 01743 254600

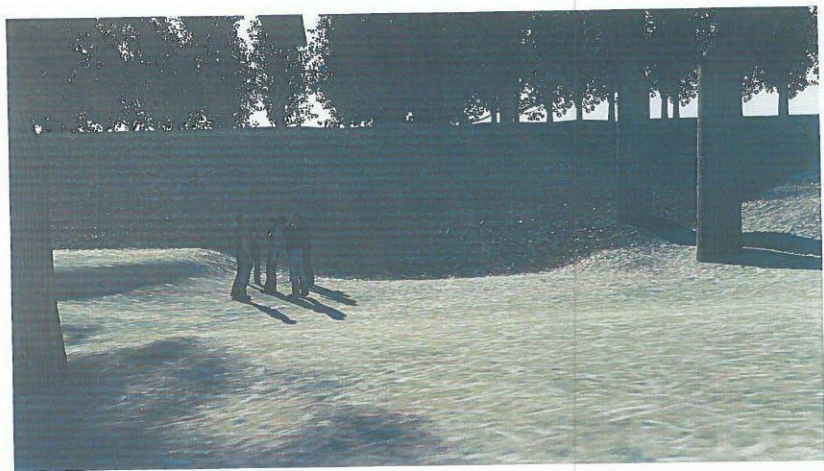




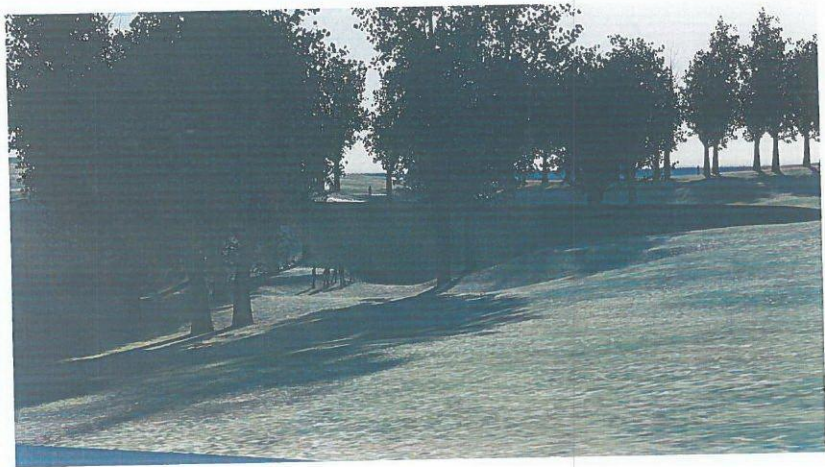


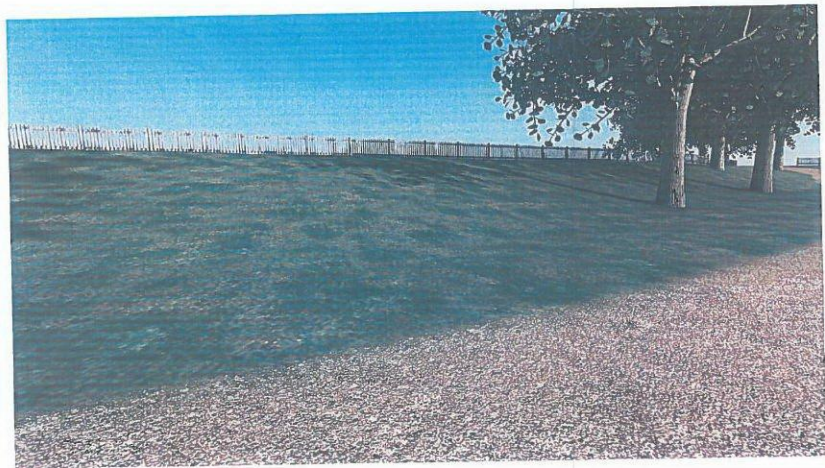


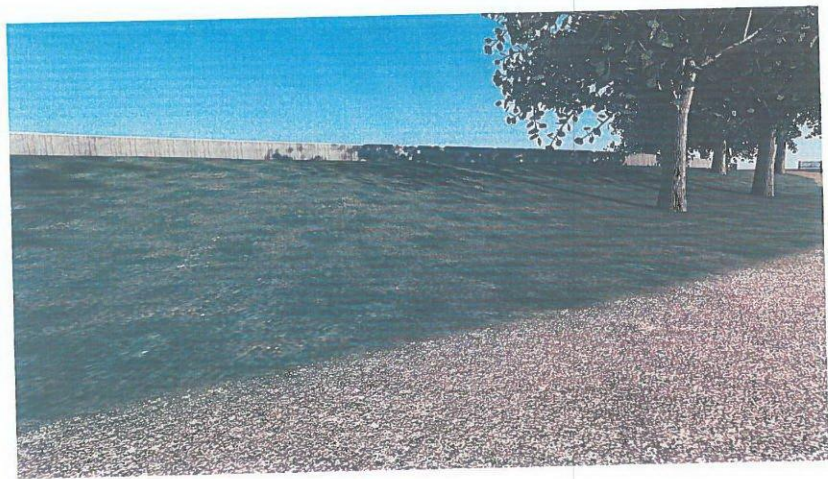


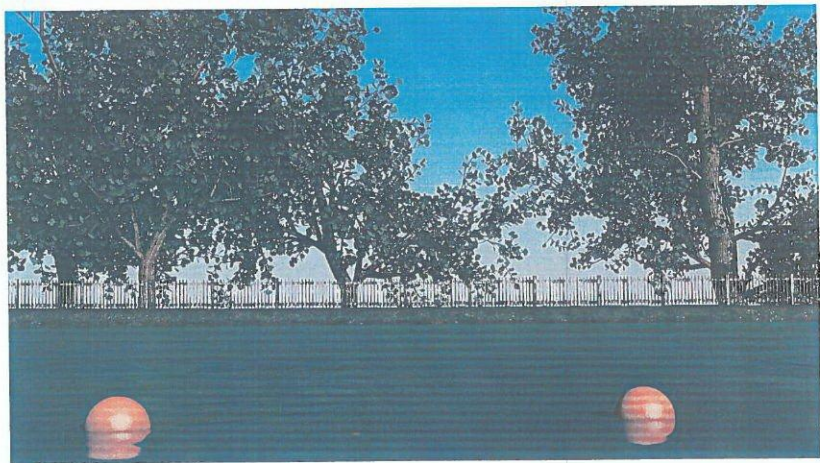


