

MELBREAK WILDLIFE GROUP
Comments re Crummock Water planning application Ref: 7/2025/2052

This version of our comments will be provided to United Utilities, Natural England and the National Trust in May 2025. At this stage, United Utilities has placed its application on hold and we understand it is due to provide further information on a range of topics. We hope that by providing these comments now, they might be taken on board as part of that process. When United Utilities has provided its updates and the application is live again, we will review what has been released, revise these comments as and if appropriate, and submit them to the planning authority as our response to the planning application.

Melbreak Wildlife Group

1. Melbreak Wildlife Group (“MWG”) is part of Melbreak Communities, a community group representing the interests of the four parishes of Blindbothel, Buttermere, Lorton and Loweswater. MWG consists of a number of sub-groups and is overseen by a committee of seven which reports into the main Melbreak Communities steering group (on which representatives of each of the parish councils sit). MWG works closely with local farmers and landowners, and members of the MWG committee sit on the Cocker Catchment Working Group led by West Cumbria Rivers Trust.
2. The MWG sub-groups include Melbreak Curlew Project, now in its second year, which has benefited from funding from Farming in Protected Landscapes (FiPL). Melbreak Barn Owl Group works with landowners to enhance opportunities for barn owls to thrive, has overseen the installation of more than 10 nest boxes in the valley, and monitors and records nesting locations and barn owl sightings. The Hedgehog project has received funding from Cumberland Council’s Lakes to Sea fund for public education and conservation work it is undertaking in 2025. MWG’s first project, in 2021, was to address declining Swift populations, and in 2025 it is considering a greater focus on Red Squirrel conservation. MWG enjoys a considerable amount of local support, with approaching 50 people attending its last update meeting in the autumn of 2024, and a WhatsApp group on which sightings are shared, which has over 60 members and is active most days.

3. MWG's mission statement is as follows:

Melbreak Wildlife Group aims to:

- *Bring local people and communities together to share their enjoyment and experiences of wildlife*
- *Provide opportunities for people to take part in practical conservation activities that help support wildlife in the Melbreak area.*

The group is an advocacy group that aspires to share and follow best practice. It is non-activist group and does not lobby.

Introduction

4. MWG's intention in this response is to set out its concerns and observations in the context of wildlife. Whilst MWG does not take an overall position as to supporting or objecting to the application as a whole, its view is that a planning application of such magnitude should only be approved if the mitigation of ecological impact, and overall biodiversity gain, are significant and apparent, and that any short-term loss of biodiversity is kept to an absolute minimum. At present, we think the applicant needs to go further in these respects, as we now set out.

5. The scheme forms part of a wider project to restore habitat which is beneficial to freshwater mussels and salmon¹, and it is stated that "*the nature of the project [is] an ultimate re-naturalisation and environmental betterment*"². Accordingly, we would expect that protection and enhancement of habitat, in all forms, should be the focus of the entirety of the project, including the construction phases. Rather than simply complying with minimum standards and legal requirements in respect of wildlife and ecology, UU and its contractors need to go beyond that, otherwise the initial intentions become meaningless. In short, we need to see that this is a project which achieves the gold standard in terms of working with nature, and that the culture of doing so is pervasive throughout the organisations and individuals who are involved in it. Such a culture is far from clear in the planning application; we recognise that that is perhaps because of the very nature of those documents, but if the planning application is approved, we

¹ Paragraph 1.1.8 Planning Support Statement

² Paragraph 5.4.26 ES

trust that through a combination of planning conditions, and top down education and communication starting with UU, this can be achieved and fostered.

6. At the very least, UU and its contractors must comply with the recommendations set out in the various reports it has commissioned and which form part of the planning application documentation. Where possible, they should at all times, starting now, consider ways in which they can go above and beyond them.
7. We are concerned in particular that several of the surveys are out of date, do not go far enough, or are entirely absent. We have noted that guidance to planners in the context of protected species³ says it should not be made a planning condition that further surveys are provided, but that they can be asked for if there is insufficient information, and that an application can be turned down if surveys are out of date. Our preference, in line with that guidance, is that UU is asked to make good the issues with the surveys which we have outlined below, prior to its application being decided upon.
8. The structure of the following sections should not be considered to represent any form of priority. Endangered and protected species are of course of key importance to protect, but they exist and are present because of the wider habitat, so the picture is an intrinsic one. These works will undoubtedly upset the status quo, so need to do so in the most considered way possible.

Study Areas

9. We consider it unfortunate that there has been a disproportionate focus on the “Proposed Scheme Area” in many of the studies and comments in the Environmental Statement (“ES”), which fails to recognise that the works will impact the entirety of the lake, and the wider area too. Lanthwaite Woods, Park Beck, and the area of the weir and wave wall, do not exist in isolation, but are part of a bigger ecological picture. Whilst we note that wider ‘Zones

³ <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#standing-advice-for-protected-species>

of Influence' have been set out⁴, we do not consider that in all instances these are wide enough. We make further comments in this respect below.

