



DRAFT DEED OF OBLIGATIONS (B): 9.11

Cory Decarbonisation Project

PINS Reference: EN010128

November 2024

Revision A



QUALITY CONTROL

Document Reference		9.11			
Document Owner		Pinsent Masons			
Revision	Date	Comments	Author	Check	Approver
Rev A	November 2024	Submitted with D1	Pinsent Masons	Cory	Cory

DATED _____ **202[]**

- (1) LONDON BOROUGH OF BEXLEY**
- (2) CORY ENVIRONMENTAL HOLDINGS LIMITED**
- (3) THAMES WATER UTILITIES LIMITED**

**DEED OF OBLIGATIONS AND OTHER
COVENANTS**

**pursuant to Section 111 of the Local
Government Act 1972 and Section 1 of the
Localism Act 2011 and all other powers
enabling relating to the Cory Decarbonisation
Project in the London Borough of Bexley**



Pinsent Masons

DRAFT

CONTENTS

1.	INTERPRETATION	5
2.	LEGAL EFFECT	7
3.	CONDITIONALITY	7
4.	THE DEVELOPER'S OBLIGATIONS	8
5.	THE COUNCIL'S OBLIGATIONS	8
6.	TWUL'S OBLIGATIONS	8
7.	REGISTRATION AS LOCAL LAND CHARGE	8
8.	RELEASE AND ASSIGNMENT	9
9.	FURTHER CONSENTS	9
10.	EXPIRY	9
11.	CERTIFICATES OF COMPLIANCE	9
12.	NOTICES	10
13.	APPROVALS	10
14.	THE COUNCIL'S POWERS	10
15.	GOOD FAITH	10
16.	RIGHTS OF THIRD PARTIES	10
17.	JURISDICTION	10
18.	COUNTERPARTS	11
19.	COSTS	11
20.	DISPUTE RESOLUTION	11
	SCHEDULE 1	13

DEED

relating to

Section 106 of the Town And Country Planning Act 1990 and section 174 of the Planning Act 2008 in relation to the development at Norman Road North, Belvedere, London, DA17 6JY.

THIS DEED is made on [REDACTED]

BETWEEN:

- (1) London Borough of Bexley, whose registered office is at Civic Offices, 2 Watling Street, Bexleyheath, DA6 7AT ("the **Council**");
- (2) Cory Environmental Holdings Limited, whose registered office is at Level 5, 10 Dominion Street, London, EC2M 2EF (company number 05360864) ("the **Developer**"); and
- (3) Thames Water Utilities Limited, whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB (company number 02366661) ("**TWUL**").

BACKGROUND:

- (A) The Council is the local planning authority for the purposes of s106 of the 1990 Act for the area in which the Order land is situated and is the enforcing authority for the purposes of section 106 of the 1990 Act.
- (B) On 21 March 2024 the Developer submitted the Application to the Secretary of State for development consent to construct, operate and decommission the Project. The Application was accepted for examination by the Secretary of State on 18 April 2024.
- (C) It is intended that the Developer will be the undertaker for the purposes of the Development Consent Order and the Developer intends to construct, operate and decommission the Project as authorised by the Development Consent Order.
- (D) TWUL are the owners of the TWUL Crossness LNR Land, which will become part of an extended Crossness Local Nature Reserve created by the Development Consent Order.

IT IS AGREED:

1. INTERPRETATION

In this Deed unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

"1972 Act"	means the Local Government Act 1972;
"2008 Act"	means the Planning Act 2008;
"2011 Act"	means the Localism Act 2011;
"Application"	means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project and submitted to the Secretary of State on 21 March 2024 and given reference number EN010128;
"Authorised Development"	has the same meaning as in Article 2 of the Development Consent Order;
"Commence"	has the same meaning as in Article 2 of the Development Consent Order and the words "Commencement" and "Commenced" and cognate expressions are to be construed accordingly;
"Date of Commencement"	means the date of Commencement of works pursuant to the Development Consent Order;
"Crossness LNR"	means the area currently designated as Crossness Local Nature Reserve and as extended pursuant to the Development Consent Order;
"Crossness LNR TWUL Land"	parts of the Crossness LNR, as extended by the Development Consent Order, which fall within TWUL's ownership, and are outside of the Order land as shown on the Crossness LNR TWUL Land Plan;
"Crossness LNR TWUL Land Plan"	means the plan at Appendix 1 to this Deed;
"Date of Decommissioning"	means the date on which the Developer commences the decommissioning of the Project in accordance with the timetable set out in the Decommissioning Environmental Management Plan approved under requirement 23 of the Development Consent Order;
"Deed"	means this deed made under section 106 of the 1990 Act;