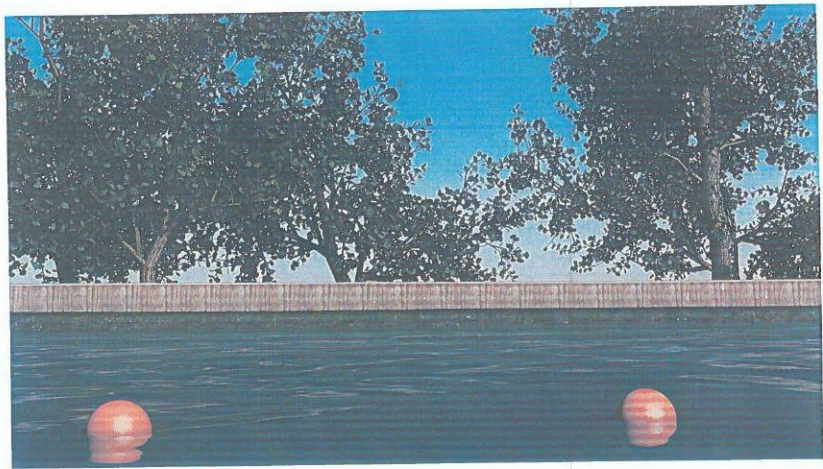


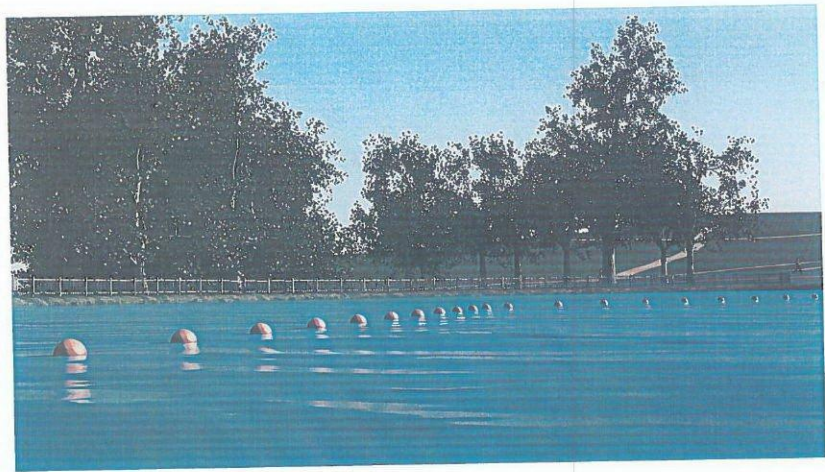




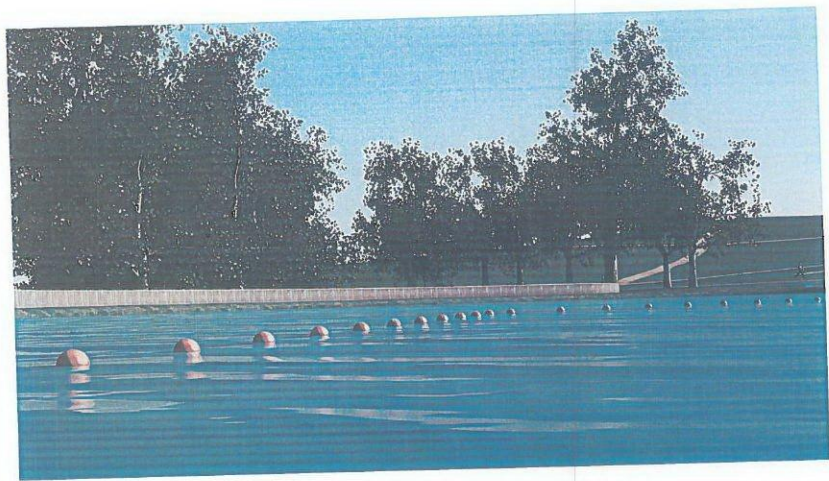








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## **Ponds Project Stakeholder Group**

