

Riverside Energy Park

Applicant's response to the ExA's Rule 17 Letter on Changes to the Application

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0 Introduction

0.1.1 On 1 August 2019, the Examining Authority (ExA) published two Rule 17 letters in respect of the REP examination. This document responds to the Rule 17 letter within which the ExA has requested a response from the Applicant regarding 'Changes to the Application' made at Deadline 2. These changes consisted of the following:

- As set out in the **Environmental Statement Supplementary Report (6.6, REP2-044)**:

a) The removal of Plots 02/53 and 02/55 from the Main Temporary Construction Compounds and the use of Plots 02/43, 02/44, 02/48 and 02/49, (the "Data Centre site") as part of the Main Temporary Construction Compounds; and

b) The use of cable troughs to cross a watercourse at Norman Road and (by way of a watercourse crossing) a strategic sewer at Joyce Green Lane for the Electrical Connection route; and

- An update to the Electrical Connection route, notably removing the route through Crossness Local Nature Reserve (LNR), which is set out in the **Electrical Connection Progress Summary (8.02.07, REP2-058)**.

0.1.1 The ExA did not receive any comments on the changes to the Electrical Connection route or the proposed use of cable troughs and agrees with the Applicant's assessment that the changes do not give rise to new or different likely significant effects compared to those considered in the Environmental Statement (ES). The ExA has therefore accepted these changes into the examination as non-material.

0.1.2 Comments were received from Friends of Crossness Nature Reserve ('FoCNR', REP4-034) and Thames Water Utilities Limited ('TWUL', REP4-039) to the proposed changes in the use of the Data Centre site as part of the Main Temporary Construction Compounds.

0.1.3 The ExA has therefore requested the Applicant:

- *"1) to respond to the concerns about the proposed use of the Data Centre site that have been raised by the FoCNR and by TWUL;*
- *2) comment, in the light of the concerns raised by the FoCNR and TWUL, on whether the proposed use of the Data Centre site during the construction period and the delay in developing the Data Centre would result in direct or cumulative impacts that have not been assessed in the [Environmental Statement] ES and the Environmental Statement Supplementary Report. And, if so, provide supplementary environmental information on these potential impacts;*

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- *3) set out how access to the Data Centre site would be provided if access is not agreed with TWUL and what implications this would have for the Proposed Development as set out in the Land and Works Plans (REP2-003 and REP2-004) and other related documents;*
- *4) set out any further mitigation measures that it might wish to propose.”*

0.1.4 The above matters (1-4) are addressed in order below.

1 ExA Changes to the Application Question 1

1.1.1 The ExA has requested the Applicant:

“To respond to the concerns about the proposed use of the Data Centre site that have been raised by the FoCNR and by TWUL.”

Response:

1.1.2 The Applicant has submitted a response to FoCNR (**Applicant's response to Friends of Crossness Deadline 4 Submission (8.02.48)**) and TWUL (**Applicant's response to Thames Water Deadline 4 Submission (8.02.50)**) at Deadline 5 which addresses comments in respect of the proposed use of the Data Centre site as part of the Main Temporary Construction Compounds. The ExA is directed to those submissions in response to this question.

2 ExA Changes to the Application Question 2

2.1.1 The ExA has requested the Applicant:

“Comment, in the light of the concerns raised by the FoCNR and TWUL, on whether the proposed use of the Data Centre site during the construction period and the delay in developing the Data Centre would result in direct or cumulative impacts that have not been assessed in the ES and the Environmental Statement Supplementary Report. And, if so, provide supplementary environmental information on these potential impacts”

Response:

2.1.2 The **ES (6.1)** did not assume that the Data Centre works would be undertaken concurrently with the Proposed Development, as Plots 02/43, 02/44, 02/48 and 02/49 (Data Centre site) were allocated for Works No. 7 in the **Works Plans (2.2, REP2-004)** submitted with the DCO Application. The ES assessed potential impacts on the basis that the construction of the Data Centre would start after the construction of REP.

2.1.3 The **Environmental Statement Supplementary Report (6.6, REP2-044)**, considered two indicative scenarios:

- Scenario 1: The Data Centre site as a whole being used as part of the Main Temporary Construction Compounds; and
- Scenario 2: Whereby once construction has moved past its most intense period and not all of the Main Temporary Construction Compounds is required, the southern parcel of the Data Centre site would be used as part of the Main Temporary Construction Compounds whilst construction of the Data Centre is commenced on the northern parcel.