“Development Consent Order”	means the development consent order to be made pursuant to the Application;
“Expert”	means the expert appointed pursuant to Clause 20;
“Notice”	means the written notification given by any Party to the other Parties of their intention to refer to the Expert any dispute arising between the Parties in respect of any matter contained in this Deed, such notice to specify the matters set out in Clause 19;
“Order land”	means the “Order land” as defined in Article 2 and Schedule 1 of, and to be authorised by, the Development Consent Order;
“Parties”	means the Council, the Developer and TWUL and “Party” means any one of them as the context so requires;
“Project”	means the Authorised Development;
“Secretary of State”	means the Secretary of State for Energy Security and Net Zero or such other Secretary of State of Her Majesty’s Government that has the responsibility for determining the Development Consent Order;
“Undertaking”	means the benefit of the Order to construct and/or operate Work No.1 as set out in Schedule 1 to the Development Consent Order; and
“Working Day”	means a day other than a Saturday or Sunday or public holiday in England.

- 1.1 In this Deed, unless stated otherwise:
- 1.1.1 words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
 - 1.1.2 words importing persons include firms, companies, corporations, and vice versa;
 - 1.1.3 references to the Council include the successor(s) to its statutory function as local planning authority;
 - 1.1.4 references to clauses, paragraphs and Schedule are unless otherwise stated references to the relevant clauses and paragraphs of and Schedule 1 to this Deed;

- 1.1.5 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.1.6 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.1.7 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.1.8 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.1.9 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.1.10 references to “notice” shall mean notice in writing;
- 1.1.11 references to “including” shall mean including without limitation;
- 1.1.12 the Interpretation Act 1978 shall apply to this Deed; and
- 1.1.1 the Deed shall be a local land charge in respect of all freehold or leasehold interests the Order land owned by the Developer and for the purposes of the Local Land Charges Act 1975 the authority by whom the obligation is enforceable shall be treated as the originating authority as respects such a charge.

2. **LEGAL EFFECT**

2.1 This Deed is made pursuant to section 111 of the 1972 Act, section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The obligations, covenants and undertakings on the part of the Developer and TWUL in this Deed are, subject to Clause 8, entered into with the intent that they shall be enforceable by the Council against:

2.2.1 the Developer and any transferees or grantees of the benefit of the Undertaking pursuant to the Order and are entered into as obligations, covenants and undertakings in respect of all clauses not listed in clause 2.2.2; and

2.2.2 TWUL in respect of its covenants in Schedule 1 of this Deed;

in pursuance of the powers referred to in clause 2.1 with the intent that they shall be enforceable under contract.

3. **CONDITIONALITY**

3.1 Subject to Clause 3.2, this Deed is conditional upon and will not take effect until both the Development Consent Order has been granted and the Authorised Development has Commenced.

- 3.2 Clauses 1, 2, 3, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20 come into effect on the date of this Deed.
- 3.3 Where the Development Consent Order becomes the subject of any judicial review proceedings under section 118 of the 2008 Act:
- 3.3.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed, will remain without operative effect unless the Project has been commenced; and
- 3.3.2 if following the final determination of such proceedings the Development Consent Order is capable of being commenced, then this Deed will take effect in accordance with its terms.
- 3.4 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used) the following provisions will apply:
- 3.4.1 proceedings by way of judicial review are finally determined:
- (a) when permission to bring a claim for judicial review has been refused and no further application may be made;
 - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
 - (c) when any appeal is finally determined and no further appeal may be made.

4. THE DEVELOPER'S OBLIGATIONS

- 4.1 The Developer covenants with the Council to observe and perform the obligations, undertakings, covenants and agreements in Schedule 1.
- 4.2 The Developer covenants with TWUL to observe and perform the obligations, undertakings, covenants and agreements in Schedule 1.

5. THE COUNCIL'S OBLIGATIONS

- 5.1 The Council covenants with the Developer to observe and perform the covenants and obligations on their part contained in Schedules 1.
- 5.2 The Council covenants with TWUL to observe and perform the covenants and obligations on their part contained in Schedule 1.

6. TWUL'S OBLIGATIONS

- 6.1 TWUL covenants with the Developer to observe and perform the covenants and obligations on their part contained in Schedule 1.
- 6.2 TWUL covenants with the Council to observe and perform the covenants and obligations on their part contained in Schedule 1.

