



APPLICANT'S RESPONSE TO INTERESTED PARTIES' DEADLINE 4 SUBMISSIONS: 9.27

DECARBONISATION

Cory Decarbonisation Project

PINS Reference: EN010128

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Revision A

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EXECUTIVE SUMMARY

12 Interested Parties have made written submissions at Deadline 4 of the Examination for the Cory Decarbonisation Project (the 'Proposed Scheme').

Cory Environmental Holdings Limited (the 'Applicant') has reviewed each of these submissions and responds to those that it considers require a substantive response in this document. The submissions received from the Interested Parties are focussed on various topics, and the Applicant has responded on a per party basis accordingly:

- London Borough of Bexley (LBB)
- Marine Management Organisation (MMO)
- Port of London Authority (PLA)
- Campaign to Protect Rural England (CPRE)
- Mr Gannon
- Creek Side Developments (Kent) Ltd
- Ralph Todd
- Landsul Limited
- Munter Joinery (U.K) Limited
- Rideway Users
- Save Crossness Nature Reserve (SCNR)
- Thames Water Utilities Limited

1. INTRODUCTION

1.1. PURPOSE OF THIS DOCUMENT

- 1.1.1. This Report provides a response to the issues raised in the submissions of Interested Parties at Deadline 4 (25 February 2025).

1.2. STRUCTURE OF THE APPLICANT'S RESPONSE

- 1.2.1. Section 2 of this document presents the Applicant's response to relevant parts of the submissions received from the following Interested Parties at Deadline 4. The responses are focussed on those points from these Interested Parties where the Applicant considers it would be helpful to expand on its previous submissions in Examination. Where the Applicant has not responded to points, that is because either the points do not need a response, or the Applicant relies on its previous submissions. The Interested Parties responded to are:
- Marine Management Organisation (MMO)
 - Port of London Authority (PLA)
 - Mr Gannon / Creek Side Developments (Kent) Ltd (responded to together as their submissions are repeated)
 - Landsul Limited / Munter Joinery (U.K) Limited (responded to together as their submissions are repeated)
 - Ridgeway Users
 - Save Crossness Nature Reserve (SCNR)
 - Thames Water Utilities Limited (TWUL)
- 1.2.2. Within Section 2, the Applicant has responded to the submissions received by each of the above Interested Parties in a separate table for each Party.
- 1.2.3. No response is required, and is consequently not provided, to LBB's Deadline 4 submission **(REP4-036)**.
- 1.2.4. No response is required, and is consequently not provided, to CPRE's Deadline 4 submission **(REP4-039)**. Please see the Applicant's previous submissions in relation to openness **(REP4-033)** and **(REP4-012)**.
- 1.2.5. No response is required, and is consequently not provided, to Ralph Todd's Deadline 4 submission **(REP4-046)**. Please refer to sections 10-13 in the **Outline LaBARDS (as updated alongside this submission)** which deals with the points made in Mr Todd's submissions.

2. RESPONSES TO MATTERS RAISED IN DEADLINE 4 SUBMISSIONS

2.1. MARINE MANAGEMENT ORGANISATION

Table 2-1 Applicant's response to Marine Management Organisations Deadline 4 Submission

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
2.1.1	<p>Validity of Environmental Statement Conclusions</p> <p>3.2.5. The Applicant has still not provided evidence as to why they categorise the magnitude of impact as 'medium' for most receptors, 'low' for marine plants and macroalgae, and 'negligible' for plankton and marine mammals. The evidence to assess these conclusions is likely to be the sample results, so the MMO considers that this can be revisited once the samples results are provided.</p> <p>3.2.6. Evidence should be provided to support the Applicant's conclusions regarding magnitude of impact. Until then, the original comment remains outstanding. The evidence for this will likely be the sample results so the MMO requests that the Applicant review and update the Environmental Statement as appropriate alongside the sample results when available.</p>	<p>3.2.5. The medium magnitude for fish has been derived by taking a precautionary approach and assuming any sediment contaminants released during activities will be harmful to fish species in conjunction with the transient nature of fish within this section of the River Thames. The transient nature of fish will reduce the potential exposure to sediment bound contaminants and thus reduce the magnitude of the impact.</p> <p>The low magnitude for marine plants and macroalgae was derived from the distribution within the study area (i.e. colonising marginal areas and hard substrates) and the limited interactions with construction activities such as dredging and piling. In addition, the coastal process modelling predicted that the majority of suspended sediments would be retained within the main channel and not be deposited on marginal areas. Therefore, the anticipated magnitude of change is expected to be low.</p> <p>The negligible magnitude for plankton was derived from the high tidal flows within this section of the River Thames resulting in high mixing and low residence times for plankton within the study area and subsequent exposure to any released contaminants.</p> <p>The negligible magnitude for marine mammals was derived from their transient nature and low numbers reported within the study area.</p> <p>The negligible magnitude for Marine habitats and Associated Intertidal and Subtidal Benthic Communities was derived from the background levels of suspended sediments and waterborne contaminants within the Thames and took into consideration existing activities such as maintenance dredging occurring within the study area. The scale of the proposed works in comparison to the intertidal and subtidal habitats</p>	<p>3.2.5. The MMO notes that sediment contamination data at depth (8 metres) has not yet been provided and so it is difficult to agree to any sort of predicted magnitude of impact as without any such characterisation there is still a large margin for error.</p> <p>The MMO considers the Applicant's response to point 3.2.5 is still not appropriately justified, however defers further comment until the depth data are available. This is because, if the depth data do not indicate a cause of concern (contaminant levels are acceptable) then a lower magnitude of impact can be justified by this. Until then, the MMO is unable to agree to any sort of conclusion of low or medium significance in some with such a paucity of data.</p> <p>3.2.6. Given the above comments regarding 3.2.5. the MMO considers that point 3.2.6 remains outstanding.</p>	<p>In response to 3.2.5 and 3.2.6, the results of sediment sampling at dredge depth have been received and were presented to the MMO in a meeting on the 19th February 2025 and subsequently reported in the Sediment Sampling Technical Note (as submitted alongside this report). The Applicant provided a draft of the Sampling Technical Note (as submitted alongside this report) to the MMO for comment on the 5th March 2025. The Applicant received comments from the MMO on the Sediment Sampling Technical Note (as submitted alongside this report) on the 20th March 2025. No updates are required to the Sediment Sampling Technical Note (as submitted alongside this report) based on the comments, however there are several points raised relating to dredging arising disposal matters (not WFD compliance matters), the Applicant has proposed a meeting with the MMO to discuss these comments further.</p> <p>The results of the sediment sampling at depth, were similar to those recorded from the surface sediment analysis, which was used to inform the assessment within Section 8.8 of Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057). This included the presence of several contaminants recorded above CEFAS Action Level 1 (AL1), however only one substance, Mercury was recorded above Action Level 2 (AL2). Full details of the sediment analysis is included in the Sediment Sampling Technical Note (as submitted alongside this report).</p> <p>The Applicant considers that these sediment results justify and validate the magnitude of impact levels used within the assessment presented in Chapter 8: Marine Biodiversity</p>

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
		<p>present within the River Thames also reduces the magnitude.</p> <p>Therefore, the Applicant considers the existing conclusions of the assessment presented within Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057) to be valid. It is anticipated that the results of the sampling analysis will validate the findings of the assessment and further impact assessment will not be required.</p> <p>3.2.6. Please see responses 3.2.4 and 3.2.5 above.</p>		of the Environmental Statement (Volume 1) (APP-057).
2.1.2	<p>3.2.7. In addition, it does not appear that the Applicant has sufficiently assessed the impacts of changes in water quality and the release of contaminants resulting from the proposed maintenance dredging. The Applicant should assess impacts from maintenance dredging separately and provide this assessment for review.</p>	<p>3.2.7. The Applicant considers that the potential effects from maintenance dredging have been suitably assessed within Paragraphs 8.8.139 to 8.8.142 of Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057) and within Appendix 11-4: Coastal Modelling Studies of the Environmental Statement (Volume 3) (APP-109) (and throughout the rest of the Operational Phase assessments presented in the chapter).</p>	<p>3.2.7. The MMO notes that modelling of sediment concentrations and deposition was undertaken (paragraph 8.8.130 of ES Chapter 8) and acknowledges that the Applicant has considered suspended sediment concentrations on the various receptors within the ES, however much of this appears to be in relation to background levels and natural variation. Having reviewed paragraphs 8.8.139 to 8.8.142 of the ES, the description of the potential impacts specifically from maintenance dredging appears to be limited.</p> <p>The potential impacts assessed from the capital dredging have been used to inform maintenance dredging impacts, which, as separate activities, is not appropriate. The Applicant considers the potential impacts from the capital dredge to be of a 'negligible magnitude', and as the volume of material removed for each maintenance dredge campaign will be significantly less than during capital dredging, the potential impacts from maintenance dredging will be reduced. The MMO cannot agree that the impacts from capital dredging will be of a 'negligible magnitude' as again in the absence of depth data, the Applicant cannot justify this conclusion regarding release of contaminants with any notable certainty. The Applicant will need to re-assess the potential impacts of the capital and maintenance dredging in light of the additional depth sample results.</p>	<p>The impacts of the release of contaminants from maintenance dredging on ecological receptors within the Thames Middle Transitional Water Body are detailed in Paragraph 8.8.139 to Paragraph 8.8.150 of Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057). The negligible to low magnitude of impact for the release of contaminants from maintenance dredging is based upon the reduced volumes of dredging required, the result from the surface sediment contaminant analysis and the mitigation measures in place as described in Section 8.7 of the chapter (including the use of backhoe dredging). The mitigation measures are secured in the Mitigation Schedule (REP1-010) within the requirements in the Draft DCO (as updated alongside this submission).</p> <p>The Applicant believes that using the impacts from the capital dredging when considering the impacts of maintenance dredging is appropriate as the capital dredging provides a worst case scenario due to the higher volume of material required to be dredged and historic contamination. So, whilst they may take place at separate times, the impacts of maintenance dredging, will always be less than capital dredging.</p> <p>The results obtained from the sediment testing at the dredge depth, as described within</p>

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				<p>Paragraph 4.2.1 of the Sediment Sampling Technical Note (as submitted alongside this report), are consistent with the results returned from the analysis of sediment surface grabs (May, June and September 2023) which were used to inform the impact assessment within the Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057) (Paragraph 8.8.44). Therefore, the Applicant believes that use of a negligible magnitude of impacts from capital and maintenance dredging within the existing assessment within Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057) is justified, and re-assessment of these impacts is not required.</p>
2.1.3	<p>3.2.8. The MMO notes from the Change Request and Consultation Report Appendices (page 59) the Applicant has “described, with evidence, that the Change is not likely to result in changes to the conclusions within the Environmental Statement. This is presented at Table 4-1 of the main report”. However, it is not clear which document the ‘main report’ is referring to, thus, the MMO is unable to confirm at this time that the Change has been assessed in an appropriate and proportionate manner. The MMO, in consultation with Cefas, would be happy to review the evidence if the Applicant could provide the report for review. Until then, this conclusion of the Environmental Statement remains outstanding.</p>	<p>3.2.8. The ‘main report’ is the Change Request and Consultation Report (AS-048), the evidence provided is presented within Table 4-1 of the report.</p>	<p>3.2.8. The MMO thanks the Applicant for confirming that the ‘main report’ is the Change Request and Consultation Report (AS-048).</p> <p>The MMO requires clarification regarding the changes in dredge volumes.</p> <p>It is stated in the Change Request and Consultation Report that the Applicant requires “an increase in assumed capital dredging volume by approximately 40,000m³”. However, <i>Table 4-1 of this document states that “during the operation phase, there will be an increase in the dredged arisings by 1,000m³ (or 10% of the original volume) a year”</i>. It is presumed that this volume increase is referring to the maintenance dredging, which was previously estimated to be 9000m³ of material, therefore 10% would equate to an additional 900m³ per year.</p> <p>The MMO requests that the Applicant clarify the maintenance dredge volume, as the 10% increase (1000m³) per year during the operational phase would suggest it is currently 10,000m³.</p> <p>It is assumed that the increase in capital dredge volume will be responsible for the subsequent increase in maintenance dredge</p>	<p>For assessment purposes, the worse-case volume for capital dredging is 150,000 m³, to be undertaken via backhoe dredging, as described in Change Request Report (AS-048).</p> <p>The increase in volume of 1,000m³ of dredged material is for the maintenance dredging, from 9,000m³ to 10,000m³. There is a typographical error in the Change Request and Consultation Report (AS-048), whereby the text should say “(or 11% of the original volume)”. The increase in maintenance dredging is a direct result of the increased downward limits of deviation for dredging (from - 10.5m Chart Datum to -11m Chart Datum as set out in Article 2 of the Draft DCO (as updated alongside this submission), as described in Change Request Report (AS-048).</p>

