

# Riverside Energy Park

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## Applicant's response to Thames Water Utilities Limited Deadline 7 Submission

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# 1 Applicant's response to Thames Water Utilities Limited Deadline 7 submission

## 1.1 Introduction

1.1.1 This document provides a response to Thames Water Utilities Limited (TWUL) submission at Deadline 7. For ease of reference, the Applicant has kept the same structure as TWUL's Deadline 7 submission when responding. Therefore, this document includes comments on TWUL's response on the following:

- Draft Development Consent Order (dDCO) and Protective Provisions;
  - Schedule 2, Requirements;
  - Schedule 10 Part 2, Protective Provisions;
- Additional information / submission received by previous deadline;
  - Update on Environment Bank Site Selection Progress;
  - Applicant's Response to Thames Water Deadline 4 Submission (Document 8.02.50) ("the Applicant's Response to TWUL's Deadline 4 Submission");
    - Crossness Access Road;
    - Public Rights of Way FP2 and FP4;
    - Response to TWUL comments on additional information/submission; and
    - Response to comments on document 6.6 Environmental Statement Supplementary Report as requested by the ExA in its Rule 17 letter dated 1st July 2019 ("ES Supplementary Report").

1.1.2 The Applicant's response to the above matters is set out below.

1.1.3 TWUL made an additional submission, accepted into the Examination at the discretion of the Examining Authority, dated 18<sup>th</sup> September 2019. The submission confirmed that the Protective Provisions in the dDCO have now been agreed between the Applicant and TWUL (a copy of the agreed Protective Provisions will be included in the dDCO (3.1, Rev 4) submitted at Deadline 8a). The Applicant welcomes TWUL's confirmation that it is content that sufficient protection is now secured in relation to mitigation measures relating to the Crossness Local Nature Reserve (LNR) and TWUL's statutory apparatus. This agreement is reflected in the Applicant's response to TWUL's Deadline 7 submission below.

## 1.2 Draft Development Consent Order (dDCO) and Protective Provisions

### Schedule 2, Requirements

- 1.2.1 As stated in the **Applicant's response to comments on the draft Development Consent Order (8.02.54, REP5-025)** it is a matter for LBB to determine who it should consult on the adequacy of the strategy, similar to the practice for the discharge of conditions on any planning permission. However, the Applicant has considered the additional consultation requirement inserted by Thames Water Utilities Limited (TWUL) in the updated bespoke protective provisions and is content with the insertion of the provision. This provides that upon submission of the relevant strategy or scheme submitted under Requirements 5 (**Biodiversity and landscape mitigation strategy**), 11 (**Code of construction practice**), 13, (**Construction traffic management plan(s)**), 18 (**Operational lighting strategy**) and 19 (**Control of operational noise**) of the dDCO to LBB, the undertaker must submit the relevant strategy or scheme at the same time to TWUL for information.

### Schedule 10 Part 2, Protective Provisions

- 1.2.2 The Applicant highlights that, as confirmed in the additional submission made by TWUL (dated 18<sup>th</sup> September 2019), the Protective Provisions have been agreed between the Applicant and TWUL. The final agreed version of the Protective Provisions will be included in the revised dDCO (3.1, Rev 4) to be submitted at Deadline 8a.

## 1.3 Additional information / submission received by previous submissions

### Update on Environment Bank Site Selection Progress

- 1.3.1 As stated by TWUL, the Environment Bank, on behalf of the Applicant, has contacted TWUL (and other local landowners) to discuss the biodiversity offsetting opportunities. The Applicant welcomes TWUL's in-principle interest in becoming an offset provider. The Applicant submitted the **Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** at Deadline 7 which includes The Ridgeway (Site 9). This option presents a number of opportunities for habitat creation/enhancement on the site (Site 9) and it is understood that conservation priorities are for the removal of dense scrub habitat to restore areas of grassland. Furthermore, the post-industrial nature of the site lends itself to the potential creation of Open Mosaic Habitat, which is a Habitat of Principal Importance in England and a London Biodiversity Action Plan habitat. Crossness LNR was considered in preparing the **Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)**. As explained in the report, Crossness LNR is not being pursued as a preferred offset location at this stage due to the existing Section 106 (s106) agreement at the site, the uncertainty over the ability to achieve additionality (i.e. the ability to secure net gain above and beyond what is currently on-site and required through the s106 agreement) and the ability to maintain these features over the course of a 25-year management agreement.