10. We also question why there has been no consideration of the following, and suggest that there should be:
 - 10.1. The impact on the river habitat downstream of Lanthwaite Woods (i.e. north of the C2030), including the effects of greater quantities of gravel potentially being washed down in circumstances in which there will be, at least in the short-term, a degree of artificiality to the meeting of the lake and the River Cocker;
 - 10.2. Whether there is any spawning ground in becks which feed into the lake, in particular Rannerdale (or Squat) Beck and if so, what impact there might be on those.

Ecological Clerk of Works and other on-site protection

11. We are encouraged by the fact that UU states it will employ an Ecological Clerk of Works ("EcCoW"), described in the Construction Environmental Management Plan ("CEMP") as a "*site-based ecologist who oversees works and provides advice on an appropriate approach for the management of ecological features in the context of environmental legislation and planning policy*"⁵. For the reasons set out in the Introduction above, it is disappointing that the description of this fundamentally important role has been relegated to a footnote.
12. We ask that it is made a condition of any planning approval that an EcCoW is on-site whenever there is any activity at all, and that if they are absent for any reason, no activity should take place. This is important, given the need for them to be able to respond quickly if an issue arises⁶. It seems likely to us that there will need to be more than one EcCoW, to cover absences for example. It seems clear from Section 5 of the ES that the EcCoW will need

⁴ Table 5-2 on page 5 of chapter 5 ES

⁵ Footnote 1, page 2 CEMP

⁶ For examples of their potential involvement see pages 61 and 65 of chapter 5 ES concerning tree felling, bats and otters

to have qualifications in and experience of a range of ecological issues, which we welcome, and we would expect to see that reflected in the recruitment process.

13. It would also be our preference that the EcCoW(s) have reporting lines outside UU (although funded by UU) to ensure proper accountability and transparency. If that is not feasible, we would ask that they report monthly to Natural England. The EcCoW(s) must have sufficient levels of authority in relation to the main contractors.
14. We also note that it is intended that there will be an Arboricultural Clerk of Works (“ACoW”), “*an advisory and reporting role, focused on caring for and protecting the existing trees on site during construction works*”⁷. The word ‘advisory’ concerns us – this individual needs to have sufficient authority to halt unnecessary damage to trees (or, directly or indirectly, wildlife). It should be a condition that the ACoW is on-site whenever tree felling is being planned or taking place, and available to be contacted at all other times.
15. The ES refers to the intention that there will be ‘toolbox talks’ for those working on site in relation to a number of wildlife protection aspects. We trust that steps will be taken to ensure that delivery of those is comprehensive, including allowing for absences, late joiners to the team and so on.
16. We are concerned about the effect of concrete crushing on site, given that it will be highly alkaline. We note that there is an intention to use dampening with water as a dust suppression measure⁸, and it seems that the intention is to pump that water “*onto adjacent grassed meadow/field [sic] areas to allow sediment to drop out and water to soakaway*”⁹. This risks having a negative impact on the flora species in those meadows and fields, and the wildlife which passes through them, and still seems to carry the danger of it running into the watercourses. Our concerns in this respect include the effect on otters given that the general decline in their population nationally is due in no small part to pollution. It does not seem that proper consideration has

⁷ Footnote 2, page 2 CEMP

⁸ Paragraph 11.4 CEMP

⁹ Paragraph 10.11.19 ES

been given to this - it needs to be. We also note that there is not yet a dust management plan.

17. The Construction Method Statement addresses the possibility of rats on site and says “*Get rid of rats on site if discovered (control methods)*”¹⁰. The methods of control are not set out, but any used must take into account other wildlife using the site. In particular, given that barn owls are known to feed in this area, non-poisonous options must be used¹¹.

Biodiversity Net Gain

18. It is said that “*A bespoke approach to BNG has been undertaken to support this application*”¹² and that a Rule 4 deviation from BNG metric methodology has been agreed¹³. Whilst we understand that the planning authority has agreed this deviation, it is not clear to us as a group, or therefore to the wider local community, the basis on which that agreement was reached. Looking at the two factors when such a deviation might be appropriate, set out in paragraph 5.4.27 of the ES, we are struggling to see that the applicant is going to be restoring the site to a wildlife rich habitat, in circumstances in which it is actually going to be producing a net reduction in that respect. That reduction calculation does not even take into account the 0.12ha of irreplaceable woodland habitat which is to be lost¹⁴. The percentage increases in relation to hedgerows and watercourses are only high because of a low starting point. Nor have we seen anything to give us confidence that “*the project team has the expertise ... to deliver the habitat with negligible risk of failure*”.
19. Even where there is a Rule 4 deviation agreed, there must still be a net gain. We cannot see that there is, given the loss of habitat on site, and the potential impacts around the entirety of the lake which, as we set out at various points in these comments, have not been properly considered.

¹⁰ Paragraph 6.4 Construction Method Statement

¹¹ See <https://www.barnowltrust.org.uk/hazards-solutions/rodenticides/safer-rat-control/> for more information in this respect

¹² Paragraph 5.4.24 ES

¹³ Paragraph 5.4.26-27 ES

¹⁴ Paragraph 1.39 and Table 4 Biodiversity Impact Assessment

Whilst the wider lake area does not form part of the DEFRA metric calculation, it cannot be overlooked when considering biodiversity gain in general terms.