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			<p>volume. However, this should be clarified and stated explicitly in an updated Change Request and Consultation Report.</p> <p>The MMO requests that the Applicant confirm the worst-case volume for capital dredging, to be undertaken via backhoe dredging.</p>	

2.2. PORT OF LONDON AUTHORITY

Table 2-2 Applicant's response to Port of London Authorities Deadline 4 Submission

Table ref	Summary of Issue Raised	Applicant's Response
2.2.1	3.3 In addition to the above, in terms of potential updates to the pNRA that are still required before the close of the examination, a further discussion was held with the Applicant on 28 January 2025 in relation to passing distances for the proposed berth, draught effects on varying tides and passing speeds for vessels in the reach and the PLA await a Technical Note to be shared before Deadline 5 on these matters. Resolution of the concerns raised by WRWA regarding operations needing to cease at Middleton Jetty is also required (see section 4 below).	<p>The Technical Note providing the additional passing vessel impact study was issued to the PLA on the 11th March 2025 and discussed with the PLA on 17th March 2025. The Applicant is also expecting to receive comments on a Technical Note previously provided to the PLA in relation to LCO2 release issues shortly. Please see the response to ExA question 2.14.1 for the agreed position statement on these matters.</p> <p>WRWA does not have direct involvement with river transport operation and is not directly impacted by any event affecting Middleton Jetty. Cory is under contract with WRWA to provide a waste logistics service in collecting the waste and transporting it by river to Riverside 1. Cory can therefore manage the risk to meet the contractual obligations with WRWA in light of the commitments that are secured via the DCO – it is essentially a contractual, commercial matter. In any event, the Applicant is confident that there would be no adverse impact on service provision for WRWA or other customers even with this control measure in place. Frequency and duration of project vessel arrival / departure is minimal, and tug operations have the flexibility to be planned around project vessel movements.</p>
2.2.2	4.3 The PLA requires certainty that operations will cease at Middleton Jetty if this is to continue to be included as a risk control measure.	<p>The Applicant confirms that risk control #4 (Cory tug and barge operation at inside/inshore downstream end of Middleton Jetty to cease during project vessel arrival / departure) will be implemented, and this is secured by DCO Requirement 19. The Standard Operational Procedures for Middleton Jetty will be updated to reflect this risk control.</p>
2.2.3	9.2 It is noted that the EA recommend the removal of the Belvedere jetty as a mechanism for delivering BNG. The PLA has no in principle objection to this, but more information would need to be provided about the use of the jetty by wintering birds and fish before implementing this. It is unclear whether the original BNG calculations have assessed the condition of the area under the jetty, which would be required to claim an improvement in habitat condition.	<p>Impacts on important birds, both breeding and wintering, are assessed in Section 7.8 of Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). This includes an assessment of the potential effects on these ecological features from the Proposed Scheme, mitigation and compensation measures are described in Section 7.7 and Section 7.9 of the chapter. As described in Paragraph 7.8.4 of the chapter, removal of Belvedere Power Station Jetty (disused) is considered the worst case scenario for wintering and breeding birds within the assessment as both use this structure as part of their habitat, and thus its removal has been part of the assessment for these ecological features.</p> <p>The removal of the Belvedere Power Station Jetty (disused) and the potential impacts to fish have been discussed in Paragraphs 8.8.7, 8.8.18 and 8.8.26 of Chapter 8: Marine Biodiversity of the Environmental Statement (Volume 1) (APP-057). The chapter discusses the potential loss of fish refuge habitat through the removal of the Belvedere Power Station Jetty (disused) but also acknowledges that additional foraging areas would be provided as a result of removal. The construction of the Proposed Jetty will also have the benefit of providing fish refuge habitat and the new piles will be enhanced with structures to improve fish habitat.</p> <p>The initial BNG calculations for the Belvedere Power Station Jetty (disused) and underlying mudflat have been included in the Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 1) (APP-088). Paragraph 3.3.5 of Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 1) (APP-088) details how the area of mudflat under the Belvedere Power Station Jetty (disused) has been estimated. The condition of the mudflat under the Belvedere Power Station Jetty (disused) has</p>

Table ref	Summary of Issue Raised	Applicant's Response
		<p>been included within Table 3-1 of this report where it is included under Littoral mud and assigned a condition of Moderate.</p> <p>Details of how BNG would be achieved in the intertidal environment would be put forward as part of the discharge of DCO Requirement 16.</p>

2.3. MR GANNON / CREEK SIDE DEVELOPMENTS (KENT) LTD

Table 2-3 Applicant's Joint Response to Mr Gannon's and Creek Side Developments (Kent) Ltd Deadline 4 Submissions

Table ref	Summary of Issue Raised	Applicant's Response
2.3.1	Carbon Capture at large scale is unproven. There are numerous examples of large-scale Carbon Capture and Storage (CCS) projects that have failed or underperformed.	<p>As set out in the Applicant's Response to Relevant Representations (AS-044) at section 4.2, the Applicant disagrees with those respondents who suggest that carbon capture is neither proven nor reliable; paragraph 4.2.5 of that document provides some notable examples of successful schemes.</p> <p>Furthermore, not least as expressed at paragraph 4.2.6 of AS-043, <i>'the Climate Change Committee has determined that CCS is a 'necessity, not an option' (as quoted in paragraph 3.5.2 of NPS EN-1). It is therefore Government policy to support carbon capture and its rollout to meet the Net Zero challenge, as set out in NPS EN-1, and reflected by the continuing evolution of its economic support package for this technology and decisions on DCOs such as Keadby 3, Net Zero Teesside and Drax BECCS. Given this policy support, it is also considered that such representations are of a type that can be disregarded, pursuant to section 106 of the PA 2008.'</i></p> <p>The Climate Change Committee's continued support for carbon capture at EfW facilities is set out in its Seventh Carbon Budget (very recently published in February 2025). In addition to increased recycling and a reduction in food waste, a key element of the Balanced Pathway for waste is that <i>'CCS is installed to capture 90-95% of emissions from EfW.'</i> (Seventh Carbon Budget, page 247). The Seventh Carbon Budget makes clear that even with future step changes in waste management - including the near elimination of <i>biodegradable</i> waste sent to landfill by 2028 and the near elimination of <i>all</i> waste sent to landfill by 2045 – there remains an integral role for CCS with EfW, not least <i>'to balance out the residual emissions remaining in the waste sector. These residual emissions mostly come from hard-to-abate process emissions in wastewater, mechanical biological treatment, legacy methane emissions from landfill, and uncaptured CO2 from EfW with CCS.'</i> (Seventh Carbon Budget, pages 248 and 249).</p>
2.3.2	<p>No Consideration to Alternative Layouts and Reduced Land Acquisition</p> <p>The Applicant has not adequately considered alternatives to reduce the amount of land they take in an area of London that has no commercially available land. From Charlton to Dartford there is currently no freehold land available for the owners and occupiers to relocate to.</p> <p>As explained at the Hearing it was never the intention to lease the site. The Applicant required the site for Riverside 2 and the lease would end after the construction of Riverside 2. The associated company, Elm Surfacing Ltd, was due to relocate to the site and full planning consent had been achieved. Elm have had to lease expensive, alternative sites in London whilst they awaited for the Norman Road site to become available.</p> <p>If the Compulsory Acquisition goes ahead in full that will not be possible.</p> <p>There are alternative areas on which the development could be delivered, and the proposals look to develop habitat created as part of the Riverside 2 scheme, which is undesirable. It is not clear whether there has been proper disaggregation of the elements of the proposed development in considering alternatives. As matters stand, there is no proper</p>	<p>Elm Surfacing received full planning permission at the land parcel known as Creek Side for the <i>'redevelopment of part of site to provide a two storey office block, workshop and associated works for use in connection with highways resurfacing and repairs (Class B1)'</i> on 22 July 2014, under reference 12/01930/FUL. It does not appear that this planning permission has been implemented, but in any event the permission was gained some four years before the Riverside Energy Park ('Riverside 2') DCO application was submitted (accepted for examination in December 2018), some six years prior to it being granted (in April 2020), and some nine years prior to the commencement of construction of Riverside 2 (in January 2023).</p> <p>A compelling case in the public interest that supports the Applicant's compulsory acquisition proposals has been set out, not least in the Statement of Reasons but also section 4.2 of the Applicant's Response to Relevant Representations (AS-044).</p> <p>The comment made in relation to alternative locations is unclear and inchoate, making no specific criticism of the site assessment work undertaken or providing any clear alternative. The Applicant has previously made clear (including in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)) that appropriate provision is being made for the open mosaic habitat that is, under the Riverside Energy Park ('Riverside 2') DCO, intended to be reinstated at the land parcel owned by Mr Seamus Gannon.</p>

Table ref	Summary of Issue Raised	Applicant's Response
	<p>justification for permanent rather than temporary acquisition of the land, particularly given the availability of alternative layouts.</p> <p>The Cory Decarbonisation Project has not adequately explored alternative designs that could reduce the amount of land required. By considering innovative and space-efficient solutions, the project could minimize its land footprint and avoid unnecessary acquisitions. The acquisition would put the associated company under substantial financial pressure to rent alternative accommodation to operate from as no freeholds are available.</p> <p>Vertical Integration One potential solution is vertical integration, where the carbon capture facility is designed to occupy a smaller horizontal footprint by utilizing multi-story structures. This approach can significantly reduce the amount of land needed while maximising the use of available space.</p> <p>Co-location with Existing Infrastructure and Split Sites Another alternative is co-locating the carbon capture facility with existing industrial infrastructure already owned by the Applicant. By greater use of existing facilities, the project can minimise land acquisition costs and reduce its environmental impact.</p> <p>No consideration had been given to potentially splitting the site with the only credible explanation given by their advisers being that such a scenario would increase their security costs.</p> <p>In our view at the Hearing the Applicant did not provide a compelling case to acquire all the land including all of part of our clients site they have designated necessary. It was clear they had not considered alternative where less land was acquired for the scheme by careful design given the lack of availability in the region for the occupiers to relocate.</p>	<p>The Applicant has submitted substantial evidence demonstrating that an appropriate site assessment has been undertaken, principally in the: TSAR (APP-125); TSAR Addendum (AS-044); and Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025) and its Appendices (REP1-026). Within Revision D of the SoCG with LBB (REP4-016) the parties agree <i>'that the method used for the site assessment undertaken for the Proposed Scheme is appropriate'</i> and that <i>'all reasonable alternative sites have now been assessed'</i>. Further, in relation to effective masterplanning across a single contiguous site, the Applicant and LBB agree that <i>'In the interests of good planning, the importance of a masterplan led approach is agreed. Further, it is agreed that such an approach, guided by clear, agreed design principles would deliver clarity and legibility across a consistent design approach'</i>.</p> <p>Following previous submissions, not least in the Applicant's Follow Up Submission to Rule 17 Response (AS-043); the Written Summary of the Applicant's Oral Submissions at CAH2 (REP4-048) (particularly section 3); and its Appendices (REP-034) substantial evidence is presented in regard to alternative layouts, and that those promoted by Landsul Ltd/Munster Joinery Ltd are neither relevant nor important. Paragraph 3.1.16 of the Written Summary of the Applicant's Oral Submissions at CAH2 (REP4-048) makes the following statement, which would also apply to the representations made by Mr Gannon and Creek Side: <i>'The Applicant also notes that, in the context of what was intimated by Mr Turney KC at CAH2 and ISH2 in terms of the duties of an Applicant and an objector in a DCO Examination, paragraph 4.3.29 of the NPS, states that "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 LMJ have not demonstrated the suitability of its proposals, in the context of the detailed submissions that have been made in Examination to date'</i>.</p> <p>As explained in the Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025) (notably on page 13) opportunities to reduce the required overall site footprint through the use of vertical integration have already been sought and incorporated where safe and operable. Specific opportunities include:</p> <ul style="list-style-type: none">• Vertically arranging ductwork, pipework and cabling on pipe bridges, where possible, so as• to minimise the width of pipe bridges.• Employment of vertically orientated pipeline expansion loops.• Vertical stacking of smaller items of equipment on multi-tier support structures• Locating equipment beneath pipe bridges.• Locating liquid CO₂ pumps and associated infrastructure under liquid CO₂ storage tanks.• Integrating CO₂ compressor intercoolers/aftercoolers and knockout pots within compressor.• Integrating refrigerant compressor intercoolers/aftercoolers within the compressor packages.

