

**Thames Water Utilities Limited
Cory Decarbonisation Project
Written Representation**

1. Introduction

- 1.1 On 14 June 2024 Thames Water Utilities Limited (**TWUL**) submitted a relevant representation (**RR**) in relation to the application for development consent (**Application**) for the Cory Decarbonisation Project (**Project**) made by Cory Environmental Holdings Limited (**Applicant**).
- 1.2 This written representation is provided on behalf of TWUL by its advisors and is an update as to TWUL's position on the issues raised in the RR, and also sets out TWUL's additional concerns with the proposed Project, following further assessment of the Application documents, the Applicant's responses to date and attendance at the initial examination hearings held between 5 and 7 November 2024.
- 1.3 For ease of reference, the issues raised in the RR were:
- 1.3.1 the use of and impacts of the Project on the Crossness Local Nature Reserve (**LNR**), and the Applicant's approach to site selection;
 - 1.3.2 the effect on TWUL's ability to comply with the existing section 106 agreement dated 21 July 1994 (**1994 Agreement**);
 - 1.3.3 the proposed compulsory acquisition of TWUL-owned land;
 - 1.3.4 the impacts on the existing Crossness Sewage Treatment Works (**STW**) emergency access/egress; and
 - 1.3.5 the impacts of the Project on TWUL's existing network and apparatus.
- 1.4 TWUL's primary concern with the Project remains that, as proposed, it requires the total loss of part of the LNR, which TWUL considers is unnecessary and contrary to national and local policy. Further, the ecological and amenity impacts on the part of the LNR not lost to the Project: (a) are unacceptable; and (b) have not been adequately assessed by the Applicant and are understated as a result.
- 1.5 As such, unless the Applicant relocates the Project to a site which does not involve the loss of part of the LNR (and TWUL considers there to be a number of viable alternatives in this regard, which have been prematurely discounted by the Applicant), TWUL will continue to object to the Project. However, it should be noted that TWUL reserves the right to make further representations as the examination and negotiations with the Applicant progress.

2. Crossness Local Nature Reserve & Site Selection

Relevant Policy and Legislation

- 2.1 The Crossness LNR benefits from a number of policy designations, being:
- 2.1.1 Metropolitan Open Land ("MOL"), to which Policy G3 of The London Plan 2021 applies;
 - 2.1.2 a local nature reserve, established pursuant to section 21 of the National Parks and Access to the Countryside Act 1949;
 - 2.1.3 part of the Erith Marshes, being a site of importance for nature conservation ('SINC') (metropolitan grade), to which Policy G6 of The London Plan 2021 and Policy SP9 of the Bexley Local Plan 2023 apply (in addition to a number of further local policy documents); and

- 2.1.4 open space and green infrastructure, to which Policies G1 and G4 of The London Plan 2021 apply and Policy SP8 of the Bexley Local Plan 2023 applies.
- 2.2 Policy G3 of The London Plan 2021 provides that MOL *"is afforded the same status and level of protection as Green Belt"* and that it *"should be protected from inappropriate development in accordance with national planning policy tests that apply to the Green Belt"*.
- 2.3 Policy G4 of The London Plan 2021 sets out that *"Development proposals should...not result in the loss of protected open space"*.
- 2.4 Policy SP8 of the Bexley Local Plan 2023 sets out: *"The Council's commitments to creating a multifunctional network 1. Bexley's green infrastructure, including open spaces and waterways will be protected, enhanced, restored and promoted as valuable resources to provide a healthy integrated network for the benefit of nature, people and the economy. Future development must support the delivery of a high-quality, well-connected and sustainable network of open spaces. In particular, this will be achieved by: a. protecting Metropolitan Green Belt and Metropolitan Open Land from inappropriate development"*. Paragraph 5.56 sets out that: *"The primary function of Metropolitan Green Belt is to serve as a break between settlements. Metropolitan Open Land functions similarly, but as a break within a built-up area rather than at the edge. Both of these land use designations are strongly protected from development by the London Plan and NPPF."*
- 2.5 Policy SP9 of the Bexley Local Plan 2023 provides that the Council's policy aims include the protection and conservation of SINC's and local nature reserves in line with national policy. Policy G6 of The London Plan 2024 specifies that SINC's *"should be protected"* and further requires that:
- "Where harm to a SINC is unavoidable, and where the benefits of the development proposal clearly outweigh the impacts on biodiversity, the following mitigation hierarchy should be applied to minimise development impacts:*
- 1) avoid damaging the significant ecological features of the site*
 - 2) minimise the overall spatial impact and mitigate it by improving the quality or management of the rest of the site*
 - 3) deliver off-site compensation of better biodiversity value"*.
- 2.6 The National Planning Policy Framework (December 2023) (**NPPF**) also provides that:
- "152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*
- 153. 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 considerations"*
- 2.7 Section 104(2) of the Planning Act 2008 (**2008 Act**) requires the Secretary of State (**SoS**), in deciding the Application, to have regard to (inter alia) any relevant national policy statement (**NPS**), any local impact report submitted by the local planning authority and any other matters which the SoS thinks are both important and relevant. Section 104(3) requires the Application to be decided in accordance with any relevant NPS, except to the extent that one or more of subsections (4) to (8) apply which includes, at subsection (7), that the SoS is satisfied that the adverse impact of the Project would outweigh its benefits.
- 2.8 NPS EN-1 (**the NPS**) applies to the Application for the purposes of section 104 of the 2008 Act. The NPS reiterates NPPF and local policy in respect of Green Belt (and thus MOL), including:

- 2.8.1 “5.11.20 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. **Such development should not be approved except in very special circumstances**”;
- 2.8.2 “5.11.36 When located in the Green Belt, energy infrastructure projects may comprise ‘inappropriate development’. Inappropriate development is by definition harmful to the Green Belt. The NPPF makes clear that most new building is inappropriate in Green Belt and **should be refused permission unless in very special circumstances**”; and
- 2.8.3 “5.11.37 Very special circumstances are not defined in national planning policy as it is for the individual decision maker to assess each case on its merits and give relevant circumstances their due weight. However, when considering any planning application affecting Green Belt land, **the Secretary of State should ensure that substantial weight is given to any harm to the Green Belt** when considering any application for such development, while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation. Very special circumstances may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources” (emphasis added).