- 1.3.2 The Applicant and the Environment Bank are happy to keep this position under review with Thames Water should the ongoing discussions with LBB during the site selection process identify that the investigation of further sites is necessary. However, Ridgeway will continue to be included in the site selection process. The Environment Bank met with Thames Water at the Ridgeway Site on 17 September 2019. The meeting comprised a walkover of the site in LBB to discuss management opportunities and constraints for project delivery if the Ridgeway is considered as a preferred site for the offset strategy. A site survey will be scheduled for early October 2019 to determine the baseline habitats on the site and to calculate the extent of biodiversity unit uplift available.
- 1.3.3 The **Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)** identifies sites or projects which could cumulatively provide up to an estimated area of 114.62 ha, with opportunities for habitat enhancements. This indicates that there is sufficient flexibility to achieve a robust compensation package and biodiversity net gain through the sites identified within the **Environment Bank Site Selection for Biodiversity Offsetting Report (8.02.71, REP7-019)**.
- 1.3.4 The final metric assessment will be provided in the Biodiversity Landscape Mitigation Strategy which is secured through **Requirement 5** of the **dDCO (3.1, Rev 4)** and requires approval of the final BLMS by LBB. The Applicant will develop the BLMS in consultation with LBB and, to this end, met with LBB land, conservation and planning staff on the 9 September 2019 to discuss an approach for confirming the sites for offsetting. The Applicant considers that LBB or the relevant planning authority is the appropriate, sole approving authority for discharging **Requirement 5** of the **dDCO (3.1, Rev 4)** and express reference to consultation with a limited company, TWUL, is not necessary or justified. However, as explained above, the Applicant has agreed within the Protective Provisions for TWUL, that a copy of the BLMS will be sent to TWUL at the same time that it is sent to LBB under **Requirement 5** of the **dDCO (3.1, Rev 4)** for LBB's approval. Additionally, as discussed above, the Applicant is engaging with TWUL to further assess the suitability of sites within TWUL ownership.
- 1.3.5 The biodiversity metric process will address direct effects to habitats arising from the Proposed Development. Further information regarding certainty of offset delivery is provided in the **Applicant's response to ExA's Rule 17 letter on 30 August 2019 (REP7a-004)** and the Applicant's Response to the London Borough of Bexley Deadline 7 Submission (**8.02.80**), and the Applicant's Response to the London Borough of Bexley Deadline 7a Submission (**8.02.84**) submitted at Deadline 8. The proposals, following revision of the Application Boundary at Deadline 2, no longer include any TWUL-owned land within Crossness LNR. All potential effects on Crossness LNR have been shown to be Negligible after mitigation which, for indirect effects, does not rely on the offsetting process and the associated delivery of at least 10% net gain.

- 1.3.6 The Applicant has adopted various measures in the **Outline Biodiversity Landscape Mitigation Strategy (OBLMS) (7.6, Rev 4)**, set out at previous deadlines, to further reduce potential effects to Crossness LNR including, for example, a commitment to avoid activities that may cause disturbance during relevant core nesting seasons for birds found to be present during construction. These measures are delivered through the Biodiversity Landscape Mitigation Strategy which is secured through **Requirement 5** of the **dDCO (3.1, Rev 4)**.
- 1.3.7 The Applicant has also committed, at Deadline 5 **Paragraph 1.3.29** of the **Applicant's response to Thames Water Utilities Limited Deadline 4 Submission (8.02.50, REP5-021)** to explore some of the enhancement measures that TWUL have suggested, at the detailed design stage.
- 1.4 Applicant's Response to Thames Water Deadline 4 Submission (Document 8.02.50) ("the Applicant's Response to TWUL's Deadline 4 Submission")**

#### **Crossness Access Road**

- 1.4.1 The Applicant welcomes the resolution of TWUL's concerns regarding the Crossness Access Road.
- 1.4.2 The Applicant considers that LBB or the relevant planning authority is the appropriate sole approving authority for discharging **Requirements 13** of the **dDCO (3.1, Rev 4)** and express reference to consultation with a private limited company, TWUL, is not necessary or justified, particularly as the Crossness Access Road is not included in the Application Boundary and will not be affected by the Proposed Development. However, as explained above, the Applicant has agreed within the protective provisions for TWUL, that a copy of the CTMP will be sent to TWUL for information at the same that it is sent to LBB under **Requirement 13** of the **dDCO (3.1, Rev 4)** for LBB's approval.

