

## **HIGH PEAK BOROUGH COUNCIL**

### **The Executive**

**9 December 2021**

<b>TITLE:</b>	<b>Proposed programme of works to Toddbrook Reservoir spillway</b>
<b>EXECUTIVE COUNCILLOR:</b>	<b>Councillor Damien Greenhalgh - Deputy Leader &amp; Executive Councillor for Regeneration, Tourism and Leisure</b>
<b>CONTACT OFFICER:</b>	<b>Robert Wilks - Principal Officer (Leisure and Recreation)</b>
<b>WARDS INVOLVED:</b>	<b>Whaley Bridge;</b>

#### **Appendices Attached**

**Appendix A: Memorial Park Landscape Design**

**Appendix B: Temporary Play Area Location Plan**

**Appendix C: Cross Section Of Bypass Water Channel**

**Appendix D: Draft Heads Of Terms**

**Appendix E: Lease Area Plan**

#### **1. Reason for the Report**

- 1.1 To update members as to the progress of the proposed programme of works to Toddbrook Reservoir spillway and highlight the key implications affecting the Council for consideration.

#### **2. Recommendation**

- 2.1 That the Executive approves the proposals subject to:

- Formal approval of the proposed scheme by the Development Control Committee.
- Receiving approval from the Charity Commission and HLF for the proposed scheme.
- That the appropriate Council land asset is disposed of in order to facilitate the dam rebuild and reduce the Council's ongoing maintenance liability.
- That the Canal & Rivers Trust (CRT) pick up all costs incurred by the Council associated with supporting delivery of the proposed scheme.

2.2 That authority is given to the Executive Director (Place), in consultation with the Leader of the Council, to authorise the disposal of the required land to CRT and to enter into any necessary legal documents in respect of the disposal.

### 3. **Executive Summary**

3.1 Memorial Park is situated within the centre of Whaley Bridge and runs almost the complete length of the town. It is a formal urban park but is surrounded by open countryside, adjacent to the Peak District National Park Authority boundary and the Goyt Valley. The site is exclusively owned by High Peak Borough Council and is designated as a Protected Major Park. Although not within the Conservation Area of Whaley Bridge, the park sits closely to this designated area.

3.2 In 2009 the Council was successful in securing a development grant from the Heritage Lottery Parks for People fund (HLF) for the park and subsequently submitted a Stage 2 application in April 2010 to secure funding for a wide range of improvements to the park. The funding secured from the HLF totalled £615,200 and this enabled major improvements in the park which included the restoration of the cenotaph and memorial area, enhancement of the main entrances to the park, resurfacing of pathways and the installation of a new play area.

3.3 On 1<sup>st</sup> August 2019, after a significant period of rainfall, a large section of the concrete spillway supporting the Toddbrook Reservoir collapsed. The reservoir and concrete spillway sits directly above the bottom of the park and the collapse of the spillway resulted in a major emergency planning situation with the majority of residents from the town of Whaley Bridge being evacuated whilst the emergency services worked to reduce the level of the water in the reservoir to avert a significant flooding disaster.

3.4 After immediate essential repairs had been undertaken, discussions with the CRT began around their requirements for a permanent solution to the spillway in order to mitigate any further flooding and the effect that this was likely to have on the park. Initial investigation work undertaken by the CRT highlighted 13 potential options but it was confirmed that only two were feasible to deliver, both with significant implications for the park, namely Option A and Option B. Both options were put out to public consultation in September 2020 by the CRT, with the favoured public response being Option A, which is detailed in this report as Appendix A.

3.5 The CRT have a statutory responsibility under the Reservoirs Act 1975 to make provision against escapes of water from large reservoirs artificially created and so officers and representatives from the CRT have been working through the detail of Option A to understand the technical requirements of a new spillway, what a new engineered structure would look like, how it would deal with future event flooding, the impact of this new structure on the Memorial Park and implications for the local community's use of the park.

3.6 Officer engagement with the CRT has been extensive throughout 2021 and

has involved officers from various of the Council's service areas including Service Commissioning, Assets, Legal Services and Development Control. This was to ensure that, as the landowner, HPBC was comfortable with the CRT design proposals which would have a major impact on the look and feel of Memorial park following construction but also during it.

3.7 On 22/10/2021 the CRT submitted a planning application (HPK/2021/0607) to the Council which details the proposed scheme for formal consideration and, as part of this, there is the opportunity for residents and stakeholders to provide formal comments.