2.9 In relation to open space¹, the NPS further provides:

“5.11.32 The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements or the Secretary of State determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities”.

Critical National Priority Presumption

2.10 With regards Green Belt and very special circumstances, the sections of the NPS relating to critical national priority (**CNP**) infrastructure need to be considered. Section 3.3.62 of the NPS specifies that: “Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure”. Section 3.5.8 confirms that: “CCS technologies, pipelines and storage infrastructure are considered to be CNP infrastructure”. As a carbon capture facility, the Project falls within the category of CNP infrastructure, for the purposes of the EN-1.

2.11 That being the case, the Applicant places considerable weight² on sections 4.2.16 and 4.2.17 of the NPS, which state:

“4.2.16 As a result, the Secretary of State will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances.

4.2.17 This means that the Secretary of State will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests...where development within a Green Belt requires very special circumstances to justify development”

¹ Footnote 246 of NPS EN-1 states that “open space should be taken to mean all open spaces of public value...”. See further analysis at paragraph 2.41 onwards below.

² See sections 3.2.15 – 3.2.17 of the Applicant’s Planning Statement (Examination Library reference APP-040)

- 2.12 However, this must be read in conjunction with sections 4.2.10 to 4.2.14, which state (inter alia):
- 2.12.1 *"4.2.10 Applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS,...applying the mitigation hierarchy, as well as any other legal and regulatory requirements"*
 - 2.12.2 *"4.2.11 Applicants must apply the mitigation hierarchy and demonstrate that it has been applied..."*
 - 2.12.3 *"4.2.14 The Secretary of State will continue to consider the impacts and benefits of all CNP Infrastructure applications on a case-by-case basis. The Secretary of State must be satisfied that the applicant's assessment demonstrates that the requirements set out above have been met. Where the Secretary of State is satisfied that they have been met, the CNP presumptions set out below apply".*
- 2.13 As such, section 3.2.17 of the Applicant's Planning Statement (APP-040) is not correct where it states: *"As a starting point therefore, the CNP infrastructure status of the Proposed Development means that this test can be assumed to be made out"*. The 'real' starting point for decision-making in relation to CNP Infrastructure is an assessment of whether the Application satisfies section 4.2.10; then – and only then – can the CNP presumptions be applied. It is TWUL's position that the Application does not satisfy section 4.2.10 of the NPS, in that the mitigation hierarchy has not been correctly applied – in particular, that it is possible to avoid the loss of any part of the LNR entirely without compromising the Project's objectives by relocating the Project to an alternative site.

Site Alternatives

- 2.14 In determining the Application, the NPS specifies, at section 4.3.22, that the SoS is to be guided by the following principles when deciding the weight to be given to alternatives:
- 2.14.1 the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner; and
 - 2.14.2 only alternatives that can meet the objectives of the proposed development need to be considered.
- 2.15 The Project's objectives are set out at section 2.2.26 of the Applicant's Terrestrial Site Alternatives Report (**TSAR**) (document reference APP-125) as follows:
- 2.15.1 located in the vicinity of the Riverside Campus and the River Thames, for efficient connection to EfW facilities and the Proposed Jetty;
 - 2.15.2 of sufficient size to accommodate the Carbon Capture Facility, including its Supporting Plant and Associated Infrastructure in order to capture and process the carbon created by both Riverside 1 and Riverside 2; and
 - 2.15.3 deliverable in a timely manner.
- 2.16 At Issue Specific Hearing 1 (**ISH1**), it was confirmed by the Applicant that there was no technical limit as to the length of flue gas ductwork required to connect the existing energy from waste facilities to the Project. There is land within the vicinity of the Riverside Campus which has been allocated as employment development for a number of years and which is not part of the Erith Marshes SINC and nor is it MOL, being Veridion Park, situated between Eastern Way and Yarnton Way. TWUL considers that the protection of MOL, SINC and open space land should take precedence over any cost implications.
- 2.17 Given that this location would overcome a number of the policy constraints, is within the vicinity of the existing EfW facilities, appears to be of sufficient size when compared to the Applicant's preferred site, and no evidence has been presented by the Applicant that use of the Veridion Park site would mean the Project would not be deliverable in a timely manner,

TWUL considers that this site is an appropriate and proportionate alternative, and should have been considered as part of the Applicant's site selection process.

