

DCO Drafting and Land Matters		
TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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.</p> <p>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.</p>	<p>The Applicant has set out in its application documentation, Response to Relevant Representations, its Deadline 1 submissions, and the responses to the Terrestrial Biodiversity and Optioneering themes in this document that:</p> <ul style="list-style-type: none"> • the TWUL owned sections of the LNR are either required for the Proposed Scheme (the East Paddock), for mitigation or enhancement proposals, or to ensure that a consolidated management expanded Crossness LNR is able to be developed. The Applicant's compulsory acquisition proposals ensure that the LaBARDS is able to be delivered; and • the chosen South Zone 1 and its layout are appropriate for the Proposed Scheme and that the East Zone is not a viable alternative site. <p>Given Schedule 1 and Requirement 12, there can be no doubt that the TWUL land is required for the Proposed Scheme.</p> <p>The compulsory acquisition tests in section 122 of the Planning Act 2008 and the tests set out in guidance are therefore clearly met.</p>	<p>The LaBARDS does not need to include the TWUL owned part of the LNR – as shown on figures 14 and 15 from the Outline LaBARDS document, there are no proposed new habitats or landscaping proposals, nor are there any environmental proposals for the TWUL owned part of the LNR. Requirement 12 is a self-imposed requirement which the Applicant could amend so that all of the mitigation/enhancement is provided on the Norman Road Field. TWUL is content managing the nature reserve as per the present arrangements under the 1994 agreement, which indeed secures the management of the nature reserve for a longer period than proposed by the Applicant.</p> <p>As such, the Applicant's argument that its inclusion in the dDCO shows there is "no doubt" the TWUL land is required is not substantiated and TWUL does not agree that the compulsory acquisition tests in section 122 of the Planning Act 2008 or in the guidance are clearly met.</p> <p>TWUL also maintains that East Zone is a viable alternative, notwithstanding the Applicant's further response on this issue.</p> <p>If the Applicant ultimately did secure the requested CPO powers and acquired the freehold in the TWUL-owned LNR, TWUL would like clarification as to how the Applicant would provide sufficient rights to TWUL to enable it to undertake the management obligations in the proposed planning agreement. Clearly without sufficient rights, TWUL could not agree to the obligation as proposed.</p> <p>TWUL also wishes to note that it is considering whether the TWUL owned part of the LNR (besides the access road) satisfies the definition of statutory undertakers' land for the purposes of section 127 of the Planning Act 2008, and will endeavour to confirm its position in relation to this ahead of CAH2.</p>
<p>5.1 TWUL affirms the Applicant's confirmation at the examination hearings that the STW emergency access</p>	<p>The Applicant can confirm that (a) the necessity of diverting the TWUL Access Road is not yet confirmed</p>	<p>TWUL is concerned by this lack of uncertainty. If the access is required to be diverted, the internal</p>

<p>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:</p> <p>5.1.1 the access can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or</p> <p>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.</p> <p>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.</p>	<p>and will not be known during the Examination period and that (b) any design for diverting the TWUL Access Road will not be known during the Examination period.</p> <p>As such, the protection for TWUL comes from paragraph 39 of their Protective Provisions, which provides that the TWUL Access Road cannot be diverted until TWUL has approved the details of any diversions and that access rights to use it are granted on terms pursuant to TWUL.</p> <p>These terms ensure that no serious detriment can be caused to TWUL's undertaking and reflect the standard approach in DCOs that statutory undertaker interests are protected through Protective Provisions.</p>	<p>approvals required to be obtained by TWUL, along with approval of the HSE and emergency services (given the access is subject to the COMAH Regulations 2015), and the Environment Agency, which benefits from a right of way over the access, could take several months. The element of the Project necessitating the diversion would have to be placed on hold during this time, which would not be a satisfactory position for TWUL or the Applicant.</p> <p>The position confirmed by the Applicant further demonstrates that the CPO tests are not met in relation to the access road – the tests require certainty, i.e. section 122(2) of the Planning Act 2008 require that the land "<i>is required for the development...</i>" or "<i>is required to facilitate or is incidental to that development</i>" (emphasis added).</p> <p>The Applicant has confirmed that it does not know whether the land will be required; it does not have a clear idea of how it intends to use the land. As such, this clearly demonstrates the CPO tests are not met in respect of the access road.</p> <p>TWUL does not agree to the Applicant's proposed Protective Provisions in relation to the access road and has provided an updated version to the Applicant. Given its operational importance and the requirement for approvals from multiple parties, TWUL will not agree to deemed approval of its consent in relation to the access road and must also be permitted to refuse its consent to a diversion in its discretion entirely; TWUL does not agree to being exposed to potential arguments as to what constitutes reasonableness in this regard. Finally, TWUL considers that the Applicant should not be empowered to exercise any compulsory acquisition of the access road without TWUL approval.</p>
<p>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.</p> <p>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</p>	<p>In respect of the LaBARDS, TWUL were added as a consultee in the Draft DCO (REP1- 002) submitted at Deadline 1, albeit noting that the Outline LaBARDS and the Deed of Obligation approach already set out that the Applicant had already provided for TWUL to play a key part in the development of the proposals for the expanded Crossness LNR.</p>	<p>TWUL does not agree to the local authority and the Applicant being afforded powers to make byelaws, but not TWUL. Given that the Applicant is proposing that TWUL takes responsibility to manage the CLNR in accordance with the LaBARDS, it is considered that the power should also be given to TWUL.</p>

<p>and not to commence until the detailed LaBARDS has been approved.</p> <p>7.3 In both cases, TWUL is concerned that is 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.</p>	<p>In respect of article 53 (what was article 51), the DCO has been updated at Deadline 2 to provide for TWUL to be consulted prior to the making of any byelaws. It is also noted that TWUL could ultimately object to any byelaws pursuant to the procedures in the Local Government Act 1972 or the Byelaws (Alternative Procedure) (England) Regulations 2016.</p>	
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Terrestrial Biodiversity

TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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.</p> <p>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). 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 Froglife8, 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</p>	<p>The Applicant recognises accepts that there will be the direct loss of land within Erith Marshes SINC/Crossness LNR and has undertaken a detailed assessment of the impacts of the Proposed Scheme on this designated site and ecological features it supports in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). Section 7.4 of this chapter and its associated supporting appendices, details the survey methodologies used to provide the ecological baseline for assessment presented in Section 7.8 of the chapter, and the Applicant considers these were appropriate to evaluate the ecological features. Limitations of surveys are described within the reports that form appendices to Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). The Applicant is confident that further survey or changes in methodology would not yield a difference in the conclusions returned by the assessment within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056), and for this reason the survey methods are considered robust.</p> <p>As detailed in Table 7-4 of Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056), timing of visits was chosen to cover optimal months for reptile survey, avoiding warm summer months when the use of artificial refugia to</p>	<p>The ecological surveyors were in constant contact with the Crossness Nature Reserve manager at that time and could have requested removal of horses to undertake robust ecological surveys in the very area that their clients wish to build on. GiGL data would not be available for this area because the public do not enter and therefore no adhoc records are provided. Also, horses freely graze the Norman Road Field and the Applicant was able to survey this.</p> <p>TWUL is confident that further survey or changes in methodology would yield a difference in the conclusions returned by the assessment within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056), and for this reason the survey methods are not considered robust. TWUL reach this conclusion due to, despite, and because of the heavy grazing, the East Paddock, is the only part of the nature reserve that contains a very large population (hundreds) of Strawberry Clover (which has vulnerable to extinction status) that will be directly lost due to the Project.</p> <p>The only other known location on the reserve contains only a tiny number of plants, and the East Paddock concentration is likely to be the original source. It is also the location of Borrer's Saltmarsh Grass (which is a nationally scarce plant listed under section 41 NERC)</p>