3.8 Should planning permission be granted, officers from the Council would support the CRT to deliver the project successfully, whilst ensuring that any conditions of the planning decision are met fully, that the Council's interests are protected and the implications highlighted in this report are resolved satisfactorily.

#### **4. How this report links to Corporate Priorities**

4.1 Aim 4 of the Corporate Plan 2019-2023 prioritises protecting and improving the natural environment, including responding to the climate emergency and, within this, the objective of effective provision of quality parks and open spaces.

#### **5. Alternative Options**

5.1 Various alternative options have been explored with the CRT and subsequently discounted for a range of reasons. This option is now the preferred one, subject to satisfactory resolution to the points highlighted within section 2 of this report.

#### **6. Implications**

##### 6.1 Community Safety - (Crime and Disorder Act 1998)

None

##### 6.2 Workforce

None

##### 6.3 Equality and Diversity/Equality Impact Assessment

An Equality Impact Assessment has been completed as part of the preparation of the report.

##### 6.4 Financial Considerations

Any costs associated with the Council supporting the effective delivery of the preferred option will be reimbursed in full by the CRT.

## 6.5 Legal

6.5.1 In order to facilitate the rebuild of the dam, CRT require a controlling land interest which currently resides with the Council. Details of the proposed land transfer can be found in section 12 of this report.

6.5.2 The power to dispose of this land is contained under section 123 of the Local Government Act 1972. The power is subject to the Council obtaining consideration not less than the best that can reasonably be obtained. Once the detail of the draft Heads of terms are finalised, the District Valuer will be instructed to provide a valuation for the disposal of a 999 year leasehold interest

6.5.3 The Council holds the freehold to the land which is subject to:-

a. A charitable trust. This trust is registered with the Charity Commissioners and as the land intended to be disposed of will not be replaced, an Order giving permission to the disposal will need to be sought from the Charity Commission.

b. A restrictive covenant. This covenant states that permission must be obtained from the holder of the covenant, before any building is erected other than a building to be used in connection with the use of the land as a public park or recreation ground. As the works are not intended to create a building but a channel which will be publicly accessible and be created sympathetically to the surroundings and continue to form part of the park, it is considered consent is not required.

6.5.4 Prior to disposal, an Open Spaces Notice under S123 (2A) of the Local Government Act 1972 will need to be advertised in a local newspaper circulating in the area.

## 6.6 Climate Change

The CRT proposal does request that some mature trees will require removal. The impact and associated mitigation is detailed in the planning application.

## 6.7 Consultation

As detailed in section 9.6 of the report.

## 6.8 Risk Assessment

As considered throughout the report.

Mark Trillo  
**Executive Director (Governance & Commissioning)**

**Web Links and  
Background Papers**

[CRT Website – Restoring Toddbrook Reservoir](#)

**Contact details**

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**7. Detail**

**7.0 Whaley Bridge Memorial Park**

- 7.1 Memorial Park is situated within the centre of Whaley Bridge and runs almost the complete length of the town. It is a formal urban park but is surrounded by open countryside, adjacent to the Peak District National Park Authority boundary and the Goyt Valley. The site is exclusively owned by High Peak Borough Council and is designated as a Protected Major Park. Although not within the Conservation Area of Whaley Bridge, the park sits closely to this designated area.
- 7.2 There are four public rights of way across the site: Footpaths 28, 29, 32 and 105, with the river Goyt running along the eastern edge of the park which means that part of the park is also a flood plain. There is a designated wildlife site along the river edge and flood plain area of the park and Derbyshire Wildlife Trust have produced a report on the nature conservation value of the site.
- 7.3 Along with the park's nature conservation interest, it also has a number of facilities to attract visitors and regular users. These include: the Memorial and its setting; woodland and watercourses including the River Goyt; extensive path network; horticulture features; toddler and junior play area and basketball court; junior and senior football pitch with sports pavilion and changing facilities; concrete skatepark and adjacent pump track; and bespoke street furniture including notice boards, signage and litter bins.
- 7.4 Toddbrook Reservoir sits above the park on its eastern edge and although owned and managed by the Canal and River Trust, it is very much seen as part of the park landscape with established linking walks from the park to the reservoir and beyond.
- 7.5 As well as a very active Friends of Memorial Park Group, Whaley Bridge benefits from a wealth of community organisations, many of whom see the park as integral to projects which enhance the town. The park is already well used for events by the Friends, Taxal and Fernilee Primary School, the Royal British Legion, Junior Park Run and Christmas Lantern Parade. Overall, Memorial Park provides an invaluable cultural and recreational resource for the local community in Whaley Bridge and it is the only park in the town.
- 7.6 Although there had been developments over the years to cater for changing needs it was clear that the park required significant investment to meet

community desires and aspirations and provide good quality recreational opportunities for the residents of Whaley Bridge and surrounding rural areas that used the park.