- 2.18 Further, considerable time was spent at ISH1 discussing the potential for the Project to be located in the "East Zone", as detailed in the TSAR. Having reviewed the Applicant's responses to relevant representations (AS-043) and heard the Applicant's submissions at ISH1, it remains TWUL's position that the East Zone has been ruled out prematurely and without full assessment. This is supported by the Applicant's concession at ISH1 that its assessment of the economic impact of the Project being located in the East Zone was undertaken at a very high level only and, following questions from the Examining Authority, its commitment to provide additional information and analysis relating to the East Zone assessment (although TWUL considers that relevant information and analysis should already have been provided and undertaken).
- 2.19 The Applicant also confirmed at ISH1 that it would not be technically difficult to connect the flue gas ductwork from the existing EfW facilities to the East Zone, but that this would have an adverse impact on Footpath 4, which would either require stopping up or would be "*substantially disadvantaged*" due to the equipment that would be required to cross the footpath. It is difficult to reconcile the Applicant's stated concern about impacts on Footpath 4 and the powers sought in relation to Footpath 4 under article 14 and Schedule 7 of the draft development consent order (and the requirement to provide an alternative route to pedestrians in certain circumstances in any event). Notwithstanding that, TWUL considers that impacts to a footpath (which may, at worst, relate to visual amenity) cannot be compared to the adverse impact which would result from the permanent loss of MOL, open space and SINC land.
- 2.20 As such, it is TWUL's view that the real reason for the Applicant ruling out the East Zone is because it assumed it would cost too much to relocate and/or acquire the existing businesses. However, reaching this conclusion is the result of insufficient analysis and is therefore unreliable. The Applicant has, by its own admission, not undertaken a full assessment of the economic implications of locating the Project in the East Zone. This failure to adequately assess the site options in the East Zone was vividly demonstrated by the confirmation during Compulsory Acquisition Hearing 1 (**CAH1**) that one of the businesses in the East Zone was a willing seller and another had marketed the freehold of its site at an early stage of the Project proposals being finalised.
- 2.21 The Applicant should have been aware of this and should have incorporated such significant information into its analysis; had it done so, TWUL considers that the East Zone could not reasonably have been discounted by the Applicant as a viable location for the Project. In TWUL's view, the East Zone remains a viable option which would both meet the Project's objectives and avoid the loss of MOL, SINC and open space. The lack of thorough assessment of the East Zone is a clear defect in the Applicant's optioneering process.
- 2.22 A further defect in the Applicant's assessment of site alternatives was identified during ISH1. As set out in the Environmental Statement, the Applicant's preliminary feasibility studies concluded that the site area required for the Project was estimated to be around 4 hectares. However, this increased to 7 hectares in the PEIR and later to 8 hectares³. At ISH1, it was confirmed that the area of land required for the Project's 'compressed layout', as shown on the Alternative Layouts plan⁴, was measured to be around 5.5 hectares, and the expanded layout 7.4 hectares. As submitted on behalf of Landsul Limited and Munster Joinery (UK) Limited, if the actual land requirement for the Project is less than the original 8 hectares, then the alternatives process might need to be revisited: if the land requirement has reduced, this indicates that the conclusion in the site selection report in the TSAR is not right; it should have been revisited when the actual land requirement was established. This further demonstrates incorrect application of the mitigation hierarchy.

³ Paragraphs 2.4.1, 2.6.2 and 2.6.5 of the TSAR (APP-125)

⁴ Figure 3.3 – ES – Figures – Part 1 (APP-072) (superseded by AS-021)

- 2.23 For these reasons, TWUL considers that the Applicant has not applied the mitigation hierarchy and therefore the CNP presumptions at sections 4.2.16 and 4.2.17 of the NPS should not be applied to the Project.

Very Special Circumstances

- 2.24 Without the very special circumstances test being presumed met as a starting point, the Application must be assessed from the perspective that it is inappropriate development on MOL⁵ and, in accordance with section 5.11.36 of the NPS, should be refused unless very special circumstances apply. Whilst the Applicant contends that very special circumstances do apply, even if the CNP presumption does not apply (section 5.5 of the Planning Statement), TWUL does not agree, for the following reasons:

- 2.24.1 Section 5.5.5 of the Planning Statement sets out that the Project will make a significant contribution to the global priority to address climate change by capturing carbon dioxide for permanent storage. However, the majority of the carbon savings appear to relate to the CO₂ emissions produced by the Riverside Energy Park scheme and the Project is therefore doing little more than offsetting the adverse impact on climate change caused by the existing EfW facilities. In any event, to claim the Project will make a "significant contribution" to addressing global climate change is a significant exaggeration;
- 2.24.2 Section 5.5.12 of the Planning Statement claims that '*future proofing sustainable waste management*' is a very special circumstance. It is not understood why this constitutes a very special circumstance and further clarification is required. No policy support is given in this section as to why waste management needs future proofing and even if it did it is not clear why the Project would contribute towards this as it is not in itself waste management plant. Moreover, the Applicant has not given any sound justification or provided any technical evidence as to why the Project cannot be located further away from the existing waste plants on non MOL/LNR land. Also, it has not been robustly demonstrated that the proposed Project is the most sustainable way to deal with the carbon especially in the longer term – section 5.5.12 is essentially subjective assertion;
- 2.24.3 Section 5.5.18 of the Planning Statement claims that the '*riverside location*' is a very special circumstance, on the basis that the Project can also use shipping vessels to export the LCO₂ to its final storage location. It is accepted that the Applicant's existing waste plants are located next to the river; however, the Project, as proposed, does not actually allow for direct access to the river: LCO₂ would seemingly still need to be transported from the carbon capture plant to shipping vessels, presumably by vehicle. This would not be the case (or the transport distance would be less) if the Project were located on the East Zone. If the LCO₂ is returned directly from the carbon capture facility itself to the existing EfW facilities for collection (i.e. instead of needing to be manually transported to the jetty), then it does not matter where the Project is situated. In either case, TWUL does not consider a '*riverside location*' to be a very special circumstance;
- 2.24.4 Section 5.5.23 of the Planning Statement sets out '*sustainable infrastructure delivered through coherent design*' as a very special circumstance. However, there is nothing particularly exceptional about the design. By analogy, paragraph 84 of the NPPF provides an exception to the restriction on building isolated homes in the countryside where the design is of "*exceptional quality, in that it...is truly outstanding, reflecting the highest standards in architecture*". TWUL considers that for design to be a very special circumstance justifying building on Green Belt/MOL, a similar standard would need to apply, which is not the case with the Project. Further, the design of the Project means that 30% of it is situated within MOL, which is not a "very small part" as suggested by the Applicant at section 3.4.42 of its Planning Statement. Further, the part of the Project which is not to be constructed on MOL is nevertheless located adjacent

⁵ Paragraph 154 NPPF

to the LNR/MOL and will still have a detrimental impact on ecology and on the visitor experience due to visual impacts. TWUL considers that the proposed loss of MOL will have a disproportionate impact on the remaining Crossness Nature Reserve.