Table ref	Summary of Issue Raised	Applicant's Response
		<ul style="list-style-type: none"> Employing two-storey buildings to accommodate control room, welfare facilities, instrument rooms, workshops, stores, etc. to minimise building footprint. <p>The matters raised by Mr Gannon and Creek Side are comprehensively addressed in the Applicant's submissions. The Applicant has demonstrated that the Landsul Limited/Munster Joinery Land cannot be avoided, and the same conclusion applies to the land parcels owned by Mr Gannon and Creek Side.</p>
2.3.3	<p>Funding At the Hearing, the Applicant said they believed the £60m put aside for land acquisitions was sufficient. The Cory Decarbonisation Project has set aside £60,000,000 for land acquisition. However, this amount is insufficient for securing the required land in London, where commercially available land is scarce and highly competitive. The financial limitations raise serious concerns about the project's feasibility and the potential for cost overruns.</p> <p>Competitive Land Market in London London's real estate market is one of the most competitive and expensive in the world. The limited availability of commercial land has driven up land and building prices, The £60,000,000 allocated for land acquisition is likely to fall short, leading to potential delays and the need for additional funding.</p> <p>Cost Overruns and Project Viability Given the historical trend of cost overruns in large-scale infrastructure projects, there is a high risk that the Cory Decarbonisation Project will exceed its budget. Insufficient funds for land acquisition can lead to project delays, increased borrowing costs, and diminished investor confidence. The financial instability could jeopardise the project's viability and its ability to achieve its decarbonisation goals.</p> <p>In our view, given lack of availability and no agreement amongst any of the fourteen affected parties by now the level of Funding is clearly insufficient.</p>	<p>The Applicant does not share the concerns raised regarding the potential for insufficient funding, project delays, and investor confidence. The Applicant confirmed that the estimated cost of the property is a minor part of the Proposed Scheme's overall cost estimate and highlighted its track record in raising funds. Specifically, the Applicant secured £540 million in 2008 for Riverside 1, which was completed on time and within budget. Furthermore, the Applicant raised £896 million in 2022 for Riverside 2, which remains under budget and on schedule deep into the construction program with operations due to commence in 2026. It's also notable that Riverside 2 proceeded at a time of severe inflationary headwinds including from Covid and the war in Ukraine. In parallel with Riverside 2 the Applicant has progressed the purchase and redevelopment of Barking Waste Transfer Station – an investment of c. £100 million – which will be operational in 2026.</p> <p>Following CAH2, the Applicant confirms that it anticipates covering land acquisition costs from cash reserves it holds, either as generated through its operating businesses, or via an equity injection from its current shareholders. Additionally, article 11 of the draft Development Consent Order (as updated alongside this submission) order stipulates that the Applicant (as the undertaker) must provide a guarantee, with the amount subject to approval by the Secretary of State, to ensure compensation liabilities are met.</p>

2.4. LANDSUL LIMITED AND MUNSTER JOINERY (U.K.)

Table 2-4 Applicant's Joint Response to Landsul Limited and Munster Joinery (U.K.) Limited Deadline 4 Submissions

Table ref	Summary of Issue Raised	Applicant's response
2.4.1	<p>18. Whilst the Applicant claims that it would be technically and economically viable for the CCF to service heat demand outside of its locality, it has not provided any evidence to support this, and the conclusions of the Fichtner Report cast doubt on such claims. There is no evidence more recently than this so the Fichtner report must be taken as authoritative. Dr Edgar's supplementary report supports this, submitted at D3 (Annex A of REP3-045).</p> <p>19. Even if it were technically and economically viable for the heat from CCF to service any wider additional heat demand, additional planning permissions and consents would be needed.</p> <p>20. For long range heat pipe transmission, there would be a need for:</p> <ol style="list-style-type: none"> planning permission to lay out such pipework and any required infrastructure crossings; consent from the highway authority where such pipework is to be installed under the public highway; and/or consent from statutory undertakers where the laying of such pipework would interfere with existing underground services. <p>21. For mobile heat, there would be a need for:</p> <ol style="list-style-type: none"> planning permission for a jetty and to lay pipework from the CCF to the barge where the thermal batteries would be stored and from the thermal batteries to its final destination; and licences from the Port of London Authority to operate the barge on the River Thames. <p>22. There is no evidence that such planning permissions or consents would be forthcoming to enable the transfer of heat from the CCF and without such, the heat would not be capable of transfer.</p> <p>23. The Fichtner Report also concluded that the transfer of heat from RRRF and REP was economically unviable stating that "Without some form of fiscal incentive, the returns based on heat sales revenue alone are unattractive and carry a reasonable level of uncertainty". The only reason the Applicant is able to fund the transfer of heat from RRRF and REP is due to it being awarded £12.1 million through the Government's Heat Network Investment Project.</p>	<p>Appendix H to the Written Summary of the Applicant's Oral Submissions at CAH2 (REP4-034) (Heat Note) presents the Applicant's position on heat, providing updated evidence to that set out in the Fichtner Report in 2019. The Heat Note demonstrates that a substantial amount of heat can be provided from the Riverside Campus to respond to an even more substantial heat demand from across London.</p> <p>The Heat Note concludes that there is a clear policy imperative, both nationally and locally, to put waste heat to beneficial use, decarbonising the energy sector and ensuring supply remains reliable and affordable. Policy is clear that all opportunities should be taken to use waste heat effectively in homes and businesses.</p> <p>The GLA and LBB, amongst others, have progressed studies for heat networks. In its December 2024 report, the GLA confirmed its support for strategic heat sources (expressly including the Riverside Campus) and long range transmission as the route forward for achieving its decarbonisation objectives. The GLA also published a London Heat Map that records the demand for heat across greater London. As referred to in the Heat Note (REP4-034) the City of Westminster and City of London Corporation have published their own reports. It is therefore incorrect to say there is no more recent evidence than the 2019 Fichtner Report on levels of heat demand – much evidence exists and is in the public domain.</p> <p>Whilst heat transmission may well require planning permission, the Applicant is confident that appropriate consent would be forthcoming. This assumption is shared across London local government and key stakeholders. London Borough of Greenwich has based its borough-wide heat network Detailed Project Design on a heat transmission main from the Riverside Campus. The City of Westminster, supported by the DESNZ Heat Network Development Unit, contributed funding to the early studies on mobile heat supply to Pimlico, from Riverside, and Westminster City Council has publicly listed it as an option for heat supply to its heat networks in the area. The public announcement of SWAN (a large heat network in Westminster) included reference to the possibility of bringing heat by barge from the Riverside Campus. The PLA published Cory's proposals to move heat by barge on its website and has been engaged throughout the planning process. These public data points are supported by many more commercially confidential discussions.</p> <p>In light of the important and relevant policy context, both the GLA and LBB have expressed their support for it within the Proposed Scheme and '<i>supports the inclusion of infrastructure to facilitate the export of heat</i>' from the Proposed Scheme (LBB SoCG, Rev C, (AS-080)).</p> <p>The Applicant is already complying with this policy context at Riverside 1 and Riverside 2; both facilities are CHP Ready and have identified areas for their own heat transfer stations. Vattenfall, an energy delivery company that has been in the UK for 15 years, has gained the consent necessary to commence delivery of the Riverside Heat Network.</p>

Table ref	Summary of Issue Raised	Applicant's response
		<p>The Proposed Scheme would not comply with policy imperatives if it did not provide for heat transfer. If a HTS is not built into the Proposed Scheme, as required by policy, the opportunity to provide it efficiently and effectively is lost.</p> <p>Paragraphs 1.3.1 and 1.3.2 of the Heat Note (REP4-034) update the position in regard to funding stating: <i>'The Heat Transfer Station is intended to be funded separately from the wider CCS plant, which as described elsewhere is expected to have a dedicated government supported funding mechanism, specific to carbon capture. Heat export would generate separate revenues – including from direct heat sales – and the financing of the HTS would ultimately be based on those revenues.'</i></p> <p><i>Separate government support is also available for heat network projects, notably the Green Heat Network Fund (GHNF), which provides grant support up to 50% of eligible commercialisation and capital costs. Cory have been engaging with the GHNF scheme administrators for funding support under this programme.'</i></p>
2.4.2	<p>11kV Connectability Misinterpretation of the Applicant's position as stated at CAH2 in regard to electrical connection.</p> <p><i>"At CAH2, the Applicant's representatives confirmed that distribution at 11kV was achievable..."</i></p>	<p>The Applicant considers that the Interested Parties has misinterpreted what was actually said at the Hearing, the transcript of which is provided below:</p> <p><i>"...in terms of the practicalities of making the connection and Doctor Ferguson, obviously, yes, there potentially is a way. But at the moment, from our initial review or not from from a fairly detailed review of the existing infrastructure, we believe that's quite a high risk to assume that we can make a connection, because from what we've seen, it is impractical."</i></p> <p>The Applicant therefore reiterates that an 11kV supply from Riverside 1 and/or Riverside 2 is impractical and is not achievable, as demonstrated by Appendix E: Electrical Connections Note to the Written Summary of the Applicant's Oral Submissions at CAH2 (REP4-034). A 132kV supply, with the associated electrical infrastructure, is an essential part of the Carbon Capture Facility.</p>