20. As we set out in the introduction to these comments, in our view, the applicant needs to be providing significant biodiversity benefits, and we are not currently seeing that in the information available.

Non-Native Invasive Species

21. We are concerned that changes caused by the proposed scheme, and the construction work itself, may allow non-native invasive species to thrive and spread.

Himalayan Balsam

22. Himalayan Balsam (“HB”) exists in the Crummock area¹⁵. There must be no HB alongside any routes on privately owned land on which site vehicles are to travel, and none on the U2212 road where there will be considerably increased traffic during the period of works and use of temporary car park. It should be a planning condition that UU engages specialist contractors to regularly inspect and remove HB from these routes, and the entirety of the site areas in use at any particular time, to avoid the inadvertent spread of seed by machinery and vehicles. Ideally, we would want UU to be undertaking surveillance and removal along the entire route between the construction site and the A66, but we recognise this may be considered too great for a planning condition.
23. Obviously we would expect the site area to be cleared of HB and maintained as clear on an ongoing basis (as seems to be the intention, as set out in section 6 of the Invasive Non-Native Species and Biosecurity Management Plan (“IN-NS”)). To that end, we consider that it should be a condition of approval that UU takes the steps it has outlined in that section.

¹⁵ Paragraphs 5.5.52 and 5.5.53 ES

24. We note reference to volunteer days in conjunction with West Cumbria Rivers Trust but hope that UU does not intend those to be the limit of their efforts at control – it must be ongoing, with UU paying for specialist contractors to undertake the work as required.

New Zealand Pygmy Weed

25. New Zealand Pygmy Weed has only relatively recently been discovered in Crummock, in 2021¹⁶. We note from the IN-NS that it is most concentrated in the area around Rannerdale¹⁷; whilst it is not expressly said there, the southernmost area of distribution is a public 'beach'. It is not acceptable for UU to simply dismiss this as being an area which is "*outside of the Proposed Scheme*". It is quite possible that this area will become more popular for recreational use whilst the work is underway, and it is clear from the black line indicating the likely lake level that the beach area here will be wider, and therefore provide greater public access. We therefore ask that UU considers working with the National Trust to install signage to educate recreational users on the importance of washing equipment, and that facilities to do so are installed.
26. We also ask that it is a condition of the planning application that UU engages specialist contractors from the point at which it commences to lower the lake levels to monitor on an ongoing basis whether this accelerates the spread of New Zealand Pygmy Weed, perhaps because of a change in the temperature of the water at the lake edges, or a change in pH levels of the water, and that if it does, that steps are taken to control it (which are sympathetic to native species and any spawning ground in the same area).

Blue-green Algae

27. Whilst not a non-native invasive species, blue-green algae is still something which is detrimental to wildlife, and human users of the lake. Anecdotally, it was present in Crummock in 2023, and has possibly been seen since. We would like to see an action plan as to how any increased appearance of

¹⁶ Paragraph 5.1.2 IN-NS

¹⁷ Paragraph 5.1.2 and figure 5.2 IN-NS

blooms will be communicated both at the specific location, and more generally, should changes in the water levels in Crummock cause these to occur. As with New Zealand Pygmy Weed, it could be affected by temperature or pH changes.

Vegetation / Wetlands

28. The National Vegetation Classification Survey (“NVCS”) was completed in July 2021, and has only been updated by a validation survey undertaken in November 2024, which is acknowledged to be “*outside of the optimum period for undertaking most NVC surveys*”¹⁸. This is not acceptable – at the very least a validation survey needs to be taken inside the optimum period for doing so, but ideally a full NVCS needs to be undertaken before works commence.
29. The 2021 NVCS records that at the southern end of the lake “*there are extensive areas of sharp-flowered rush ... rush pasture along the lakeshore with small stands of grey willow carr present along the banks of Buttermere Dubbs*”¹⁹, and that “*Only at the southern end of the lake are there significant areas of wetland vegetation which are likely to be dependent on lake water levels*”²⁰. These areas have not been directly addressed within the ES, yet will be significantly affected by the proposed works and lowered water levels.
30. In relation to the northern end of the lake, the concluding section of the NVCS²¹ also refers to an area of reed canary-grass and common spike-rush swamp, and a stand of rush pasture, all of which are directly influenced by the lake. It goes on to state that “*All other areas of vegetation are separated from the lake by a low concrete wall and well drained path*”. We have taken this to be a reference to the wave wall that will be removed. MWG members have identified species such as bogbean, marsh cinquefoil, ragged robin and marsh hawksbeard at this site. We discussed these with Natural England and suggested mitigation by the inclusion of a bund to reduced water loss

¹⁸ Paragraph 5.4.36 ES

¹⁹ Page 5 NVCS

²⁰ Page 20 NVCS

²¹ Page 20 NVCS

from these wetland habitats – especially during periods of extreme drought due to climatic changes. However, this does not seem to have been addressed.