- 2.25 In TWUL's view, the very special circumstances test is not met, on the basis that the CNP presumption does not apply and the list of circumstances proposed by the Applicant do not reach the 'very special' threshold. As such, the Application should be assessed in accordance with section 5.11 of the NPS, i.e. the Secretary of State should give substantial weight to the harm to the MOL and should refuse the Application.

Green Belt/MOL Harm

- 2.26 Section 5.4.16 of the Applicant's Planning Statement sets out: "*The Proposed Scheme will result in the net loss of 2.5ha of MOL (Stable and East Paddock) and a maximum area of 1ha of compromised MOL (within Sea Wall Field and West Paddock).*" Section 5.4.17 goes on to state: "*However, this loss is minimised, openness is maintained through the retention of remaining open land and urban sprawl is prevented. Further, there is no impact on the Accessible Open Land within the MOL*".
- 2.27 TWUL disagrees that the impact on MOL is minimised through the retention of remaining open land, as a total of 3.5 hectares will be lost/impacted in a key location between existing built development. It is also not relevant that the impacted land is non accessible as that is not a requirement of development in Green Belt policy (and see below regarding the designation of 'accessible' and 'non-accessible' open land).
- 2.28 It is considered that the proposed Project will have a significant adverse impact on the openness of the MOL at Crossness Nature Reserve and this was accepted in the Applicant's PEIR, which confirms that the impact on MOL to be permanently lost is considered to be: Moderate Adverse (significant).
- 2.29 Chapter 8 of the Bexley Green Infrastructure Study identifies the part of the MOL proposed for the Project as having 'Strong Openness', characterised as 'wholly open MOL free from buildings and structures that compromise openness' (Chapter 3, Table 3.1). This part is also described as being 'flat and open with views towards commercial development along the Thames.' (Chapter 8, Table 8.1).
- 2.30 TWUL does not agree with the Applicant where they suggest that the Project will maintain the existing '*break within the built up area*'⁶ which contributes to the physical structure of this part of London (see paragraph 3.48 of the Bexley Green Infrastructure Study), as there will be a significantly reduced open space between the proposed Project's built form and the Crossness STW, contrary to the Applicant's assessment at section 5.4.3 of its Planning Statement.
- 2.31 Section 5.3.17 of the Applicant's Planning Statement claims that only the first purpose of Green Belts set out at paragraph 143 of the NPPF applies to the MOL required for the Project. TWUL does not agree with this assertion, as the following 3 purposes are also directly relevant:
- 2.31.1 *to prevent neighbouring towns merging into one another:* The MOL in question is part of the important open space/gap in between the urban areas of Thamesmead and Erith. The proposed development would reduce the size of the gap between Thamesmead and Erith and therefore would contribute towards towns/urban areas merging contrary to NPPF paragraph 143(b);
- 2.31.2 *to assist in safeguarding the countryside from encroachment;* the MOL land in question is currently undeveloped and is an important remnant of grazing marsh habitat. Therefore, the Project would encroach into countryside contrary to NPPF paragraph 143(c); and

⁶ Section 5.4.2 of the Planning Statement (APP-040)

- 2.31.3 *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.* The LNR is currently undeveloped and does contribute towards encouraging the recycling of other urban land. As has been discussed above, it is considered that other industrial sites should be considered in preference to MOL/LNR land and have been prematurely ruled out by the Applicant. The Project as proposed is therefore contrary to NPPF paragraph 143(e).
- 2.32 The only paragraph 143 purpose TWUL accepts is not engaged by the Project is (d): *to preserve the setting and special character of historic towns.* All other Green Belt purposes are directly engaged and should be considered accordingly.

Ecological Impacts

- 2.33 If the direct loss of LNR land/MOL is not deemed sufficiently harmful in itself (a position which TWUL does not accept), then TWUL considers that the adverse ecological impacts provide further weight against the grant of the Application. Firstly TWUL remains of the view that the survey methodologies used by the Applicant to inform its Environmental Statement were not in accordance with best practice in many respects, notwithstanding the Applicant's responses to relevant representations.
- 2.34 With regards to reptile surveys, these occurred at the very end of the survey period for a period of just two weeks (September 13, 15, 19, 22, 26, 29 2023 and refugia collected in on October 3 2023)⁷. The recognised survey season runs from March to October when temperatures are between 8 and 18 degrees centigrade. Although late August to late September can be useful for capturing juveniles, according to *Froglife*⁸, March captures animals emerging from hibernation, with peak months for adults being in April and May. Amphibian and Reptile Conservation's (ARC) National Reptile Survey Protocol⁹ states that sampling should be split between two sampling periods incorporating six visits in March to June, and mid-August to mid-October. Further ARC guidance recommends that the survey be split with four visits in the first sampling period (1st March to 30th June) and two in the second (15th August to 31st October). They suggest that as a general guide, surveyors should allow for an interval of at least five days between visits.
- 2.35 Reptile surveys did not occur in the key areas that would be lost to the Project. As stated in 2.4.2 of ES Appendix 7-7: Reptile Survey Report, the East Paddock was not surveyed due to the presence of horses and the Stable Paddocks were not surveyed. TWUL maintain that the East Paddock should have been surveyed for reptiles. This provides good reptile habitat and, being located immediately west of the development footprint, will suffer the impacts of shading, particularly in the mornings when reptiles require warm basking spots to regulate their temperature.
- 2.36 With the Project intending to utilise the whole of the Crossness LNR, TWUL remain concerned that no baseline ecological surveys were undertaken across the LNR. Only 1 static bat detector was located across the 25ha reserve¹⁰, the location of which would have skewed the data by its close proximity to the construction of Riverside 2 and subsequent light pollution. No reptile surveys took place on TWUL land¹¹. A review of the breeding bird survey appears to indicate that Lagoon Field and Island Field were not surveyed¹², even though the Applicant appears to be identifying Lagoon Field as a potential receptor site for the relocated stable block, Public Footpath 2 (Fig 9 of the LaBARDS), and the relocated STW emergency access/egress road, (as presented verbally during a site visit with TWUL's tenant graziers and Crossness Nature Reserve Manager on 14th May 2024). Similarly, Island Field and Island Field Lagoons did not form part of the Wintering Bird Survey¹³ (as demonstrated