**Thursday 26<sup>th</sup> June 2014, 6pm**

**Parliament Hill Meeting Room**

### **Present:**

Karen Beare	KB	Fitzroy Park RA (Acting Chair)
Jeremy Simons	JS	City of London elected member (Deputy Chair)
Lynda Cook	LC	Heath & Hampstead Society
Rachel Douglas	RD	Mixed Pond Association
Janis Hardiman	JH	Vale of Health Society
Prem Holdaway	PH	Hampstead Heath Anglers Society
Harriet King	HK	Brookfield Mansions RA
Charles Leonard	CL	Oak Village RA
Nick Bradfield	NB	Dartmouth Park RA
Ellin Stein	ES	Mansfield CACC
Armorer Wason	AW	West Hill Court Residents Association
Philip Everett	PE	Project Board Director, CoL
Bob Warnock	BW	Superintendent, Hampstead Heath, CoL
Esther Sumner	ESu	Ponds Project & Management Support Officer, CoL
Peter Wilder	PW	Strategic Landscape Architect
Mike Woolgar	MW	Director, Water & Environment, Atkins
Kate Radusin	KR	PA, CoL (notes)

### **Alternative members observing:**

Tony Ghilchik	TG	Heath & Hampstead Society
Harley Atkinson	HA	Fitzroy Park RA
Roderick Allison	RA	on behalf of Ed Reynolds, Oak Village RA

### **City of London Officers observing:**

Declan Gallagher	DG	Operational Services Manager, CoL
Jonathan Meares	JM	HW, Conservation and Trees Manager, CoL
Tom Creed	TC	Engineer and Projects Liaison, CiL

### **BAM Nuttall:**

Giles Brooks	GB	Contract Manager, BAM Nuttall
Ian Grant	IG	Site Agent, BAM Nuttall

#### **1. Apologies**

Michael Hammerson, Muriel Mitchison, Mary Port, Geoff Goss, Tom Brent, Mary Cane, Jane Shallice, Jennifer Wood.

#### **2. Approval of note from previous meeting**

- LC has a summary of the tree walk which she can forward if people would like to have the Heath & Hampstead Society version to accompany the CoL version Jennifer Wood

sent out. (Note added after the meeting – the H&HS note was distributed with the CoL note via email on 18 June 2014)

- KB - a recent email from ESu was sent out 'Bcc', the usual policy within the group is to send 'cc'.
- ESu noted for future emails, so long as everyone consents.
- PH- item 3, point 9 – information (what happens to water when it leaves Highgate No.1) has not been provided before the 5<sup>th</sup> June deadline stated.
- TC - we have only just received this from Atkins.
- PH - when will it be available?
- PE - Monday/Tuesday via email.
- HK - what will it show?
- TC - revised topographical survey with contours round Highgate No.1. Shows the extent of flooding in the existing position and compares between existing and proposed – only at PMF.
- HK - not 1:10,000?
- CL - 1:2,000 and 1:5,000 were asked for as these are critical.
- PH- item 3, point 14 – is ICE guidance in law? If not why are you quoting, as still do not know what a PMF is?
- PE- the guidance isn't law – but it is the guidance any engineer would follow. The guidance says that as we have 'category A' dams they have to withstand a PMF. Our dams cannot tolerate overtopping, due to trees/vegetation and the nature of their construction as earth dams, if they overtop then they will erode. Erosion leads to further risks, so they have to withstand a PMF as they cannot tolerate overtopping. Agree that the PMF is difficult to grasp, this is an attempt to model the amount of water the atmosphere can hold – which equals the PMF. That is the standard set for dams like this.
- MW- the concept is to virtually eliminate risk.
- RD - this is not in the Act.
- MW - virtually eliminating failure is the adopted practice for all dams where life is at risk. It is not written into the Act that you must use a PMF. However it is a rational position to avoid catastrophic events. Boscastle in 2004 for example. We are using standard practice for this area, the PMF varies across the country.
- PH - this explains it more clearly.
- LC - In your calculations peak rainfall concept is that rain will endure for 9 hours and that all the dams will burst?
- MW - Hydrograph does not use a constant rainfall level over 9 hours.
- CL - at Camden meeting, MW mentioned a flood relief tunnel, we know nothing about this – why can't we have this information?
- MW - I don't have it. I would estimate that the flood tunnel is capable of carrying a 1:30 year event.
- CL - would like to know the flow rates and capacity.
- MW - pipes in the tunnel have a finite storage – which is not huge and would be quickly overwhelmed.
- CL - frustrated nothing is happening.
- KB - who does know?
- MW - Camden / Thames Water
- KB - this information is outstanding, we need to obtain it from Camden/Thames Water or whoever is holding it. The difficulty is the downstream residents need this information, and have been waiting for 2 years.