<p>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.</p> <p>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.</p>	<p>attract reptiles is not effective¹. Remaining elements of the methodology, as detailed in Appendix 7-7: Reptile Survey Report of the Environmental Statement (Volume 3) (APP-094) followed guidance issued by Froglife² and in the Herpetofauna Workers Manual³.</p> <p>As detailed in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056), the East Paddock was not surveyed on the grounds of health and safety due to the permanent presence of horses that were known to disturb equipment if left out in the field (i.e. the refugia used to detect reptile presence). The Applicant, as detailed in the report, maintains that this was not considered a significant limitation to the survey as the field is heavily grazed by horses and therefore provides only a low suitability for reptiles. It should be noted that evaluation of Site for reptiles took into account not just field survey results, but also desk study information including records of reptile sightings noted by Thames Water at Crossness LNR from 2015 to 2022, as well as those held by Greenspace Information for Greater London (GiGL). In addition, if survey data from East Paddock had been available it would not have changed the evaluation of reptiles, the assessment of impacts on them, nor the mitigation for effects that has been proposed. Sources of baseline data have therefore provided an appropriate and robust baseline for the evaluation of the Site's importance for reptiles to inform the assessment in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056).</p>	<p>and other flora species that are of conservation concern. These were missed during the Applicant's ecological surveys, because they did not enter, nor liaise with the site manager to safely enter, to carry out a robust survey.</p> <p>TWUL maintains that the timing of reptile surveys should be considered a significant limitation because the population could be larger than the Applicant has currently suggested. Despite grazing by horses and the perceived low suitability for reptiles, the marginal habitats and ditches are suitable for reptiles and will be lost due to the Project.</p>
<p>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</p>	<p>Baseline ecological surveys were undertaken covering areas under the footprint of the Proposed Scheme and the Mitigation and Enhancement Area, where direct impacts and compensatory habitat creation and enhancement will occur.</p> <p>Regarding survey extent, at the time of the baseline terrestrial biodiversity surveys, although the Site Boundary did not include the Lagoon Field and Island</p>	<p>The Applicant states that for Lagoon Field and Island Field, "no interventions (through the Proposed Scheme directly or habitat creation and enhancement) are proposed in these areas – they are instead proposed to be managed as part of the overall expanded Crossness LNR. Ecological surveys focussed on the development footprint and areas within the Mitigation and Enhancement Area." However, Lagoon Field has been identified as the potential receptor for the</p>

¹ Reading, C. (1996). 'Evaluating Reptile Survey Methodologies. English Nature Research Report 2000'. English Nature, Peterborough

² Froglife. (1999). 'Reptile Survey: an introduction to planning, conducting and interpreting surveys for snake and lizard conservation'. Froglife Advice sheet 10. Froglife, Halesworth

³ Gent, A and Gibson, S. (1998). 'Herpetofauna Workers Manual, Joint Nature Conservation Committee, Peterborough

<p>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 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'.</p>	<p>Field, no interventions (through the Proposed Scheme directly or habitat creation and enhancement) are proposed in these areas – they are instead proposed to be managed as part of the overall expanded Crossness LNR. Ecological surveys focused on the development footprint and areas within the Mitigation and Enhancement Area (i.e. Norman Road Field) where measures proposed in the Outline LaBARDS (REP1-012) would be focussed, with the application of an appropriate survey buffer. However, the evaluation of the Site for protected and/or notable species (including bats, wintering and breeding birds) took into account not just field survey results, but also desk study information including records noted by Thames Water at Crossness LNR from 2015 to 2022, as well as those held by Greenspace Information for Greater London (GiGL). These sources provided an appropriate and robust baseline for the evaluation of the Site's importance for protected and/or notable species to inform the assessment in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056).</p>	<p>stables, the rerouted public footpath, and potentially the rerouted TWUL access road, so there are potentially direct interventions and further habitat loss which have not been assessed.</p>
<p>2.37 No part of the LNR received a botanical survey except East Paddock and Stable Paddocks, which was inadequately carried out from the roadside with binoculars, thereby missing notable species such as the large stand of Strawberry Clover (<i>Trifolium fragiferum</i>) listed as Vulnerable to Extinction in the 2020 Plant Atlas, the Pink Waterspeedwell (<i>Veronica catenata</i>), and Borrer's Saltmarsh-grass (<i>Puccinellia fasciculata</i>) 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 (<i>Lotus tenuis</i>), which is listed as Vulnerable to Extinction in this region.</p>	<p>Botanical survey described within Appendix 7-6: Botanical Survey Report of the Environmental Statement (Volume 1) (APP-093) was undertaken to identify habitats and characterise the botanical community for the purposes of the impact assessment, and to determine the condition of habitats for the purposes of Biodiversity Net Gain. It was appropriate that it focussed on areas where habitat would be lost (i.e. the East Paddock/Stable Paddock) or where compensation/enhancement was proposed (i.e. the Mitigation and Enhancement Area, namely Norman Road Field). Thus, although further species may have been present and not revealed by the botanical survey, the data collected was appropriate for the identification of habitat types, primarily confirmation that Coastal Floodplain Grazing Marsh is dominant, and to allow their evaluation as well as of the botanical community as a whole. Data on habitat condition was also appropriate to inform Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088) as it followed the methodology</p>	<p>TWUL queries how the Applicant considers it has properly focussed on areas where habitat would be lost (i.e. the East Paddock/Stable Paddock), given that these were surveyed with binoculars only. TWUL reiterates that this is not adequate survey methodology and the Applicant could (and should) have arranged for the removal of the horses, if it had health and safety concerns.</p>

	<p>associated with the UK Government's Statutory Metric⁴.</p> <p>The Applicant does not agree that an inappropriately low level of value of designated sites, habitats or notable plants has been presented within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). Crossness LNR, SINCs, habitats (other than those that are clearly common and widespread) and notable plants have been evaluated at County level (i.e. important in the wider Greater London area). The Applicant maintains this is an appropriate and robust baseline position for the assessment of ecological impacts on the habitats and botanical features relevant to the Proposed Scheme.</p> <p>With reference to survey of East Paddock and Stable Paddock, no safe access was available to the East Paddock due to the presence of horses. However, the plant species were recorded directly from the southern and eastern boundaries of the field (as noted in the survey limitations presented in Section 2.4 of Appendix 7-6: Botanical Survey Report of the Environmental Statement (Volume 1) (APP-093). Other parts of the habitat could be adequately surveyed from the other side of the fence using binoculars to confirm visually they are similar to those directly surveyed. Thus, the survey is considered to be sufficient for the purposes it was intended.</p>	
<p>2.39 As per Government guidance on habitats and species of principal importance in England, 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</p>	<p>The Applicant notes that any obligations relating to the NERC relate to the NERC, not the NPS. The Applicant cannot be 'not in accordance with the NPS' for a footnote which reminds the Secretary of State of his/her statutory obligations.</p> <p>The assessment carried out within Environmental Statement Chapter 7: Terrestrial Biodiversity (APP-056) has evaluated Crossness LNR, habitats that comprise the LNR (primarily but not limited to Coastal Floodplain Grazing Marsh, recognised as a Habitat of Principal Importance under the NERC act) and notable plants found within the LNR and habitats on Site more widely as being of County value (i.e. the scale of</p>	<p>The statement "<i>any obligations relating to the NERC relate to the NERC, not the NPS</i>" is not correct. The NPS specifies that: "<i>Applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS and the relevant technology specific NPS, applying the mitigation hierarchy, as well as any other legal and regulatory requirements.</i>"</p> <p>The reference to complying with legal requirements (including NERC) means that if the Applicant has not complied with NERC (which TWUL considers is the case), the application does not accord with the NPS in this respect. Whilst the footnote refers to the Secretary of State's obligations, paragraph 4.2.10 of the NPS</p>

