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# **Thames Water Utilities Limited**

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## **Riverside Energy Park Examination – EN010093**

### **Submission of Comments on behalf of Interested Party Thames Water Utilities Limited**

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**Submitted at Deadline 5  
13 August 2019**

1. **BACKGROUND**

1.1 This submission comprises comments of Thames Water Utilities Limited (TWUL) pursuant to Deadline 5 in accordance with the timetable at Annex A of the Examining Authority's Rule 8(3) letter dated 8 August 2019.

1.2 Comments are submitted in respect of the following:

1.2.1 Comments on any additional information / submissions received by previous deadline;

1.2.2 Notification by affected persons and/or IPs of wish to speak at and attend the CAH reserved for September (Item 16).

2. **COMMENTS ON ANY ADDITIONAL INFORMATION / SUBMISSIONS RECEIVED BY PREVIOUS DEADLINE**

**Applicant's Response to Thames Water's Written Summary of Oral Submissions Made at Hearings (Document 8.02.39) ("the Applicant's Response to TWUL's Oral Submissions")**

2.1 TWUL notes that the Applicant's Response to TWUL's Oral Submissions is a summary of the Applicant's responses from Deadline 2 and 3 (see paragraph 1.2.3). The points made by the Applicant in the Applicant's Response to TWUL's Oral Submissions will therefore already have been responded to by TWUL in their previous submissions, including its Deadline 4 submission. TWUL would therefore refer the Examining Authority to those submissions [PINS REF: REP2-092, REP3-049, REP3-050, REP4-038 and REP4-039], which remain an accurate representation of TWUL's position.

2.2 TWUL seek only to respond to certain paragraphs of the Applicant's Response to TWUL's Oral Submissions with a view to reiterating its position and respectfully suggests that this submission is read in conjunction with its Deadline 4 comments.

2.3 For the purposes of this submission, TWUL has set out its comments in the same format as appears in the Applicant's Response to TWUL's Oral Submissions.

Submission in response to Agenda Item 5

*Paragraph 1.2.5*

2.4 In response to paragraph 1.2.5 of the Applicant's Response to TWUL's Oral Submissions, TWUL maintains that the inclusion of the Data Centre site as Main Temporary Construction Compounds is "Significant". As mentioned in paragraph 4.2 of its Deadline 4 submission [REP4-039], the use of the Data Centre sites for the Main Temporary Construction Compound will result in a three to five year construction period – a longer timeframe than the consented Data Centre only allows (two year construction period).

2.5 The construction will displace the breeding Skylark that is present and result in the loss of the regionally important invertebrate fauna that is present on the Open Mosaic Habitat. This results in a loss of wildlife and habitat, which will have an indirect impact on the wildlife present on the immediately adjacent Crossness Nature Reserve, Erith Marshes SMINC and Metropolitan Open Land ("MOL").

2.6 In addition to disturbance to wildlife, the use of the Data Centre site will cause considerable disturbance to visitors accessing the reserve. TWUL refers the Examining Authority to paragraph 2.11 and section 4 of its Deadline 4 submission [REP4-039] which comments on the impacts to visitors of the Applicant's proposed use of the Crossness Access Road as a shared access to the Data Centre site.

*Paragraphs 1.2.6 and 1.2.7*

- 2.7 In paragraph 1.2.6 of the Applicant's Response to TWUL's Oral Submissions, the Applicant seeks to address TWUL's comments in respect of visual impacts and visitor experience at paragraph 5.3.14-5.3.15 and 5.3.30-5.3.34 in the Applicant's Response to Written Representations (Document 8.02.14) submitted at Deadline 3. At paragraph 1.2.7, the Applicant states that *"openness is maintained and the Crossness LNR would not be enclosed. This includes taking into consideration the consented and once built Data Centre, which is located to the east of the Crossness LNR"*.
- 2.8 In response, TWUL accepts that the Crossness Nature Reserve is located within an existing industrial area and that existing industrial buildings are already sighted in views out of the Reserve. However, it is TWUL's position that the size of the Riverside Energy Park Project ("the Project") in combination with other developments, when viewed against the openness of the MOL, result in more enclosure and result in a restriction of views. TWUL refers the ExA to Figure 1 at Annex A of this submission which shows the Applicant's impression of the proposed Project and consented Data Centres sitting on the boundaries of the Crossness Nature Reserve. The cumulative landscape and visual impacts of the Project with other developments in the vicinity of the Crossness Nature Reserve would have an "Adverse" effect that is of a "Moderate/Major" level of significance and would therefore be "Significant".
- 2.9 Further, and returning to paragraph 1.2.7 of the Applicant's Response to TWUL's Oral Submissions, TWUL strongly disagrees with the Applicant's statement that *"it is likely that any visitors would be focussed on undertaking ecologically related activities within the nature reserve itself rather than on views of surrounding built development."* Most visitors are bird watchers, which involves them looking out from the Crossness Nature Reserve at open skies.