31. The National Trust highlights on its website²² that unusual plants at Crummock include freshwater sponges, attached to the cliffs under water. These are not mentioned in the NVCS or Aquatic Macrophyte Mapping Survey²³, and in our view it needs to be considered whether there is a risk they will be affected by the change in water levels. It might be that they are sufficiently deep that they won't be, but it is impossible to know without expert consideration.

Trees

32. The Arboricultural Impact Assessment (“AIA”) is based on a desk study, and a walkover survey undertaken in August 2022²⁴. However, it is expressly noted that “*Arboricultural survey data is typically valid for a period of two years unless otherwise stated. Significant environmental events (such as extreme weather conditions) or changes to the Site may render it invalid within a shorter timescale*”. In circumstances in which there have been a number of named storms since August 2022 and the walkover survey was undertaken more than two and a half years ago, we question its validity, and the outcomes set out within the AIA, and ask that UU is required to provide an updated AIA. As set out further below, the study area also needs to be widened considerably.
33. Notwithstanding that the AIA is out of date, it suggests that there will be a 12% loss of arboricultural feature²⁵, and sets out in paragraphs 4.3.3 to 4.3.7 those which will be lost. In our opinion, this is a considerable proportion and should be revised to allow minimal impact, particularly in circumstances in which there will be a loss of 0.12 hectares of irreplaceable woodland, as set

²² <https://www.nationaltrust.org.uk/visit/lake-district/buttermere-valley/wildlife-in-the-buttermere-valley>

²³ ES Appendix 5-9

²⁴ Paragraphs 2.2- 2.4 AIA

²⁵ On the basis that it states that approximately 88% of arboricultural features can be retained: paragraph 4.3.2 AIA

out in the Biodiversity Impact Assessment (“BIA”)²⁶. Already the woods have undergone recent removal work with disturbance to wildlife including red squirrel and nesting birds, and in the wider area there has been considerable felling due to larch disease and, to a lesser extent, ash die-back. We address the felling of trees and vegetation in the context of birds in more detail below.

34. We note that under the Biodiversity Net Gain rules there must be “*bespoke compensation*” for the loss of the irreplaceable habitat²⁷. We have not seen it set out anywhere what that bespoke compensation will be. The single paragraph on ‘Compensation Planting’ in the AIA²⁸ says that it is “*discussed*” in Chapter 8 of the ES and “*shown*” in Figure 8.1, however Figure 8.1 shows the Zone of Theoretical Visibility and not compensation planting at all. We have only seen passing and non-specific reference to tree planting in Chapter 8 of the ES.
35. Chapter 5 ES repeatedly states, “*Trees lost during construction would be replanted*” and that coniferous trees will be replaced with broad-leaved native species²⁹. However, it does not specify at what stage of maturity the replacement trees are likely to be or therefore how much of a replacement they are, at least initially. Nor does it set out what steps will be taken, if any, to monitor the success of replacement trees and provide further replacement for any that fail.
36. In our view, planning permission cannot be granted until compensation planting is properly addressed, and consulted upon.
37. It should be a planning condition that the Arboricultural Method Statement set out at Appendix D to the AIA is adhered to.
38. The study area of the AIA is limited to the ‘Site’ and a further 15m only³⁰. It has not considered trees around the shore, many of which, logically, will be affected by water levels receding and being less available to their root

²⁶ Table 4, page 9 BIA

²⁷ Paragraph 1.39 BIA

²⁸ Paragraph 4.5.1 AIA

²⁹ Paragraph 5.9.7 ES

³⁰ Paragraph 2.1.2 AIA

systems. There are woodlands on the north-east shore, and various groups of trees along the rest of the eastern shore, as well as trees on the islands. In our view consideration needs to be given to each of these trees, how they will be affected, and whether any mitigation can be put in place, particularly in relation to some of the older oak trees at Fletcher's Field. Loss of these trees is also, of course, a loss of habitat to other species. If it is anticipated that trees may be lost because of the drop in water levels, replanting needs to be considered in the year that the weir penstocks are opened, so that replacement trees can start to get established, rather than waiting until 2028 as currently seems to be intended³¹.

Birds

Surveys

39. The Breeding Bird Survey Report³² provides a comprehensive and thorough overview of birds breeding in the 'Proposed Scheme Area' in 2022. However:

39.1. There has been no more recent survey of breeding birds, except the Bankside Nesting Bird Check Report of 2024³³. Although the survey methodology for the latter report is less comprehensive than the former, it still identifies as breeding species Pied Flycatcher (which was totally absent from the former report) and Dipper (which was included in the former report, but only as a 'Possible' breeding species). This indicates the potential variation in breeding species from one year to another, and/or the likelihood of present birds being missed.

39.2. There is no survey of other areas which could be affected by the weir removal (e.g. the lakeshore, the islands at the south end of the lake). The existing lakeshore provides ideal habitat for amber status common sandpipers to breed (and there has certainly been a

³¹ Paragraph 3.2.3 Planning Support Statement and paragraph 2.5.3 ES

³² Appendix 5.14 ES

³³ Appendix 5.15 ES

breeding population in recent history), and areas of the south shore have been fenced to protect breeding waders. The islands provide an excellent opportunity for ground-nesting birds away from the risk from mammalian predators. Until UU understands what species currently breed on the lake shore and the islands, they cannot assess the potential impact of the planned reduction in lake depth, which would permanently impact the foreshore and join the islands to the land surrounding the lake. Nor therefore can they take appropriate steps to mitigate those impacts.