⁴ UK Government. (2023). 'Statutory biodiversity metric'. Available at: Statutory biodiversity metric tools and guides - GOV.UK (www.gov.uk)

<p>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.</p>	<p>Greater London). The Applicant's position is that this remains the correct evaluation of these ecological features, and that as it covers the botanical species found at the LNR is confident that habitats and species including those that may be identified as being of Principal Importance have been appropriately assessed within the ES. The Applicant's view is that the conclusions of the ES are therefore correct and able to be taken into account by the Secretary of State in discharging his/her NERC duty.</p>	<p>expressly requires the Applicant to demonstrate how the application meets the requirements of NERC. The Applicant has failed to identify or assess the presence of a species listed on the Habitats and Species List. The application therefore does not fully meet a legal requirement, contrary to paragraph 4.2.10 of the NPS.</p>
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Optioneering Matters

TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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.</p>	<p>Paragraph 3.2.16 of the Planning Statement (APP-040) simply quotes paragraph 4.2.16 of NPS EN-1, that critical national priority infrastructure, such as the Proposed Scheme, will be determined from a starting point 'that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances.'</p> <p>Paragraph 3.2.17 of the Planning Statement, simply acknowledges that paragraph 4.2.17 of NPS EN-1 specifically applies that approach to development in the Green Belt, which for the Proposed Scheme, would also apply to Metropolitan Open Land.</p> <p>However, contrary to Thames Water's assertions, NPS EN-1 paragraph 4.2.10 is not forgotten; indeed, it even appears in the Executive Summary and section 4 of the Planning Statement:</p> <p>Paragraphs 4.2.10 and 4.2.11 make clear that this level of policy support does not negate the need to follow the requirements of the NPS, or any other relevant legal and regulatory requirements. In particular 'applicants must apply the mitigation hierarchy and demonstrate that it has been applied. ... Applicants should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated.'</p>	<p>TWUL does not assert that the Applicant has forgotten the mitigation hierarchy; TWUL considers that it has not been correctly applied, and reiterates its position as per its written representation that avoidance is possible and that the East Zone was ruled out primarily due to cost implications.</p> <p>TWUL remains of the view that the Applicant has not provided sufficient evidence to explain how the first two steps of the mitigation hierarchy have been met. For the reasons stated in previous submissions, the failure to sufficiently assess delivery in/near the East Zone (in accordance with EN-1 and planning policy), and the failure to sufficiently test reduced footprints in the South Zone, means that the Applicant has not sufficiently avoided or minimised ecological harm.</p>

	<p>NPS EN-1 paragraph 4.2.10 is addressed at Table 1, and in some detail both at paragraphs 4.2.16 to 4.2.27 and at section 4.7 of the Planning Statement.</p> <p>The application documents both appropriately apply the mitigation hierarchy and demonstrate that it has been satisfied. Further, this point is explicitly addressed at in row 1 of table 2-4-1 and row 4 of table 2-9-3 of this response. Consequently, the starting point for the Secretary of State's decision making, is correctly to be from the assumption that the Proposed Scheme has met the relevant tests.</p> <p>They demonstrate that no residual HRA or MCZ impacts remain and there are no residual impacts which present an unacceptable risk to, or unacceptable interference with, those matters identified in NPS EN-1 paragraph 4.2.15^A. Consequently, the Secretary of State can have confidence that there is demonstrated a clear outweighing of harm.</p> <p>^ABeing residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero.</p>	
<p>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.</p> <p>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,</p>	<p>The Applicant did not say there was no technical limit to the flue gas ductwork length, but that such a limit had not been determined; they are quite different reflections. The Applicant has sought to minimise the length of large-diameter flue gas ductwork to minimise visual impact and pressure drop. The longer the length of flue gas ductwork, the greater the pressure drop from the start to the end point, and additional compression of the flue gas would consequently be required to provide sufficient pressure driving force to maintain its progression along the ductwork and into the receiving equipment.</p> <p>The Applicant notes that the suggestion of the Veridion Park alternative (as illustrated on Appendix C to this response) by TWUL should be seen in the context of paragraphs 4.3.27 to 4.2.39 of NPS EN-1:</p> <p>Alternative proposals which mean the necessary development could not proceed, for example because</p>	<p>The Applicant's response confirms that it is feasible to have a longer gas flue pipe to an alternative site further away that is not in MOL or part of a Nature Reserve. TWUL considers that the primary reason that a longer pipe has not been selected is because it would cost more.</p> <p>TWUL has consistently taken the position, since the pre-application process, that the Applicant's site selection process was not robust and that more sites that are not in MOL or part of a Nature Reserve should have been assessed. It is the Applicant's responsibility to undertake a robust site selection process prior to submitting their application; TWUL considers that this has not been undertaken.</p> <p>With regards flood risk designation, Veridion Business Park has the same flood risk designation as the surrounding area, including the Applicant's preferred site:</p>

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.

the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the Secretary of State's decision.

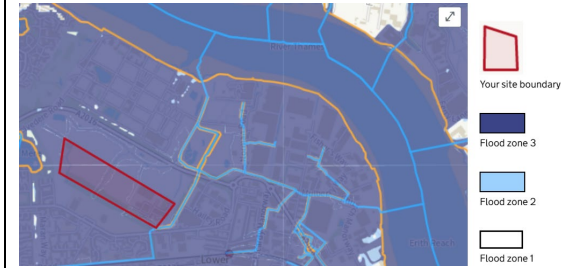
Alternative proposals which are vague or immature can be excluded on the grounds that they are not important and relevant to the Secretary of State's decision.

It is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the Secretary of State (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore, where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it.

The Applicant considers that the suggestion of Veridion Park is:

- a vague and immature proposal given its distance from the Proposed Scheme meaning that simply suggesting a 'box' of land cannot be properly considered without detailed assessment;
- for the reasons set out below, not a physically suitable site; and
- is clearly an alternative put forward post-application. It is for LBB and TWUL to provide the evidence that this site is suitable and they have failed to do so.

Veridion Park is clearly therefore not an important and relevant consideration for the Secretary of State to take into account moving forward.



Veridion Business Park is also allocated for employment development in the Bexley Local Plan.

Further, a flue gas pipe bridge over the Eastern Way A2016 could also be used as a footpath which would be a significant enhancement to local accessibility. At present pedestrians have to try and cross the busy A2016 to gain access from Abbey Wood and Crossness Southern Marsh from Public Footpath 1 to the south, to Public Footpath 2 on the Crossness Nature Reserve and Thameside walkways. Due to the danger involved in crossing the 50mph A2016 dual carriageway, TWUL understand that this footpath connection is seldom used.

It is not accepted that the gas flue pipe would need to cross the operational Crossness Sewage Treatment Works area. It could run down the boundary between the nature reserve and the sewage works.

It is therefore considered that Veridion Park should be assessed further by the Applicant along with other sites to avoid the loss of MOL and Crossness Nature Reserve land.