- PH - item 4, point 38 (why not increase the outflow from the flood storage chambers into the pipes that Thames Water in on after the 1975 flooding?). We were told the pipes were to control flow, why would Thames Water have another storage chamber? It is not included in these designs as it is classed as unsuitable, I would like clarification as to why it is not suitable.
- PE - rational for the scheme is not to alleviate downstream flooding. The nature of the work is to prevent the dams collapsing, in balance with our responsibility to the Heath, not to reduce the amount of water that flows across it. We also stated we would not make the flooding worse. What happens downstream is Camden's responsibility. Sewers are generally maintained to a 1:30 year standard.
- HK - at the meeting on 10<sup>th</sup> April between CoL and Atkins, CoL said they would arrange a meeting with Camden – this has not happened. We are really disappointed, and don't think this is good enough. It is three months later and nothing has happened. And Paul Monaghan has been dismissive.
- ESu - Paul Monaghan did give consideration to a second overflow pipe – but was concerned it would increase flows from the Heath and make downstream flooding worse.
- HK - if it goes down a small pipe to a sewer or over-ground – what difference does it make? It does make a difference to Brookfield. Paul Monaghan didn't respond to the email.
- ESu - Paul Monaghan did confirm that we cannot put more water into the sewer network.
- HK - this is illogical. We asked to be involved in these discussions, and you have been un-cooperative.
- PE – we will set up a meeting and keep you informed.
- HK - would like the minutes and dates of CoL meetings with Camden.
- CL - we are now very mistrusting of things which were said at the Camden meeting that were very alarming. Why not use the two pipes used for site storage? Are they being used? Do you know?
- PW - is the issue that you want to hear it from Thames Water? As to why they can't be used. You want to hear it from the horse's mouth?
- KB - this information is part of the bigger picture for downstream people. If these meetings have happened why have we not been informed?
- HK - Thames Water cannot turn down requests to use pipes.
- KB - it would be helpful to know what the City has been told.
- PH – the pipes are capable of taking the flow of water as they go into the Thames not the sewer. Aren't the output pipes 6ft in diameter?
- KB - Atkins and the CoL made a decision as to how the scheme is designed. The Panel Engineer and Atkins are responsible for the design – it is reasonable they may not agree with you (PH).
- PH - these designs are based on what Atkins want to do – I can't support it and neither can the Anglers.
- KB - your issues have been raised. Atkins are employed to make these designs.
- PH - will continue to attend meetings and will continue to raise objections.
- TG - this issue will only be sorted when we have a Judicial Review.

### 3. 'You said : We did' – actions from previous meetings – Peter Wilder and Bob Warnock

- BW - Peter is starting with a presentation which gives a summary of the two years' progress so far.

- PW - wanted to look back as we are about to go to planning. I want to recap on how much the Stakeholders have influenced the design. It all started as a walk around the Heath – getting together over drawings – discussing our fears and aspirations for the works. Identifying where we (Stakeholders) thought the key issues were. We asked everyone to write their biggest concern down on a post it note. Trees and views were big issues, they all seemed to be concentrated around the middle of each chain. This was fed back to Atkins and they responded.

Key Concerns: Impact on trees, views, flooding downstream, increased hard structure.

Key Aspiration: What positives things can come out of the project – we also considered these, not just the negative aspects.

Ladies' Pond – concerns about enclosure were raised, it's important to remember that Atkins have responded to issues raised at the beginning.

Model Boating – the idea to expand and open up the pond came from the Stakeholders not Atkins. It is difficult to remember as not everyone was here at the beginning.

- LC - this is not helpful..
- PW - trying to say there wasn't always agreement, but that these ideas came from the Stakeholders.
- KB - a number of Stakeholders agreed on certain things – there was not consensus – but a form of agreement across the groups of Stakeholders. We created this document (Critical Review).
- CL - we said holding water higher up the chain was better.
- KB - we came as lay people, if we do not like Atkins scheme we can say so.
- LC - important things have been left until too late.
- KB – agreed. Spillways and tree loss were left until the last minute.
- RD - we are still waiting for the legal position. Think this is a waste of time, we should wait for the Judicial Review.
- LC - agree with KB/RD, the last 3 months have been focussed on Stock Pond. On 9<sup>th</sup> June meeting there were alternatives to removing 27 trees. There is now no sign that this was considered. We want our input (what we have put forward at Stock and Catchpit to be respected.)
- PW - trying to share where the scheme has come though.

Men's Pond – dam raising at this pond, how did Atkins respond to issues.