⁷ See section 2.3.2 of ES Appendix 7-7: Reptile Survey Report (APP-094)

⁸ Surveying for Reptiles, Froglife, 2015 ([Reptile-survey-booklet-3mm-bleed.pdf](#))

⁹ National Reptile Survey Protocol v2012.2, ARC, ([National Reptile Survey - Protocol v2021.2.pdf](#))

¹⁰ See Fig. 7-8 on page 37 of ES – Figures – Part 1 (APP-072) ('Location 1')

¹¹ See Fig. 7-17 on page 46 of ES – Figures – Part 1 (APP-072)

¹² See Figs. 7-9 – 7-15 of ES – Figures – Part 1 (APP-072)

¹³ See Fig. 7-25 on page 54 of ES – Figures – Part 1 (APP-072)

by the lack of survey results shown in Fig 7-27 – Overall Distribution of Waterbirds – Figures – Part 1) despite those parcels of land being identified as part of the Project’s ‘Mitigation and Enhancement Area’.

- 2.37 No part of the LNR received a botanical survey except East Paddock and Stable Paddocks,¹⁴ which was inadequately carried out from the roadside with binoculars¹⁵, thereby missing notable species such as the large stand of Strawberry Clover (*Trifolium fragiferum*) listed as Vulnerable to Extinction in the 2020 Plant Atlas¹⁶, the Pink Water-speedwell (*Veronica catenata*), and Borrer’s Saltmarsh-grass (*Puccinellia fasciculata*)¹⁷ all of which are indicative of Thames Grazing Marsh habitat, the latter being included in the list of habitats and species of principal importance in England (**Habitats and Species List**), pursuant to section 41 of the Natural Environment and Rural Communities Act 2006 (**NERC**). The Applicant also missed the presence of narrow-leaved bird’s-foot Trefoil (*Lotus tenuis*), which is listed as Vulnerable to Extinction in this region.
- 2.38 In relation to NERC, it is important to note that section 4.2.10 of the NPS makes clear that applicants for CNP infrastructure must show how their application meets not only the requirements in the NPS but any other legal requirements. So far as legal requirements are concerned, footnote 99 of the NPS states that: “*The Secretary of State will continue to comply with any legislative requirements, such as...section 40 of the [NERC]*”. Section 40 of NERC requires public authorities to “*consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.*” Sections 40(4)(a) and (c) of NERC confirm that ‘public body’ includes a Minister of the Crown and a government department and so the Secretary of State is a public body for the purposes of NERC. As such, the Secretary of State has a legal duty to further the general biodiversity objective, which is of significant importance in the Secretary of State’s determination of the Application.
- 2.39 As per Government guidance on habitats and species of principal importance in England¹⁸, the Habitats and Species List “*is for...public bodies – to help them meet their ‘biodiversity duty’ to be aware of biodiversity conservation in their policy and decision making*”. Given there is a species listed on the Habitats and Species List present on the part of the LNR on which part of the Project is to be constructed, which the Applicant has failed to identify and has not assessed in its ES, the Application fails to meet a legal requirement that is considered to be of such importance as to be explicitly noted in the NPS and is not in accordance with the NPS in this respect. The Secretary of State therefore needs to be satisfied that granting the Application would be consistent with its duty to further general biodiversity objective. Without the impact of the loss of the protected species being assessed in the ES, TWUL’s view is that the SoS cannot be so satisfied.

Open Space

- 2.40 The NPS also directs the Secretary of State not to grant consent for development on existing open space unless:
- 2.40.1 an assessment has been undertaken either by the local authority or independently which has shown the open space to be surplus to requirements;
or
- 2.40.2 the Secretary of State determines that the benefits of the Project outweigh the potential loss of open space, taking into account proposals to provide new, improved or compensatory land

¹⁴ See Fig. 7-16 on page 45 of ES – Figures – Part 1 (APP-072)

¹⁵ See section 2.4.3 of ES Appendix 7-6 Botanical Survey Report (APP-093)

¹⁶ See: [REDACTED]

¹⁷ See: [REDACTED]

¹⁸ <https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england>

(see section 5.11.32 of the NPS, set out at paragraph 2.9 above).