## **8.0 The Heritage Lottery Parks for People Fund Restoration Project**

- 8.1 In 2009 the Council were successful in securing a development grant from the Heritage Lottery Parks for People fund (HLF) for the park and subsequently submitted a Stage 2 application in April 2010 to secure funding for a wide range of improvements to the park.
- 8.2 The funding secured from the HLF totalled £615,200 and enabled major improvements in the park which included the restoration of the cenotaph and memorial area, enhancement of the main entrances to the park, resurfacing of pathways and the installation of a new play area.
- 8.3 In November 2011 the council was awarded a grant of £84,290 from the Aiming High Programme and an additional grant of £49,999 gained through Whaley Bridge Association which allowed the installation of a new skatepark and pump track in the park. These facilities were additional to the planned HLF programme for the park.
- 8.4 Arising from the funding provided by the HLF and the programme of works undertaken in the park, a contract was entered into with the Council and the HLF, the result of which makes the latter organisation a key stakeholder in terms of any future changes or developments in the park.

## **9.0 Toddbrook Dam Incident**

- 9.1 On 1<sup>st</sup> August 2019, after a significant period of rainfall, a large section of the concrete spillway supporting Toddbrook Reservoir collapsed. The reservoir and concrete spillway sits directly above the bottom of the park, specifically the children's play area, as well as adjacent to the football pitches.
- 9.2 The collapse of the spillway resulted in a major emergency planning situation with the majority of residents from the town of Whaley Bridge being evacuated whilst the emergency services worked to reduce the level of the water in the reservoir to avert a significant flooding disaster.
- 9.3 Water was pumped from the reservoir into the River Goyt to reduce the levels and this was eventually achieved within a few days of the collapse. Access to the reservoir by the emergency services and the CRT was required through the top of the park and this resulted in emergency plant and machinery being situated on the junior football pitch.
- 9.4 Once the initial emergency was averted, the occupation of the junior football pitch by the CRT was formalised and this has become their current works compound whilst temporary repairs to the spillway have been undertaken and investigation work done to determine a new permanent solution to the spillway. Whilst the adult football pitch has remained in use by Whaley Bridge

Football Club the junior teams have had to move out of Whaley and have been temporarily rehomed at nearby facilities at Furness Vale and Chinley.

- 9.5 After immediate essential repairs had been undertaken, discussions with the CRT in order to mitigate any further flooding began around their requirements for a permanent solution to the spillway and the affect that this was likely to have on the park. Initial investigation work undertaken by the CRT highlighted 13 potential options but it was then confirmed that only two were feasible to deliver, both with significant implications for the park – namely Option A and Option B.
- 9.6 Option A proposed the creation of a new spillway channel near the sailing club, entering the park at the northern end of the play area and exiting into the River Goyt, and Option B proposed the creation of a new spillway channel near the existing skatepark, cutting through the woodland and centre of the park and exiting into the River Goyt at the bottom. Both options were put out to public consultation in September 2020 by the CRT with the favoured public response being Option A.
- 9.7 The CRT have a statutory responsibility under the Reservoirs Act 1975 to make provision against escapes of water from large reservoirs artificially created. It was clearly in the best interests of the local community of Whaley Bridge for the Council to work with the CRT to find the most suitable solution to ensure the future safety of Toddbrook Reservoir, particularly if that impacted significantly on Council owned land.
- 9.8 A Strategic Group was established in early 2021 with Council officers from various service areas and representatives from the CRT to work through the detail of Option A. This was to understand the technical requirements of a new spillway, what a new engineered structure would look like, how it would deal with future event flooding, the impact of this new structure on the Memorial Park and implications for the local community's use of the park.