- HK - there was a bund in front of Brookfield – which we supported – where has it gone?
- PW - if we had a bund, think the water would wrap around it.
- HK - doesn't think there has been any serious consideration.
- CL - we are mistrusting.
- MW - the water has to go somewhere, this would just move the problem elsewhere.
- HK - down to the sewers.
- MW - you can't just keep adding water to a sewer.
- KB - feedback has impacted on Atkins scheme, but not all feedback – Atkins have been selective.
- PW - I am not condoning Atkins scheme, not saying you got what you asked for. Just saying you helped to make the brief Atkins used. And in some places you did get what

you wanted. Upstream there are no works – this is what you wanted, although you do not eg: what is proposed downstream.

- HK - flood protection for Brookfield – we have not got what you said we would.
- MW - very difficult to know.
- KB - initial clarification of the existing level of protection keeps changing.
- MW - if we change a spillway level of a dam, or anything changes in the design, then the level of protection changes. It was 1:25 (or 1:100 as I have said), then 1:1,000 is significantly better.
- HK - standard of the protection is the design event to which a building, asset or area is protected against flooding. Any flood event greater than 1:1000 would have an impact on Brookfield and residential areas. Water discharged down the spillway will go into the sewers anyway, it isn't reasonable to pass it through Brookfield.
- CL - additional capacity could be created.
- MW - we have created it by raising the spillway.
- CL - 1:1,000 is big. How much more serious is a 4 hour storm?
- KB - there are too many variables when defining level of protection. The City needs a more accurate and reliable way of describing these events.
- MW – we raised the spillway so it stores more water, so you are getting a higher level of protection.
- CL - if you raise another 3-4 inches then it would help the situation at Brookfield.
- MW - then we may need to raise the dam more. We are trying to incorporate your views where/when we can, but sometimes we just aren't able to. Sorry that CL does not like it – it is very complicated.
- HK - were you (MW) asked to explore a second overflow?
- MW - don't know.
- PE - don't think we have asked.
- HK - CoL promised it would ask to explore this. 1:1,000 would have an impact on flooding in areas below Highgate No.1. If an overflow was placed at the level of the spillway, some water would go into the sewers. It is possible that a major part of the storm would go down the sewer.
- PE - we are sticking to the principle that we would not make things worse downstream.
- HK - you should not stick to this. I accept you do not want to damage the Heath – support this. That you don't want to put extra water to Thames Water I don't support.
- PE - our job is not to do Thames Water sewer re-modelling. Sticking to principles that the Heath is an environmental entity, and by stabilising the dams, we would not make the situation downstream worse.
- ES - we know this area will be flooded from surface water, we will already be flooded downstream. This criteria was not designed for a body of water in a city.
- LC - not clear – argument is that you can't have any loss of life. Yet the very people at risk – Brookfield – you are stating we can't protect. So why embark on this?
- MW - CoL have an asset, as guardians they must manage. If the dams collapse there will be a huge rush of water, this is what kills people. We can't stop slow rise flowing. When flooding happens suddenly is that is what is dangerous. CoL are taking responsibility, and making rational decisions. We are now at the stage where we have produced a design, we are taking comments where we can, and not making it worse downstream, Now it is going to planning, if you want to, you can argue against it.
- PE - don't want to fall out with anyone around the table, although clearly we haven't pleased everyone. Not sure we can answer all the various points. We have focused on engineering to make sure dams don't collapse. The CoL are 'undertakers' of the dams.

The City can't afford to be in a position where if there is a flood, it can be said that the collapse of dams was a contributing factor. We said we would not make the situation worse (downstream) and we won't.

- RD - I take on board that you have listened, it is appreciated. Understand design cannot change as scheme is going to planning – I hope it won't get permission. Don't know what basis the scheme is designed on – waiting for a Judicial Review.
- PE - you do know what the basis of the scheme is. It is not for us to instigate a debate on the legal stance of what we are doing.
- PH - put forward alternative designs to raise each dam by 0.5 m and no more, PW stated that members have been giving the ideas. Six ideas per chain were pushed forward, but they weren't approved or agreed.
- MW - achieving storage is dependent on two things – increasing storage – the further down the chain the more water is stored. Could build a massive dam at Highgate No.1 and capture all the water. 0.5m on each is not as efficient for what we are trying to do.
- PH - Boating and Men's add another 0.5m again and it will capture all the water. Atkins and CoL are only pushing forward their ideas. Turning the area into an animal preserve, not a human preserve.
- KB - difference is this is consultation and we are putting ideas forward as lay people. There is an expectation that they should be accepted as part of the solution. Ultimately the Panel Engineer and Atkins have come together to integrate these ideas, it is for Atkins to make a decision – we have to put up with it. You (PH) have a democratic right to oppose the design and I'm sure all of you will.
- CL – reiterated that he did like the scheme but wanted to secure extra protection from flooding.
- KB - it is down to Atkins.
- PH - since 1975 flood I have known the dams needed to be updated.
- NB - going round in circles. The scheme goes to planning on 4<sup>th</sup> July, the Secretary of State can call it in – I don't think we should continue to discuss small details- we should take to planning and wait for planning.
- RD - know PE is just doing his job, and acting on the City's idea of what they think needs to be done. Never got the legal basis agreed – we had it in the minutes from two years ago.
- LC- going round in circles. People are here to have their say. Would like aspiration and concerns taken note off. Why is Andy Hughes not here – you are always saying we must consult with Andy. He has called the shots –he said he would take a Section 10 if the works didn't carry on.
- MW - Andy wanted to be here – however he is an expert witness in a court in Ireland – that is why he can't be here, and I am standing in for him.
- HK - how complete is the design?
- MW - Environmental side –tried to take on board all comments and encapsulate in the planning.
- HK - engineering wise?
- MW - still looking at a few things – put in deliverable slopes, so don't think there will have to be any changes.
- HK - not seen engineering solutions yet, if CoL considers our points these should be altered.
- MW - any changes to levels would have a knock on effect. We would do if we have too.
- KB - as a matter of principle, planning applications change often, so this application could also change.