- 2.41 Firstly, the NPS applies very wide scope as to what the term 'open space' should be taken to mean for the purposes of applying the policy, namely: "*all open space of public value, including not just land, but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.*"
- 2.42 As such, for the purposes of the NPS, all open space of public value should be treated equally when assessing the harm due to loss caused by the Project. However, the Applicant does not do this; rather, it introduces its own categories of 'Accessible' and 'Non-Accessible' Open Land, with the latter essentially being disregarded for the purposes of assessing harm. For example, section 6.4.1 of the Planning Statement (under the 'Policy Analysis' heading) states that: "*Crucially, however, there will be no loss of Accessible Open Land resulting from the Proposed Scheme, i.e. land that is actually used as open space*".
- 2.43 For the purposes of the NPS, it is just as crucial that there is loss of 'non-accessible' open space. Further, the 'non accessible' open space is 'actually used as open space' for the purposes of the NPS, in that its 'use' is to provide essential visual amenity. However, harm is not assessed on this basis by the Applicant and it is as though the loss of 'non-accessible' open space does not matter. All parts of the LNR constitute open space for the purposes of the NPS – it all has public value and it all provides essential amenity in various ways.
- 2.44 Secondly, it was noted at CAH1 that the Applicant suggested that the western extent of the LNR (i.e. the area more commonly known as the 'protected' or 'member's' area) was not to be regarded as open space, as it is not accessible to the public and is not laid out for the purposes of recreation. This is not correct: whilst there is controlled access, anybody can become a member and it is entirely laid out for the purposes of recreation – it contains a bird hide, public toilets, an education pond, a 'mini-beast' area and boardwalks through reedbeds.
- 2.45 As such, there is clearly greater harm to open space than the Application purports. There should be no categorisation of 'Accessible' and 'Non-Accessible' open space: they both constitute open space for the purposes of the NPS which have not been assessed as being surplus to requirements by the local authority or independently. As such, it is important that this is recognised by the Secretary of State in determining whether the benefits of the Project outweigh the loss of open space.
- 2.46 As to taking into account proposals to provide 'new, improved or compensatory land', the Applicant places considerable weight on what it misleadingly calls the 'extended' local nature reserve.¹⁹ This is misleading in the sense that: (a) the 'extension' (the Norman Road Field) is already subject to section 106 obligations relating to ecology and nature conservation; and (b) there is an overall net loss of open space.

Norman Road Field S106 Agreement

- 2.47 Clause 24 of the section 106 agreement between The Mayor and Burgesses of the London Borough of Bexley ("Council") (1); Tilfen Land Limited ("Developer") (2); and Gallions Housing Association Limited (3) dated 24 January 2005 (**2005 Agreement**) provides as follows:

"24. ECOLOGICAL MASTER PLAN

The Developer covenants with the Council that prior to commencement of Phase 1 the Developer shall adopt and implement the Ecological Master Plan and in particular the active management of Area 5"

- 2.48 At clause 2.14, "Ecological Master Plan" is defined as meaning: "*the document entitled Ecological Master Plan East Thamesmead Business Park Version 2 September 2002 as*

¹⁹ See, for example, section 5.4.13 of the Planning Statement (APP-040)

submitted with the Application [planning application reference 02/03373/OUTEA]" (hereafter referred to as the **EMP**).

2.49 At clause 2.6, "Area 5" is defined as meaning: "the area within the Site so identified in the [EMP]". Drawing number D100444/001, attached to the EMP and entitled 'Figure 1 Ecological Master Plan Study Areas' identifies Area 5 in blue, being the Norman Road Field.

2.50 Section 5.3 of the EMP ('Grazing marsh grassland') sets out the management proposals for Area 5 (i.e. what is required to comply with clause 24 of the 2005 Agreement, including:

"Grassland in the northern triangle (Area 5) currently constitutes dry neutral grassland characteristic of degraded grazing marsh. The area was surveyed 10 years ago and it is evident that the quality of the grazing marsh grassland has declined dramatically over this period. Consequently, enhancement of this area will focus on implementing a management regime suitable for grazing marshes. All management of grassland will be undertaken in consultation with the warden of the Thames Water nature reserve located to the west and north of the northern triangle..."

Management of the grassland will comprise implementation of a grazing regime. The grazing regime is likely to be aimed at restoring the grazing marsh grassland in the first instance. Ideally the grazing marsh will be stocked with cattle, although it is likely that horses will be more readily available...supplemented by cutting or by hand removal of vigorous species such as false oat-grass during the first year of management."

2.51 Table 4.1, at page 20 of the EMP, further specifies:

"How the BAP [Biodiversity Action Plan] aims and objectives are met through this Masterplan (see Section 5)..."

The dry grassland in Area 5 represents degraded grazing marsh. The management of this area will be aimed at restoring the dry grassland to grazing marsh in favourable condition. This habitat will be particularly important for ground-nesting birds such as yellow wagtail and meadow pipit as well as grazing marsh plants and invertebrates."

2.52 Clause 24 of the 2005 Agreement is conditional on "the Planning Permission" being implemented by the Developer. The Planning Permission referenced was that issued on 25 January 2005 pursuant to application 02/03373/OUTEA, which authorises the following description of development:

"Outline application for the construction of a B1 / B8 business park in 3 phases including landscape and ecological works and details of reserved matters of design, external appearance and siting for Phase 1" (2005 Permission).

2.53 A review of the masterplan approved as part of the 2005 Permission (drawing number A4572/102C) and the land to which it relates on Google Maps indicates that the 2005 Permission was implemented, as part of the land appears to have been developed in a manner similar to what is shown on the masterplan and subsequent reserved matters approvals and minor amendments.²⁰ The 2005 Agreement (and clause 24 thereof) would have been triggered by such implementation and it is understood by TWUL that the obligations in clause 24 remain live as at the date hereof, given there is nothing in the 2005 Agreement or the EMP which places an end date on the active management of Area 5.

2.54 As such, it is TWUL's view that the Secretary of State could not assign much, if any, weight to the proposals for Norman Road Field when applying section 5.11.32 of the NPS in relation to the loss of open space, because there is no new or compensatory open space: Norman Road Field is subject to an existing nature conservation and management requirement so cannot be considered to be new or compensatory land and, as set out from paragraph 2.58 below, the 'improvements' to Norman Road Field are considered insufficient by TWUL.