2.1.4 Therefore, the ES and the **Environmental Statement Supplementary Report (6.6, REP2-044)** both considered the potential construction period of works in the vicinity of Crossness LNR to include the consecutive construction of the Proposed Development and the Data Centre and the assessment found that the effects in both scenarios were Not Significant on all accounts (with the exception of a limited number of residual (moderate) significant adverse effects in relation to Townscape and Visual Impact, as assessed in the ES (**Chapter 16 Summary of Findings and In-Combination Effects of the ES (6.1, APP-053)**). Effects in respect of Air Quality and Terrestrial Biodiversity have been agreed by Natural England as Not Significant in a **Statement of Common Ground (SoCG)** between them and the Applicant (**Statement of Common Ground between the Applicant and Natural England (8.01.05, REP2-051)**).

2.1.5 FoCNR and TWUL provide no reasoned basis or evidence for claiming that the revised extent of the Main Temporary Construction Compounds will give rise to “*considerable disruption*” and this is not related to the EIA methodology

and findings (which the Applicant states does not give rise to any new or different likely significant effects, new impact interactions or cumulative effects, when compared to those reported in the submitted ES, as stated at **Paragraph 5.1.1** of the **Environmental Statement Supplementary Report (6.6, REP2-0440)**).

- 2.1.6 The Data Centre site was included within the original DCO Application as part of Work No. 7 and was therefore assessed and reported in the submitted ES. These areas are now included in respect of Works items associated with the Main Temporary Construction Compounds. Although the works differ in activity and potential duration, the proposed change does not give rise to any new or different likely significant effects, new impact interactions or cumulative effects, when compared to those reported in the submitted ES.
- 2.1.7 The use of the Data Centre site as part of the Main Temporary Construction Compounds is not considered to represent significant construction. This was stated at **Paragraph 8.9.15, Chapter 8 Noise and Vibration** of the **ES (6.1, APP-054)** that *"the Main Temporary Construction Compounds, other than their initial preparation for use, are not likely to be utilised for major construction works such as building construction and site levelling and are more likely to be utilised as a laydown area/parking and fabrication of parts."* The activities on the Main Temporary Construction Compounds (including the Data Centre site) will include work that can be considered light industrial which is in keeping with the industrial character of the area.
- 2.1.8 In addition, the London Borough of Bexley has granted consent for the Data Centre site subject to planning conditions and, reserved matters applications have been submitted as part of the Data Centre application. Therefore, the principle of development on this site is established and accepted in planning terms. The use of the Data Centre site as part of the Main Temporary Construction Compounds for the Proposed Development will be subject to environmental controls through a **Code of Construction Practice (CoCP)** and **Biodiversity Landscape Mitigation Strategy (BLMS)** which are secured through **Requirements 11** and **5**, respectively of the **dDCO (3.1, Rev 3)** and must be substantially in accordance with the Outline versions which are under consideration as part of the Examination. Accordingly, the proposed use of the Data Centre site during the construction period and the potential subsequent development of the Data Centre would not result in any significant adverse cumulative impacts.
- 2.1.9 Potential impacts have therefore been fully assessed in the ES (**Sections 6.10, 7.10, 8.10, 9.10, 11.10, 12.10, 13.10** and **14.10** of **ES Chapter 6-14**, as well as the combined interaction of effects from REP in which concluded No Significant adverse effects) (with the exception of a limited number of residual (moderate) significant adverse effects in relation to Townscape and Visual Impact as assessed in the ES) (**Chapter 16 Summary of Findings and In-Combination Effects** of the **ES (6.1, APP-053)**) and the **Environmental Statement Supplementary Report (6.6, REP2-0440)** (**Table 2.1** and **Table 2.2**) findings demonstrated that the proposed change does not give rise to any new or different likely significant effects, new impact interactions or cumulative

effects, when compared to those reported in the submitted ES, as stated at **Paragraph 5.1.1** of the **Environmental Statement Supplementary Report (6.6, REP2-0440)**).

2.1.10 Notwithstanding the above, the Applicant has proposed further mitigation in Paragraph 4.1.2 below, which are over and above those that are required to mitigate the effects of the Proposed Development. Whilst the ES does not require such mitigation, the Applicant recognises that FoCNR and TWUL have concerns. See **Paragraph 4.1.2** to this report.