#### **Public Rights of Way FP2 and FP4**

- 1.4.3 The Applicant welcomes the resolution regarding TWUL's concerns regarding the Public Rights of Way FP2 and FP4.
- 1.4.4 In respect of visitor car parking at Crossness Local Nature (LNR), Crossness LNR is well connected to local transport links (trains and buses) and through public footways and footpaths. It is the Applicant's expectation that TWUL, in managing public access to its land, will be focussed on promoting sustainable forms of transport to and from Crossness LNR as part of its own sustainable practices and that there is no basis for the Applicant to facilitate (or fund) a shift to private car visitors (that are not currently afforded dedicated parking) during the temporary period of construction works for REP. The Applicant has set out previously the retention of existing footways and cycleways on Norman Road and is not aware of substantial use of Norman Road for parking by visitors to Crossness LNR. TWUL acknowledges that the use of Norman Road will not affect the ability for occasional visitors to park near the northern

end of Norman Road should they choose to visit by private car. Their access to footpaths and footways will not be materially impeded by the REP construction movements or during operation.

- 1.4.5 In respect of TWUL's comment regarding the increase of traffic on Norman Road, a vehicle bookings management system framework is set out in the **Outline Construction Traffic Management Plan (CTMP) (6.4, Rev 4)** which is secured through **Requirement 13** of the **dDCO (3.1, Rev 4)**, ensuring that stated construction vehicle flows are as anticipated. Furthermore, the Applicant has agreed with the LBB to further restrict the number of vehicle movements to and from the REP site. This will be reflected in the **dDCO (3.1, Rev 4)** to be submitted at Deadline 8a.
- 1.4.6 Overall, the Applicant continues to assert that, as stated at Deadline 5 (**Applicant's response to Thames Water Utilities Limited Deadline 4 Submission (8.02.50, REP5-021)**), visitors to Crossness LNR will not be materially adversely affected either arriving on foot or in terms of private car parking. There are also other opportunities that exist to park and walk to gain access to the reserve and the Applicant does not accept the suggested amendments to **Requirement 13** of the **dDCO (3.1, Rev 4)** or that the **Outline CTMP** should be amended for the same purpose of securing parking facilities.

#### **Response to TWUL comments on additional information/submission**

##### **Environmental Impacts**

- 1.4.7 The Applicant disagrees with TWUL's statement that the Proposed Development will put TWUL in breach of its statutory duties under section 3 of the Water Industry Act 1991 and suggests that it represents a misreading of that legislation. What is key is the nature of the proposal under consideration, and not TWUL's functions. Although TWUL brought the Crossness LNR forward as part of its statutory duties, section 3 of the Water Industry Act 1991 applies to proposals being promoted by TWUL. As TWUL is not promoting the 'proposal', being the Proposed Development, it will not be in breach of its statutory duties. TWUL is under a duty to further the conservation and enhancement of natural beauty and the conservation of flora and fauna and, by considering the Proposed Development and making representations in relation to it, TWUL is acting in accordance with its functions.
- 1.4.8 In respect of the specific environmental points made by TWUL at Paragraphs 3.13.2.1-3.13.2.4, the Applicant responds as follows:
- As previously stated, the Proposed Development (and the proposed Data Centre) are to be located in an existing urban industrial area and TWUL accepted at Deadline 5 (REP5-039) that Crossness LNR provides "*green relief*". Visitors are likely to be focused on undertaking ecologically related activities within the nature reserve itself rather than on the views of surrounding built development.

