

THE HAMPSTEAD HEATH PONDS PROJECT
WITHOUT PREJUDICE JOINT STATEMENT

by the City of London Corporation and The Heath & Hampstead Society

Representatives of the City and the Society, together with their respective legal advisers, met on 19 September 2013 at the Guildhall to exchange views on the legal basis for the proposed works comprising the Project.

The parties agree that the Reservoirs Act 1975 ("**RA 1975**") currently only applies to the three largest ponds on Hampstead Heath, but that the Flood and Water Management Act 2010 ("**FWMA 2010**"), if fully implemented, will apply the RA 1975 to all of the ponds in the Hampstead and Highgate chains. It is agreed that, to the extent that works are required, it is preferable that these should be carried out in a holistic way along the chains of ponds (rather than be confined to the three largest ponds), in order to minimise the impact on the Heath, and to avoid further works having to be undertaken if the FWMA 2010 is fully implemented. The Society accepts that some works may be necessary in order to ensure the safety of the ponds in accordance with the RA 1975.

The RA 1975 requires the City to take appropriate steps "in the interests of safety" to maintain the dams on the relevant ponds. The phrase "in the interests of safety" is not defined in the RA 1975.

The view of the City is that the phrase "in the interests of safety" must be given its meaning by dam engineers carrying out their appointed roles under the RA 1975, and ultimately, in appropriate circumstances, by a court or tribunal according to the relevant law. The City has decided to follow the advice given by its supervising engineer, appointed under the RA 1975, as to the works that are required. He in turn is following standard industry guidelines that have been applied to reservoirs nationwide. These guidelines state that, where a community could be endangered by the breach of a dam, the risk of any breach caused by a flood must be virtually eliminated. In other words, safety comes first. It is only where no community is at risk that economic factors, and possibly other factors such as environmental factors, may be taken into account.

The view of the Society is that the phrase "in the interests of safety" must be given its meaning by the courts and according to the general law. Because absolute safety cannot be achieved, a court would hold that a standard of reasonable safety is the standard intended by the RA 1975. Such a standard is not compromised by considering during the process of the design of the works (i) how to reduce the adverse consequences of dam collapse by taking into account practicably available measures such as early warning and (ii) the balancing of the scale of the proposed works against their impact on the Heath, its users, the local community and the environment.

The Hampstead Heath Act 1871 ("**HHA 1871**") requires the City to at all times preserve, as far as may be, the natural aspect and state of the Heath. The City's view is that this is a qualified duty, which does not prohibit works that are required under any other statutory provision i.e. the RA 1975, or works that are otherwise required in the interests of safety. Accordingly, the HHA 1871 should not influence any decision as to the works that are required in the interests of safety under the RA 1975, but is relevant to the Project in that, so long as this does not jeopardise safety, the works should be undertaken in the way that is most sympathetic to the natural aspect and state of the Heath.

The view of the Society, on the other hand, is that the duties of the City under the HHA 1871 must influence at an initial stage any decision as to the works that are required under the RA 1975.

As a result, the City and the Society were unable to agree on the correct application of the RA 1975 and the HHA 1871 to the Project.

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