

Cory Decarbonisation Project DCO

LB Bexley Deadline 3 Response

17th January 2025.

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INTRODUCTION

This document is being submitted in response to documents submitted by Cory at Deadline 2.

UPDATE SINCE DEADLINE 2

Since Deadline 2 the Council and Cory have been in discussion following the Council's submission of its Deadline 2 response and the updated Statement of Common Ground.

Since Deadline 2 the Council and Cory have been focusing primarily on establishing an agreed methodology for the submitted Terrestrial Site Alternatives Report (TSAR) and the Statement of Common Ground.

Further updates will follow in due course.

RESPONSE TO EXAMINERS QUESTIONS

On Friday 20th December 2024 the Examiner issued his first written questions of which seven require a response from the Council. Both the questions and the Council's response are provided below:

Q1.1.01- Would the changes proposed by the Applicant to the Design Principles and Design Code set out in their Response to Interested Parties Deadline 1 Submissions document [REP2-019] address the issue of location of short term generators relative to CLNR? Does the Applicant's Response to Interested Parties Deadline 1 Submissions document [REP2-019] address LBBC's comments on i) the potential emissions of chemicals used to capture CO₂ emissions and ii) in respect of the consistency of the evaluation of the model results relating to the EA's nitrosamine guidance and acceptable level of risk?

With regard to the Applicant's response to the location of short term generators in relation to CLNR, the Applicant has set out in their "Applicants' Response to Interested Parties Deadline 1 Submissions Number: 9.12 document that in an amended Design Code under CCF-Form and Layout that they will allow for a "minimum 25m offset between back-up generators and the Crossness Local Nature Reserve boundary, where practicable, to minimise (sic) the impact of noise and emissions."

Whilst the Council is content that a distance of 25 metres could be achieved and it is accepted by the Council that generators may have to be moved around the site during the operational phase, it has not been defined what "where practicable" means and therefore the Council would like to seek clarity on this.

With regard to the potential emissions of chemicals used to capture CO₂ emissions, the Council raised at Relevant Representation stage that details regarding the potential

emissions of chemicals used to capture CO₂ emissions had not been provided. In their in their “Applicants’ Response to Interested Parties Deadline 1 Submissions Number: 9.12” document the Applicant has stated that the detailed dispersion modelling assessment including sensitivity analysis of potential air quality impacts of the carbon capture plant were reported in Section 5.8 of Chapter 5 (Air Quality) of the Environmental Statement (Volume 1). The Applicant has investigated a potential reduction in impacts from ammonia emissions on ecological sites. Additional modelling has been undertaken post-submission of the Environmental Statement using a reduced emission limit value (ELV) of 10mg/Nm³ (at 11% O₂, dry) for ammonia post-carbon capture. Details of this modelling has been provided in Appendix B of the “Applicants’ Response to Interested Parties Deadline 1 Submissions Number: 9.12” document.

The Council has reviewed the above modelling and considers that the details provided are acceptable provided that the reduced ELV is secured via the DCO.

With regard to the EA’s Nitrosamine guidance the Council had raised concern that the modelling undertaken by the Applicant was not consistent with the EA’s Nitrosamine guidance. The Applicant has since responded by stating that there is a typographical error in Table 5-36 of Chapter 5 (Air Quality) of the Environmental Statement which has now been rectified. Provided that the Environment Agency are satisfied that the modelling follows their Nitrosamine guidance the Council is satisfied.

Q1.3.1.1- How will the effectiveness of any management regimes or works implemented either on the Order Land or the Offsite Biodiversity Net Gain (BNG) Area be monitored over time and what mechanisms would be put in place to provide for remedial measures or alternative approaches in light of any monitoring results? How would these be specified and enforced?

Prior to the commencement of development, the applicant would be expected to submit an Ecological Monitoring Strategy which would establish biodiversity baselines (at the time of submission) and explain how biodiversity would be reassessed in the subsequent years.

The Ecological Monitoring Strategy should include detailed and structured proposals, which will be used to establish whether proposed mitigation, compensation and enhancement measures have been effective over a specified period. The strategy shall also be used to provide early warning of when contingencies and/or remedial measures will be ‘triggered’ in the event that ecological objectives are not being achieved. Implementation of the strategy over time will be informed by periodic ‘Ecological Monitoring Reports’.