2.5. RIDGEWAY USERS

Table 2-5 Applicant's Response to Ridgeway Users Deadline 4 Submissions

Table ref	Summary of issue raised	Applicant's response
2.5.1	<p>1. Further failure to properly engage with Ridgeway Users & PFAS pollution risks</p> <p>1.1 Site Inspection & Breakdown of Communication</p> <p>1.1.1 At the site inspection, the ExA suggested that parties get together at another date to negotiate/talk and that they are shown around the site. In later conversations with one of the attending Cory party, we asked for both a discussion and a tour (one member has been asking for this since October 2023 both in writing and in person). Sadly, we have been told that neither is possible by the DCO deadline. We are unsure of where this puts the applicant in relation to its obligation to engage with stakeholders.</p> <p>We suggested in person at the site visit that we would be willing to drop our environmental complaints in return for Cory commencing new testing of their flue gas and rainwater discharges for the full PFAS suite using a suitable, correct, method and sharing the results with us, allowing us to put this issue to bed.</p> <p>Ultimately, this testing is the only way we can effectively eliminate Cory as a potential source of these harmful pollutants. Regrettably, they have refused to come to the table with us. We are unsure why the applicant is so resistant to making any meaningful concessions in this regard.</p> <p>What data would we need to provide that would be plausible for us to attain for the applicant to take this issue seriously and test their flue gas and discharges directly?</p> <p>1.1.2 We believe that, at present, this does not seem to indicate the position of a company that is serious about both engagement and protecting the nature reserve in the best possible condition for residents and wildlife. We note that the testing suite laid out in their rule 17 letter does seem to include a CEFAS suite, but we understand that does not include PFAS (as far as we are aware).</p> <p>As we have noted previously, the diffuse effect of previously recorded PFAS emissions from other EfW facilities means that in other cases, these chemicals have been observed spreading widely, possibly impacting large areas. Thus flue gas tests make the most sense.</p> <p>We would be very happy to have it proven to us that these PFAS come from another source and are likely historic in nature.</p>	<p>The Applicant has spent some time with representatives of the Ridgeway Users on this matter, responding to their questions and ensuring they remain a part of the DCO examination process.</p> <p>As has been previously explained (for example at table 2.8.1.4 of the Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)) Riverside 1 is operated under an Environmental Permit, as will Riverside 2, with both facilities regulated by the Environment Agency. The Applicant is complying with all that is required of it under this environmental permitting regime, works with the relevant regulators, and has not been subject to any enforcement action from the Environment Agency.</p> <p>These facilities are already consented under the relevant planning and permitting regimes; they are not available for reconsideration as a part of the current DCO application. The Carbon Capture Facility receives flue gases from these facilities to capture the carbon dioxide; due to the nature of the Proposed Scheme, PFAS will not be introduced by the carbon capture process.</p> <p>As confirmed at table 2.7.15 of the Applicant's Response to Interested Parties Deadline 3 Submissions (REP4-033), the Applicant has committed to testing for a range of contaminants including PFAS during ground investigation within soils, groundwater and surface water post-determination for the Proposed Scheme. The results will be assessed and provided to the Environment Agency. Should risks be identified to any sensitive receptors a remediation strategy will be produced, as specified in the Outline Construction Code of Practice (CoCP) (as updated alongside this submission) and secured by a requirement of the Draft DCO (as updated alongside this submission). This is an appropriate and proportionate response to the concerns that are being raised by the Ridgeway Users.</p>
2.5.2	<p>1.2 Permitting Regime Gaps & EN-1 Guidance Challenge</p> <p>1.2.1 At the hearing, the applicant stated, when challenged by Ridgeway Users as to whether there are gaps in the permitting regime which could have harmful effects (specifically when we brought up the issue of potential unmeasured PFAS in flue gas) that: <i>'It's not that there is no gap, and I would just make the point that the position stated there is directly contrary to national policy statement or government policy. That may or may not be agreed with, but that is the policy position. And there is no doubt,</i></p>	<p>Riverside 1 and Riverside 2 are both subject to Environmental Permits that cover the pollutants considered appropriate by the relevant regulatory authority, the Environment Agency. Regulation of energy from waste facilities ('EfW') across the UK is undertaken by the Environment Agency on those pollutants considered relevant and important and is transposed into UK legislation from the Waste Incineration Directive. The Environment Agency's approach is to regulate by sector, to ensure that the EfW fleet in the UK has a level of commonality across permitting standards and expectations. Whilst Environmental Permits can contain site specific elements, it is up to the regulator, the Environment Agency, to determine the site-</p>

Table ref	Summary of issue raised	Applicant's response
2.5.3	<p><i>because the permitting regime specifically covers air quality monitoring from industrial installations.'</i></p> <p>This paired with conversations with the applicant at the site visit seems to indicate that Cory believes the permit negotiated with the EA and other licensing bodies will be almost entirely the sole arbitrator of their pollution considerations. Having looked at the position of national policy in EN-1, we are not entirely sure that is the case. Permits do not occur in a vacuum; they interact with a variety of other issues. In addition, the ExA appears to have at least some authority.</p> <p>1.2.2 If that is what Cory is referencing, the guidance does indicate that the Secretary of State must indeed consider that permitting regimes work as intended at controlling the substances they are required to control. PFAS however, are currently outside the permit; it appears there is no such obligation presently. Similarly, according to guidance laid out in Section 4 of EN-1 The Secretary of State is also meant to consider that: <i>'The effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.'</i></p> <p>We submit that our data shows there is current pollution (above the EQS for PFOS) and Cory's future works, without proper testing, remediation and mitigation strategies, could plausibly lead to greater cumulative pollution. It is incumbent on the applicant to prove that they can avoid this and that they are not currently contributing to it.</p> <p>1.2.3 Section 4.3 in this same guidance clearly states that: <i>'The applicant must set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy. This information could include matters such as employment, equality, biodiversity net gain, community cohesion, health and well-being.'</i></p> <p>We believe we have put evidence forward of a probable and significant environmental impact. New work on avoidance, reduction, mitigation or compensation does not appear to have been added since we raised this concern. Again we suggest it is incumbent on the applicant, and not for us, to prove to the ExA that these effects are not caused by them or otherwise make suitable remediation if they are.</p> <p>1.2.4 Similarly, alongside guidance for The Secretary of State, there is additional legal background to cast doubt on this assertion.</p> <p>Section 4.12.4 states that: <i>'Larger industrial facilities undertaking specific types of activity are required to use Best Available Techniques (BAT) to reduce emissions to air, water, and land. Agreement on what sector-specific BAT standards are, will now be determined through a new UK-specific BAT process.'</i></p> <p>Much of this guidance can be found in Integrated Pollution Prevention and Control – The Developing and Setting of Best Available Techniques (BAT), a key government document</p>	<p>specific conditions that are relevant to any facility. It is agreed that for PFAS no obligations presently exist under the permitting regime. This applies to potential concentrations in the flue gas, in ambient air, and in the soils/ground water/surface water, etc. There is potential for PFAS to be added by the Environment Agency to the environmental permitting regime in the future, and the Applicant will continue to comply with the relevant regulatory controls applied by the Environment Agency. Regarding the comment made at 1.2.7, current PFAS Environmental Quality Standard (EQS) criteria are protective of human health (such as through the consumption of fishery products); there are no known criteria to assess risk or impact directly to ecological receptors.</p> <p>Riverside 1 and 2 are already consented under the relevant planning and permitting regimes; these facilities are not the subject of the current DCO Application. The Carbon Capture Facility receives flue gases from these facilities to capture the carbon dioxide; due to the nature of the Proposed Scheme, PFAS will not be introduced by the carbon capture process. The relevant information submitted with the DCO Application for the Proposed Scheme (not least the Environmental Statement) and the responses to it from the statutory regulators (including the Environment Agency) demonstrate that PFAS are not considered to be a primary concern and are not considered likely to make the Proposed Scheme unacceptable.</p> <p>As is recognised at Section 4.12 of NPS EN-1, the planning and environmental permitting regimes are separate but complementary. The planning system controls the development and use of land in the public interest. In the case of the Proposed Scheme, this is being implemented through the examination process. The environmental permitting regime is concerned with preventing pollution, for example using measures to prohibit or limit the release of substances into the atmosphere and it is the Environment Agency's role to monitor compliance with that limit. Crucially, the NPS is clear that the Secretary of State can rely on the permitting regime to regulate emissions.</p> <p>However, as previously stated in the Applicant's responses (response 2.7.15 of the Applicant's Response to Interested Parties Deadline 3 Submissions (REP4-033)), to meet the obligations set out in response 2.7.15, the Applicant has committed to testing for PFAS during ground investigation within soils, groundwater and surface water that would be undertaken prior to construction of the Proposed Scheme. The results will be assessed and provided to the Environment Agency. Should risks be identified to any sensitive receptors a remediation strategy will be produced, as specified in the Outline CoCP (as updated alongside this submission) and secured by a requirement of the Draft DCO (as updated alongside this submission).</p> <p>The response given at table 2.7.15 of the Applicant's Response to Interested Parties Deadline 3 Submissions (REP4-033) states: <i>"the Outline CoCP (as updated alongside this submission) provides details of the mitigation measures that would be implemented to mitigate risks to human health, controlled waters, below ground services and ecological receptors. Notwithstanding this, as outlined in the Applicant's response to 2.8.1.2 below, a ground investigation will be undertaken to include testing soil, groundwater and surface water (where relevant) for a range of contaminants including PFOA and PFAS. A Generic Quantitative Risk Assessment (an outcome of Phase II Ground Investigation shown in Figure 17-3: Connections between the Ground Conditions and Soils Mitigation Tasks and Design of Chapter 17: Ground Conditions and Soils of</i></p>

Table ref	Summary of issue raised	Applicant's response
	<p>on how to install best practices. This includes CCS and EfW. This facility will rely on both to function.</p> <p>1.2.5 This document in Section 2: Relevant International Obligations states: <i>'International policy formulation will be developed in line with the current Devolution MoU and its accompanying International Relations (IR) Concordat. International obligations will be implemented in line with these agreements. In this respect, the Parties will automatically use any updated IR Concordat, and the wider outcomes 4 Best Available Techniques of the Joint Intergovernmental Relations (IGR) Review, as the basis for such international considerations...</i></p> <p><i>...International obligations within the scope of the framework areas include three directions on control of emissions under the UNECE Convention on Long-range Transboundary Air Pollution (CLRTAP) that require consideration of BAT regarding Persistent Organic Pollutants (POPs), Heavy Metals and abatement acidification, eutrophication and ground-level ozone. The full list is provided in Annex C.'</i></p> <p>POPs regulation constitutes part of these international obligations. PFOA, PFOS, PFHxS and PFCAs are all captured under The Stockholm Convention. We note that it seems that Cory already tests bi-annually for some POPs such as PCBs, but we have as of yet found no data on PFAS within their emissions data. This appears to match what they told us both in writing and in person previously about not testing for PFAS.</p> <p>We have looked at 2018 Riverside 2 application testing submissions and could not find any PFAS results appended either but evidence of some testing for other POPs, which appears to back up what we have said previously.</p> <p>1.2.6 Furthermore, whilst Environmental Permitting is a separate process, the guidance states it is complementary to the planning process and thus is well within its scope - especially where pollution is counter to the public interest.</p> <p>Section 4.12.2 of EN-1 sates that: <i>'The planning and pollution control systems are separate but complementary. The planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching conditions to allow developments which would otherwise not be environmentally acceptable to proceed and preventing harmful development which cannot be made acceptable even through conditions. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air, water, and land quality meet standards that guard against impacts to the environment or human health.'</i></p> <p>This statement indicates that it is up to the ExA to make decisions regarding the protection of public interest, public health, safety and other decisions - including the attachment of conditions for mitigation, testing etc.</p> <p>1.2.7 An example of the broader interactions which must be considered is that PFAS pollution can harm wildlife and thus have an impact on Biodiversity Net Gain (BNG). This is</p>	<p><i>the Environmental Statement (Volume 1) (APP-066)) will be undertaken that will assess the risk to all identified receptors including human health receptors such as on and off-site users and Controlled Water receptors. Should these substances and an unacceptable risk to identified receptors be identified then Phase III Ground Remediation Strategy and Verification will be produced and provided to the Environment Agency and other relevant stakeholders. Should remediation be required and undertaken then this would represent an improvement on the current baseline. The development of these documents is secured pursuant to Requirement 21 of the Draft DCO (as updated alongside this submission)."</i></p>