2.1.11 In addition to the above, the Applicant notes that TWUL has raised concern in submissions to the EXA that the Proposed Development could prevent TWUL from complying with its obligations as set out in the Section 106 agreement (s106). TWUL Relevant Representation submission and subsequent submission state:

2.1.12 *"TWUL is obliged to maintain and enhance the Crossness Nature Reserve pursuant to a section 106 agreement ("S106") dated 21 July 1994. The S106 was entered into in relation to an application for the purposes of a sludge powered generator at the Crossness Sewage Treatment Works to be constructed on the Site, defined in the S106 as the land shown edged red on Plan A to the S106. The S106 binds the Site, the Crossness Nature Reserve and Operational Land, defined as the then operational land at Crossness Sewage Treatment Works shown edged in green on Plan D to the S106. As such, TWUL owns and operates the Crossness Nature Reserve in connection with and as a requirement of its statutory operational activities at the Crossness Sewage Treatment Works, and believes that the impacts of the Project on the Crossness Nature Reserve could prevent it from complying with its obligations in the S106"*

2.1.13 As noted by the Applicant at Deadline 3 in the **Applicant's Response to Written Representations (8.02.14, REP3-022)** and again at Deadlines 4 and 5 *"The Applicant received a copy of the main body of the Section 106 agreement ('s106') dated 21st July 1994, in relation to the TWUL sludge treatment facility, on 10th June 2019. It is understood that the obligations on TWUL are set out in Schedule 2 to the s106 which have been requested but had yet to have been provided by TWUL."*

2.1.14 While TWUL were unable to provide a copy, the Applicant sought to obtain the s106 through alternative means. A full copy of the s106 has now been sourced from the London Borough Bexley's (LBB) Building Control Team. The Applicant has reviewed the 21 obligations set out in Schedule 2 of the TWUL s106 (an extract is provided in Appendix A) and can conclude that the Proposed Development would not contravene any of the obligations set out in Schedule 2, as the Proposed Development would not restrict TWUL from undertaking and maintaining these obligations.

3 ExA Changes to the Application Question 3

3.1.1 The ExA has requested the Applicant:

“Set out how access to the Data Centre site would be provided if access is not agreed with TWUL and what implications this would have for the Proposed Development as set out in the Land and Works Plans (REP2-003 and REP2-004) and other related documents”

Response:

3.1.2 The Applicant confirmed in its response to FoCNR (**Applicant's response to Friends of Crossness Deadline 4 Submission (8.02.48)**) and TWUL (**Applicant's response to Thames Water Deadline 4 Submission (8.02.50)**) at Deadline 5 that the TWUL road, which intersects the Data Centre site (land parcels 02/43, 02/44/, 02/49 and 02/48) does not form part of the DCO Application for REP. Therefore, for clarity, the Applicant confirms that the statement struck through in the extract below from **Table 2.1 Environmental Statement Supplementary Report (6.6, REP2-0440)** would not apply:

3.1.3 *“With regard to potential for accidents and road safety, the access road that intersects the Data Centre site (access for Crossness Sewage Treatment Works) will be retained. There are likely to be construction-related movements (vehicle and construction workers) between the two retained parcels of land. Therefore, a suitable crossing point along the access road with appropriate traffic controls will be installed during the construction phase.”*

3.1.4 In light of the above, the Applicant confirms that it does not intend to utilise this route for access from the public highway to the compound areas and that separate access or accesses would be created from Norman Road, as can be seen from the **Access and Rights of Way Plans (Sheet 2) (2.3 REP2-005)**, which were submitted at Deadline 2.

3.1.5 The Applicant also confirms that there is no intention to close or refuse access and that any disruption from construction of the Proposed Development would be minimised through the liaison measures set out in the **Outline Construction Traffic Management Plan (CTMP) (Appendix L of Appendix B.1 Transport Assessment, Rev 3)** to the **ES** at Deadline 5. For example, Paragraph 2.6.1 **Outline Construction Traffic Management Plan (CTMP) (Appendix L of Appendix B.1 Transport Assessment, Rev 3)** to the **ES** at Deadline 5 states:

3.1.6 *“The Principal Contractor would be responsible for ensuring coordination with adjacent development sites to minimise traffic disruption. They would also be responsible for promoting a good working relationship with the immediate neighbours to the REP site and dealing with any complaints arising from the construction of REP and the associated Electrical Connection. Contact details would be provided on information boards adjacent to the work site and the Main Temporary Construction Compounds on Norman Road. The information*

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on the notice board would provide information on the works and contact details for general enquiries and emergencies.”