*Paragraph 1.2.8*

- 2.10 In response to paragraph 1.2.8 of the Applicant's Response to TWUL's Oral Submissions, whilst TWUL accept that the Crossness Nature Reserve might still offer 'green relief' and provide educational opportunities to local residents, visitors and schools following the construction of the Project and Data Centres, it is TWUL's position that visitors might be discouraged to do so in light of the indirect impacts considered in this submission and TWUL's previous submissions (see PINS references at paragraph 2.1 of this submission).

*Paragraph 1.2.14*

- 2.11 In paragraph 1.2.14 of the Applicant's Response to TWUL's Oral Submissions, the Applicant states that *"During baselines surveys, lapwings were identified as breeding in the West Paddock. It is considered that if the habitat is currently suitable for breeding lapwing, as it is in the West Paddock, then lapwing will be resilient to reasonable levels of disturbance."*
- 2.12 Lapwing began breeding on the Crossness Nature Reserve's West Paddock in 2017 and in subsequent years since. In each of those years, there has been no building construction or disturbance on the peripheries of the Reserve. The construction of the Project, together with the construction of the Data Centres, in combination or consecutively, are not considered to be 'reasonable levels of disturbance' and contrary to the Applicant's claim, the breeding lapwing and other wildlife, TWUL considers that it will almost certainly not be resilient.

*Paragraph 1.2.15*

- 2.13 TWUL responds to paragraph 1.2.15 of the Applicant's Response to TWUL's Oral Submissions which states that the area surrounding the Proposed Development currently contains numerous perching structure for avian predators such as existing buildings, pylons, and gantries.
- 2.14 TWUL responded to this point in its Deadline 4 submission [REP4-039], see paragraph 3.22, and maintains its position as follows. Whilst it is true that avian predator perches exist in the area, there are no buildings as close to Crossness Nature Reserve as the proposed Project which provide perching posts for avian predators and there are no pylons as the

Applicant claims – the Crossness pylons were removed many years ago (approximately 8 years).

- 2.15 The Crossness Sewage Treatment Works Sludge Powered Generator and the Applicant's Riverside Resource Recovery Facility are the only existing perching posts of sufficient height for Peregrine Falcons. However, the Project is proposed on the immediate boundary of the West Paddock. The height of the stacks will provide sufficient height for Peregrines which will then prey on the ground-nesting Lapwing and other bird species on the West Paddock immediately below.

*Paragraph 1.2.17*

- 2.16 In response to paragraph 1.2.17 of the Applicant's Response to TWUL's Oral Submissions, TWUL maintains that the biodiversity value of the Crossness Nature Reserve will be adversely affected by the Project and that the direct effects are "Significant". Despite embedded mitigation measures to minimise impacts of the Project, there will be disturbance to wildlife on the immediately adjacent Crossness Nature Reserve. The loss of habitat flora and invertebrate fauna on the Data Centre site will directly impact foraging wildlife from the Crossness Nature Reserve.
- 2.17 As mentioned in its Written Representation submitted at Deadline 2 [PINS Ref: REP2-092], TWUL is obliged to maintain and enhance the Crossness Nature Reserve pursuant to a section 106 agreement ("S106") dated 21 July 1994 in connection with and as a requirement of its statutory operational activities at the Crossness Sewage Treatment Works.
- 2.18 Further, TWUL has a statutory duty under section 3 of the Water Industry Act 1991 ("the 1991 Act") in carrying out its functions, to further the flora and fauna, and to have regard to the desirability of the public to have freedom of access to places of natural beauty. Related to this duty, the Secretary of State has issued guidance under section 5 of the 1991 Act in the form of a Code of Practice on Conservation and Recreation (February 2000). TWUL owns and operates the Crossness Nature Reserve consistent with and for the purposes of complying with these statutory duties.
- 2.19 TWUL disagrees with the Applicant's comment at paragraph 1.2.17 and reinforces its position that there are indirect effects of the Project on the Crossness Nature Reserve, as explained in this submission and previous submissions, which could prevent TWUL from complying with the S106 and its statutory duties.