- 39.3. There is also no survey of birds using the construction site area or lake for feeding throughout the year. As an example, it is known that there are barn owls breeding in the local area, they use the Park Beck habitat for feeding. Once again, UU needs to commission work to understand use of the site and lake by birds throughout the year in order to make a full assessment of potential impact and plan mitigation.
 - 39.4. We question whether either of the surveys undertaken has considered the presence of owls nesting within the site area.
40. Given all of the above we request that UU is required, as part of its planning application, to provide:
- 40.1. An up-to-date breeding bird survey of the construction area, and also the lakeshore and islands, to identify all species of breeding birds likely to be affected by the proposed works (including owls);
 - 40.2. A survey of birds using the Proposed Scheme Site and lake throughout the year;
 - 40.3. A plan to mitigate the effects on birds, taking into account those surveys.

Protection during Construction Activities

41. The ES states that *“To ensure impacts to nesting birds are avoided, site clearance works would ideally be undertaken outside of the nesting bird periods (March-August, inclusive). If this is not possible, the EcCoW would check for the presence of active birds’ nests immediately prior to clearance”*³⁴. “Ideally” is not acceptable – it must be an absolute condition that no clearance works are undertaken during the nesting season³⁵.
42. This is particularly so, given that the Bankside Bird Nest Check Report states that *“Observing this activity was key to locating bankside nests, as without the bird ‘giving away’ the nest location, their natural camouflage and the inaccessibility of the banks themselves would make simply searching the banks for nests very challenging”*³⁶ demonstrating that the proposed mitigation approach of EcCoW nest checking would be very unlikely to provide the required comprehensive level of protection for breeding birds.

Mitigation

43. In its Recommendation section, the Breeding Bird Survey Report says:
- “It is considered likely that proposed works will have a temporary, detrimental impact on many of the species recorded during these surveys.*
- However, given the temporary nature of this disturbance, alongside the proposal’s purpose to improve the habitats present on site, it is not anticipated that there will be any long-term detrimental impact upon any of the species recorded during these surveys. Indeed, it is likely that the habitats on site will be enhanced as a result of the proposed works over the long term, providing an increase in the nesting and foraging opportunities for these species.”*³⁷.

³⁴ Page 63 of chapter 5 ES

³⁵ Although as set out below, this ‘no-go’ period needs to be extended, to take into account the red squirrel breeding period

³⁶ Paragraph 2.4 Bankside Nesting Bird Check Report

¹¹ Paragraphs 6.2 & 6.3 Breeding Bird Survey Report

¹² Page 65 of chapter 5 ES

44. As stated in paragraph 74 below, UU has not provided a detailed, timed Landscape and Ecological Management Plan to improve habitats, and it is therefore not possible to have any confidence that the impact of the disturbance at the Proposed Scheme Area on birds will indeed be temporary or short-lived. As already noted, the ES simply contains statements such as: *“Trees lost during construction would be replanted. Any hedgerows or habitats damaged during construction would be reinstated”*³⁸. Without evidence to the contrary, it can only be assumed that each of these measures will take a number of years to come to fruition, running a significant risk that bird populations will be adversely affected for the long term.
45. Furthermore, since there has been no survey of birds in other areas which are likely to be impacted by the proposed works (e.g. lakeshore, islands), it is impossible to understand the potential short, medium and long-term impacts on these bird species. These impacts need to be identified as part of the necessary additional surveys identified in paragraph 40 above.
46. It is also noticeable that the documents contain no plans for short-term mitigation of the detriment caused by the planned works. This is not acceptable, particularly in the light of the absence of any detailed re-naturalisation plans. We therefore request that it is a planning condition that UU is required to commission detailed specialist advice to recommend what short-term mitigation plans during the construction period are appropriate for every Red-listed and Amber-listed bird species identified as being impacted by the proposed scheme.
47. As an example, a colony of **Sand martins** nests in the concrete walls of Park Beck which are to be removed, and the Bankside Nesting Bird Check Report *“confirmed its use by multiple pairs during the 2024 breeding season”*³⁹. The application sets out no mitigation in this respect, despite it being acknowledged that they, as well as dippers, re-use nests⁴⁰. This absence of

³⁹ Paragraphs 5.5.11 and 5.5.12 of chapter 5 ES, and see also paragraph 6.6 BBS and paragraph 3.3 BNBC

⁴⁰ Paragraph 6.7 BBS

mitigation is not acceptable. It should be a condition of any approval that UU obtains specialist advice and creates alternative sand/mud banks for sand martins to nest in before any work begins in the Park Beck area. t

48. The AIA does not appear to take account of the 'Breeding Bird Constraints Plan' set out in the BBS⁴¹, or what is set out in paragraph 6.4 in the Recommendations section of the BBS: "*The temporary impacts of the proposal can be mitigated by minimising the amount of vegetation which needs to be cleared to facilitate the works or by removing the vegetation cover in a phased manner. In particular, avoiding the clearance of vegetation, particularly trees and scrub, from areas identified as of high or very high value for breeding birds on the Breeding Birds Constraints Plan*". Whilst those requirements are cited in the ES⁴², we would like to see a clear link to the decision as to which trees are to be felled, and compliance with that recommendation.