## **10.0 Canal & River Trust Proposals**

- 10.1 Following several Strategic Group meetings and site visits to the Memorial Park a preferred design and layout for the new spillway channel has now been informally agreed. This design, which is currently under consideration by the Council's development control team (HPK/2021/0607) incorporates both the CRT's engineering and safety requirements and those of the Council in terms of providing a safe, high quality play area for the local community whilst protecting the landscape and heritage value of the park.
- 10.2 The proposed design which shows the new spillway channel and its impact on the Memorial Park can be seen in Appendix A. The design proposes that a new concrete spillway will start from the north east corner of the reservoir passing through the current sailing club car park. Before it enters the park, a large stilling basin with two concrete turrets will be installed and it is here where the new, narrower, open water channel enters the park, running along the southern edge of the play area until it discharges into a short section of existing bywash channel and then into the River Goyt.

- 10.3 The new water channel will be an open, shallow water feature which will be publicly accessible with a limited amount of constant water flow. The proposed terraced landforms which can be seen in Appendix C will also be accessible for use as informal seating areas and the CRT are proposing an area of 'stepping stones' across the channel as an added feature as well as a footbridge over it.
- 10.4 The existing large concrete auxillary spillway will be decommissioned and the area grassed over, as can be seen at other nearby reservoirs, including Fernilee. Although remaining in the ownership and management of the CRT, this grassy bank will be publically accessible and will provide links into the park over the new proposed footbridge and vice versa.
- 10.5 In terms of the existing play area, this will need to be reconfigured to make allowance for the new water channel. During the construction phase, all items from the existing play area will be removed and, due to playground safety standards, cannot be re-installed once work is complete. All items will be replaced in the new design and Appendix A provides the layout for the new play area once work has been completed, with the older children's equipment being located to the north of the site and toddler equipment to the south. The replacement play equipment will be exactly the same as the original items except for the zip wire which cannot be accommodated in terms of safety space within the new configuration. Two additional new items of equipment have been proposed and will be integrated into the banked area. Alternative options for the basketball post are being considered.
- 10.6 During the construction phase it has been agreed to install a new temporary play area at the top of the park. This will be located in a corner of the existing junior football pitch which is no longer occupied by the CRT, and will be adjacent to the 3G multi use games area benefitting from the existing access paths – see Appendix B for proposed new location of temporary play area.
- 10.8 This new play area will be in situ for as long as the CRT works are taking place. Once these works are completed, and the existing play area is open for use again, this equipment will be decommissioned and the junior football pitch can be re-instated. The play area is being funded by the CRT and is being supplied and installed by Wicksteed play company so it will conform to all playground safety standards. Once the installation is complete, the site will be inspected and maintained by AES.

## **11.0 Implications for the Park**

### *Length of Construction*

- 11.1 It is anticipated that the works to install the new the proposed spillway with associated stilling basin and water channel will take three years. During this time, a large section of the park, including the existing play area, will not be available for public use. It will also mean that access to and from the park at Reservoir Road will be prohibited. This will affect access for those residents living at north end of Whaley Bridge as well as safe school routes to Taxal and

Fernilee Primary School. The nearest access into the park for these residents will be Wheatsheaf Road.

### *Play Area Reconstruction*

- 11.2 As stated at section 10.5 and 10.6, the existing play equipment will need to be removed in its entirety. A new temporary play area will be installed at the top of the park next to the existing multi-use games court for the duration of the works, but will be decommissioned when the existing play area is re-instated and to allow works to commence to re-instate the junior football pitch.
- 11.3 Appendix A includes the proposed layout for the reconstruction of the play area which has been developed with the careful thought and oversight of officers, supporting the CRT design process. Although the layout is slightly altered to accommodate the new spillway, new identical items of play equipment will be installed as well as a couple of additional items. At present, the cableway cannot be accommodated alongside the basketball area but discussions with the CRT will continue to see where these items could be accommodated.
- 11.4 In addition to the play equipment will be the creation of a new water feature which will be integral to the play space and can be accessed directly by the public as well as over it on the new proposed footbridge. Public perception will need to be managed in terms of concerns about open water in a public open space where children are encouraged to play. The new channel will be very shallow. See Appendix C with cross sections showing the channel depth.

### *Trees*

- 11.5 There will be loss of some trees in the direct works area, of particular note are the two large sycamore trees in the play area, in the line of the proposed spillway. The CRT is working closely with the Council's Tree Officer to look at replanting and other ecological enhancements with the intention of providing a 10% net gain in biodiversity. Whilst we are committed to providing this gain, the intention in the play area itself is to keep this as open as possible with good sight lines and visibility as was set out in the original HLF design and layout. Therefore, the wider park area is being considered for additional planting and ecological enhancement.