*Paragraph 1.2.26*

- 2.20 Paragraph 1.2.6 of the Applicant's Response to TWUL's Oral Submissions responds to TWUL's concerns in relation to the cumulative impacts of the Project and the Data Centres on breeding birds. The Applicant argues that in light of the mitigation measures secured through Requirement 11 (Code of Construction Practice) and Requirement 5 (Biodiversity and landscape mitigation strategy) of the dDCO, and the small areas of habitat used by birds that will be affected by the Project, the cumulative effects to breeding birds would be "Not Significant".
- 2.21 As referred to in paragraph 3.18 of TWUL's Deadline 4 submission [PINS Ref: REP4-039], the Data Centre site supports several pairs of annually breeding Skylark. These are nationally declining red-list species of conservation concern that do not breed elsewhere in the vicinity. They will be lost when the area is used as a Main Temporary Construction Compound for the Project and/or Data Centre site. The breeding Linnet and Cetti's Warbler present will also be lost (red list species and Schedule 1 species of the Wildlife and Countryside Act 1981). TWUL disagrees with the Applicant's assessment concluding that cumulative effects to breeding birds would be "Not Significant".
- 2.22 The Project and the Data Centres are located on the boundaries of the Sea Wall Field, the West Paddock, East Paddock, Stable Paddock and The Triangle, as shown on Figure 2 at Annex B to this submission. It is very unlikely that the usual assemblage of birds that breed on or around these parts of the Crossness Nature Reserve will continue during the construction of the Project and Data Centres.

2.23 As mentioned in paragraph 3.23 of its Deadline 4 submission [PINS Ref: REP4-039], TWUL acknowledge that the Applicant has commissioned the Environment Bank to assist with the delivery of off-site habitat compensation and enhancement, which will be secured through Requirement 5 of Schedule 2 to the dDCO submitted at Deadline 3. In its Deadline 4 submission, TWUL sought to amend Requirement 5 to require consultation on the biodiversity strategy prior to its submission and approval to ensure that sufficient measures to mitigate against the impacts of the loss of the open mosaic habitat on the Data Centre site are secured. In addition, TWUL also requires the amendment to Requirement 11 as follows:

2.23.1 Requirement 11 (Code of Construction Practice) requires a code of construction practice to be submitted to and approved by the relevant planning authority before pre-commencement works are carried out and any part of the authorised development is commenced.

2.23.2 To ensure sufficient measures are in place to mitigate the impacts of the Project on the Crossness Nature Reserve, TWUL requires insertion of the following wording into Requirement 11:

*"Prior to the submission of the code of construction practice pursuant to subparagraph (1), the undertaker must consult with Thames Water Utilities Limited on details of mitigation measures required to reduce the impacts of the authorised development on the Crossness Nature Reserve."*

2.24 TWUL will continue to liaise with the Applicant to agree the requested amendments to the Requirements in Schedule 2 to the dDCO made as part of this submission and its Deadline 4 submission [PINS Ref: REP4-039]. In the event that the amendments are not agreed with the Applicant, TWUL would look to cover the obligations for their consultation in some other format – for example, through protective provisions or a side agreement.

#### Protective Provisions

2.25 TWUL is still in discussion with the Applicant in respect of its required protective provisions.

2.26 TWUL included a copy of its required protective provisions at Annex A to its Deadline 4 submission [PINS Ref: REP4-038]. TWUL received the Applicant's comments on its provisions on 16 August 2019 and is in the process of reviewing and responding on these.

2.27 TWUL will continue to update the Examining Authority on progress in this regard.

#### **Analysis of whether the policy on Green Belt in the National Policy Statement applies to the Metropolitan Open Land in respect of the Proposed Development (Document 8.02.41) ("the Applicant's MOL Analysis")**

2.28 TWUL refers the ExA to the section on National Policy Statement EN-1 at paragraphs 2.59 – 2.61 of its Written Representation submitted at Deadline 2 [PINS Ref: REP2-092] and the further references to the Policy position in later submissions. TWUL drew the ExA's attention to Policy 7.17 of the adopted London Plan and specifically:

#### *Strategic*

*A The Mayor strongly supports the current extent of Metropolitan Open Land (MOL), its extension in appropriate circumstances and its protection from development having an adverse impact on the openness of the MOL.*