The periodic ‘Ecological Monitoring Reports’, which are distinct from a monitoring strategy, shall be submitted and approved in writing by the Local Planning Authority, in accordance with the intervals set out in the Ecological Monitoring Strategy, and not less than once every 5 years. The Periodic Ecological Monitoring Reports shall provide the results of post-construction monitoring for a development project as a ‘snap shot’ at a particular period in time. Each Ecological Monitoring Report will include a description of the methods used as well as the detailed results of surveys, and interpretation/

assessment of the results including remedial measures or alternative approaches needed in light of any monitoring results.

The monitoring reports shall highlight where there is a need to undertake review and update the LaBARDS and Ecological Monitoring Strategy. In such instances, an updated LaBARDS and Ecological Monitoring Strategy should be submitted with the Ecological Monitoring Report for approval by the Local Planning Authority.

Local planning authorities have responsibility for taking whatever enforcement action may be necessary.

Q1.3.1.2- Bearing in mind the potential timespan, should there be a provision requiring the LaBARDS to be reviewed and updated at relevant intervals, for the lifetime of the Proposed Development, and for any updated LaBARDS to be submitted to, and approved in writing by, LBBC within agreed timescales?

Please see answer to Q1.3.11. In terms of timescales, the Council would expect an updated LaBARDS at least once every 5 years.

Q1.7.0.1- Could the MMO, NE and LBBC please confirm whether they are content that all other developments, plans and projects that have the potential to result in cumulative or in-combination effects together with the proposed development have been identified and appropriately assessed by the Applicant in the Environmental Statement [APP-118] and the HRA Report [APP-090] (including any relevant marine licensed projects)?

Table 2.2 of the Environmental Statement: 6.3 Appendix 21-1: Inter-Project Effects Assessment sets out a long list of applications that the Council has either determined or are currently considering. The list of applications provided included applications which were made as far back as 2015, some of which may have been implemented.

When producing the now adopted Bexley Local Plan (2023) the Council carried out an HRA of growth and an appropriate assessment (AA) was also carried out due to uncertainties around the in combination air quality and visitor pressure effects on Epping Forest. The Applicant has also undertaken due to potential Air Quality impacts of the CCP on Epping Forest in APP-090.

Preparation of the Local Plan was informed by an Integrated Impact Assessment (IIA) and Habitats Regulations Assessment (HRA). The Bexley Local Plan IIA Post Adoption Statement (PDF) provides further details and links to the main reports <https://www.bexley.gov.uk/sites/default/files/2023-06/bexley-local-plan-iaa-post-adoption-statement.pdf>.

The assessment concluded that most aspects of the Local Plan including site allocations, will have no significant effects on any European sites, alone or in combination due to the absence of effect pathways; and where effect pathways are present or where there are uncertainties over the scale of the effects (in combination air quality and visitor

pressure effects), ‘appropriate assessments’ have demonstrated that the Local Plan will have no adverse effect on site integrity.

Notwithstanding the above, the Council is concerned that the proposed development would delay the aspiration of the planned Riverside District Heat Network to which both Riverside 1 and the currently being constructed Riverside 2 are the heat source. Whilst the Council accepts that the Carbon Capture Facility would not prevent the District Heat Network from coming forward, it could delay any potential implementation due to the Carbon Capture Facility being constructed.

Q1.8.3.4- LBBC point out that their “limitations for noisy works” have a start time of 08:00 rather than 07:00. What is the basis for this timeframe and what supporting documentation is there?

As per the Councils response at Deadline 2 the Council have withdrawn their concern relating to construction work hours. This is primarily because the construction hours set out in the draft DCO are the same as those granted in the DCO for the construction of Riverside 2. During the construction of Riverside 2 the Council has received no noise complaints or any other complains and therefore sees no reason to object to the construction hours set out in the draft DCO.

Q1.11.0.1- LBBC in the LIR [REP1-034] seeks “more powers over how the process for re-routing footpaths would occur in order to make sure that the best possible routes for users are created”. Please can LBBC clarify what power they seek and how it envisages the powers sought would be delivered?

The Council seeks powers to review and approve the details of the re-routed and newly created footpaths before any works to footpaths are undertaken.

Any review is intended to:

- Ensure that the proposed routes are appropriate and fit for purpose.
- Determine whether the newly created routes should be adopted as formal Public Rights of Way (PRoW) or maintained by the landowner as private footpaths.
- If a newly created route is designated as a PRoW, enable the Council to assess and approve the construction details of any required structures, ensuring all associated costs are borne by the landowner rather than the Council.

Q1.16.0.3- Are the parties satisfied that the Deeds of Obligations have been drafted in a legally satisfactory manner and meet the tests for such obligations?