Other points

49. It is noted in the ES that area to the north of Crummock water contains habitats suitable for breeding **curlews**⁴³. In April 2024 we informed UU's regulatory partner, Natural England, that curlews have been observed feeding in that area. The on-site workers need to be briefed as to curlew identification, the fact they are ground nesting, and the need to protect them.
50. For completeness, we mention that **ospreys** have been noted over Crummock Water, with the frequency of their visits possibly having increased in recent weeks (April 2025). And whilst **peregrine falcons** – a Schedule 1 species - are noted in the context of the Buttermere Fells SSSI⁴⁴, the application does not appear to recognise that they in fact breed on the cliffs on Melbreak overlooking the lake and close to the construction site.

⁴¹ Final page BBS

⁴² Page 64 of chapter 5 ES

⁴³ Paragraph 5.5.13 ES

⁴⁴ Page 19 of chapter 5 ES

Mammals

Bats

51. The Ground Level Tree Assessment (“GLTA”), undertaken to identify trees within the site boundary that are considered to have potential to support roosting bats notes that an area of woodland has not been surveyed, due to a misunderstanding of the site boundary⁴⁵. UU has said that it will undertake further survey work to establish the presence or likely presence of bat roosts in trees which are intended to be removed⁴⁶, but this should be a condition of any planning approval given, particularly as only a single emergence survey was conducted in July 2024⁴⁷. In particular, the surveys and recommendations set out in section 4 GLTA⁴⁸ should be mandated as conditions of any permission, and the section which has not been surveyed at all must be, prior to granting approval.
52. Maternity roosts, where female bats gather to raise young, are said to be particularly important for population stability. If maternity roosts are found to be present and likely to be affected by tree felling, mitigation methods must be considered.
53. It is stated in the ES that one bat box will be installed for the loss of every three potential roosting features⁴⁹. It is not clear to us why there should not be a like for like installation, and unless there is a good reason for there not to be, this is what we would expect to happen. Bat boxes should include a variety of maternity roosts and crevice boxes to cater for different needs.
54. Given the importance of, and likely impact to, bats, it is of fundamental importance that the EcCoW(s) are fully conversant with the issues in this respect.

⁴⁵ Paragraph 1.4 GLTA

⁴⁶ Paragraph 5.5.5 ES

⁴⁷ Page 8 of chapter 5 ES

⁴⁸ Page 18 GLTA

⁴⁹ Page 61 of chapter 5 ES

Otters

55. As well as being protected under the Conservation of Habitats and Species Regulations 2017, and the Wildlife and Countryside Act 1981, otters are a species of principal importance under section 41 of the Natural Environment and Rural Communities Act 2006 (“NECRA”) which means, in short, that it is a requirement that planning decisions ensure their conservation. Natural England’s standing advice for otters is a material planning consideration⁵⁰.
56. From both the 2023 and 2024 Otter Surveys (“OS”)⁵¹ it is evident that breeding otters are present within the area highlighted for works, despite stated limitations to the 2024 survey in relation to camera monitoring⁵²:
- 56.1. The 2023 OS records multiple field sightings and spraints located at Park Beck, a lay-up feature close to Crummock Water, and potential holts and lay-up features on the River Cocker just downstream of Crummock, within the boundaries of the scheme.
- 56.2. The 2024 OS notes that a video “*appears to show a mother and cub*” and highlights that “*high [water] flows immediately prior to the survey had resulted in most prominent features, i.e. those which would typically be used for sprainting, being washed clean. As a result, no new spraints were identified during the 2024 survey*”⁵³.
57. It is stated in the ES that “*SK Environmental Solutions Ltd concluded that the holts or lay-ups were not currently in use by otters*”⁵⁴; the reference for this assertion is an email, which does not form part of the planning documentation, so the basis for reaching that conclusion is unknown.
58. The ES states “*Mitigation in relation to potential effects of the Proposed Scheme on otters is covered in the above (Additional Mitigation for River Derwent and Tributaries SSSI) and also within the Information to Support a*

⁵⁰ <https://www.gov.uk/guidance/otters-advice-for-making-planning-decisions>

⁵¹ Appendixes 5.16 and 5.17 ES

⁵² Paragraphs 3.11-3.13 OS 2024

⁵³ Paragraph 3.5 2024 OS

⁵⁴ Paragraph 5.5.26 ES

*Habitats Regulations Assessment Report*⁵⁵. The Additional Mitigation in relation to the River Derwent and Tributaries SSSI begins on page 47 of Section 5 ES and says nothing specifically relating to otters. The Information to Support a Habitats Regulations Assessment Report says, broadly speaking, that if otters are to be impacted by the delivery-phase of the works, a European Protected Species licence must be obtained, and that will “*contain any further details of required mitigation*”.