The following key points demonstrate why this site is unsuitable in general terms:

- the whole area is in Flood Zone 3b, so the Sequential Test would be failed;
- the site would be located adjacent/close to a nursery, secondary school, park and residential areas, meaning there would be highly likely to be significant air quality and noise effects, policy compliance issues (e.g. 'minimising' impacts to health from noise effects) and issues around public safety;
- the site is significantly closer to Lesnes Abbey, visual receptors and would not be located in an industrial area. The Applicant has prepared a visualisation (Appendix D to this response) to demonstrate this; and
- the site is surrounded by MOL and SINC, a significant amount of which would need to be crossed by ductwork and pipework to connect the site back to the Riverside Campus

The site is physically unsuitable as:

- It would be impracticable, and operationally inefficient, to locate all the flue gas ductwork, steam and condensate pipework, LCO2 pipework, and utilities that are required between the Riverside Campus, the Carbon Capture Facility and the new Jetty using the route suggested by LBB. This would require all this infrastructure to be routed down Norman Road and then along either Eastern Way or along Yarnton Way (an even more circuitous route).
- The shortest distance, measured from the southern boundary of the Riverside Campus to the northern boundary of Veridion Park (which is developed and occupied) is some 940m. The distance to the land to the west of the occupied Veridion Park, which is not currently built out, is some 970m. Even if the shortest route were followed, this would entail all the flue gas

	<p>ductwork, steam and condensate pipework, LCO2 pipework, and utilities being laid across the Crossness Local Nature Reserve, MOL and SINC designations as well as the A2016 Eastern Way, a part of the strategic road network (due to scale, pressure and temperature constraints the connections cannot be undergrounded) and several public rights of way. This would likely cause significant disruption.</p> <ul style="list-style-type: none"> In addition to the above constraints, the shortest route to this location for ductwork, pipework and utilities would also cross the operational area of the Crossness Sewage Treatment Works. Even if Peabody (the landowners of the alternative site) was looking to sell the land at Veridion Park, this option would still require substantial engineering works (and thus land take) across other 3rd party land north of Eastern Way and the public highway. <p>Veridion Park is therefore clearly an unsuitable site for the Carbon Capture Facility.</p> <p>The Applicant disagrees that Veridion Park is 'in the vicinity' of the Riverside Campus and does not agree that development of the Carbon Capture Facility at Veridion Park 'would overcome a number of the policy constraints'. The site is therefore plainly not a reasonable alternative and should not be considered as an important and relevant consideration moving forward.</p> <p>The Applicant notes that at the meeting on 9 December 2024, LBB agreed that the SIL at Veridion Park was unlikely to be a reasonable location and this has been agreed in the SOCG (Rev B, Document Reference: 8.1.1, as submitted alongside this response).</p>	
<p>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</p>	<p>The site assessment process has been undertaken following a rigorous, iterative and proportionate approach, that delivers the policy requirements of NPS EN-1. In addition to the TSAR (APP-125), and the TSAR Addendum (AS-044) the Applicant provided the further information sought by the Examining Authority</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

<p>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).</p> <p>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.</p> <p>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.</p>	<p>(including impacts on FP4 and explanation of the economic assessment) in its Written Summary of the Applicant's Oral Submission at ISH1 (REP1-024), particularly at Appendices B, D and E (REP1- 025). The East Zone has not been ruled out prematurely, it has been robustly, and continuously, demonstrated not to be a reasonable alternative.</p> <p>Thames Water's assertions regarding the Applicant's decision-making being cost driven is unsubstantiated. It is demonstrated to be incorrect by the extent of analysis submitted by the Applicant, which confirms the East Zone to not be a reasonable alternative.</p> <p>Thames Water's assertion that the Applicant has taken a different approach in relation to FP4 fails to recognise that the provisions set out within the draft DCO are to ensure public safety during the temporary construction period only. It is entirely correct for the Applicant to be concerned about the permanent adverse effects that would likely impact FP4 if the Carbon Capture Facility were to be developed at the East Zone.</p> <p>The Applicant understands that Realty Income (which owns the freehold of the Iron Mountain site and is Iron Mountain's landlord) acquired the Iron Mountain site in March 2021 with Iron Mountain as the sitting tenant. Realty Income has confirmed to the Applicant that it has not marketed the site since (nor has the Applicant seen any evidence to support such propositions), nor does it intend to market or dispose of the site in future following its acquisition of it approximately 4 years ago. Further, the Applicant has established through its own due diligence that Iron Mountain obtained planning consent for the facility in 2001 (Application Reference 99/02838/OUT) and has a protected 25 year lease (subject to security of tenure) until 2031, the implication being that Iron Mountain can seek a statutory renewal of its leasehold interest through to 2046.</p>	
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<p>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.</p>		
<p>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.</p> <p>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.</p>	<p>There is no defect in the Applicant's assessment of alternative sites. The evolution of land requirements, and representation of the 'compressed layout' is explained in the TSAR (APP-125) and in the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-024), particularly at Appendix B (REP1-025).</p> <p>Appendix B of the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025) explains how the Proposed Scheme evolved over time and how this was considered within the optioneering undertaken by the Applicant, focussing on site location and layout options. It explains consideration of different site layouts, with the Compressed/Compact Layout selected for the Carbon Capture Facility, noting at paragraph 1.2.12, that this option 'could be accommodated within a range of site size (some 6.3ha to over 8ha). The revised ES Figure 3-3 (Annex A) indicates the focus areas of flexibility sought, with the areas indicated potentially to be used for any (or all) of LVIA, water environment, ecological and operational drainage functions. These are a limited part of the overall CCF area that will be developed during detailed design and are an appropriate and necessary part of the Proposed Scheme'.</p> <p>The East Zone site options do not require retesting; even if the Compressed/Compact Layout could be delivered on a site of 6.3ha; it would still require the Iron Mountain plot and one other, with all the challenges that have been set out in the TSAR (APP-125), the TSAR Addendum (AS-044) and Appendix D of the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025).</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

Further, the South Zones do not require retesting. These are discussed in Appendix B of the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025) which confirms that a reduced site size 'would not change the conclusions of the analysis of the different south zones.'

Through the TSAR and TSAR Addendum, the North and West Zones are demonstrated to not be reasonable alternatives with conclusions that would not be affected by site size.

The mitigation hierarchy has demonstrably been applied, and it has been applied throughout the project's evolution and scrutiny. It is applied throughout the Environmental Statement and Planning Statement (APP-040), with explicit consideration (in addition to the implicit consideration carried through from the other assessments) made at Table 1, and in some detail both at paragraphs 4.2.16 to 4.2.27, and in regard to the principle of development (section 4.7) and marine and terrestrial biodiversity (section 7.9). The TSAR (APP-125) acknowledges the policy driven need to follow the mitigation hierarchy; and this is then applied in the Optioneering Principles seeing to 'avoid or minimise' adverse impact/land take. A design process was undertaken seeking to compress the layout of the Proposed Scheme such that its footprint could be minimised and its benefits optimised (as detailed in the Design Approach Document (APP-044 to APP-046). The Environmental Statement identified suitable mitigation for each topic and these are secured through the Mitigation Schedule.

These actions demonstrate compliance with all levels of the mitigation hierarchy. Further, the principles established through these Application documents have been continued through the Applicant's subsequent submissions to the Examination. The Applicant's Response to Relevant Representations (AS-043) specifically addresses the potential to avoid the Erith Marshes SINC and Crossness LNR (section 2.5) and the potential to avoid MOL (section 2.6). The Applicant has proactively updated the Mitigation Schedule and control mechanisms such as the Design Code, the Outline LaBARDS and the Outline CoCP in response to

	<p>helpful suggestions on these matters from Interested Parties.</p> <p>The Applicant has demonstrably applied the mitigation hierarchy throughout the Proposed Scheme. Those residual effects that remain are not HRA or MCZ impacts and have consistently been proven to be not avoidable or capable of being further minimised. Further none of the exceptions set out at NPS EN-1 paragraph 4.2.15 apply. Appropriate mitigation has been built into the Proposed Scheme, not least through a carefully considered, strategic masterplanning approach.</p> <p>Consequently, the starting point for the Secretary of State's decision making, is correctly to be from the assumption that the Proposed Scheme is to be treated as if it has met the relevant tests and to be considered as CNP infrastructure.</p>	
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Very Special Circumstances

TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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;</p>	<p>The very special circumstance of carbon capture is set out in the Planning Statement (APP-040) from paragraph 5.5.5 to 5.5.11 (and reiterated in the Applicant's Response to Relevant Representations (AS-043, section 3.4). The Planning Statement explains that the Proposed Scheme would capture some 1.3 million tonnes of carbon dioxide each year, resulting in net-negative CO2 emissions of some 0.6 million tonnes each year. The payback period, the time it would take for carbon emissions calculated for the construction and operation phases to be offset by the savings in carbon emissions from the Proposed Scheme is less than five weeks. The Proposed Scheme will make a substantial contribution to meeting global, national and local decarbonisation targets. This matter is also addressed in the Project Benefits Report (APP-042) and section 3.4 of the Applicant's Response to Relevant Representations (AS-043).</p> <p>Mr Hewitt's Written Representation (REP1-065) references OIES Paper: CM09, Carbon Capture from EfW: A low-hanging fruit for CCS deployment in the UK? (Carbon Capture from EfW); it is provided at</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

	<p>Appendix E to this report. The Executive Summary states:</p> <p>'In fact, the significance of EfW+CCS in meeting climate objectives cannot be overstated, as the practice can contribute at least three different climate benefits. First, by diverting waste away from landfill, it avoids the generation of methane emissions which would occur otherwise. Second, it directly reduces emissions by capturing CO2 from the fossil content in waste (around half of waste is fossil-based). Third, and perhaps most critically, EfW coupled with CCS can generate negative emissions (or 'carbon removal') since a substantial portion of the carbon contained in residual waste streams is of biogenic origin, the permanent sequestration of which leads to a negative impact on overall CO2 stocks in the atmosphere.'</p> <p>The Carbon Capture Facility is proposed, and is designed, for the capture of carbon dioxide emissions from Riverside 1 and 2 energy from waste facilities. That is its function, and the outcome of its function is a very special circumstance – it is an exceptional project that will deliver meaningful change.</p>	
<p>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.</p>	<p>The very special circumstance of future proofing sustainable waste management is set out in the Planning Statement (APP-040) from paragraph 5.5.12 to 5.5.17. This explains the important role played by Riverside 1 and Riverside 2 (when operational) as providing some 50% of the residual waste management capacity in London and the benefit of being able to achieve negative carbon – the quote given above from 'Carbon Capture from EfW' would also be relevant here. More detail on the sustainable waste management services provided by the Applicant at the Riverside Campus is provided at section 2.3 of the Project Benefits Report (APP-042) and section 3.4 of the Applicant's Response to Relevant Representations (AS-043).</p> <p>To be clear, Thames Water is correct in that the Proposed Scheme is not a waste management plant. However, it is the project required to enable the important waste treatment infrastructure already at Riverside to make its full contribution in sustainably managing society's residual waste and helping Bexley,</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

London and the UK to meet their decarbonisation goals. As is explained throughout the application documents, the Carbon Capture Facility necessarily needs to be located with the Riverside Campus for operational efficiency, for security and to reduce impacts on the environment and third parties.

Section 4 of the Planning Statement considers matters relevant to the principle of the development and how the Proposed Scheme delivers against a raft of national and local policy priorities for climate change, not least:

- NPS EN-1;
- the Sixth Carbon Budget, which at page 91 considers that the only way to reach Net Zero by 2042 is if energy from waste facilities use CCS 'in order to decarbonise, as no other viable low-carbon alternatives are available' and that 'CCS is essential in achieving Net Zero, at lowest cost, in the UK. The importance of CCS globally further underscores the urgency of progressing CCS plans in the UK.';
- Carbon Capture Usage and Storage Vision;
- Draft Strategy and Policy Statement for Energy Policy in Great Britain, which at page 22 states, 'Carbon dioxide transport and storage networks will be the enabling infrastructure for carbon capture from a range of potential sources, including ... carbon capture from energy from waste, ...';
- London Plan policy GG6, which confirms London's target to be 'a zero carbon city by 2050'; and
- Bexley Local Plan policy DP14 - 'The Council will actively pursue the delivery of sustainable development by ... supporting development that achieve zero -carbon and demon strate a commitment to drive down greenhouse gas emissions to net zero.'

The policy case for post -EfW carbon capture is also set out in the Project Benefits Report (AP -042) at section

s 3 and 4. From paragraph 4.3.41, the PBR reports on work commissioned by the GLA to understand the pathways available to reach, and the implications of, an accelerated target to reach net zero carbon emission by 2030, relative to the former 2050 target. 'Analysis of a Net Zero 2030 Target for Greater London' was published by Element Energy in 2022 presenting the work undertaken to provide this insight.

Page 22/23 recognises the important role that EfW facilities have to play in supplying heat networks and goes on to recognise that adding carbon capture delivers the ability 'to generate electricity with net negative GHG emissions, which offers the opportunity to offset some of the remaining emissions from other sectors.'

Page 23 confirms that this aligns with the CCC's sixth Carbon Budget 'Balanced Pathway'.

'The CCC's 6th Carbon Budget Balanced Pathway requires all EfW plants to be fitted with CCUS by 2050. Achieving this technology deployment relies on CCUS infrastructure being rolled out across the UK. In London, this transition relies on local projects developing CCUS transport chains for London's EfW plants to join with and therefore the timing of when CCUS could be a viable solution for EfW plants strongly depends on development of these projects. Project Cavendish is aiming to begin operation of hydrogen production with CCUS in the late 2020s, offering a potential opportunity for consolidation of CO2 transport and storage supply chains if one or more of London's EfW plants were to convert in the early 2030s. Without this project (or other opportunities for lower cost CO2 transport and storage), it may be more likely Page 40 of 63 Planning Inspectorate Ref: EN010128 Project Benefits Report Application Document Number: 5.4 that conversion happens later, in the 2030s or early 2040s, as wider CCUS supply chains ramp up.

If CCUS could be in place at the largest EfW plants by 2030 -2032, emissions from EfW could be net negative at -0.2 MtCO2e. Recent UK-wide analysis placed London's EfW plants within a second phase of conversion that could occur between 2031 -2040,

	<p>meaning that this transition is technically feasible if London's plants could convert at the beginning of this phase.'</p> <p>The role of carbon capture following the management of residual waste through incineration is supported throughout policy documents, and the priority for carbon capture is most neatly summed up by the Committee on Climate Change (CCC) in its 2019 Report to Parliament in which it recognised CCS as a necessity, not an option.</p> <p>In its 2023 Progress Report to Parliament (summarised from paragraph 3.3.12 of the Project Benefits Report) the CCC identifies EfW facilities fitted with CCS, by 2035, as a 'required outcome of policy', with the intention to reduce CO2 emissions from EfW by 8% by 2035. Table 12.1 of that report recommends that Government continues 'to progress work on the carbon capture business models at pace and continue to support EfW plants to participated in future phases (recommendation R2022-304).'</p> <p>The Second National Infrastructure Assessment 2023 (summarised from paragraph 3.3.19of the Project Benefits Report) states (at page 129):</p> <p>'Energy from biogenic waste – waste which emits carbon dioxide – combined with carbon capture and storage can also deliver negative emissions. Government should support the transition of the energy from waste sector to carbon capture and storage through its industrial decarbonisation programme.'</p> <p>Government is taking this action, and the Proposed Scheme will be ready to participate in it and to contribute to meeting the early Tailwinds scenarios set out in the Sixth Carbon Budget. This is a very special circumstance.</p>	
<p>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;</p>	<p>The Proposed Scheme does not propose the use of vehicles to transport LCO2 from the Carbon Capture Facility to the Jetty. Neither will any vehicles return to the EfW facilities. The LCO2 is proposed to be transported via pipework, directly from the Carbon</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