²⁰ See development north of Veridion Way and west of Waldrist Way [REDACTED]

- 2.55 It is also noted that the Applicant indicated at ISH1 that it was not aware of the 2005 Agreement. As such, the position with Norman Road Field could not have been taken into account as part of the Project's biodiversity net gain (**BNG**) calculations. TWUL therefore reiterates that the inclusion of the Norman Road Field as part of the BNG 'offer' needs to be reassessed in light of the existing baseline for Norman Road Field.

Net Loss of Habitat and Recreation Land

- 2.56 The second reason TWUL considers the term 'extended LNR' to be misleading is because the loss of East Paddock and Stable Paddock due to the Project will result in a net loss of habitat and land for recreation. At present, the existing TWUL LNR is approximately 25 hectares in area, with Norman Road Field being approximately 8 hectares. The Project will result in a loss of approximately 3.5 hectares of habitat and recreational land. There is no 'new' or 'extended' land being provided to offset this loss. The Norman Road Field is already accessible via footpath 2 and the LNR by footpath 1. Save for what appears to be a new short connection from Norman Road Field to the LNR²¹, accessibility to either is not substantively changed.
- 2.57 Whilst article 48 of the draft development consent order technically designates the Norman Road Field as a nature reserve for the purposes of section 21 of the National Parks and Access to the Countryside Act 1949, it is already land subject to nature conservation requirements pursuant to the 2005 Agreement and is freely accessible to the public for recreation: for all practical and beneficial purposes, Norman Road Field can already be considered an extension of the LNR. TWUL therefore considers it disingenuous for the Applicant to be giving the impression they are providing additional land for nature conservation and enhancement, which is what the term 'extended nature reserve' implies. There is no such additional land; there will be a net loss and the enhancements proposed by the Applicant in the Outline Landscape, Biodiversity and Recreation Delivery Strategy (**LaBARDS**) does not make up for that loss.

Landscape, Biodiversity and Recreation Delivery Strategy

- 2.58 Firstly, the LaBARDS indicates that there is likely to be a greater loss of MOL and habitat thereon than the 3.5 hectares originally calculated, due to:
- 2.58.1 the use of Sea Wall Field (which is MOL) for temporary construction compounds (as shown on Figure 13);
 - 2.58.2 the relocation of the stable block from the north of the TWUL emergency access to the south with proposed fencing (as shown on Figure 9); and
 - 2.58.3 the creation of an additional footpath link connecting footpath 2 to footpath 3 (section 6.4.9).
- 2.59 All of the above will result in disturbance to and/or loss of habitat. Whilst temporary, the construction of the compounds and subsequent activity may result in irreversible loss of habitat in that location, if not properly reinstated by the Applicant.
- 2.60 With regards the footpath link, TWUL has already created a link between footpaths 2 and 3. Whilst TWUL would welcome the enhancement of the existing TWUL link (which may then be dedicated as a formal public footpath), the creation of a further link is unnecessary, would lead to further land loss and a further reduction of grazing land.
- 2.61 It is noted from Figure 14 of the LaBARDS, that the creation of a woodland habitat is proposed to be provided on grazing marshland. TWUL considers that this is inappropriate, as grazing marsh habitat is meant to be an extensive open area with a flat, low-lying landscape, and a strong feeling of remoteness and wildness. As well as removing this sense of openness, trees dry out wetlands, create shade, and provide additional perching for predators of ground-nesting bird species. The provision of trees on the Norman Road Field would also appear to be inconsistent with the 2005 Agreement, which requires that field to

²¹ As shown on Figure 9 of the Outline LaBARDS (APP-129)

be managed in accordance with the EMP. TWUL considers it more appropriate to remove the proposed woodland, which would allow for a reconfigured stable block to remain in its current location, thereby removing the potential for further habitat loss.

- 2.62 In summary, TWUL considers that the LaBARDS as currently drafted does not provide sufficient mitigation and enhancement of the Norman Road Field and the LNR to overcome the permanent loss of Stable Paddocks and East Paddock, and the temporary loss of Sea Wall Field. Whilst TWUL does not consider there is any justification for this loss, TWUL will nevertheless seek to engage with the Applicant to propose what enhancements and mitigation should be included to better compensate for the loss, in the event the Application is approved, notwithstanding TWUL's position that it should be refused, as detailed below.

Summary of TWUL's Position – Crossness LNR & Site Selection

- 2.63 Section 104 of the 2008 Act requires the Application to be determined in accordance with the NPS, unless the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits. Regard must also be had to (inter alia) any local impact report and any other matters which the Secretary of State thinks are both important and relevant to the decision.

- 2.64 As set out above, the NPS sets out that development in the Green Belt (which includes MOL by virtue of the London Plan 2021) should be refused unless very special circumstances apply. Whilst this test is presumed to be met for critical national priority infrastructure, which includes the Project, this only applies if the mitigation hierarchy has first been applied correctly and has been demonstrated as such by the Applicant. TWUL considers that the mitigation hierarchy has not been applied and/or demonstrated to have been applied for the following reasons:

2.64.1 a viable alternative site – Veridion Park – was not considered at all, even though it would meet the Project's objectives and would not result in the loss of MOL or LNR;

2.64.2 a viable alternative site in the East Zone has been discounted prematurely, due to lack of thorough economic assessment and for invalid reasons (being the prioritisation of footpath 4 over the loss of MOL/LNR); and

2.64.3 the alternatives process needs to be revisited, on the basis that the actual land requirement for the Project appears to have reduced when compared to the original assessment.

- 2.65 As such, the Applicant must demonstrate that the Project meets the very special circumstances test without the CNP presumption applying. TWUL does not consider the circumstances set out in section 5.5 of the Planning Statement constitute 'very special': the claim the Project will make a "significant contribution" to address global climate change is significantly exaggerated; the benefits of the riverside location are more applicable to the existing EfW facilities and no analysis or data has been provided as to the purported benefit of shipping vessels exporting LCO₂; and the design of the Project, respectfully, is not extraordinary.