59. In our view, none of this amounts to demonstrating how the proposal mitigates harm to otters, as it should do. It is high level and vague, reactive and not pro-active, with no specific proposals taking into account the undisputed presence of otters on site. Given that a mother and young were seen in the most recent survey undertaken, thought needs to be given to identifying and protecting otter ‘havens’, and potentially creating artificial holts, particularly in circumstances in which otters breed all year round, and the young do not leave the holt until 2-3 months old. Other specific measures need to be put in place before the area becomes a construction site, rather than the ‘wait and see’ approach suggested.
60. It is acknowledged in the application that pre-construction surveys for otters are required by “*suitably qualified ecologists*”⁵⁶. We ask that this is made a planning condition. However, then the responsibility for overseeing the protection of otters is passed primarily to the EcCoW. Accordingly, it is imperative that they are trained in recognising signs of otters and the protection afforded to them; again, we ask that this is made a condition of approval.

Red squirrels

61. Red squirrels are also a species of principal importance under section 41 of NECRA. We are extremely fortunate to have them in our area, although numbers seem to have declined in recent years, and they have undoubtedly been affected by mass felling in nearby Holme Wood. In all the circumstances therefore, UU and its contractors should be doing their utmost

⁵⁵ Page 65 of chapter 5 ES

⁵⁶ Page 65 of chapter 5 ES

to protect them (and, as stated above in relation to otters and s.41 NECRA, the planning authority has obligations in this respect too). The Red Squirrel Survey Report⁵⁷ is lamentably short, and sets out no recommendations or mitigation. The mitigation set out in the ES is bland and lacking in detail⁵⁸. There is a wealth of knowledge in Cumbria about red squirrels; UU should be required to provide further information about the anticipated effects on them, and specific mitigation steps to be taken.

62. Forestry Commission guidance states that felling in red squirrel areas should be avoided during the breeding season of February to September⁵⁹. Local knowledge suggests the breeding season may in fact start earlier, in January. This has not been factored in, and in fact the reverse – it is stated in the CEMP that tree works will take place between 1 September and 28 February⁶⁰. It should be a planning condition that there is no felling between January and September, i.e. extending beyond that which has already been committed to in order to protect breeding birds.

Reptiles

63. The Reptile report⁶¹ recommends that a ‘Precautionary Method of Working’ should be produced and communicated to contract workers undertaking works within suitable habitats for reptile species (which, it seems from paragraph 5.2 of that report, is the entire site area). We ask that this is made a condition of any planning approval.

Arctic charr

64. Arctic charr is another rare species which is likely to be impacted by the proposals. It has recently been reported to be in decline in Windermere⁶²; we are not aware of the current status of the Crummock population.

⁵⁷ Appendix 5.19 ES

⁵⁸ Page 66 of chapter 5 ES

⁵⁹ <https://www.gov.uk/government/publications/red-squirrels-and-forestry-operations-in-england-operations-note-65/red-squirrels-and-forestry-operations-in-england-operations-note-65>

⁶⁰ CEMP page 9, third bullet point (also suggests felling in January-February 2025, which clearly hasn't taken place, but should not take place in those months in 2026 either)

⁶¹ Appendix 5.18 ES

⁶² <https://www.bbc.co.uk/news/articles/cwy63ge60zno>

65. Disappointingly, the planning application includes no recent survey specifically looking at numbers or locations of Arctic charr, but simply relies on an assessment of the impact on their spawning substrates⁶³, which itself is stated to be “a high level assessment”⁶⁴, set out a number of further quite significant limitations⁶⁵, and that “No information on charr spawning or population structure was available and therefore a detailed assessment on the effects of weir removal on current charr populations (and subpopulations) within Crummock cannot be completely realised”⁶⁶.
66. The only information directly relating to population is set out in a report from 2017, which itself recommends that the population is monitored at intervals of 3 years (albeit, we accept, potentially in the context of the drought permit order that it was produced in relation to – but in any event, demonstrates that having been produced 8 years ago, it is considerably out of date)⁶⁷.
67. Given the scarceness of the species, we find the lack of certainty as to the impact on Arctic charr of the removal of the weir to be concerning. We recognise this is a complex area, but in circumstances in which the applicant is relying on one report which is 8 years old, and another which is said to be a high level assessment with a number of limitations, we would ask that as part of its application it provides a far more comprehensive report considering the full range of factors which could be relevant, and their potential impact on this species. Clearly we have no professional expertise in this area, but it seems to us that water temperatures, pH levels, and availability of food sources, all of which could potentially be affected by the weir removal, are matters which could be considered.
68. We note that there is to be no wet marginal lake work between October and December due to Arctic charr spawning. The 2017 report submitted with the application⁶⁸ notes that there are actually two spawning periods in Crummock – in addition to the late Autumn period which has been allowed

⁶³ Appendix 5.10 ES

⁶⁴ Page 5, Appendix 5.10 ES

⁶⁵ Page 16, Appendix 5.10 ES

⁶⁶ Third bullet point under ‘Conclusions’, page 17, Appendix 5.10 ES

⁶⁷ Paragraph 10, page 5, Appendix 5.24 ES

⁶⁸ Appendix 5.24 ES

for in the application, there is also Spring spawning, in January-March. This needs to be recognised by the applicant, and work planned to take this into account (which is perhaps already the case, but absent express acknowledgement of it, it is hard to be sure).