Table ref	Summary of issue raised	Applicant's response
	a clear demonstration of how these interactions need to be properly worked out and discussed.	
2.5.4	<p>2. Romani Issues & Clarifications From Deadline 3</p> <p>2.1 Responses To Deadline 3 & LaBARDS</p> <p>2.1.1 The applicant states in its answers to ExA's written questions 9.18 that: <i>'Ridgeway Users misunderstands the Outline LaBARDS, and criticises language that it erroneously attributes to the Applicant. The Outline LaBARDS does not, and the Applicant would not, use deprecating language of any community. In fact, the reference given is from section 1.7.2 of the Crossness Nature Reserve Management Plan (2016- 2020) that is appended to the Outline LaBARDS. This is a document prepared by TWUL, not the Applicant.'</i></p> <p>We believe the applicant misunderstands us. It is easy, when discussing structural equalities issues, to believe that this is generalised rather than site-specific. We were using this reference to demonstrate that anti-Romani discrimination is specific to this site as well as institutional, regardless of who wrote it originally. Hence why we stated:</p> <p><i>'This discriminatory language is present in this planning process and needs to be addressed.'</i></p> <p>and:</p> <p><i>'Cory have even published documents containing discriminatory language against Romani people...'</i></p> <p>Our use of the term publish, rather than written, was intended to show that it was included but not written by Cory. We do not believe Cory is a racist company and to the extent that it may be considered discriminatory, it was unwitting on its part.</p> <p>2.1.2 However, there is also a lack of understanding demonstrated by the repeated use of 'Travellers' (a separate ethnicity) or even 'Gypsy' (which can be considered a slur by some, but not all Romani) rather than 'Romani' or 'Romany' in other parts of Cory documentation, which indicates a plausible lack of understanding of cultural nuance.</p> <p>2.1.3 The reason we decided to include this was because we saw that Cory stated earlier in the document that: <i>'The existing management plan (see Appendix 2) for the Crossness LNR provides a sound framework for future management.'</i></p> <p>Appendix 2 contains the disputed text. We believe that describing this document as a 'sound framework', indicates they overlooked this issue.</p>	<p>The Applicant has provided comprehensive responses to these criticisms in its Response to Examining Authority's FWQ (REP3-029) (Q1.0.2.1) and in its Response to Interested Parties' Deadline 3 Submissions (REP4-033) (from page 59).</p> <p>The CLNR Management Plan, prepared by Thames Water, is appended to the Outline LaBARDS (as updated alongside this submission) for context and to provide a framework for future management plans across the extended nature reserve. The Applicant does not condone the use of discriminatory language and will ensure that such wording is not present in any document it authors.</p> <p>The history of Erith Marshes is relevant to a number of different communities. As has been demonstrated through the Applicant's submissions to the Examination, the Proposed Scheme does not prejudice the Romani community, or any other community with protected characteristics.</p>

2.6. SAVE CROSSNESS NATURE RESERVE

Table 2-6 Applicant's Response to Save Crossness Nature Reserve Deadline 4 Submissions

Table ref	Summary of issue raised	Applicant's response
Compulsory acquisition, temporary possession and other land rights		
	<p><u>Development footprint</u></p> <p>1. A theme emerged during CAH2 and ISH2: the Applicant is intentionally avoiding detailed design of the Proposed Scheme at this stage, in order to retain flexibility to cover multiple eventualities. This includes many design aspects that affect the overall development footprint. However, as argued by Landsul and Munster Joinery at CAH2, land may only be compulsorily acquired pursuant a DCO where it is required for the development. If it is feasible to deliver the Carbon Capture Facility with a reduced development footprint, the additional acquisition is not required and the Proposed Scheme must not be granted. The Applicant does not have the luxury of flexibility when it requires other parties' land. The detailed design must be advanced as far as possible to ensure acquisition is as minimal as feasible.</p> <p>2. Expanding on this point, the primacy of the mitigation hierarchy under EN-1 (particularly the avoidance of ecological harm), and the particularly strong protections afforded to Crossness Nature Reserve (LNR, MOL, SINC, HPI, high quality open space and green infrastructure), mean that any such feasible reduction in development footprint must be applied to it as far as possible. In any event, the question of which land would need to be prioritised is not relevant to the s122 test: it is sufficient to show that the full extent of compulsory acquisition proposed is not required. The evidentiary burden is on the Applicant to show that the full extent of compulsory acquisition is required.</p> <p>3. As highlighted by Landsul and Munster Joinery, there are substantial opportunities for footprint reduction, including the electrical switchyard, co-location of water storage, tank storage, and general layout efficiencies.</p>	<ul style="list-style-type: none"> The Applicant confirms that the Proposed Scheme requires all of the land presented within Work No.1, that the indicative masterplan has been carefully developed and that only a reasonable level of flexibility remains. The Applicant has explained its approach in its submissions, most recently in the Written Summary of the Applicant's Oral Submission at CAH2 (REP4-048) which emphasise that the Applicant has undertaken an appropriate level of design to this stage, informed by leading experts in the field of carbon capture projects, but also being consistent with the precedent of many other consented DCO schemes. Paragraphs 3.1.7 to 3.1.10 are particularly pertinent. At paragraph 3.10, the Applicant concludes that, <i>'in the case of the Proposed Scheme, even if the utilisation of the flexibility by the Applicant in fact led to the smallest amount of land take possible within that 'envelope', it is important to note that LMJ's land cannot be avoided.'</i> The Applicant notes that an alternative which avoids the LNR land was considered in the TSAR process (APP-125) as South Zone 5. The TSAR notes a number of reasons why that zone configuration is not acceptable, and any 'efficiency' arising from the remaining flexibility sought would not change those reasons. The Applicant has presented a compelling case for the full extent of compulsory acquisition powers being sought. The Applicant has responded to SCNR's comments in regard the mitigation hierarchy, including in the Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019) at Table 2-9-5 (pages 117 and 118) and the Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033) at Table 2-7 (pages 35-57). Following previous submissions, not least in the Applicant's Follow Up Submission to Rule 17 Response (AS-043); the Written Summary of the Applicant's Oral Submissions at CAH2 (REP4-048) (particularly section 3); and its Appendices (REP-034) substantial evidence is presented in regard to alternative layouts and the concerns raised by Landsul Limited/Munster Joinery.
2.6.1.1	<p>In relation to tree planting, we add the following:</p> <p>a. Despite, the Applicant's commitment to reduce tree planting, it still proposes extensive planting along the eastern boundary of Crossness Nature Reserve and NRF. This is inappropriate on (or immediately adjacent to) grazing marsh habitat as it risks drying out the habitat, thereby undermining its inherent wetland character (and the Applicant's plans for raised water levels). This would reduce natural carbon storage capacity and threaten the ecosystem;</p> <p>b. Similarly, the trees themselves will not thrive in a waterlogged environment, limiting their ecological value;</p>	<p>Tree planting shown along the eastern boundary of Norman Road Field in Figure 14 of the Outline LaBARDS (as updated alongside this submission) has been significantly reduced and matches well the existing situation, with infrequent low scrubby trees and shrubs in keeping with the grazing marsh character. Where introduced species would be selected that thrive in these damp and exposed conditions such as goat willow (<i>Salix caprea</i>).</p> <p>The wider proposals and drainage strategy aim to create more consistent ground water levels throughout the year for improved condition grazing marsh habitats.</p> <p>Floodplain grazing marsh is a habitat type dominated by grasses, with frequent wetland features such as ditches and ponds present and a high water table leading to periodic inundation. However, this definition does not exclude the presence of trees in peripheral areas such as field boundaries or even as lone standards within the middle of fields. The frequency of</p>

Table ref	Summary of issue raised	Applicant's response
		<p>such trees would be low to maintain the open meadow-like character of the grazing marsh, and in this case are proposed as an interface between Crossness Nature Reserve and planting within the proposed Carbon Capture Facility.</p> <p>Plenty of tree species are wetland specialists. Other than goat willow that is mentioned above, common alder is another native British tree species that thrives in riparian and wetland environments where waterlogged soils exist.</p>
2.6.1.2	<p>c. We do not believe tree planting will achieve the intended visual impact benefits ("screening to operational equipment"). The Carbon Capture Facility will stretch far above the trees, which will not be able to grow to any significant height within the 20–25-year timespan of the development (particularly given the unsuitable waterlogged environment);</p> <p>d. It is irrational to seek to protect the visual amenity of Crossness Nature Reserve and NRF through the removal of additional land. One of the reasons people use it is the visual amenity of open grazing marsh habitat. Visual amenity is best preserved through retaining as much of this habitat as possible; and</p>	<p>The Applicant disagrees that the proposed tree planting will not achieve its intended visual impact benefits. The effect the Proposed Scheme is likely to have on receptors within the Accessible Open Land ('AOL') has been assessed in Chapter 10: Townscape and Visual of the Environmental Statement (Volume 1) (APP-059). The tree planting, proposed for several reasons including biodiversity enhancement, habitat creation, townscape integration, visual amenity, and visual screening, will contribute to screening parts of the lower-level operational equipment for users of the AOL and provide a 'soft edge'. The Applicant agrees that the Carbon Capture Facility will stretch far above the trees and the Townscape and Visual Impact Assessment, presented in Chapter 10: Townscape and Visual of the Environmental Statement (Volume 1) (APP-059), considers this in its assessment of significance of effect on receptors within the AOL.</p> <p>The Applicant disagrees that seeking to protect the visual amenity of Crossness Local Natural Reserve and Norman Road Field through the proposed woodland buffer is irrational. The woodland buffer softens the industrial appearance of the facility from the AOL and provides a natural screen to the lower-level operational equipment. The green infrastructure design has been considered to maintain key sightlines across the AOL, preventing the buffer from obstructing valued views of the open grazing marsh habitat and tree species selection and spacing ensures a gradual transition from open grazing marsh to wooded areas, avoiding abrupt visual barriers.</p>
2.6.1.3	<p>e. Beyond visual amenity, this natural grazing marsh habitat has inherent ecological value; losing it is an ecological harm. The mitigation hierarchy requires the Applicant to avoid/reduce such harm as far as possible – regardless of whether it is purportedly mitigated by new woodland habitat.</p>	<p>The Applicant agrees that the floodplain grazing marsh habitat within Crossness LNR is ecologically valuable. The loss of floodplain grazing marsh has been assessed within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056), and the mitigation hierarchy has been applied to avoid, minimise and compensate for its loss as discussed. This has been explained in previous submissions by the Applicant, including in the Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019) at Table 2-9-5 (pages 117 and 118) and the Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033) at Table 2-7 (pages 35-57). Compensation for the loss of floodplain grazing marsh habitat will be achieved through enhancement of remaining floodplain grazing marsh habitat within Crossness LNR from Poor to Moderate condition in compliance with Biodiversity Net Gain trading rules. The Applicant has not put forward proposals for created woodland habitat to act as compensation for floodplain grazing marsh habitat.</p>
2.6.2	<p><u>Securing LaBARDS through s106</u></p> <p>4. As discussed at CAH2, it is entirely possible to secure delivery of the LaBARDS without acquisition via a new s106 agreement, to which TWUL, the Applicant and LBB would be party. TWUL would give commitments to: (1) allow the Applicant to carry out the works, and (2) manage the land in accordance with the LaBARDS. TWUL's commitments to LBB would function as planning obligations and bind the land. TWUL's commitments to the Applicant would function as normal contractual obligations and could include enforcement rights</p>	<p>Please see the Applicant's response to TWUL in this document for commentary on these matters.</p> <p>In respect of the Members' Area, the Applicant repeats what it has said previously – that the Members' Area was included on the basis that TWUL could voluntarily choose to agree to enter into a contract, not a planning obligation (with all that the latter entails), to manage that land in accordance with the LaABRDS; but that, sitting as it does behind the TWUL operational fence,</p>