- At Deadline 7 the Applicant submitted a revised **Anaerobic Digestion Facility Emissions Mitigation Note (8.02.42, REP7-010)**. **Paragraph 3.2.6** within that note states “daily mean NOx critical level of 75 µg/m<sup>3</sup> is not exceeded in Crossness Nature Reserve. In accordance with the criteria set out in **Paragraph 7.5.65 of the ES Chapter 7 Air Quality (6.1, REP2-019)** the impacts are therefore insignificant”. The latest version of accompanying **Figure 7.10** was submitted at Deadline 7 (**REP7-006**). In addition, it has been established that habitats within Crossness LNR adjacent to the Anaerobic Digestion facility are not habitats of high botanical diversity (as acknowledged by TWUL) and are less sensitive to changes from nitrogen deposition. As the NOx annual mean and daily mean critical levels received by Crossness LNR are not exceeded, and habitats adjacent to the Anaerobic Digestion facility are unlikely to be sensitive to NOx, there will be no significant effects to habitats within Crossness LNR from the Anaerobic Digestion facility.
- The Applicant has addressed TWUL concerns previously at Deadline 3 in its **Report on Shading Effects to Crossness Local Nature Reserve (8.02.10, REP3-019)**, during the Issue Specific Hearing on Environmental Matters on 5 June 2019 and within the **Oral summary from the Issue Specific Hearing on Environmental Matters (8.02.19, REP3-027)**. As previously stated, shading from the Main REP Building will be largely limited to the early mornings and there will be no shading during the middle part of the day when the majority of solar radiation is received. It is therefore not considered likely that there will be any significant changes to ditch habitats within the Crossness LNR.
- As stated in the **Applicant's Response to the Examining Authority's Rule 17 letter on Changes to the Application (8.02.61, REP6-003)** at Deadline 6, the construction work is unlikely to affect breeding birds, as the existing birds that breed on Crossness LNR are resilient to an urban environment. Full details of measures to avoid or minimise potential impacts, including to ground nesting breeding birds, will be set out in the **Biodiversity and Landscape Mitigation Plan**, as secured through **Requirement 5 of the dDCO (3.1, Rev 4)**. As stated in the **OBLMS (7.6, Rev 4)** if any nesting birds are identified during the survey, they would be left in situ for their entire nesting period and alternative approaches will be included in the work proposed.

## Visual Impacts

1.4.9 As stated by the Applicant at previous Deadlines (5 and 7), the stepped roof design was chosen following feedback from statutory consultation and consideration of various factors. The stepped roof design reduces the overall height and mass of the buildings. This is considered to be part of the appropriate embedded mitigation which reduces potential visual effects including upon the Crossness LNR.

1.4.10 The Applicant has made the commitment at Deadline 5 (**Applicant's response to Thames Water Utilities Limited Deadline 4 Submission**



(**8.02.50, REP5-021**)) to explore the potential use of green roofs or bio-solar roofs at the detailed design phase. LBB is the determining authority to discharge **Requirement 2** of the **dDCO (3.1, Rev 4)** (as well as other Requirements) which refers to approval of detailed design. The approving authority is the proper body to examine the Applicant's approach to meeting with the Requirements of the DCO in this regard, not TWUL.

1.4.11 The Applicant has not seen any alternative recognised TVIA methodology, submitted by TWUL, which differs from that used by the Applicant. In the absence of such a methodology, the Applicant continues to assert that the potential cumulative effects from REP and the Data Centre would result in a Slight Adverse townscape effect which has a Minor level of significance and is Not Significant. As stated in **Appendix E.1 Townscape and Visual Impact Assessment Methodology** of the **ES (6.3, APP-072)**, a three-stage assessment process has been adopted for the TVIA, in accordance with GLVIA3. Firstly, the nature of receptors (the receptor's sensitivity) which is likely to be affected is assessed. Secondly the nature of effects (magnitude) likely to result from the Proposed Development is assessed. Lastly, the levels of significance of the identified townscape and visual effects on receptors are determined, by combining judgements of sensitivity and magnitude, as required by the European Union Directive 2011/92/EU, and as amended by 2014/52/EU and UK Country Regulations. The TVIA assessor makes those judgements based upon the combinations set out in Table 3.10 of **Appendix E.1 Townscape and Visual Impact Assessment Methodology** of the **ES (6.3, APP-072)**.

1.4.12 The TVIA assessment process has determined that the open space and marshland around Crossness LNR, which is covered by Designated Public Open Space and Landscapes within the TVIA, has an overall Medium receptor sensitivity. Receptor sensitivity is derived from the combination of receptor value and receptor susceptibility as stated in **Appendix E.1 Townscape and Visual Impact Assessment Methodology** of the **ES (6.3, APP-072)**

1.4.13 Based on the assessment methodology for determining cumulative effect, combining receptor sensitivity and magnitude of effect, as set out in **Appendix E.1 Townscape and Visual Impact Assessment Methodology** of the **ES (6.3, APP-072)** the potential cumulative effects from REP and the Data Centre would result in a Minor level of significance and is Not Significant.