- MW - don't have a design yet we can build from.
- KB - it is 7.30pm – how do we want to proceed with the remaining 30 minutes.
- RD - suggest we talk about the future of the group – when to meet with Andy Hughes, how the outcomes of planning take place.
- KB - Bob will talk about the way forward. Do you want to hear from BAM or MW?

## **6. The way forward for the PPSG – Bob Warnock**

- BW - expecting there will be consultation on detailed design, path surfacing, species mix, material specifications. We would need to discuss in early September so we can fix these elements because we are working with BAM to fix an agreed maximum price. Hope to give you information beforehand for your groups. We would be looking at tree works happening in January/February 2015 and construction from March 2015. We would like to develop another phase of this group from autumn 2014 to discuss sharing of information and access issues i.e. path diversions. We want to consult on a more practical element – CoL will lead and link between designers and constructors. We would value ideas as to how we can share information with Heath users.
- KB – to clarify, the role of the PPSG as currently defined finishes is September. Will there be more detailed design in the interim? Or straight to hard hats and then information sharing?
- RD - results of planning? We would want to be informed, suggestions may come up.
- BW - we can't yet understand how a Judicial Review might influence this right now. We are moving from consultation to information sharing, we would respond as it comes to light.
- PE - planning wouldn't be approved until October/November – we can give an update in September.
- KB - group email can be used.
- NB - cause of action not for this group – individuals need to act accordingly; the group should be frozen until we know either way.
- LC - are Camden holding another public meeting?
- HK - they said it was only a voluntary meeting so we will have another.
- RD - they didn't get through the whole agenda at the meeting so we will need another.
- ES - can the January tree works go ahead if you don't know if a Judicial Review will be allowed?
- PE - if the Judicial Review stops us (i.e. an injunction) then we will not proceed.
- PH - consultation with the Hampstead Heath Angling Society? Is there going to be any?
- BW - we are going to keep talking with the HHAS, we need to meet with the EA regards fish health and moving them between ponds. The HHAS can be involved.
- PH - would like you to act through myself when setting these up.
- JH - is the fate of the trees set?
- BW - yes, set out in the planning documentation.
- JH - Jonathan Meares was very helpful at talking about alternative locations.
- BW - we did challenge this through Atkins, and JM challenged. We had challenged at Stock Pond, and regards the willow at Men's Pond. We are not able to take on board every comment – Ben Jones (Atkins) did look at a piece of work, but the outcome remains that we can't move it (spillway).
- JH - why?
- MW - dictated from the response Ben Jones gave:

<sup>44</sup>I have confirmed with Andy Hughes that the reasons for locating the spillway on the right hand side are:

- 1) The spillway must be located around the right hand (West) end because the downstream slope of the dam is steep so the velocities of water overtopping the dam would be excessive and more likely to cause erosion in a spillway over the centre of the dam. A spillway on the middle of the dam would therefore have to be lined with concrete with a large concrete stilling basin extending out from the downstream toe to prevent erosion at the toe. There would therefore be more tree loss downstream of the dam as well as on the dam itself. Having the spillway around the West side means that the velocities are so low that the lining material can be a light turf reinforcement material such as Enkamat.
- 2) The spillway should be located away from the scour pipe (which would be affected by a central spillway) as the valve should be kept clear in case the dam shows signs of distress during high water levels. If leakage or cracks that indicate slip failure are observed, it would be necessary to access the scour pipe valve in order to draw down the reservoir below the auxiliary spillway level.