The Deeds of Obligations as currently drafted are not planning obligations pursuant to S106 of the Town and Country Planning Act 1990. They are expressed to be made pursuant to S111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011. Albeit that parts of the deeds of obligations do still refer erroneously to being a deed under S106, (for example the definition of “deed”).

Therefore, as the obligations contained within the Agreement are not planning obligations they do not run with the land and would only be enforceable as a breach of a

contractual obligation against the parties to the agreement. Furthermore, as they are not planning obligations the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 Community do not apply.

The Council has the following specific concerns.

Deed of Obligation A

The BNG Opportunity Area Land is owned by Peabody. The deed contains provisions at paragraph 3 to require the Developer and Peabody to use all reasonable endeavours to enable delivery of ecological works within the BNG Opportunity Area Land to be included as part of the Off-Site Proposals and if so included, provides for a BNG Opportunity Area Delivery Contribution to be paid to Peabody to deliver them before the Stop Date. However, there is no mechanism to compel their delivery by Peabody. Furthermore, the provisions in paragraph 4.3.2 for the works ongoing maintenance would not be enforceable against Peabody's successors as the deed is not made pursuant to S106. Therefore the 30 years maintenance period is not secured.

Should Peabody not deliver the Approved Ecological Works by the Stop Date the deed includes a fallback provision contained within paragraph 3.4 of Schedule 2. This requires the Developer to update the Landscape, Biodiversity, Access and Recreation Delivery Strategy and submit it to the Council for approval to provide details of the Alternative Off-Site Delivery Mechanism that will be used to deliver the Undelivered Off-Site Proposals.

Paragraph 3.4.4 provides a covenant by the Developer to the Council that it will put in place the Alternative Off-Site Delivery Mechanism to deliver the Undelivered Off-Site Proposals prior to the Date of Final Commissioning. That provision does not secure the ongoing delivery of the Undelivered Off-Site Proposals. If after "putting in place" the mechanism there is a failure of delivery, the Council has no remedy against the Developer as it would have fulfilled its obligation of "putting in place" the mechanism. It is unclear how such a mechanism will ensure/secure the delivery of the measures and their ongoing maintenance.

Deed of Obligation B-Between London Borough of Bexley, Cory Environmental Holdings Limited and Thames Water Utilities Limited.

The obligations in paragraph 2 of Schedule 1 by TWUL in relation to the Crossness LNR Manager and in relation to the management of the Crossness LNR TWUL Land in accordance with the Landscape, Biodiversity, Access and Recreation Delivery Strategy are insufficient as they do not bind successors in title to the Land and therefore do not secure the ongoing maintenance of the land. This is of particular importance as Article 50 of the draft Order abrogates the provisions of Clause 4 of the 1994 Agreement, being the S106 Agreement that provides for TWUL to maintain and enhance the Crossness LNR for a period of 99 years from the date of approval of the Management Plan. The Crossness LNR Endowment only applies after decommissioning of the Project. Furthermore, the agreement does not provide for the maintenance of the extended part of Crossness LNR.

Whilst Requirement 12 requires the submission and approval of the Landscape, Biodiversity, Access and Recreation Delivery Strategy and requires its implementation it is unclear how the enforcement provisions contained within Part 8 of the Planning Act 2008 could enable the Council to enforce the terms of its provisions in relation to providing for the management and maintenance of land outside the scope of the order. It is the Council's opinion that only a S106 obligation could provide such comfort. Without the provisions being part of a S106 agreement that binds successors in title, the Council's enforcement powers are limited to a contractual breach of the agreement against the current owner

Other obligation matters

The Council in its Local Impact Report stated that in relation to the improvements to the highway along Norman Road that form part of the works delivered by the development, that it does not object to the changes in principle. However, the DCO does not require the Applicant to enter into an appropriate agreement with the Highway Authority. This could create a possible maintenance and financial burden to the Council if temporary and permanent changes to the highway are not built to an agreed specification / design and appropriate standard. The Council therefore suggested that a mechanism is added to the DCO to require the developer to enter into an appropriate agreement (S278 of the Highways Act 1980) which offers a guarantee of temporary and permanent changes to highway are complete to an acceptable standard and thus reduce the risks to the Council.

Potentially such provision could be contained in the Deed of Obligation.

NOTIFICATION OF WISH TO ATTEND ASI

Please accept this as notification that the Council would like to have a representative attend the Accompanied Site Inspection scheduled to be held on week commencing 10th February 2025.