7. REGISTRATION AS LOCAL LAND CHARGE

- 7.1 This Deed shall be registered by the Council as a local land charge in the register of local land charges pursuant to the Local Land Charges Act 1975.

7.2 The Council must remove this Deed from the register of local land charges upon the Date of Decommissioning, unless already removed pursuant to clause 9.1

8. **RELEASE AND ASSIGNMENT**

8.1 No person shall be liable for any breach of the development obligations or other provisions of this Deed after:

8.1.1 in respect of the Developer, it shall have parted with its interest in the Order land or the relevant part thereof, or the Undertaking, under article 9 (consent to transfer the benefit of the Order) of the Development Consent Order; and

8.1.2 in respect of TWUL, it shall have parted with its interest in the TWUL Crossness LNR Land;

but without prejudice to any rights of the Council or either of them in respect of any antecedent breach of those obligations.

8.2 In the event that:

8.2.1 any person other than the Developer is appointed as an “undertaker” (as defined in the Development Consent Order) for the purposes of the Development Consent Order; or

8.2.2 powers of the “undertaker” under the Development Consent Order are devolved or transferred to any other person in connection with the Project;

8.2.3 any person other than the Developer performs any physical works connected with “Work No.1” (as defined in the Development Consent Order);

8.2.4 and the provisions of this Deed are not otherwise made directly enforceable against any such person (the “Transferee”), the Developer will without delay require the Transferee to enter into a deed in favour of the Council that the Transferee shall observe and perform such of the covenants and obligations on the Developer under this Deed as relate to the exercise of the powers which have been transferred as though the Transferee had been an original party to this Deed.

9. **FURTHER CONSENTS**

Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Developer to use or develop any part of the Order land in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order, consent under the Electricity Act 1989 or other statutory authority granted either before or after the date of this Deed, other than the Development Consent Order.

10. **EXPIRY**

If the Development Consent Order expires or is quashed or revoked prior to Commencement then this Deed shall immediately determine and cease to have effect and the Council shall cancel all entries made in their register of local land charges in respect of this Deed.

11. **CERTIFICATES OF COMPLIANCE**

The Council shall upon written request certify compliance with the development consent obligations in this Deed.

12. **NOTICES**

12.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

12.2 Any such notice must be delivered by hand or by pre-paid special delivery post (unless the receiving party agrees to receive the notice electronically) and shall conclusively be deemed to have been received:

12.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

12.2.2 if sent by special delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

12.3 A notice or communication shall be served or given:

12.3.1 on the Developer at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [TBC];

12.3.2 on the Council at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [TBC];

12.3.3 on TWUL at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of [TBC];

13. **APPROVALS**

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

14. **THE COUNCIL'S POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the Council as local planning authority or as highway authority as the case may be.

15. **GOOD FAITH**

The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

16. **RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed

17. **JURISDICTION**

This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

18. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

19. **COSTS**

The Developer shall pay on completion of this Deed the reasonable legal and planning costs of the Council and TWUL incurred in the preparation, negotiation and execution of this Deed.

20. **DISPUTE RESOLUTION**

20.1 In the event of any dispute arising between any of the Parties in respect of any matter contained in this Deed, senior representatives of the Parties to the dispute in question shall meet to try and resolve the dispute within 10 Working Days of the dispute arising.

20.2 In the event of any dispute arising between the Parties not being able to be resolved pursuant to clause 20.1, that dispute may be referred to the Expert by any Party serving the other Party(s) to the dispute in question with a Notice.

20.3 The Notice must specify:

20.3.1 the nature, basis and brief description of the dispute;

20.3.2 the clause of this Deed to which the dispute has arisen; and

20.3.3 the proposed Expert.

20.4 The Expert shall be an independent person possessing expertise relevant to the dispute and in the event that the Parties are unable to agree whom should be appointed as the Expert within twenty (20) Working Days after the date of the Notice then any Party may request:

20.4.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;

20.4.2 if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;

20.4.3 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert; or

20.4.4 in all other cases, the President of the Law Society to nominate the Expert.

20.5 The Expert shall act as an expert and not as an arbitrator and whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares.

- 20.6 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine submitted jointly by the Parties) subject to an express requirement that he reaches his decision and communicates it to the Parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 20.7 The Expert shall be required to give notice to each of the said Parties to the dispute inviting each of them to submit to him within twenty (20) Working Days from the date of his appointment written submissions and supporting material and shall afford to the said Parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 20.8 In the absence of manifest error the Expert's decision shall be binding on the Parties.