### **Visitor Health and Well-being**

1.4.14 Crossness LNR is located in an existing industrial area with characteristics of an urban setting, major roads and industrial buildings. TWUL has accepted and agreed at Deadline 5 (Deadline 5 Submission - Any additional information / submissions received by previous deadline and notification of a wish to speak at and attend the Compulsory Acquisition Hearing (REP5-039)) that the Crossness LNR provides "*green relief*" to an otherwise urban environment. The Applicant does not dispute that there will be some disturbance arising from the Proposed Development, however, these impacts are Not Significant. Mitigation in place during the construction phase of the Proposed

Development, including the **Outline Code of Construction Practice (CoCP) (7.5, Rev 4)** (as secured through **Requirement 11** of the **dDCO (3.1, Rev 4)**) would ensure that there are no significant impacts (apart from some moderate visual effects). The Applicant has agreed within the protective provisions for TWUL, that a copy of the CoCP will be sent to TWUL at the same that it is sent to LBB under **Requirement 11** of the **dDCO (3.1, Rev 4)** for LBB's approval. Whilst TWUL's suggested socio-economic measures are not considered as mitigation, the Applicant is happy to explore these (such as the enhancements to the bird hide within Crossness LNR) at the detailed design stage.

1.4.15 Protective Provisions are discussed in **Section 1.2** above.

### **Other Impacts**

1.4.16 The inclusion of the Data Centre sites for use as part of the Main Temporary Construction Compound has not altered the outcomes to the EIA as reported in the ES, as these land parcels were included in the original DCO Application (Work No. 7 – Works to construct and install from Work No. 6 pipes and cables). Though the type and duration of activities may differ on these land parcels (02/44, 02/43 and 02/48, 02/49) to those originally considered in the EIA, the effects have been found to remain as stated in the ES, as set out in the **Environmental Statement Supplementary Report (6.6, REP2-044)**. The mitigating controls in respect of noise and dust during construction are set out in the **CoCP (7.5, Rev 4)**, submitted at Deadline 8. The Applicant is willing to provide this to TWUL for information at the same time as submission to the approving authority, as agreed via the protective provisions. TWUL has not stated any EIA basis on which noise and dust disturbance could be considered 'considerable' to both wildlife and the public, or what the significance of the effect constitutes in EIA terms.

1.4.17 As stated above, the Applicant considers that LBB as the relevant planning authority is the appropriate sole approving authority for discharging **Requirement 13** of the **dDCO (3.1, REP5-003)** and express reference to consultation with a limited company, TWUL, is not necessary or justified. However, the Applicant has agreed within the protective provisions for TWUL, that a copy of the CoCP will be sent to TWUL at the same that it is sent to LBB under **Requirement 11** of the **dDCO (3.1, Rev 4)** for LBB's approval.

1.4.18 At **Paragraph 1.2.30** of the **Applicant's response to Thames Water Utilities Limited Deadline 4 Submission (8.02.50, REP5-021)**, the Applicant states that avoidance of all construction works in the south and south west of the REP site during the entire bird nesting season (1 March – 31 August) is not necessary. The mitigation suggested by TWUL is not proportionate or required since the conclusion identified in **Chapter 11 Terrestrial Biodiversity** of the **ES (6.1, REP2-023)** is that there are no significant effects. Additionally, the further information provided in response to written representations, demonstrates that potential construction disturbance will not affect the long-term distribution or abundance of the assemblage of breeding birds within the study area or its nature conservation importance.

- 1.4.19 As stated above, the Applicant considers that LBB or the relevant planning authority is the appropriate sole approving authority for discharging **Requirement 5** of the **dDCO (3.1, REP5-003)** and express reference to consultation with a limited company, TWUL, is not necessary or justified. However, the Applicant has agreed within the protective provisions for TWUL to send the final BLMS to TWUL for information at the same time as submitting it to LBB for approval.
- 1.4.20 The Applicant acknowledges that the core bird nesting season for most species of birds is March-August inclusive. However, this is a broad and precautionary period which covers the majority of breeding bird species in the UK. It is welcomed that TWUL recognises that the typical nesting period specifically for *lapwing* is April and May, and in addition the Applicant acknowledges that there are exceptions to this period, as TWUL has stated. Full details of measures to avoid or minimise potential impacts, including details such as timing of works to minimise disturbance to breeding birds, will be set out in the **Biodiversity and Landscape Mitigation Plan**, as secured by **Requirement 5** of the **dDCO (3.1, Rev 4)**.
- 1.4.21 The Applicant acknowledges that lapwing chick mortality from predation does occur. TWUL has specifically mentioned corvids and foxes of being of particular concern. Corvids are opportunistic and have a varied diet feeding upon a range of food sources. Unlike some bird species, corvids are able to perch at a range of heights, including using low bushes, trees and fence posts, of which many are already present in the existing landscape. The Applicant therefore concludes that the addition of REP will not significantly increase the perching opportunities for corvids in the area. Therefore, it is unlikely that the Proposed Development would increase predation of lapwing by foxes and corvids, and no evidence has been provided by TWUL as to how this could occur.
- 1.4.22 The Applicant's position in relation to TWUL consultation on the OBLMS remains as above.