- JH - not a good argument.
- MW - if we move in a flood, then can't use the scour pipe anyway. It is not an emergency issue associated with flooding – it is used to manage the dams, used to lower the water levels.
- JH - sacrificing 26 trees because of it could ruin it forever.
- PE - listened to stakeholders regards tree loss – we went back to Atkins and asked them to consider an alternative spillway location. They looked at it again, you now have a statement about why the original decision to have the spillway off the dam remains the right decision. We have here an engineering analysis as to why we can't have it there. It means the spillway doesn't have to be concrete. We keep trying to reduce the engineering, this result is confirmed as the right decision, and we have reduced the number of trees to be lost by doing so. We should have carried out the 'You said : We did' exercise earlier, we really did try to get better answers for Stock – we have succeeded up to a certain point.
- HK - don't want spillways over the dams? But you have at Highgate No.1.
- MW - this is a more stable dam.
- RD - same with Mixed Bathing.
- PH - agree it can't go over the middle at Stock pond, can't you put the two extra pipes to the right side? It would save some trees.
- PE - it would have an impact downstream – the mechanics of the water changes. We are trying to balance every case. It all has an impact on the design.
- PH - can't see your argument – putting pipes at the same level as the spillway.
- BW - there is a veteran oak on the other side of the dam we are trying to protect.
- LC - can avoid the oak, as it is not on the pond, 27 trees are on the pond. If BAM dredge then it will increase the water level.
- BW - no the water level would stay the same.
- LC - why not leave the pond alone – below the pond is a lot of vegetation and trees, which absorb water.
- KB - all stakeholders oppose the plans at Stock Pond as it stands. I would implore the City to reconsider.
- MW - if the planning authorities agree with you we have will to go back and look again.
- KB - hope we wouldn't get to this situation, the tree loss situation has eroded a certain level of support. You have picked the worst location.

- JH - the lime on Hampstead No.1 – we have heard nothing about how you can change this (to not lose the tree). We should fight for the trees.
- RD - also Catch pit area, 49 trees will be lost, not so much worried about the trees, but about the habitat. I want to keep this as a wild area, don't want pathways made through it, no heavy equipment used there, don't want the grass kept short.
- KB - we are going over the same ground – everyone has had their say, we haven't got through any of the information where we could have learnt something new. When it comes to consultation views are either accepted or rejected. Full stop.
- HK - (my views) have not been considered.
- KB - then perhaps you need consider it is rejected. You will not always get an answer today. It is now 8pm and we have not even started on any of the material for the meeting.
- CL - there are no action points.
- KB - we had action points – not had an opportunity to talk to BAM or MW – no time to hear their presentations.
- PH - questions are never answered.
- KB - if you didn't like the Agenda why did no one say so? Not sure how you want to continue and move forward?
- LC - would like to hear the list of things going into planning.
- MW - Statement of Community involvement – how we tried to engage with people/stakeholders/public.
  - Planning, Design & Access statement – sets out planning policy framework. States how the project developed.
  - Environmental statement – report on the environmental impact assessment. Impacts/ mitigations /final outcomes. Statement will be in lay terms.
  - Flood Risk Assessment – definition of the problem.
  - Transport Statement and Appendices – the impact on roads/rail.
  - Outline Specification Booklet – shows what is proposed, includes section elevations.
  - Verified View Booklet – verified views, used to create before/after images.
- KB- the photos taken were specifically requested by Camden? They have asked for these locations?
- MW - yes.
- RD - they told you which views?
- MW - yes, they selected in accordance with their policy.
  - Specification Booklet – outlines finishes, i.e. not stone. Creates a pallet. If Camden do not condition it this can be looked at later.
  - Ladies' Pond DAS – explains how came to their design.
  - Arboricultural report – lists all the trees, their size, shape. It is a very substantial report.
  - BAMS Project Management Plan (including CMP) – how they will do the design – how they will do everything.
- LC - online version available through Camden?
- KB - Camden are doing a standard planning application so there will be no hard copies.
- ESu - will have hard copies in libraries (1x Highgate Library, 1x Queen's Crescent Library, 1x Hampstead Heath Management Team on site). We will put links on CoL website.
- LC - planning design and access plans – how long are they?
- MW - not sure, about 40 pages.

- LC – is the Flood Risk Assessment the same as QRA?
- MW - no different, the QRA will be a supplementary document.
- MW - think the most important documents for you will be; views, specifications, Arboricultural report (very long) and the ERA.
- LC - Camden requested the Arboricultural report?
- JM - it is a standard planning document.
- MW - if we were just doing works on one pond we would still have all these documents – they would just be thinner.
- HK - what are the sections?
- MW - they were in my presentation – they are coloured.
- HK - existing and proposed?
- MW - yes

### **5. Construction Management Plan – BAM Nutall**

- GB - the CMP is very long – we will try to summarise for you as quickly as possible.
- IG - the programme is 78 weeks + 8 week start works. There will be no swimming allowed while we de-silt a pond.
  - Men's Pond, March-April 2016
  - Mixed Pond, January – February 2016
  - Ladies' Pond, November-December 2015, the Ladies' Pond will also remain closed for 3months while the building is built.
- KB - is the W&C design for the new building included in planning application?
- PE - yes.
- IG - gave a run through of the deliveries expected to the Heath. There will be more movements around inside the compounds. There are only 4 road access points;
  - Highgate Road – covering deliveries to; Ladies' Pond, Bird Sanctuary, Model Boating, Men's Pond and Highgate no.1.
  - South End Road (opposite Downshire Hill) – covering deliveries to; Mixed Pond, Hampstead no.2 and Hampstead no.1.
  - East Heath Road (opposite Well Road) – covering deliveries to; Vale of Health, Viaduct and Catch pit.
  - Kenwood Nursery – covering deliveries to Stock Pond.
- HK - Highgate road access? Will the path be fenced off?
- IG - the path will remain open, banksmen will be used to move vehicles.
- CL - are you including details of paths that will be closed?
- IG - in the Transport Strategy.
- CL - new paths will be built first?
- IG - we will need to do the landscaping first.
- HK - a lot of vehicles coming in per week?
- KB - saw 12 HGVs along Sheldon Road today for a basement construction. It is not a lot in context. The vehicle movements proposed are small.
- IG - a crane will be needed for some locations occasionally. We plan to have a mesh/wire fencing panel every 4/5 along so that public can see in, although this will create a bit more dust/noise if we do have.
- RD/CL - good.
- PH - Police will be patrolling?
- IG - we will have site security at weekends/nights.