#### *Planning decisions*

*B The strongest protection should be given to London's Metropolitan Open Land and inappropriate development refused, except in very special circumstances, giving the same level of protection as in the Green Belt. Essential ancillary facilities for appropriate uses will only be acceptable where they maintain the openness of MOL.*

- 2.29 Paragraph 5.10.17 of the National Policy Statement EN-1 states that *'Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is outweighed by other considerations. In view of the presumption against inappropriate development, the IPC will attach substantial weight to the harm to the Green Belt when considering any application for such development ...'*.
- 2.30 The Crossness Nature Reserve is Metropolitan Open Land. In accordance with the adopted London Plan, it should therefore be given "the strongest protection". TWUL quoted the London Plan because it is relevant for the purposes of understanding the protection afforded to MOL in planning policy. TWUL did not mention the National Planning Policy Framework ("NPPF") because it does not consider it to be relevant – paragraph 5 of the Introduction to the NPPF provides that *"the Framework does not contain specific policies for nationally significant infrastructure projects"* which instead will be determined in accordance with the decision-making in relevant national policy statements for major infrastructure.
- 2.31 Therefore, it is TWUL's position that the NPPF is not relevant for the purposes of applying policy context to the Project. Regardless, and given that the Applicant has sought to rely on the NPPF in its application of the NPS, TWUL makes the following submissions in response to the Applicant's MOL Analysis:

*"When located in the Green Belt"*

- 2.31.1 The Applicant's first point is that the words *"when located in the Green Belt"*, which feature at the beginning of paragraph 5.10.17 of the NPS, should be taken literally to mean that the paragraph only applies to development which is in (in these circumstances) MOL.
- 2.31.2 TWUL does not agree with this interpretation and does not consider that this is what was intended at the time of writing the NPS. *"When located in"* is not a defined term within the NPS. Nor, for completeness, is it defined in the NPPF. It is TWUL's submission that *"located in"* means located within areas of MOL or adjacent to MOL. It would be unfair, for example, to say that a development taking place immediately adjacent to MOL or Green Belt would automatically not need to be considered in the context of national planning policy because the land on which the proposed development is taking place is not MOL or Green Belt.
- 2.31.3 The Project sits immediately adjacent to the Crossness Nature Reserve. The Project as a whole, together with any other proposed development (such as the Data Centres), – and not the plots which only fall within the MOL – should be considered in the context of paragraph 5.10.17 of the NPS.

*Paragraph 144 of the NPPF*

- 2.31.4 In the Applicant's MOL Analysis, the Applicant relies on paragraphs 143, 145 and 146 of the NPPF in its application of the policy context to the Project.
- 2.31.5 Inconsistent with this approach, and further to TWUL's point above, the Applicant fails to refer to paragraph 144 of the NPPF which provides that *"when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other circumstances."*
- 2.31.6 Whilst TWUL disagrees with the Applicant's reliance on the NPPF, if, as the Applicant asserts, the NPPF is to apply to nationally significant infrastructure projects and interpretation of the NPS, then paragraph 144 is also relevant. Paragraph 144 does not restrict consideration of a proposed development to one which is only located in the Green Belt/MOL, and instead requires decision-makers to ensure that substantial weight is given to any harm to the Green Belt (MOL) when considering an application (nationally significant infrastructure projects).

*"Inappropriate Development"*

- 2.31.7 Tables 1.1 and 1.2 of the Applicant's MOL Analysis, details those plots within the Order Limits which are designated MOL. As explained above, TWUL does not consider this to relevant because the Project as a whole should be considered for the purposes of paragraph 5.10.17 of the NPS.
- 2.31.8 TWUL also note that the description of works set out in Table 1.2 of the Applicant's MOL Analysis, in respect of reference to Work Nos. 8 and 9 are incorrect. The Works Plans (Document 2.3) submitted by the Applicant at Deadline 2 refer to Work No. 8 and 9 (a)-(d). Table 1.2 refers to Work No. 8 (a), (b), (d) and (e) and then Work No. 9.
- 2.31.9 On the basis that the Project should be considered in the context of paragraph 5.10.17 of the NPS as a whole, TWUL submit that the Examining Authority cannot rely only on the Applicant's assessment of *"inappropriate development"* against those plots listed in Table 1.2.