### *HLF Implications*

- 11.6 Once design Option A was agreed as the preferred option for the spillway and it was clear this was going to impact on the park, discussions began with the HLF to inform them about the location and siting of the new spillway. Initial concerns were raised by the HLF with regard to whether there would be a requirement for the Council to pay back some of the grant monies received for the park refurbishment project.
- 11.7 In between meetings with the CRT to agree the design and layout for the spillway in the park, the HLF were kept fully informed of the proposals by

officers and this involved ensuring that comments and concerns provided by the HLF were fed back to the CRT and were incorporated into the proposed design. The main requirement of the HLF is to ensure that this area of the park remains as close to the original design and layout as agreed as part of the restoration project, once the work is completed, and this is reflected in the final design.

- 11.8 On the 27<sup>th</sup> August, the Council wrote formally to the HLF to update on the current position and provide the final agreed design and layout for the park. A response was received on 9<sup>th</sup> September to state that the revised final design was an improvement and that they would be in touch if they had any further queries. To date there have been no further queries and therefore on this basis, whilst not confirmed in writing, it is considered unlikely that any grant monies will have to be paid back. Officers will continue to provide updates on the works to the HLF when the project progresses.

#### *Re-instatement of junior football pitch*

- 11.9 The junior football pitch has been used as a works compound for the CRT since the collapse of the dam making the pitch completely unusable for junior football. A reduction in the size of the compound over the last few months has now enabled some of the open space to be utilised by the public for informal recreation and as part of the Junior Parkrun weekly event. The plan is also to use a section of this space to site the new temporary play area as previously stated.
- 11.10 From the outset, the CRT have made a commitment to re-instate the junior pitch ensuring it is fit for purpose as a grass playing pitch. There will have been a significant impact on the ground and so an enhanced re-build of the pitch is therefore required and this work will be completed once the spillway works have been completed and when the CRT formally exit the park.
- 11.11 When work to re-instate the junior pitch is starting to be considered, the intention of the Council will be to engage with the CRT, Whaley Bridge AFC and other partners to consider where there may opportunities to enhance or add value to these existing playing facilities with the support of the Football Foundation, Derbyshire Football Association and Sport England.

#### **12.0 Asset Management Implications**

- 12.1 The Council owns Memorial Park under two Titles; the north area under DY290861 and the remainder of the Park under DY392003. Title DY290861 is held by the Council on a long lease (999 years from 29 September 1923) as a charity trustee. Both Titles form part of Asset 82 on the Asset Register.
- 12.2 The Council currently holds the maintenance liability for the existing channel. The construction of the new channel will require the CRT to acquire an interest in Council owned land that is registered under Title DY290861. The acquisition will allow the CRT to hold the maintenance liability for the new channel.

- 12.3 Heads of Terms (HoTs) for the transfer of the land are being negotiated and the latest version of the draft Heads of Terms are attached as Appendix D. Still to be confirmed is the capital value for the land interest. This will be evidenced by a valuation undertaken by the District Valuer, which will be commissioned once all the detail is agreed.
- 12.4 The construction of the new channel will require a temporary construction compound for the duration of the works which will be recognised by a separate licence arrangement. Separate licence agreements will also be required for access to the land for the construction of the spillway, and to also include the agreed reinstatement of these sites. An acceptable fee for the temporary use of the Council's land will be agreed with CRT.
- 12.5 Once the HoTs have been agreed they will form the basis of the lease agreement along with the various licences to form an Agreement for Lease to include the preconditions of the works. The detail of these conditions will be confirmed.
- 12.6 Officers propose that the remaining term of the 999 year lease that is held by the Council on the strip of land that the CRT want to build the new channel on is transferred to the CRT. A plan of the proposed area for lease can be found in Appendix E
- 12.7 Access rights over the land that is to be transferred will be kept by the Council and the permitted use of the land is to be "Spillway" only.
- 12.8 As the transfer of the land via a long lease is effectively a disposal, a valuation of the land will be required. The District Valuer (DV) will be requested to evidence that best consideration has been achieved in this case to satisfy the provisions of the Local Government Act. It has been agreed that CRT be responsible for all costs relating to this. It is not anticipated that the capital sums agreed will be significant in their value.