- 2.66 Accordingly, determining the Application in accordance with the NPS where very special circumstances do not apply means that it should be refused due to the loss of MOL. There are also a number of adverse impacts and material considerations which add further weight to the refusal of the Application:

2.66.1 the Project is contrary to a number of local policies and the London Plan 2021, as set out in paragraphs 2.2 to 2.5 above. In relation to Policy G6 of the London Plan, there is further mis-application of the mitigation hierarchy specified therein, for the same reasons as set out above in relation to the NPS;

2.66.2 the Applicant's ecological survey methodologies are flawed and, further, the Applicant has failed to identify and assess the presence, on the part of the LNR to be lost to the Project, of species listed on the Habitats and Species List. As

such, the Application cannot be confirmed as complying with the legal requirement in section 40 of NERC, namely to further the general biodiversity objective;

- 2.66.3 Norman Road Field is bound by the 2005 Agreement, meaning that the baseline for measuring the Project's BNG provision is potentially inaccurate;
 - 2.66.4 section 5.11.32 of the NPS provides a starting point that development consent should not be granted for development on existing open space (and it is noted that section 5.11.32 does not appear to be overridden by the CNP presumption). Whilst it is open to the Secretary of State to determine that the benefits of the Project outweigh the loss of open space, in TWUL's view this is not the case, given the status of the open space in question in particular, and also given that no new or compensatory open space is being provided in its place. The Applicant's division of open space into 'accessible' and 'non-accessible' categories is wrong and, as a result, the Applicant's assessment of harm due to the loss of open space is misdirected;
 - 2.66.5 the LaBARDS indicates that there is likely to be a greater loss of MOL and habitat thereon than the 3.5 hectares originally calculated; and
 - 2.66.6 whilst it is not yet known whether the local planning authority will submit a local impact report (which is due by Deadline 1 – 26 November 2024), if it does, TWUL anticipates that the LNR will find that the Project results in a significant adverse impact on the MOL and the LNR. Whatever the findings (if any), any LIR must be taken into account when deciding the Application.
- 2.67 For all of the reasons specified above, TWUL considers that the Application should be refused as currently proposed.
- 2.68 Notwithstanding TWUL's position as to the principle of the Application set out above, there are a number of matters on which TWUL are continuing to engage with the Applicant, set out as follows.

3. **Planning Agreement**

- 3.1 TWUL received an initial draft of the proposed planning agreement from the Applicant on 13 November 2024, which is intended to capture the heads of terms set out in document reference APP-121. TWUL will submit a revised draft to the Applicant's solicitors in due course.

4. **Compulsory Acquisition of TWUL Land**

- 4.1 Negotiations with the Applicant are ongoing as to the acquisition of TWUL's land by private treaty.
- 4.2 However, not all of the part of the TWUL owned LNR is required for the Project, nor is it incidental to or required to facilitate the Project. As set out in the LaBARDS, the part of the TWUL-owned LNR which is not required for ducting is not needed for mitigation: the Applicant only proposes to 'enhance' it. Given that this land is already subject to an ongoing nature conservation and management obligation, pursuant to the 1994 Agreement, TWUL is not convinced the land necessarily requires enhancement, nor is it required to mitigate the impact of the Project in planning terms. As such, it is not clear what the compelling case in the public interest is for the land to be acquired compulsorily and TWUL therefore does not consider the requirements of section 122 of the 2008 Act are satisfied.
- 4.3 Additionally, in light of the representations set out above in respect of the East Zone assessment, TWUL considers there is a viable alternative site which could be acquired from a willing seller. This would negate the requirement for the compulsory acquisition powers sought by the Applicant, particularly in relation to the loss of the MOL-designated East Paddock and Stable Paddock.

5. **STW Emergency Access**

5.1 TWUL affirms the Applicant's confirmation at the examination hearings that the STW emergency access is operational land, used for the purposes of the STW. As such, section 127 of the 2008 Act is engaged, i.e. the development consent order may only include provision authorising the compulsory acquisition of the access if the Secretary of State is satisfied that:

5.1.1 the access can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or

5.1.2 if purchased, the access can be replaced by other land belonging to, or available for acquisition by, TWUL without serious detriment to the carrying on of TWUL's undertaking.

5.2 At this stage TWUL is unable to make an assessment as to the level of impact acquiring the access will have on TWUL's operations, as the Applicant has not provided any firm proposals for an alternative access. TWUL will therefore continue to object to the compulsory acquisition of the access until such time as it is satisfied the Applicant is able to provide an acceptable alternative.

6. **TWUL Protective Provisions**

6.1 The draft Protective Provisions at Part 4 of Schedule 12 to the draft development consent order are not agreed by TWUL at this stage. TWUL will be proposing amendments to Part 4 to the Applicant in due course.

7. **Other DCO Provisions**

7.1 Article 51 of the draft development consent order includes that the Applicant or the local planning authority may make byelaws in respect of the Crossness LNR.

7.2 Requirement 12 of the draft order requires the Applicant to submit the detailed LaBARDS to the LPA prior to commencement of development of the Project and not to commence until the detailed LaBARDS has been approved.

7.3 In both cases, TWUL is concerned that it currently has no involvement in either the byelaws or the LaBARDS. Given that TWUL is being asked by the Applicant to manage the LNR in accordance with the approved detailed LaBARDS (pursuant to the proposed planning agreement), TWUL considers it necessary to also be given the power to make byelaws and to be involved in the design of the detailed LaBARDS. TWUL has engaged with the Applicant on the latter point (and will continue to do so) and will also propose amendments to article 51 in due course.

26 November 2024