*"Any other harm"*

- 2.31.10 Paragraph 5.10.17 of the NPS states that: *'Very special circumstances will not exist unless the harm by reason of inappropriateness, and **any other harm**, is outweighed by other considerations.* 'Very special circumstances' is not limited to *"inappropriateness"*, but also considers the potential for *"any other harm"* generated as a result of the development.
- 2.31.11 For the reasons mentioned in this submission and TWUL's previous submissions, it is TWUL's position that there are indirect impacts of the Project and Data Centres in relation to the Crossness Nature Reserve which are "Significant".
- 2.31.12 As a result, these impacts should be considered as *"any other harm"* for the purposes of paragraph 5.10.17 of the NPS, to which substantial weight should be attached by the Examining Authority.

*Indirect Impacts*

- 2.32 Paragraph 1.5 of the Applicant's MOL Analysis considers indirect impacts of the Project on the MOL.
- 2.33 In paragraph 1.5.6, the Applicant states that *"the proposed orientation, and stepped building arrangement, takes into account the relationship with the Crossness LNR"*. Further to paragraphs 3.7 and 3.8 of its Deadline 4 submission [PINS Ref: REP4-039], TWUL continues to maintain that the curved roof option is the preferred design option to mitigating the appearance of the Project on the immediate landscape.
- 2.34 Further, in consideration of the Applicant's images at Figure 1 in Annex A to the submission, the Data Centres do not appear to have been carefully designed. The Data Centres received outline planning permission pursuant to the Town and Country Planning Act 1990 in July 2016. Recently, the Applicant has submitted its Reserved Matters for approval. At the outline planning stage, the Applicant offered to build green walls the full height of the western façade with a view to softening the visual impact of the Data Centres. However, it is evident from the detailed designs as part of its reserved matters that the Applicant has reneged on this commitment. On the basis that it would need to be *'artificially sustained with the installation of an irrigation system'* (paragraph 2.11 of the London Belvedere Data Centre Design and Access Statement), the Applicant has removed this in favour of a small green wall (which contains non-native species, even though it is next to a grazing marsh, further demonstrating a lack of understanding of the biodiversity impacts to the environment in which the Project and Data Centre is to be located) on the undercroft (ground floor) of the building, which will be scarcely visible behind the 3m high security fencing. It is TWUL's position that careful design has not been integral to the process, as stated by the Applicant.

2.35 Furthermore, TWUL submits that the view of the Data Centres shown on Figure 1 in Annex A of this submission, is inaccurate. For example, the Thames Water Crossness Sewage Treatment Works have been moved south in order to include a section of the Sludge Powered Generator, trees are dotted about across the landscape which are not present, the Great Breach Lagoon and Island Field lagoons and reed beds have been omitted.

3. **NOTIFICATION BY AFFECTED PERSONS AND/OR IPS OF WISH TO SPEAK AT CAH RESERVED FOR SEPTEMBER (ITEM 16)**

3.1 In response to the Examining Authority's Rule 8(3) letter, and whilst considering the Applicant's Deadline 4 documents – in particular, the updated Land Plans (Document 2.1) and Book of Reference (Document 4.3) – TWUL wish to reserve the right to speak at and attend the Compulsory Acquisition Hearing to be held on the dates between 17 – 19 September 2019.

3.2 TWUL will update the Examining Authority if it later decides that it does not wish to attend the Compulsory Acquisition Hearing.

3.3 Whilst TWUL recognise that it is not yet known which Issue Specific Hearings will be held on what date, it wishes to use this opportunity to reserve the right to speak at and attend the Issues Specific Hearings which are to be held on 17 – 19 September 2019.

4. **CONCLUSION**

4.1 For the reasons set out above, it is TWUL's position that the indirect impacts on the Crossness Nature Reserve are Significant. Together with its Deadline 4 submission, TWUL is seeking amendments to the Requirements in the dDCO to ensure that sufficient measures are adopted by the Applicant to mitigate against the impacts on the Crossness Nature Reserve.

4.2 TWUL is also in discussions outside of the Examination Process towards reaching agreement to satisfactorily address its concerns in relation to its interest in statutory apparatus. TWUL will continue to update the Examining Authority with the progress of agreement of these matters throughout the Examination.

**Annex A**

**Figure 1 – Proposed Riverside Energy Park and consented Data Centres sitting on the boundaries of Crossness Nature Reserve (sourced from the Applicant’s planning documents)**



Two, four-storey Data Centres on CNR’s east boundary – view from the east looking into Crossness Nature Reserve



Data Centres on the CNR south and eastern boundary – view from the west looking out of the Crossness Nature Reserve



Riverside Energy Park on CNR’s northern boundary

Annex B

Figure 2 – Schematic of Crossness Nature Reserve