#### **Wildlife Impacts – Barn Owls**

- 1.4.23 The Applicant welcomes the acknowledgement by TWUL of measures which could be incorporated to enhance biodiversity within the REP site. The Applicant will investigate the suggestion of provision of tussocky grassland verges within REP as part of the detailed design process, in accordance with the **Design Principles (7.4, APP-105)**.

#### **Cumulative Impacts**

- 1.4.24 The Applicant acknowledges that, despite not being recorded in the 2018 surveys, both ringed and/or little ringed plover may have previously bred on the Data Centre sites (as demonstrated by TWUL's photographs of nesting ringed plover in 2016). However, the recent absence of either species is likely to be due to the habitats becoming unfavourable for nesting through succession.

- 1.4.25 The TWUL comment on survey timing relates to surveys undertaken for the consented Data Centre site in 2016. The historical presence of little ringed plover and ringed plover was a consideration during the ecological assessment for REP, however their absence during breeding bird surveys undertaken in 2018 (confirmed by TWUL), and the likely unsuitability of the habitats within the Data Centre for these species to breed, mean these species were not a key concern in the EIA.
- 1.4.26 As previously stated, full details of measures to avoid or minimise potential impacts, including to ground nesting breeding birds, will be set out in the **Biodiversity and Landscape Mitigation Plan**, as secured through **Requirement 5** of the **dDCO (3.1, Rev 4)**.
- 1.4.27 Protective Provisions are discussed in **Section 1.2** above.

### **Shading**

- 1.4.28 The Applicant has previously responded to TWUL's concerns on shading, and the potential for this to result in changes to habitats (vegetation structure) and the water vole population, with further 3-dimensional modelling of the shadow cast across Crossness LNR from the Main REP Building, along with a commentary on potential ecological effects to the Crossness LNR with the **Report on Shading effects to Crossness Local Nature Reserve (LNR) (8.02.10, REP3-019)**, submitted at Deadline 3. Paragraph 1.1.13 of this report states:

*“As shading from the Main REP Building will be largely limited to the early mornings, and there will be no shading during the middle part of the day when the majority of solar radiation is received by earth, it is not considered likely that there will be any significant changes to ditch habitats within the Crossness LNR which could affect water voles. The images show that ditches which currently support water voles are subject to some shading in the evening from the existing Thames Water Sewage Sludge Incinerator. This further supports the assessment above that there will not be any significant changes to ditch habitats within the Crossness LNR which could affect water voles”.*

- 1.4.29 TWUL reiterates its suggestions in relation to enhancement of existing water courses to include potential re-profiling, desilting and vegetation management of ditches suggested in paragraph 3.26.4 of TWUL's Deadline 4 submission (REP4-038 and REP4-039) with a view to reducing effects of shading. As set out above, the Applicant reiterates that the shading of the ditches is considered minimal as a result of the Proposed Development and it is considered that such effects would not result in changes to habitats which would affect water voles. In addition, the effects of ditch re-profiling would result in loss of other habitats and impacts on those species associated with Crossness LNR which the Proposed Development has been designed to protect and would appear to be counterproductive to minimising biodiversity effects associated with the Proposed Development.

1.4.30 The Applicant remains of the view that the measures proposed by TWUL do not comprise mitigation and TWUL has agreed that this is the case. They are therefore not necessary or required to make the Proposed Development acceptable in planning terms. Notwithstanding this, the Applicant confirms its intention to explore potential enhancement measures with TWUL when detailed design is undertaken which is the appropriate time to explore such measures to ensure these can be delivered with the final design in harmony with the Proposed Development.