<p>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;</p>	<p>Capture Facility to the Jetty, where it will be loaded into the ships.</p> <p>The very special circumstance of the riverside location is set out in the Planning Statement (APP-040) from paragraph 5.5.18 to 5.5.22. This explains that the history of the Cory group is underpinned by the River Thames, and that this future use of the river will provide environmental, economic and societal benefit. It can also act as a catalyst to growth of the UK shipping sector. More detail on Cory's history on the river is provided at section 2.3 of the Project Benefits Report (APP-042) which also sets out the benefits of this mode of transport at section 5.3. The matter is also addressed at section 3.4 of the Applicant's Response to Relevant Representations (AS-043).</p> <p>The Applicant is the only waste management company to rely upon riparian waste management facilities and to the Applicant's knowledge is currently the only waste management company to engage in shipping for this purpose. The local benefits (not least avoiding additional road movements on the public highway, bringing societal and environmental benefit) and the national benefits (not least demonstrating NPT options for other decarbonisation projects that are not connected to a pipeline) are only achieved by the very special circumstance of being by, and using, the River Thames as intended by the Proposed Scheme.</p>	
<p>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</p>	<p>The very special circumstance of the quality of the proposed coherent design is set out in the Planning Statement (APP-040) at paragraphs 5.5.23 and 24. It is also addressed in the Project Benefits Report (APP-042, not least at paragraphs 5.4.8 to 5.4.11) and at section 3.4 of the Applicant's Response to Relevant Representations (AS-043).</p> <p>Thames Water may consider the loss of MOL to be considerable. The Applicant disagrees and has set out its comprehensive analysis of this harm at section 5.4 of the Planning Statement (APP-040) and section 3.4 of the Applicant's Response to Relevant Representations (AS-043). It has demonstrated that harm is limited, that there will remain a 'break within the built up area', there will be no loss of Accessible</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

<p>which is not to be constructed on MOL is nevertheless located adjacent 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</p>	<p>Open Land and there will result a general improvement in the user's experience of the MOL.</p> <p>Further, Thames Water focusses purely on aesthetic design, which is not a stage yet reached by the Proposed Scheme. Good design is much broader than simply the visual appearance of a development.</p> <p>The comprehensive and coherent design promulgated through the Proposed Scheme addresses all aspects of the project, starting with the use of the land allocated as SIL to the west of Norman Road (some 70% of the Carbon Capture Facility site), through considering an optimal layout within the site, seeking to integrate biodiversity and landscape within elements of the project (eg water habitats within the attenuation pond), developing proposals for the Mitigation and Enhancement Area is committed through the Outline LaBARDS, and into the ongoing evolution of the design in compliance with the Design Code that will control all of these matters as the project moves through detailed design and into implementation.</p> <p>The rigour and standard applied to these matters is set out in the application documents, not least the Design Approach Document (APP-044 to 046). It is a standard that would only be seen in a project of national significance permitted through a comprehensive approach to development masterplanning to secure wider ranging design proposals than incremental development on a plot by plot basis, is likely to be capable of achieving if the CIL policy area was to come forward as individual plot proposals, and is a very special circumstance of the Proposed Scheme, which delivers on a globally important environmental challenge with a positive and locally relevant solution.</p> <p>Visual effects of a development can be considered 'other harm' for MOL as it results in changes in landscape character and the nature of the visual environment. Chapter 10: Townscape and Visual of the Environmental Assessment (Volume 1) (APP-059) considers the effects on townscape character and visual amenity during both construction and operation phases, including an assessment of the views that are available to people who may be affected by the Proposed Scheme, including their perception and</p>	
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	<p>response to changes in these views, and visual amenity. The extent to which the Townscape and Visual Impact assessment relates to MOL is limited to its assessment of impact on accessible non-built-up areas of the site. The assessment concludes significant adverse effects during construction and operation phases on users of Accessible Open Land (AOL) (parts of which fall within the MOL and Crossness LNR) and PRow within the Site Boundary. The magnitude of impact is related to the scale and nature of the Proposed Scheme, along with the geographic extent of the Proposed Scheme within views and how these views would change with the introduction of the Proposed Scheme. The quality and condition of the Accessible Open Land, however, would be tangibly improved through the proposals for the Mitigation and Enhancement Area (committed through the Outline LaBARDS (APP-129)) which includes enhanced grazing marsh, enhanced wetland habitat, and improved footpath construction. The proposed improvements to habitat and access aim to create a more enjoyable, inclusive, and sustainable interaction with the environment for users of the AOL and remaining MOL, which would foster not only a positive user experience but also long-term ecological resilience.</p>	
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Green Belt and MOL Harm

TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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”.</p> <p>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</p>	<p>That there will be harm to the designated MOL is recognised and considered in some detail within the Application documents, principally section 5.4 of the Planning Statement (APPP-040) and section 3.4 of the Applicant’s Response to Relevant Representations (AS-043). Within these submissions, the level of harm and application of the mitigation hierarchy is explicitly considered, and the Bexley Green Infrastructure Study is referenced.</p> <p>Thames Water and the Applicant concur on the matter that is raised and the relevant documents to consider. Consequently, the difference between them is simply a judgement of the level of harm resulting from the Proposed Scheme.</p>	<p>The Applicant states that the “retained MOL will continue to perform its primary function, to provide a meaningful break within the built up area...”.</p> <p>However, the Bexley Local Plan does not actually state that “a break within a built-up area” is the primary function of MOL. Further, the London Plan, with which local plans must be in accordance, states MOL is “strategic open land”, and emphasises the particular function of “protect[ing] and enhance[ing] the open environment”. The loss of open environment is a clear failure to protect it, contrary to policy.</p>

<p>in Green Belt policy (and see below regarding the designation of 'accessible' and 'non-accessible' open land).</p> <p>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).</p> <p>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).</p>	<p>The site assessment process has been undertaken following a rigorous, iterative and proportionate approach, that delivers the policy requirements of NPS EN-1. In addition to the TSAR (APP-125), and the TSAR Addendum (AS-044), the Applicant provided the further information sought by the Examining Authority (including impacts on FP4 and explanation of the economic assessment) in its Written Summary of the Applicant's Oral Submission at ISH1 (REP1-024), particularly at Appendices B, D and E (REP1- 025).</p> <p>As acknowledged by LBB in their relevant representation (RR-124) and in the Bexley GI Study (Part 1, Chapter 3, paragraph 3.51) that the concept of 'openness' is a combination of 'spatial' openness, where the 'scale, form and density of built development' are the relevant factors; and 'visual' openness, where consideration is given to the role of topography, vegetation, buildings, linear features in maintaining or screening open views of the wider MOL.</p> <p>This position is confirmed in case law. In Turner v Secretary of State and East Dorset Council [2016] EWCA CIV 466, Sales LJ said 'the concept of 'openness of the Green Belt' is not narrowly limited to a volumetric approach...The word 'openness' is opentextured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case'. It does not therefore imply a freedom from any form of development. The Supreme Court in Samuel Smith Old Brewery (Tadcaster) and Others v North Yorkshire County Council [2020] UKSC took this further, holding that consideration of visual impacts of a development on openness '...is a matter not of legal principle, but of planning judgement' (paragraph 25) which could form a material consideration. The Bexley GI Study acknowledges this and notes that vegetation and landform can provide visual enclosure to a development to mitigate its visual impacts on the wider MOL (paragraph 3.51).</p> <p>In considering the impacts to MOL, including its openness, it is important to note that there are no reasonable alternative sites such that any impact on MOL could be avoided entirely. This has been consistently demonstrated by the applicant. However,</p>	
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site choice, design evolution and the Design Principles and a robust Design Code, do minimise that impact.

As has been discussed, approximately 70% of the scheme will be positioned on SIL, where LBB have confirmed (RR -124, and most recently in the SoCG Rev B (Document Reference: 8.1.1, as submitted alongside this response) that development of the CCF would accord with policy. Only 2.5ha of MOL is to be unavoidably lost within the East and Stable Paddocks, as a result of the proposed scheme (Work No. 1a, Works Plans APP - 137). A further 1ha of MOL will be impacted, but not lost, to the immediate west and south of Riverside 2 (Work No.2B, Works Plans, APP - 137).