Salmon and Trout

69. There is concern amongst MWG members that the alluvial fan arrangement proposed for Park Beck will have a detrimental effect on the ability of salmon and trout to spawn in Park Beck. We understand that West Cumbria Rivers Trust is supportive of the proposal, but we have not seen any expert report addressing whether there will be benefit or detriment. Our view is that the planning authority, and the local community, needs reassurance in this respect, and that such a report should be provided as part of the planning application.

Island loss

70. 'Islands' at the south end of the lake will become attached to the mainland again, as they would have been historically. We have already noted above our concern that there appears to have been no consideration of the impact of this on birds, but in our view, there also needs to be a wider assessment in this respect, and an assessment of the trees which exist there.

Timetable of works

71. We note that it is intended that works are scheduled to avoid fish spawning times, specifically works in the rivers will be undertaken between mid-June and the end of September, and there will be no 'wet marginal lake work' between October and December⁶⁹; as we have already set out above, this seems to overlook the fact that Arctic charr also spawn earlier in the year. However, there needs to be consideration of the wider picture of wildlife in the area, including the fact that:

71.1. Sand Martins visit between March and September;

⁶⁹ Paragraph 2.5.2 ES

- 71.2. Pied Flycatchers and other passerine birds begin to arrive in April and breed until July;
 - 71.3. The prime breeding of red squirrels is in January-February, so there must be no work undertaken then – tree felling or otherwise. They may also have a second litter in May/June;
 - 71.4. Bats hibernate in trees between November and March⁷⁰.
72. In summary therefore, the following should be conditions of any planning approval:
- 72.1. Work in rivers should only take place between mid-June and September;
 - 72.2. There should be no wet marginal lake work between October and March;
 - 72.3. There must be no work within 30m of a tree or structure assessed as suitable to support a bat hibernation roost during November to March;
 - 72.4. There must be no work anywhere in Lanthwaite Woods in January or February;
 - 72.5. There must be no tree, hedgerow or other vegetation control between January and September;
 - 72.6. There must be no work undertaken to the weir if dippers have returned to their nest⁷¹. The ES states that if nests are confirmed to be present in the concrete weir and wall structures “*disturbance would be minimised under the direction of the EcCoW*”⁷². It is difficult to see how disturbance can be minimised to dippers nesting in the western half of the weir if the eastern half of it is being dismantled.

⁷⁰ Acknowledged on page 62 of chapter 5 ES

⁷¹ Their presence is set out in paragraph 3.2 and Figure 3 BNBS

⁷² Page 63 of chapter 5 ES

- 72.7. There must be no work undertaken to the artificial banks of Park Beck from March, and not until an alternative habitat for sand martins is in place.
73. If there is any delay in work schedule because of adverse weather or other reasons, there must be no compromise in adhering to the ‘no-go’ periods outlined above.

Reinstatement and Subsequent Management

74. It should be a condition of permission being granted that any seed sown is of local Cumbrian provenance (the need for this seems to be acknowledged in the ES⁷³). We note that there is an intention to source from local nurseries⁷⁴ but suggest that UU should be discussing this with suppliers, and engaging with the local community on this now, to ensure sufficient supply of good quality trees at a range of maturity stages, when the need arises.
75. We note that a Landscape and Ecological Management Plan (“LEMP”) is to be produced “*to ensure successful creation/reinstatement of habitats and appropriate ongoing management to maximise their biodiversity value*”⁷⁵, but understand that this is not yet available. And that in future, “*The area would be managed in partnership with a key stakeholder such as Natural England, West Cumbria Rivers Trust or the National Trust*”⁷⁶. It concerns us that the important questions of reinstatement and future management have not been resolved yet, and question whether it is appropriate to be granting permission without these being addressed. This is not least because, so far as we are aware, there will be no formal consultation requirement in relation to those plans, and therefore limited opportunity for groups like ourselves to review and comment.
76. Likewise, we are concerned that no draft Habitat Monitoring and Management Plan has been submitted. Given the complexity of the project,

⁷³ Paragraph 8.10.5 ES

⁷⁴ Paragraph 8.10.5 ES

⁷⁵ Paragraph 5.8.5 ES

⁷⁶ Paragraph 5.4.32 ES

and regardless of the Rule 4 BNG waiver, we consider that one should have been submitted in draft as part of the application.

77. We have already set out above that we do not consider that tree planting should wait until 2028 – the same goes for other types of vegetation. The ES states that “*United Utilities intend to trial regeneration planting along the shoreline of Crummock Water*”⁷⁷, and that this would be “*a few years after construction*”⁷⁸. In our view, steps should be taken from the point at which the penstocks are opened to start replacement planting. These replanting trials also do not seem to relate to the entirety of the lake shore, but only that within the site area. Consideration needs to be given to the wider lake shore.

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⁷⁷ Paragraph 5.9.1 ES

⁷⁸ Paragraph 8.5.3 ES