Table ref	Summary of issue raised	Applicant's response
	<p>allowing the Applicant to take to the land and ensure compliance. This would give the Applicant just as much certainty of delivery as acquisition. Contrary to the Applicant's suggestion, no further restrictive covenants would be required.</p> <p>5. We maintain that a variation to the 1994 Agreement would also be possible, but the above approach has the added advantages of (1) allaying any concerns around imposition of new obligations onto an old s106 agreement and (2) ensuring all areas are covered under a consolidated management regime.</p> <p>6. At CAH2, the Examining Authority asked the Applicant to explain why the proposed approach for the Member's Area (i.e. Deed of Obligation) couldn't be used for the rest of Crossness Nature Reserve. The Applicant initially focused on the fact that no works were envisaged in the Member's Area – only management. Firstly, we disagree that this distinction is material: works can be effectively secured under s106 agreement, as demonstrated above. At CAH2, TWUL pointed out that substantive works proposed on Crossness Nature Reserve were limited to specific areas, particularly the eastern border along the Carbon Capture Facility, with the rest being enhancement (see Figures 14 and 15 of Outline LaBARDS). We submit that enhancement should not be considered works at all; it is management. The Applicant responded by stating that a "consolidated approach is required in relation to the management of the totality". This brings us back to the initial question asked by the Examining Authority. There's no distinction between the Member's Area and broader Crossness Nature Reserve in terms of management. If the former can be included in the management regime without acquisition, then the same must be true of the latter.</p> <p>7. The availability of delivery and control via s106 agreement shows that the land is not required to be acquired and therefore the section 122 test is not met.</p>	<p>the Applicant did not rely on the planning benefits of a consolidated approach including that land; nor did it seek to interfere with land closer to the sewage treatment plant.</p> <p>Whilst the Applicant has added some further text to the Outline LaBARDS (as updated alongside this submission) in relation to the Member's Area in response to the ExA's question 2.16.4, this position remains the case from the Applicant's perspective.</p> <p>That is materially different from the rest of TWUL's land in the local nature reserve, which would be managed together as a consolidated whole with Norman Road Field and is separated from the sewage treatment plant.</p>
Design		
2.6.3	<p><u>Visual impact - photomontages</u></p> <p>8. As raised during the Accompanied Site Visit, we are concerned that the Photomontages do not depict the full visual impact on Crossness Nature Reserve. There is no view showing the full north-south stretch of the Proposed Scheme from Crossness Nature Reserve. 'Sequential View 1' is largely obscured by Riverside 2. 'View 1' shows the Proposed Scheme from FP2 looking north, where the impact is less severe: REP1 and REP2 are already in the sightline, and you do not see the crosssection of the full north-south length of the Proposed Scheme.</p> <p>9. We request that the Applicant provide an additional view from the entrance to the Member's Area (at the end of the access road and along the north-south path along the western edge of the main Crossness Nature Reserve area), so that the visual impact of the full north-south length of the Proposed Scheme can be assessed. This would also give a close representation of the view from the bird hide, which is particularly sensitive to visual impact.</p>	<p>Please see the Applicant's response to the ExA's question 2.18.1, also submitted at Deadline 5.</p>
2.6.4	<p><u>Norman Road Field</u></p> <p>13. The facts – both in terms of documents submitted and the reality on the ground – indicate that the Ecological Master Plan / Management Plans regime has not been</p>	<p>Appendix F to Written Summary of the Applicant's Oral Submissions at ISH1 (REP1-026) sets out the planning history relevant to Norman Road Field and that the mitigation measures have been implemented and have now expired.</p>

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	<p>complied with. This constitutes a breach of clause 24 of the corresponding s106 agreement. This breach remains enforceable by LBB, meaning that it is still possible to secure improvements to NRF under this regime. This must alter the baseline for the ecological assessment of NRF. It also undermines the value of the Applicant's mitigation and enhancement proposals (detailed further below).</p>	<p>Revision B of the SoCG with LBB (REP2-010) submitted in December 2024 confirmed that LBB agreed that <i>'there remains no mitigation commitments at Norman Road Field.'</i> LBB reasserted this conclusion in its D4 Response (REP4-036).</p> <p>The Applicant has correctly reported the baseline conditions for Norman Road Field and demonstrates material benefits to accrue following implementation of the principles contained within the Outline LaBARDS (as updated alongside this submission).</p>
2.6.5	<p><u>Ecological assessment</u></p> <p>14. The starting point is to look at the harm created by the Proposed Scheme. Ignoring developed land, artificial unvegetated surface and habitat already offset by REP2, 6.21 ha of habitat is lost onsite. A further 0.66 ha of neutral grassland is lost offsite (on TGC). In total, 6.87 ha of habitat is lost. The Applicant has obscured this figure, and it doesn't appear in any of the main Application documents, which has led us to understating the loss in previous submissions.</p> <p>15. On top of the 6.87 ha loss of habitat, there are various further harms that must be assessed, including:</p> <ul style="list-style-type: none"> a. the qualitative harm from the high value of the land lost – noting the various policy designations; b. the loss of HPI – including a qualitative assessment of the fact that these habitats have developed naturally over a long period of time, making them impossible to directly replace; c. the various species which will be directly impacted, including various SPI plant species lost and various SPI animal species whose habitats are being reduced; d. the impact on adjoining and nearby land, and the habitats and species thereon, caused by fragmentation; and e. further harms to species created by the Proposed Scheme, for example from construction noise, light pollution and dust. <p>Detailed assessments of these points are covered in our previous submissions and are not repeated here.</p> <p>16. Once these harms are fully understood, the first question to be asked is whether the Proposed Scheme avoids and (failing that) reduces these harms as far as possible, as required by the mitigation hierarchy. If it fails to do so, no amount of subsequent mitigation or compensation can justify such a failure. As detailed in our previous submissions, ecological harm could be avoided through delivery in the East Zone and reduced through a reduction in footprint.</p>	<p>The Applicant has assessed the impacts of the Proposed Scheme within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056) and this includes quantification of losses for key habitats. Losses and gains for all habitats, including those at Thamesmead Golf Course, are provided in detail within Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088). These reports confirm that, excluding habitats that incur no biodiversity value (i.e. Developed Land Sealed Surface, Artificial Unvegetated Unsealed Surface, habitat already offset by Riverside 2 and Watercourse Footprints, the latter dealt with as linear habitat features), habitat loss across both the land required for the Proposed Scheme (i.e. within the Site) and at Thamesmead Golf Course totals 6.78ha. This calculation is reached as the sum total of the following habitat losses reported in Table 4-1 and Table 4-5, which have been rounded to two decimal places:</p> <ul style="list-style-type: none"> • On-site (Table 4-1) Reedbed - 0.37ha • On-site (Table 4-1) Other neutral grassland (Moderate) - 0.67ha • On-site (Table 4-1) Other neutral grassland (Poor) - 0.04ha • On-site (Table 4-1) Coastal floodplain and grazing marsh - 2.04ha • On-site (Table 4-1) Modified grassland - 1.12ha • On-site (Table 4-1) Bramble scrub - 0.91ha • On-site (Table 4-1) Open Mosaic Habitat - 0.98ha • Off-site (Table 4-5) Neutral Grassland - 0.66ha <p>Sum Total of Losses = 6.79ha</p> <p>The Applicant's reported total losses area value (6.79ha) has been derived from figures report for habitat loss in Table 4-1 and Table 4-5 within Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088), therefore it is assumed that the different area value of SCNR is a typographical error.</p> <p>However, these losses are fully compensated for following the Statutory Metric Trading Rules (as demonstrated by the Biodiversity Net Gain – Trading Rules Compliance Note (REP3-031), and by Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)) and further habitat creation and enhancement leads to a quantitative and qualitative net gain for biodiversity.</p> <p>Creation of new, high ecological value habitats within Thamesmead Golf Course will require the removal of existing, lower value grassland habitat and this fact has not been obscured by the Applicant. The loss of 0.66ha of neutral grassland at Thamesmead Golf Course has been included in Biodiversity Net Gain calculations mediated by the Statutory Biodiversity Metric and</p>

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		<p>is shown and accounted for as a loss within Table 4-5 of Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088). Thus, it can be demonstrated that this loss of grassland, required for habitat creation to enhance the former golf course, is included in the main application documents and has been available throughout the examination. Losses have therefore not been understated by the Applicant.</p> <p>In response to the list of points made under item 15, the Applicant wishes to draw attention to the qualitative assessment of net gain provided in Section 5 of Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088) which addresses at several points the items in the list. The Applicant provides the following further responses to each point:</p> <ul style="list-style-type: none">a. Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088) details how the condition, a key element of value, has been determined for each habitat. Policy designations have been taken into account through the Strategic Significance evaluation of each habitat.b. Loss of HPI is assessed in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056) and identified in Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088), receiving appropriately high value due to their Strategic Significance. Floodplain grazing marsh and open mosaic habitat are semi-natural, intrinsically being created by human actions (grazing on wet ground for the former, cessation of industrial and commercial activity at a site for the latter). Reedbeds form naturally but are also frequently created for ecological and environmental gains.c. Impacts on SPI plant and animal species, including fragmentation of their habitats, have been assessed in Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056).d. As per the above (c).e. Effects of construction phase noise, lighting and dust have all been assessed within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). <p>Harms of the Proposed Scheme are fully understood through the assessment within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). This applies the mitigation hierarchy (as required by best practice guidance and policy) to avoid, minimise, mitigate and compensate effects on ecological features as discussed in prior responses at earlier deadlines (including in its Response to Interested Parties' Deadline 1 Submissions (REP2-019) in Table 2-9-5 (pages 117 and 118) and the Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033) in Table 2-7 (pages 35-57). For further details please see the Applicant's response to the ExA's Question 2.3.5 on this matter.</p> <p>The Applicant has submitted substantial evidence demonstrating that an appropriate site assessment has been undertaken, principally in the: TSAR (APP-125); TSAR Addendum (AS-044); and Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025) and its Appendices (REP1-026). The Applicant has responded to SCNR's submissions in regard to the potential to develop within the East Zone in Table 2-9-5 of Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019); Table 2.5 of Applicant's Response to Interested Parties' Deadline 2 Submissions (REP3-034); and Table 2.7 of Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033).</p>

Table ref	Summary of issue raised	Applicant's response
		<p>Throughout these responses the Applicant has demonstrated why the East Zone is not a reasonable alternative.</p> <p>Within the LBB SoCG (REP4-016) the parties agree <i>'that the method used for the site assessment undertaken for the Proposed Scheme is appropriate'</i> and that <i>'all reasonable alternative sites have now been assessed'</i>.</p>
2.6.6	<p>17. The next part of the assessment is to consider the adequacy of the proposed mitigation and compensation. The Applicant initially proposed creation of 3.83 ha of habitat onsite and 1.09 ha offsite (TGC). However, the offsite figure is now lower: 0.88 ha of the offsite habitat creation was "open mosaic habitat on previously developed land"; we understand this referred to the car park area and driving range buildings, which are now excluded from the BNG Opportunity Area. Therefore, it appears that only a total of 4.04 ha is created, meaning the Proposed Scheme results in a net loss of 2.83 ha of habitat. In addition, the Applicant proposes enhancement of existing habitat on Crossness Nature Reserve, NRF and TGC.</p>	<p>The Applicant confirms that the area occupied by the car park and driving range buildings will not be available for habitat creation at the Biodiversity Net Gain Opportunity Area (former Thamesmead Golf Course). This is at the request of the owner of the Thamesmead Golf Course, Peabody Trust/Tilfen Land Ltd, and is a change to the baseline reported in Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088). It should be noted that this area is relatively small at 2.8% (~0.5ha) of the total area of the former golf course (which is ~16.6ha in extent), and its habitats do not contribute any biodiversity units to the baseline value of this offsite area.</p> <p>The Applicant's proposals at the Biodiversity Net Gain Opportunity area do not require all of the land at the former Thamesmead Golf Course in order to provide habitat compensation for the Proposed Scheme and for enhancements to achieve a Biodiversity Net Gain. Thus, landscaping proposals within the Outline LaBARDS (as updated alongside this submission) can be comfortably accommodated within the Biodiversity Net Gain Opportunity Area with adequate surplus, even with the omission of the car park and driving range buildings. Remaining habitat would be subject to enhancement proposals developed by the Peabody Trust/Tilfen Land Ltd towards their own biodiversity and public access goals, and outside the scope of the Outline LaBARDS (as updated alongside this submission) and the Proposed Scheme.</p> <p>Thus, there has been no change to the position on Biodiversity Net Gain presented in Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088). Quantitative net gain of 10% is still achieved despite the car park and driving range buildings not being included.</p> <p>Please also see the Applicant's response to the ExA's question 2.3.6 on this matter.</p>
2.6.7	<p>18. There must then be a qualitative assessment of these proposals. In the tables below we provide a detailed critique of the mitigation proposals at paragraph 8.3.4 of the Outline LaBARDS, and management proposals at Table 1 of the Outline LaBARDS (noting their large overlap). These proposals cover all mitigation and enhancement proposals detailed in the Outline LaBARDS.</p> <p>19. This critique reveals that the proposals are of very limited value. In many instances they offer no meaningful benefit and, in some cases, may even entail additional harm.</p>	<p>A qualitative assessment of net gain is provided in Section 5 of Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088).</p> <p>The Applicant has provided a response to each item in Table 1 and 2 provided by the Respondent within Appendix A of this report.</p> <p>The Applicant disagrees that proposals in the Outline LaBARDS (as updated alongside this submission) are limited in value, as they demonstrate quantitatively and qualitatively that they will achieve a net gain in biodiversity. SCNR provides no evidence to support its statement that the Outline LaBARDS (as updated alongside this submission) would provide no meaningful benefit or that it may entail additional harm, outside the points to which we have responded and provided counterpoints to above and in responses to its submissions at previous deadlines.</p>