All reasonable measures have been taken to minimise the impacts and identified harms to MOL (Section 5.4, APP -040) , and to effectively mitigate those which cannot be avoided.

The comprehensive design and considered layout of the proposed development as detailed in Section 5 of the DAD (APP -044 to 046) and the consequent Design Principles and Design Code (APP -047, as updated by AS -043) will ensure that the physical characteristics of the Proposed Scheme will have a limited impact on the relevant primary purpose of the MOL, to keep land open.

In particular, careful consideration has been given to the scale, massing and layout of the scheme to minimise the footprint of the built form and consequent impacts on the MOL and other designations, and to reflect the transition from the industrial riverside to the community at Belvedere. A diffused and compact layout option were explored (DAD, APP -045) with the compact option ultimately selected to reduce the footprint of the CFF and provide space for a landscaping buffer to facilitate spatial and visual separation between the CCF and the MOL to help protect openness.

The applicant therefore maintains that the scheme proposed, which minimises as far as practicable the area of MOL to be lost, alongside the scheme of comprehensive landscaping, which will minimise the

	<p>visual impacts of the scheme for any visitors to the remaining MOL, will have a limited and minimal impact on the primary aim and purpose of the MOL to provide strategic open land and a break within a built up area.</p> <p>The applicant would highlight, that the majority of the overall Site area located within the MOL is to be retained as a substantially undeveloped Mitigation and Enhancement Area, and that the broad variety of enhancements to be delivered (see Outline LaBARDS, APP -129) are considered to accord with the wider aims and purposes of MOL set out within the London Plan and Bexley Local Plan.</p> <p>Whilst TWUL states that it is irrelevant that the fact that much of the MOL land in this location is inaccessible, they note that this relates to Green Belt policy. A key distinction between Green Belt and MOL policy objectives is that MOL not only "...protects and enhances the open environment..." it also "...improves Londoners' quality of life by providing localities which offer sporting and leisure use, heritage value, biodiversity, food growing, and health benefits through encouraging walking and running and other physical activity." (Policy G3 of the London Plan), and to this end Policy G3 (paragraph A(2)) introduces a requirement for boroughs to "work with partners to enhance the quality and range of uses of MOL".</p> <p>The applicant therefore contends that by retaining the majority of the Site area as a largely undeveloped Mitigation and Enhancement Area, the Proposed Scheme will maintain the majority of the spatial openness of the MOL in this location, so that the retained MOL will continue to perform its primary function, to provide a meaningful break within the built up area, and will largely retain the physical structure of this part of London. However, though the delivery of the scheme, extensive benefits to the environment and community will also be delivered which are consistent with the wider aims of MOL policy.</p>	
<p>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' which contributes to the physical structure of this part of London (see paragraph 3.48 of the Bexley Green Infrastructure</p>	<p>That there will be a loss to the designated MOL is recognised and considered in some detail within the Application documents, principally section 5.4 of the Planning Statement (APPP-040) and section 3.4 of the Applicant's Response to Relevant Representations (AS-</p>	<p>As above, any loss of open environment is a clear failure to protect it, contrary to policy.</p>

<p>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.</p>	<p>043). Consequently, the Applicant agrees with Thames Water that this loss leads to a reduction of the MOL, open space between Norman Road and the Crossness STW. However, even with that loss, the location of the Carbon Capture Facility is correctly described by the Applicant as being able to retain a 'break within the built-up area', which is the primary function for the MOL as set out within the Bexley Local Plan.</p> <p>Thames Water is wrong to read paragraph 5.4.3 of the Planning Statement as saying anything other than what it does, that the remaining land designated as MOL within the Crossness LNR will 'continue to perform a separating function between the built up area. A substantial, and definitive, area of openness between the proposed Carbon Capture Facility and the Crossness Sewage Treatment Works will be maintained.'</p> <p>The MOL in this area, north of the A2016 and between the Crossness Sewage Treatment Works and Norman Road, measures some 34ha. The Carbon Capture Facility would use 2.5ha, leaving some 31ha of open space remaining.</p>	
<p>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 they define 3 purposes (at paragraphs 2.31.1 to 2.31.3 that are also considered directly relevant.</p>	<p>Thames Water suggests that the Green Belt purpose 'to prevent neighbouring town merging into one another' is relevant. The Applicant disagrees. Paragraph 5.5.56 of the Bexley Local Plan states:</p> <p>'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.' (emphasis added)</p> <p>The Bexley Local Plan differentiates between the Metropolitan Green Belt and Metropolitan Open Land. If it felt that it was necessary to make a break between settlements it would have designated this area as Green Belt, rather than MOL. In any event, there remains a break between the built-up areas, and it cannot reasonably be suggested that the settlements of Erith and Thamesmead are merging.</p>	<p>The Applicant cannot assert what the London Borough of Bexley would have done, as this response suggests - there may be multiple reasons why the designation is MOL and not Green Belt.</p> <p>There is no suggestion that the settlements of Erith and Thamesmead are merging. In any event, the Applicant's reference to the Bexley Local Plan is not relevant. The Applicant's Planning Statement is referring to the NPPF and this is what TWUL's written representation is responding to.</p> <p>The MOL encourages the recycling of derelict and other urban land due to its status as MOL: it has protected status and therefore the development of other urban land will be prioritised.</p> <p>TWUL reiterates its position and the reasons as detailed in paragraphs 2.31.1 - 2.31.3 of its written representation.</p>

	<p>Thames Water suggests that the Green Belt purpose 'to assist in safeguarding the countryside from encroachment' is relevant. The Applicant does not agree. Whilst the MOL is not developed, it cannot reasonably be considered an area of countryside. The Proposed Scheme's impact on the habitat of Coastal Grazing Marsh is appropriate to understand and assess and is addressed elsewhere within the Application documents and in this response document. It is not however reasonable to suggest that habitat represents countryside.</p> <p>Thames Water suggests that the Green Belt purpose 'to assist in urban regeneration, by encouraging the recycling of derelict and other urban land' is relevant. The Applicant does not agree and is somewhat perplexed by Thames Water's representation. It offers no evidence of how the East and Stable Paddocks have encouraged the delivery of this purpose (whilst suggesting it has been achieved) and fails to recognise that most of the Carbon Capture Facility is located on land allocated as SIL (some 70%).</p>	
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Interaction with Existing Consents

TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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.</p> <p>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</p>	<p>The Applicant was unaware of the s.106 relevant to the Veridion Park permission until it was referenced by the Save Crossness Nature Reserve Group in a draft SoCG. However, the Applicant was fully cognisant of the use of Norman Road Field as an element of the mitigation delivered for the first phase of Veridion Park. It had been assumed that the management of that land had been subject to the standard period of five years for aftercare. This history is however neither important nor relevant.</p> <p>As is set out in some detail at Appendix F to the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-026), and as agreed with London Borough of Bexley in the SoCG (most recently Rev B (Document Reference: 8.1.1, submitted alongside this response)) the mitigation measures required at Norman Road Field for the Veridion Park development have been implemented and managed for the requisite period of ten years. Consequently, there is no extant mitigation</p>	<p>TWUL queries where is it specified that the mitigation measures at Norman Road Field required by the 2005 Agreement lapse after 10 years.</p>