4 ExA Changes to the Application Question 4

4.1.1 The ExA has requested the Applicant:

“set out any further mitigation measures that it might wish to propose”

Response:

4.1.2 In light of comments received from FoCNR and TWUL in respect of item (2) above, the Applicant proposes the further mitigation measures below, which are over and above those that are required to mitigate the effects of the Proposed Development. These additional measures would further reduce any potential disturbance and any potential impacts during the construction period to Crossness LNR. As such, the following measures have been included in the updated **Outline CoCP (Paragraphs 3.3.12, 4.3.5, 4.4.5, 4.4.6 and 4.5.2) (7.5, Rev 3)** submitted at Deadline 5:

- The use of temporary printed hoarding depicting vegetation and/or trees to be erected around the perimeter of the Data Centre site. This will provide further visual screening by giving the impression of continued vegetative landscape. The solid hoarding will bring the dual benefit to provide further noise reduction and dust control at the boundary to Crossness LNR during construction; and
- Specified temporary noise attenuating barriers would be erected around the perimeter of the Data Centre site closest to Crossness LNR where any noisy works are to be undertaken as part of the Main Temporary Construction Compounds. This will result in further noise reduction at the boundary to Crossness LNR during construction.

Appendix A TWUL s106 Schedule 2

SECOND SCHEDULE

Conservation Land Specification

Crossness Nature Conservation Land: Management Plan Key Issues

Thames Water and the Council agree that the aim of the Management Plan is to conserve and maintain the existing value of the nature conservation land as a grazing marsh land and where reasonably practicable to enhance the existing habitats and nature conservation importance of the nature conservation land. Having regard to this fact, the Management Plan will address the following key issues.

1. WATER LEVELS Research will be undertaken into past and existing water levels. Recommendations will be made in relation to whether water levels can be improved and to the future management of water levels.
2. WATER QUALITY Research will be undertaken into past and existing water quality and recommendations will be made in relation to the potential for improvement of the water quality.
3. GRAZING LEVELS Research will be undertaken into current grazing levels and existing management regimes. Existing tenants will be identified and recommendations made in relation to future management proposals.
4. BREEDING AND WINTERING BIRDS Research will be undertaken into the significance of the site for breeding and wintering birds. Recommendations will be made concerning how any decline in the significance of the site in this respect can be reversed.
5. HABITAT CREATION Recommendations will be made concerning the creation of relevant new habitats.
6. WARDENING Recommendations will be made in relation to appropriate wardening measures for the site.
7. HYDROLOGICAL, INVERTEBRATE AND TOPOGRAPHICAL SURVEYS Relevant survey work in this respect will be undertaken. Elements of the survey work may continue after the production of the Management Plan.
8. ACCESS MANAGEMENT Recommendations concerning the management of access to the nature conservation land will be made.
9. EDUCATION Recommendations concerning how to realise the education potential of the site will be made. These will include reference to hides and a form of interpretation facility.

10. GRANTS Relevant grants will be identified.
11. INVERTEBRATE AND AMPHIBIAN SURVEY WORK Relevant survey work will be undertaken. In the case of the amphibian survey work this will be carried out between March and May 1994. Provision for the results of this survey work will be made in the Management Plan.
12. FENCING Recommendations concerning appropriate fencing of the nature conservation land will be made.
13. SECURITY Recommendations will be made concerning maintaining the security of the nature conservation land.
14. Measures in relation to the control of coarse tall grasses (such as tall oat grass) will be recommended.
15. DYKE MANAGEMENT Recommendations will be made in this respect.
16. FOOTPATHS Recommendations concerning a possible network of footpaths on the nature conservation land will be made.
17. NATURE TRAILS Recommendations in respect of potential for a nature trail or trails will be made.
18. RESTORATION OF GRAZING MARSHES Where appropriate and practical recommendations will be made to restore the value of grazing marshes.
19. FLORA AND FAUNA DIVERSITY Recommendations relating to conserving and enhancing existing flora and fauna diversity will be made.
20. MAINTENANCE FUNDING Recommendations in relation to the funding required for future maintenance of the nature conservation land will be made.
21. CAPITAL FUNDING Recommendations in relation to the funding required for "initial capital works" will be made. Such works to include fencing, security, planting, dyke management, footpaths, hides, a form of interpretation facility and habitat creation.