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2.6.8	<p>20. A substantial proportion of the proposals are already carried out by TWUL. The Applicant does not explain how it will achieve a higher standard, and no enforceable outcome is secured. The Applicant lacks experience of nature management, especially compared to TWUL, which is also subject to a higher standard as statutory undertaker. Therefore, there is a strong risk that acquisition and ultimate control by the Applicant would lead to a lower standard of management. The ongoing lack of delivery of the offsite ecological mitigation sites for REP2 is testament to this risk.</p> <p>21. Furthermore, the value of the offsite mitigation on TGC is qualified by:</p> <p>a. The uncertainty that it will be delivered. Currently, the Applicant only proposes a Deed of Obligation, meaning the obligations are not secured in planning terms. Peabody's reluctance to enter into a s106 agreement emphasises the precariousness: as the Applicant noted itself at ISH2, "there is a different commercial position of having a 106 exist on your site to when it doesn't". Resorting to financial compensation is not acceptable for the general ecological mitigation (as distinct from BNG); and</p> <p>b. The fact that other funding mechanisms to deliver these works are available, which the Applicant accepts.</p>	<p>The Applicant disagrees with this statement and has set out its position in its Written Summary of CAH2 (REP4-048). Cory has met all of the requirements for off-site mitigation required by the REP DCO.</p> <p>As set out at ISH2, there is certainty that off-site ecological mitigation and BNG will be achieved. That is secured by DCO Requirement 12. The Deed of Obligation simply seeks to provide reassurance on the method of delivery, but the ultimate security is Requirement 12.</p> <p>The Applicant accepts that an alternative off-site OMH compensation site would need to be found if TGC was not able to be utilised and this would have to be demonstrated when seeking to discharge Requirement 12.</p>
2.6.9	<p>22. It's also important to consider what is missing from the proposals. There is no mitigation responding to the extensive loss of plant SPIs. Nor is there mitigation responding to the harm to animal SPIs (except water voles). The Applicant continues to rely on the general enhancement measures, but additional proposals are required to mitigate the specific harms to valuable species. In relation to SPI bee species, the Applicant simply suggests they "avoid newly wetted areas". This overlooks the fact that nests may already exist in areas to be wetted and would be destroyed. It cannot be assumed that the bees will re-nest; the Applicant offers no active mitigation.</p>	<p>The Applicant has made a commitment through the Outline LaBARDS (as updated alongside this submission), in response to impacts of the Proposed Scheme on habitats (primarily loss of floodplain grazing marsh habitat) and the botanical community (which includes plant Species of Principal Importance (SPI)), to enhance habitat within Crossness LNR (specifically through provisions in Section 10.1). This will lead to an overall benefit to the botanical community of the nature reserve and invertebrate species, including pollinators such as bee species. It is appreciated that SCNR is concerned regarding the retention of bee nesting sites (i.e. those of bumble bee species that create nests in the ground), however there is no reason to suspect that bees using the nature reserve would be adversely affected by raising the water table. Nesting sites may be lost as winter rains which periodically inundate the nature reserve and cause localised flooding (the Applicant's proposals are to prevent the loss of wetland character that occurs when soils dry completely during spring and summer), or to the effects of grazing; the insect community is present and resilient despite these extant factors which threaten nests currently. Thus, there is no reason to suspect that restoring the wetland character of the grazing marsh, which has been lost, would threaten nests over and above those threats currently at the nature reserve. The Applicant aims to create a wet grassland which will allow bees to nest, and not a swamp or marsh which would not.</p> <p>Additional mitigation for reptiles, breeding birds, bats and water voles (all animal SPI) is included within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056). It can be demonstrated from the application documents that mitigation is not missing; habitat enhancements to be undertaken at Crossness LNR will certainly constitute an active application of the mitigation hierarchy that will be supported by a long-term management regime, through the Outline LaBARDS (as updated alongside this submission) and secured through the Draft DCO (as updated alongside this submission).</p> <p>Please also see the Applicant's response to the ExA's Question 2.3.4 on this matter.</p>

Table ref	Summary of issue raised	Applicant's response
2.6.10	<p>23. The final question (assuming the Proposed Scheme could demonstrate avoidance and reduction of ecological harms) is whether the enhancement proposals adequately mitigate the extensive range of significant ecological harms in addition to the net loss of 2.83 ha of habitat. That is an incredibly tall order; the critique above shows that they fall woefully short.</p> <p>24. It's important that the assessment of ecological harm follows the above approach. Ecological harm is a material planning consideration. As such it needs to be properly assessed through detailed assessments, so it can be properly weighed in the planning balance. Ecological harm must not be conflated with BNG. BNG is a separate regime based on more objectively calculated metrics that often fail to capture the full picture. The assessment of baseline biodiversity units as being of 'poor' condition for BNG purposes does not inform value for the ecological assessment. By conflating the two, there is a real risk that the full extent of the ecological harm is illegitimately understated, and the weighting applied in the planning balance will be skewed.</p> <p>25. The Applicant's 'created' habitat is on existing habitat and therefore depends on loss of existing habitat. This initial loss constitutes an ecological harm in itself. The Applicant's view is that this further harm and the fundamental ecological harm (from the habitat loss under development footprint) are both mitigated by the quality of the habitat that will be created. We disagree. Furthermore, we believe this approach is not legitimate under the mitigation hierarchy: the Applicant must prioritise avoiding harm, yet the Applicant is actively creating more harm in order to achieve the thirddtier objective of mitigation. The Applicant is focused on the calculation of net result, akin to a BNG calculation, ignoring the harms created in the process and making no attempt to avoid them. That approach is not legitimate in the assessment of ecological harm.</p>	<p>The Applicant has demonstrated application of the mitigation hierarchy (see responses above) and the avoidance and reduction of effects (i.e. 'harms') on ecological features. Enhancement proposals adequately compensate for habitat loss within Crossness LNR as confirmed through application of the Statutory Metric, as reported in Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088) and its trading rules, as reported in Biodiversity Net Gain – Trading Rules Compliance Note (REP3-031).</p> <p>The Applicant's assessment of impacts on ecological features has followed best practice guidance as issued by the Chartered Institute of Ecology and Environmental Management, which is industry best practice. The Applicant does not disagree that impacts on ecological features are a material consideration for in determination of the Proposed Scheme and as such the assessment within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056) has been prepared to inform the decision makers of the ecological features present, potential effects, mitigation and likely outcomes for those features. This will allow the Examining Authority and the Secretary of State to consider the effects of the Proposed Scheme on terrestrial biodiversity in any decision that is made, and in the balance of the wider benefits of the Proposed Scheme.</p> <p>Effects on ecological features (i.e. potential 'harm') are not conflated with Biodiversity Net Gain. Evaluation of ecological features for the assessment of impacts on ecological features (Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)) has been undertaken using a separate methodology to the quantitative analysis for Biodiversity Net Gain (Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)).</p> <p>The Applicant's assessment of ecological impacts demonstrates that with both embedded and additional measures (described in Section 7.7 and 7.9 of Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)) implementing the Mitigation Hierarchy (including compensatory habitat creation and enhancement, such as enhancement of floodplain grazing marsh habitat) the Proposed Scheme does not lead to significant residual effects on ecological features through land take and habitat loss, as described in Table 7-11 of the chapter.</p> <p>Please also see the Applicant's response to the ExA's question 2.3.7 on this matter.</p>
2.6.11	<p><u>BNG</u></p> <p>27. The Applicant has not yet prepared detailed design proposals: the Outline LaBARDS is only a loose outline document; TGC enhancements lack detail and are subject to "iterative changes". Therefore, we query how BNG proposals could have been accurately calculated.</p> <p>28. Furthermore, there have been significant changes since the BNG calculation was made, including removal of habitat provision on the TGC car park and driving range, and removal of trees on Crossness Nature Reserve. The Applicant has not re-run the calculation following these changes, yet it maintains that 10% BNG will be achieved. We query how the Applicant can confirm this without reassessment.</p>	<p>Proposals provided within the Outline LaBARDS (as updated alongside this submission) are considered sufficient to demonstrate that habitat loss resulting from the Proposed Scheme will be compensated for, and that a 10% Biodiversity Net Gain is achievable. The quantitative requirements for compensation and net gain at Thamesmead Golf Course (i.e. reedbed creation, open mosaic habitat creation and the need to enhance the value of other habitats such that the Proposed Scheme achieves a 10% gain in biodiversity units) have formed a template for the proposals published in the Outline LaBARDS (as updated alongside this submission), and are forming the basis for detailed landscape proposals in development by the Applicant and its partner, Peabody Trust/Tilfen Land Ltd.</p> <p>As described above, removal of the car park and driving range buildings from the Biodiversity Net Gain Opportunity Area (Thamesmead Golf Course) does not alter the ability of the Outline LaBARDS (as updated alongside this submission) to provide habitat compensation and enhancements such that a quantitative (a minimum of 10%) and qualitative net gain is</p>