<p>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.</p> <p>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.</p> <p>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.</p>	<p>commitment at Norman Road Field. As is also set out at Appendix F of the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-026) the habitat enhancement proposals set out in the Outline LaBARDS (REP1-012) will both enhance biodiversity at this location and secure a further 30 years of management commitment.</p>	
<p>Net Loss of Habitat and Recreation Land</p> <p>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 LNR, accessibility to either is not substantively changed.</p> <p>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</p>	<p>The Applicant proposes extending the designation of Local Nature Reserve (LNR) to include Norman Road Field. As Thames Water identifies, Norman Road Field is some 8 ha; approximately 2.5ha of the Crossness LNR would be developed for Carbon Capture Facility, with approximately another 1 ha oversailed by the Flue Gas Ductwork. Thames Water considers a total of 3.5ha of Crossness LNR to be lost, which would still result in a net extension of 4.5 ha of land designated as LNR.</p> <p>The Proposed Scheme does not suggest there would be new open space. However, the users experience of the LNR, as extended, would be enhanced through a range of improvements focussing on habitat condition and biodiversity, path quality and accessibility (including potential new connections to make a circular route along the River Thames and to the former Thamesmead Golf Course) and a more open and welcoming entrance at the southern end of Norman</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

<p>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.</p>	<p>Road (which would specifically address one of the challenges of this site identified in the Bexley Green Infrastructure Study).</p>	
<p>Landscape, Biodiversity and Recreation Delivery Strategy</p> <p>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:</p> <p>2.58.1 the use of Sea Wall Field (which is MOL) for temporary construction compounds (as shown on Figure 13);</p> <p>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</p> <p>2.58.3 the creation of an additional footpath link connecting footpath 2 to footpath 3 (section 6.4.9).</p> <p>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.</p> <p>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.</p>	<p>A linear strip is required for construction of the overhead Flue Gas Ductwork, both to the east side of Sea Wall Field and northern boundary of the West Paddock. This is proposed as a framework structure supported on legs that will be 'light touch' and, in the long term, have limited impact on the habitats beneath. During construction, measures will be taken to protect existing habitats and species including protection against ground compaction and avoidance of large concrete foundations where practicable, appropriate stripping and storing soils on site to protect the important seed bank site and to ensure suitable condition, to be reapplied to the land once the vacated. These temporary works will be undertaken in accordance with the Outline CoCP (updated alongside this response) not least as set out at Sections 5 and 15 of that document.</p> <p>Potential relocation of the stable block from the north of the Thames Water Access Road to the south side is shown in illustrative plans only. The final location would be developed through the detailed design phase and in consultation with the grazier and is to be approved by LBB prior to commencement (through approval of the full LaBARDS, requirement 12 of the draft DCO). The footprint of the new stable block will not affect the ability of the Proposed Development to fully compensate for the effects of habitat loss. Effects on protected species will be avoided and minimised by embedded mitigation in minimised in accordance with the Outline CoCP (updated alongside this response),</p>	<p>TWUL reiterates its position that it considers the temporary construction compounds proposed on the Sea Wall Field will have a significant and lasting adverse effect on the habitats and species thereon. It is also noted that the avoidance of large concrete foundations only applies "where practicable". In other words, the Applicant is under no obligation to avoid using such foundations and will likely not avoid using them if it proves inconvenient or costly.</p> <p>TWUL reiterates the position set out in its Written Representation in relation to this response in all other respects.</p>

<p>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 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.</p> <p>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.</p>	<p>and any residual effects mitigated through additional measures as detailed in Section 7.9 of Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056).</p> <p>All the footpath proposals are indicative at this stage, shown in illustrative plans and to be agreed with LBB through submission, and approval, of the full LaBARDS. The Applicant sees the second access through Sea Wall Field (new FP2 leg) as an optional, more attractive route that could replace the current provision. The Applicant has proposed these footpath and access improvements as additional measures (not strictly required as mitigation) within the Proposed Scheme to enhance the users experience of this area. As these do not open up new areas of the reserve, merely improve connectivity, they do not represent the risk of additional disturbance to species or loss/degradation of habitats from members of the public than exists already at Crossness Nature Reserve and has been factored into the ecological baseline conditions.</p> <p>It is noted that the Core Temporary Construction Compound is located on land that is ultimately required for the Carbon Capture Facility and will not be reinstated. The Western Temporary Compound is located on land that forms part of the Mitigation and Enhancement Area which will be restored and enhanced pursuant to the LaBARDS.</p> <p>The illustrative proposals in Figure 14 of the Outline LaBARDS suggest a sparse collection of trees along the eastern edge of Norman Road Field. The intention was to:</p> <ul style="list-style-type: none"> • Improve diversity of ditch side habitat to include some occasional low level native trees such as Salix caprea. • Provide additional layers of screening for the CCF built form and fence lines when viewed from CLNR. • Maintain light levels for grazing marsh plant species through wide spacing between 	
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	<p>proposed trees/ shrubs and selecting species with a low/ hunkered form.</p> <p>However, the Applicant agrees that tree planting should not detract from grazing marsh habitats and will update the illustrative Figure 14 to show significantly reduced tree numbers in the next iteration of the outline LaBARDS to be submitted to Examination. The Outline LaBARDS is, necessarily an outline document, with the full LaBARDS to be approved by LBB under requirement 12 of the draft DCO.</p> <p>The location of the existing stable block within Stable Paddock would be difficult to retain due to CCF access and security requirements. The illustrative scheme proposes the remaining part of Stable Paddock utilised primarily for drainage basins and screening vegetation, which also provides new, complementary habitat.</p> <p>The Applicant welcomes Thames Waters' commitment to engage on the enhancement and mitigation proposals within the Proposed Scheme and will seek to continue discussions with them.</p>	
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Open Space

TWUL Written Rep	Cory Response	TWUL Further Response for D3
<p>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."</p> <p>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</p>	<p>Paragraph 2.2.7 of the TSAR (APP-042) describes Accessible Open Land as 'being both designated as, and used as, public open space, which has not been deemed surplus to requirements by LBB ...'. Page 33 of the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-024) reports Mr Fox's clarification at ISH1: 'that in relation to Accessible Open Land this also counts as open space or special category land. The term Accessible Open Land had been in recognition that this land is used by people both to recreate and to access nature. It was a term used in the Environmental Statement and in the Optioneering Principles.'</p> <p>Reference to, and consideration of Accessible Open Land within the Application documents is wholly appropriate and aligns with NPS EN-1. It is relevant for impacts of the Proposed Scheme to be considered in the context of whether open space is actually accessible by the public, or not. It is a fact, not</p>	<p>TWUL reiterates the position set out in its Written Representation in relation to this response.</p>

<p>Open Land resulting from the Proposed Scheme, i.e. land that is actually used as open space”.</p> <p>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 ‘nonaccessible’ 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.</p> <p>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.</p> <p>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.</p>	<p>disputed by Thames Water, that none of the East, Stable nor West Paddocks are accessible by the general public. Indeed, none of the Crossness LNR north of the Thames Water Access Road is accessible to the general public. It is not disputed that these areas have ‘public value’ and can provide ‘essential amenity in various ways’ principally privately by the grazier and by being looked at for the general public. However, this is the limit of their use as open land.</p> <p>The Applicant also notes that it has, in its TVIA, considered impacts relating to the Non Accessible Open Land, including impacts to it as forming part of the local townscape character, and as part of the user experience of Public Rights of Way, in considering effects on the visual amenity of those users. The conclusions of that TVIA have then been considered in the Planning Statement as part of the planning balance.</p> <p>Indeed, Thames Water’s Written Representation makes clear just how limited access to these paddocks is by its own reference to the Members or Protected Area of the Crossness LNR (albeit this lies outside the Order limits). The Members/Protected Area is identified as accessible, if persons become a member and are able to obtain the controlled access) (which, the Applicant notes, still means it does not qualify as ‘public open space’ for the benefit of the 2008 Act, as the ability to recreate is still controlled and is ‘by right’ of the landowner, rather than ‘as of right’); whereas this, qualified, level of access is not granted to the land to the north of the Thames Water Access Road.</p>	
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