### **National Policy Statement EN-1**

1.4.31 The Applicant's position is clearly set out in **Section 1.3 of its Analysis of Metropolitan Open Land (MOL) in respect of the Proposed Development (8.02.41, REP4-020)**. Pursuant to section 104(3) of the Planning Act 2008, the National Policy Statements ("NPS"), and the tests within them, take precedence in the decision-making process in respect of development consent for a Nationally Significant Infrastructure Project ("NSIPs"). The primary policy contained within NPS EN-1 only affords policy protection to the Green Belt - section 5.10 of NPS EN-1. Accordingly, the primary policy of NPS EN-1, does not provide any policy protection to Metropolitan Open Land ("MOL").

1.4.32 In **Section 1.6 of its Analysis of Metropolitan Open Land (MOL) in respect of the Proposed Development (8.02.41, REP4-020)** the Applicant states that, in terms of indirect effects on the MOL, careful design has been integral to the Applicant's development of REP, having regard to the Crossness LNR, which is within the MOL. The proposed orientation, and stepped building arrangement, takes into account the relationship with the Crossness LNR and allows visual permeability in views from the Belvedere area, located to the south of the Proposed Development, and from Crossness LNR. The Secretary of State can therefore conclude that the requirement for careful design in paragraph 5.9.17 of EN-1 has been met.

1.4.33 In terms of potential visual effects, the maximum impact is reported as moderate adverse. Given the planning designation of the REP site as Strategic Industrial Land, as well as the locational benefits of the REP site and the urgent need for electricity (particularly for that part that is renewable), the benefits of the Proposed Development clearly outweigh the moderate visual effects.

### **Response to comments on document 6.6 Environmental Statement Supplementary Report as requested by the ExA in its Rule 17 letter dated 1st July 2019 ("ES Supplementary Report")**

1.4.34 The Applicant has addressed TWUL's concerns with regards to Crossness Access Road at Deadline 6 (**Applicant's response to the ExA's Rule 17 Letter on Changes to the Application (8.02.61, REP6-003)**) and TWUL has accepted these. The access road will be kept open and vehicle users for Crossness LNR will be able to use this road throughout the duration of the construction phase of the Proposed Development in a safe manner (and thereafter). The **Outline CoCP** secured through **Requirement 11** of the **dDCO**

**(3.1 Rev 4)** mitigates the potential impacts of dust and noise with the provision of noise attenuating screens; damping down of stockpiles; and wheel washing of vehicles (as well as other measure set out in the Outline CoCP). The Applicant has responded to TWUL's request for a visitor car park at **Paragraph 1.4.4** of this document.

1.4.35 In response to the TWUL comment at Paragraph 2.22 of its Deadline 7 submission "*the Crossness LNR will be bounded by the Main Temporary Construction Compound, the works will not be closer than the existing location which also bounds the reserve*", which is stated in **Paragraph 1.4.2 Applicant's response to Thames Water Utilities Limited Deadline 4 Submission (8.02.50, REP5-021)**. This sentence identifies that the boundary of the Main Temporary Construction Compound, which now abuts Crossness LNR, is no closer to the reserve than the same land parcels (known as the Data Centre site) which already abut Crossness LNR when they were intended to be utilised for Work No. 7.

1.4.36 It is fully acknowledged within **Section 11.7 Chapter 11 Terrestrial Biodiversity** of the **ES (6.1, REP2-023)** that both the Data Centre site and the previous location for the Main Temporary Construction Compound, contain habitats and species of ecological value, such as Open Mosaic Habitat on Previously Developed Land, and notable invertebrate species. The similarity between the areas means measures to avoid, mitigate and compensate for potential impacts incurred through use as the Main Temporary Construction Compound are appropriate for both areas, and the use of one over the other does not elevate the significance of any residual impacts.

## **1.5 Conclusion**

1.5.1 In light of the Applicant's responses above, and the lack of any alternative methodology from TWUL where 'significant' or 'considerable' effects are claimed, the Applicant fully and firmly refutes the statement that indirect effects to Crossness LNR are 'significant'.

1.5.2 The Applicant confirms that discussions with TWUL regarding the Protective Provisions have now concluded, and that the provisions are now agreed between the Applicant and TWUL (as confirmed in the additional submission made by TWUL (dated 18<sup>th</sup> September 2019)). The final agreed version of the Protective Provisions will be included in the revised **dDCO (3.1, Rev 4)** to be submitted at Deadline 8a.