DRAFT

SCHEDULE 1

1. DEFINITIONS AND INTERPRETATION

- 1.1 Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

“Crossness LNR Manager” means the manager of Crossness LNR, currently employed by TWUL;

“Crossness LNR TWUL Land Increased Costs” means the increased costs to TWUL of managing the Crossness TWUL Land in a manner that ensures compliance with the Landscape, Biodiversity, Access and Recreation Delivery Strategy, including any increased responsibilities for the Crossness LNR Manager, for the first five years of the Project’s operational lifetime;

“Crossness LNR Endowment” means an endowment payment paid by the Developer for the on-going management and maintenance of the Crossness LNR after the decommissioning of the Project, calculated in accordance with clause 4 of this Schedule; and

“Landscape, Biodiversity, Access and Recreation Delivery Strategy” means the landscape, biodiversity access and recreation delivery strategy approved by the Council pursuant to paragraph 12 of Schedule 2 to the Development Consent Order.

2. CROSSNESS LNR MANAGER

- 2.1 TWUL covenants to the Council and the Developer that it will continue to employ the Crossness LNR Manager for the operational lifetime of the Project, unless otherwise agreed with the Council.
- 2.2 TWUL covenants to the Council and the Developer that it shall manage the Crossness LNR TWUL Land in accordance with the Landscape, Biodiversity, Access and Recreation Delivery Strategy.

3. TWUL COSTS

- 3.1 TWUL covenants to the Council and the Developer that, no later than 30 Working Days following approval of the Landscape, Biodiversity, Access and Recreation Delivery Strategy, it will submit to the Developer for approval its proposals for the value of the Crossness LNR TWUL Land Increased Costs.
- 3.2 The Developer may either approve the value presented to it pursuant to clause 3.1 of this Schedule, or it may refer the value to dispute resolution under clause 20.
- 3.3 Upon the Developer either:
- 3.3.1 having approved the value of the Crossness LNR TWUL Land Increased Costs, or
 - 3.3.2 the dispute resolution process under clause 20 having completed,
- the Developer covenants to TWUL and the Council that it will pay the Crossness LNR TWUL Land Increased Costs to TWUL within 30 Working Days of that approval being given, or dispute resolution process having completed, as appropriate.

4. CALCULATION OF THE CROSSNESS LNR ENDOWMENT

4.1 The Crossness LNR Endowment shall be calculated as following:

$$C = A \times B$$

where:

A = the costs to the Developer of maintaining the Crossness LNR in accordance with the Landscape, Biodiversity, Access and Recreation Delivery Strategy in the 12 month period prior the date of the notice required by clause 5 of this Schedule;

B = the period of remaining years between the date of the notice required by clause 5 of this Schedule and December 31 2093; and

C = the Crossness LNR Endowment.

5. PAYMENT OF THE CROSSNESS LNR ENDOWMENT

5.1 The Developer covenants to the Council to notify the Council:

5.1.1 that decommissioning works for the Project have completed no less than 30 Working Days after those works have completed; and

5.1.2 in the same notice, set out its proposed value of the Crossness LNR Endowment following applying the calculation in clause 4 of this Schedule, including presenting the information it has used to calculate 'A' in that calculation.

5.2 The Developer covenants to the Council to pay the Crossness LNR Endowment within 30 Working Days of serving the notice under clause 5.1 of this Schedule.

5.3 The Council covenants to the Developer to only use the Crossness LNR Endowment for purposes related to the on-going management of Crossness LNR and no other purposes but shall have absolute discretion in how the monies are spent for those purposes.

IN WITNESS whereof the parties hereto have executed this agreement as a deed on the date and year first before written

EXECUTED AS A DEED (but not delivered until dated) [] LONDON BOROUGH OF BEXLEY in the presence of:	
	Authorised signatory
EXECUTED AS A DEED BY CORY ENVIRONMENTAL HOLDINGS LIMITED (but not delivered until dated) in the presence of:	
	Authorised signatory
EXECUTED AS A DEED BY THAMES WATER UTILITIES LIMITED	
	Authorised signatory

APPENDIX 1 CROSSNESS LNR TWUL LAND PLAN

DRAFT



DECARBONISATION

10 Dominion Street
Floor 5
Moorgate, London
EC2M 2EF
Contact Tel: 020 7417 5200
Email: enquiries@corygroup.co.uk
corygroup.co.uk