- ESu - will email round the BAM Nuttal presentation.
- IG - tables are included in the Transport Strategy.
- MW - except for Model Boating and Catchpit the aspirations are for heavy gardening.
- KB - there wasn't an opportunity to say thank you to BAM for the presentation you gave last time – it was clearly carefully considered, thank you for that and sorry for tonight.

## **7. Date of the next meeting**

1 September 2014.

## **8. AOB**

- HK - will email a short statement to ESu. See section 9.
- LC - agree should have responded to minutes before. Can we keep an open email discussion going from now until September?
- KB - respond promptly when issued so we can get them updated, Anything you want on the agenda then let me know in advance.

The meeting closed at 8.31pm.

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## **9. Statement from Harriet King, Brookfield Mansions, received via email 27 June 2014** **Statement from Brookfield** **(Comprising Block 1-4, Block 5-8, Block 9-16, Block 17-24, Block 25-56, The Cottage and Mulberry Cottage)**

We stated in February 2013 that in our view the main objectives of any work should be:

- 1 Ensuring the structural safety of the dams.
- 2 Providing protection of residential areas from flooding.

Our primary concern is that the scheme should minimise the risk of flooding to any part of Brookfield, either directly from collapse of the dams or overtopping of the ponds, or indirectly from 'surplus discharge' through the drains or spillways. Clear information should be provided that will enable residents to assess their exposure to flood risk and insurers to determine the cost of the risk.

The biggest restriction on the entire Highgate chain falls at the toe of Highgate No1. Brookfield lies immediately below Highgate No1. The large spillway will send high velocity water towards the houses. CoL have stated that "the proposed spillway will improve the control of discharges". We see no evidence of this control.

As proposed, we believe the spillway will direct water towards the western end of Brookfield, whereas under current conditions flooding and overflow would occur from the east, south and north of HG1 and would not all be concentrated to flow by Brookfield. Consequently conditions at Brookfield may be worse under the new design and one of the basic principles is that nobody should be worse off under the proposals. The total flows from HG1 may be less but flows by Brookfield will be higher; therefore something should be done such as an additional overflow pipe

Could CoL confirm they have instructed Atkins to carry out the study of the indicative flow of water and when it will be available? (Note after meeting: we understand this will be issued early next week).

CoL does not appear to have taken our concerns seriously. There is no evidence that CoL have done anything significant about the commitments they made to us in the meetings we have had and in correspondence and in meetings which took place on 5 November 2013 and 10 April 2014.

Our comments on 'Summary table of PPSG feedback...'

- 4.6.1 We wish the Standard of Protection for both chains to be independently verified.
- 4.6.2 We're pleased the topographical survey has been carried out though in our view this should have preceded the development of the design for the Highgate chain.
- 4.6.3 CoL undertook to examine the provision of a second overflow. This work has not been carried out, nor have we been told of the content of any discussions with TWA/ Camden regarding the implications of an additional 0.8 cumecs of water taken into the sewer system some time after the onset of a storm. The new spillway is to be taken over the dam and the existing overflow which may become obstructed. The statement that "an additional pipe to the sewer system will increase the flows off the Heath and is therefore would not be in line with the objectives of the project" is illogical. The water will flow off the Heath into the sewers in any case, an additional overflow will increase control of this water and help prevent flooding of the buildings comprising Brookfield in events <1:10,000. This should be examined and discussed with residents, Camden and TWA.
- 4.6.15 Creating water storage to the west of HG1 would not impact significantly on the natural aspect of the Heath. This area was flooded this winter.

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Additional points that were raised but are not listed in the 'Summary table...':

Bund: There's no mention of consideration of a low bund/dam south of Brookfield. This was an original proposal of CoL and we've never asked for it to be removed.

Lesser events: We have asked for hydrographs from the bottom spillways for 1:2,000 and 1:5,000 events, we understand these will be provided during detail design. These would be useful in consideration of the planning application i.e. in the next month.

We have not been involved in discussions as to how these decisions were reached. We have no evidence of the content of the discussions which CoL say they have had with TWA and Camden.

We have repeatedly asked for and been promised a meeting with TWA/ Camden; this has not taken place.