Table ref	Summary of issue raised	Applicant's response
		<p>achieved. Not all habitat at Thamesmead Golf Course is required by the Applicant for these purposes, with ample that would not be subject to the requirements of the Outline LaBARDS (as updated alongside this submission). Remaining habitat would be subject to enhancement proposals developed by Peabody Trust/Tilfen Land Ltd towards their own biodiversity and public access goals, and outside the scope of the Outline LaBARDS (as updated alongside this submission) and the Proposed Scheme.</p> <p>The Applicant has provided spreadsheet copies of the metric calculation tool to SCNR for their consideration.</p>
Metropolitan Open Land		
2.6.12	<p>29. The Applicant does not rely on the CNP presumption but instead relies on independently demonstrating very special circumstances to justify what is accepted as inappropriate development on MOL. The Applicant relies chiefly on the contribution to addressing climate change achieved by carbon capture.</p> <p>30. However, this approach does not avoid the requirement to first comply with the mitigation hierarchy that applies to the CNP presumption. The CNP presumption exists because of the need for energy NPS infrastructure, including its contribution to addressing climate change. Despite this need, EN-1 makes clear that the mitigation hierarchy must first be followed, giving primacy to ecological protection. Therefore, the policy intention is that climate changes benefits cannot provide very special circumstances where the mitigation hierarchy has not been followed. This must be true whether those benefits are being claimed under the CNP presumption or as very special circumstances in their own right. We want to avoid any implication that the mitigation hierarchy can be side-stepped by not relying on the CNP presumption.</p> <p>31. We appreciate that the Applicant claims to have followed the mitigation hierarchy. We of course disagree and have demonstrated that the Proposed Scheme fails to apply the mitigation hierarchy on multiple fronts. The intention of EN-1 is clear: this failure prevents the climate change benefits from being used as very special circumstances to justify inappropriate development on the MOL. Therefore, the Proposed Scheme remains inappropriate development without justification and development consent must be refused.</p>	<p>The Applicant does not <i>rely</i> upon the CNP infrastructure presumption; however, as the Proposed Scheme is properly to be considered critical national priority infrastructure, it does benefit from the position set out in NPS EN-1.</p> <p>NPS EN-1 paragraph 4.2.10 requires that applicants for CNP infrastructure must continue to show how their application meets the requirements of the NPS, applying the mitigation hierarchy and any other legal and regulatory requirements. At paragraph 4.2.11, the NPS makes clear that applicants <i>'must apply the mitigation hierarchy and demonstrate that it has been applied'</i>. Paragraph 4.2.16 then confirms that the policy position is that the Secretary of State <i>'will take as the starting point for decision making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances'</i>. Paragraph 4.2.17 confirms that this includes very special circumstances for development within a Green Belt.</p> <p>Table 2-3-4 of Applicant's Response to Interested Parties' Deadline 1 Submission (REP2-019) sets out the Applicant's approach to the mitigation hierarchy and demonstrates how it has been comprehensively applied, as required by NPS EN-1. The Applicant's response to SCNR (on page 37 of that submission) confirms that the Proposed Scheme <i>'is a carbon capture project and as such is recognised as critical national priority infrastructure in NPS EN-1. The Applicant recognises this function in the Application (sic) documents but does not rely upon it; the Applicant is explicit in recognising the harm that result from the Proposed Scheme and addresses it. For example: very special circumstances are given for the inappropriate development in MOL; mitigation and compensation are provided for the loss of habitat, and a biodiversity net gain is proposed; Design Principles and Design Code are set out, not least for the impact on views and user experience'</i>.</p> <p>The Applicant has, and demonstrably so, applied the mitigation hierarchy (as required by NPS EN-1 paragraphs 4.2.10 and 4.2.11). Through that application of the mitigation hierarchy, the Applicant has demonstrated that there is no residual HRA or MCZ impacts and no significant residual non-HRA or non-MCZ impacts.</p> <p>The Secretary of State would be correct to apply the policy position of determining the Proposed Scheme on the basis that its location with the MOL (policy that is different to, but which is afforded the same status and level of protection as Green Belt within the London Plan and Bexley Local Plan) does meet the very special circumstances to justify development, as set out in the Planning Statement. This is where the Applicant demonstrably <i>does not rely</i> upon</p>

Table ref	Summary of issue raised	Applicant's response
		<p>the CNP infrastructure presumption – because it has set out the very special circumstances that would anyway apply to the Proposed Scheme.</p> <p>The very special circumstances that are set out in the Planning Statement (APP-040), particularly at Section 5.5, are necessarily independent; they are the matters important and relevant to the Proposed Scheme and its location. The contribution made to climate change through the capture of some 1.3 million tonnes per annum of carbon dioxide is a key very special circumstance, but so too are future proofing of sustainable waste management; the riverside location; and the delivery of sustainable infrastructure through coherent design, including the extensive proposals for biodiversity and amenity across the Mitigation and Enhancement Area and BNG Opportunity Area.</p> <p>Whilst MOL is not Green Belt, the Applicant is cognisant of the recently updated policy position in regard to Grey Belt and notes that the very special circumstances presented for the Proposed Scheme align with the Golden Rules set out in the revised PPG. The Proposed Scheme is sustainably located (not least due to use of river transport during the operation phase); it will deliver the improvements necessary to strategic infrastructure, delivering local, national and global benefit; it will provide improvements to existing green spaces that are accessible to the public; and there is a demonstrable unmet need for development such as the Proposed Scheme.</p> <p>There is no reasonable alternative to carbon capture in order to address the carbon dioxide emissions released from Riverside 1 and Riverside 2 as a result of their treatment of residual waste. The Applicant has demonstrated that there is no reasonable alternative location. As set out in the Applicant's response to SCNR at table row 2.6.5 above, the Applicant has submitted substantial evidence demonstrating that an appropriate site assessment has been undertaken, and all of SCNR's submissions in regard to alternative sites have been responded to. Within Revision D of the SoCG with LBB (REP4-016) the parties agree <i>'that the method used for the site assessment undertaken for the Proposed Scheme is appropriate'</i> and that <i>'all reasonable alternative sites have now been assessed'</i>. There is, not least as demonstrated through Chapter 7: Terrestrial Biodiversity of the ES (APP-056) no significant adverse effect on ecology or terrestrial biodiversity as a result of the Proposed Scheme.</p> <p>The Applicant has fully implemented policy established in NPS EN-1: appropriately applying the mitigation hierarchy; appropriately addressing MOL policy and confirming Proposed Scheme's CNP status to be sound; and selecting an appropriate site. The Proposed Scheme is CNP infrastructure and is demonstrated to be an acceptable project that will deliver substantial benefit, locally, nationally and globally.</p>

2.7. THAMES WATER UTILITIES LIMITED

Table 2-7 Applicant's Response to Thames Water Utilities Limited Deadline 4 Submissions

Table ref	Summary of issue raised	Applicant's response
2.7.1	<p>I. TWUL's primary position in relation to the enhancement land is that the Applicant has not made a case for any rights in respect of the same, save along the periphery of the carbon capture facility ("CCF"), as the substantive mitigation takes place on the Norman Road Field which falls outside TWUL's ownership.</p> <p>II. If, however, the Examining Authority and/or the S/S take the view that the enhancement works are necessary TWUL avers that the Applicant has not and cannot demonstrate that the outright acquisition of the land is justified. Guidance on procedure for the compulsory acquisition of land (available here) ("the 2013 Guidance") is clear that taking outright ownership by compulsion is only justified if it is necessary and that all reasonable alternatives have been explored. Acquisition is neither necessary nor proportionate. If the enhancement works are required in order to make the project acceptable then temporary rights granted to the Applicant would enable it to carry out the works. The said works could then be maintained by TWUL by modifying the extant section 106 agreement so as to include the maintenance of the enhancement works.</p> <p>III. The Applicant ought to be responsible for any additional costs incurred by TWUL as a consequence of the enhancement works and the Applicant should be added as a party to the section 106 agreement to make provision for determining the amount of money which should be paid by the Applicant and ensuring that it is obliged to make the payment or payments. A model for the provisions which should be included in respect of the Applicant's financial responsibilities is already provided in document REP1-030 Draft Deed of Obligation. That mechanism could be adopted for the entirety of the TWUL enhancement land, including that which lies beyond the order limits, save that TWUL would aver that the financial obligation should persist for the entire period of the development and not the first 5 years, perhaps with a mechanism for determining the additional costs on a 5 or 10 yearly basis with a default that the payment is to increase every 5 years in line with CPI unless either party applies for a different sum.</p> <p>IV. Such an arrangement would be a less significant interference with TWUL's property rights and is precisely the type of alternative which the Guidance states that developers should explore and pursue. The Applicant, however, states that such an arrangement is either not practicable or lawful. It has provided its reasons in the document REP1-028, pages 7 to 12. At the hearings of 11 and 12 February 2025 the Applicant provided a further reason as to why modification of the extant section 106 agreement is not a tenable alternative to outright acquisition.</p> <p>V. In this document TWUL addresses systematically all of the arguments made by the Applicant as to why modification of the section 106 agreement together with the grant of temporary powers for the Applicant to carry out the enhancement works is not a tenable alternative. The upshot is that none of the Applicant's arguments are convincing. The S/S has the power under section 120(3) and paragraph 3 of Schedule 5 of the PA 2008 to modify agreements provided that those modifications are related to the development. Modifying the agreement would mean that the enhancement works would be maintained and conserved by TWUL for the lifetime of the development, with any additional costs being financed by the Applicant who would also be added as a party to the modified section 106 agreement. To carry out the works the Applicant only needs temporary powers/rights and does not require ownership. In the circumstances, it is clear that outright ownership is not necessary.</p>	<p>The Applicant first notes that the Crossness LNR land owned by TWUL that is within the Order limits (the 'TWUL Land' for the purposes of this table) should not be simply considered as 'enhancement land'.</p> <p>The enhancements to the habitats which make up the TWUL Land are part of the overall package contained within the Outline LaBARDS (as updated alongside this submission) to ensure a well-managed expanded local nature reserve. The TWUL Land is therefore not being used as an 'enhancement' in planning terms, but as part of a wider mitigation and enhancement area package.</p> <p>The appropriateness of the Applicant's approach is therefore not just about the delivery of works in each field, but that each field is an important element of an overall whole. The creation and on-going management of a local nature reserve is not a static position, where capital works are only undertaken once – it will be an on-going 'live' environment where works are likely to be required to ensure that the overall local nature reserve achieves the goals set out in the Outline LaBARDS (as updated alongside this submission) and ultimately as will be set out in the detailed LaBARDS.</p> <p>Secondly, the Applicant wishes to clarify its position on deeds that accompany what is set out in the DCO.</p> <p>The Applicant's position is that it does not consider that it would be appropriate in policy terms for an existing section 106 Agreement, relating to a previous development, to be amended to add in additional obligations which arise as a result of a completely different development.</p> <p>This would be the imposition of new positive covenants on TWUL's land 'through the back door', using the planning system to circumvent restrictions on compulsory acquisition powers (which cannot be used to acquire positive covenants). It is considered that this is not acceptable or appropriate in legal terms, notwithstanding the powers in section 120 and Schedule 5.</p> <p>It considers that it is possible that a <u>new</u> Deed could be entered into with TWUL taking the role of a landowner, in the same way that any section 106 Agreement is entered into by landowners where a development is brought forward by a private developer.</p> <p>However, such a Deed could only be acceptable if:</p> <ul style="list-style-type: none"> (a) TWUL wanted to sign up to such a Deed; and at the time of the DCO application that was not apparent and is still under discussion; and (b) it was backed up an agreement between the Applicant and TWUL which dealt with the practical arrangements of delivery and management in accordance with the approved LaBARDS; consequences of if TWUL was to be in breach of that Deed; and ensuring that TWUL did not dispose of the land (i.e. the positive + restrictive covenant arrangement discussed previously, which is akin to acquisition); or the use of powers was permitted to achieve that same end.

Table ref	Summary of issue raised	Applicant's response
	<p>Instead, if rights over TWUL's enhancement land to carry out enhancement works are necessary then the DCO should only make provision in respect of those temporary rights and modify the section 106 agreement to ensure that they are maintained. As explained orally at the hearings of 11 and 12 February 2025 it is clear that the S/S has the power under s 120(3) of PA 2008 to modify the section 106 agreement regardless of the consent of TWUL or the Applicant.</p> <p>VI. In the remainder of the document the arguments of the Applicant are summarised or cited followed by TWUL's response. (1) to (14) address the representations made by the Applicant in REP1-028, pages 7 to 12; (15) addresses the representations made by the Applicant at the hearings of 11 and 12 February 2025.</p>	<p>The Applicant has confirmed that it considered this, but that it considered that such an approach would essentially be 'de-facto' compulsory acquisition for a landowner.</p> <p>From TWUL's responses and engagement, it now appears clear that TWUL is willing to commit to its land continuing to be used for LNR purposes in the long term, including with LaBARDS related obligations, but that it wishes to retain ownership of the land, notwithstanding how its 'enjoyment' of the land as landowner would be affected.</p> <p>With TWUL's view in mind, the Applicant has now determined that it would be appropriate to change the Land Plans (and associated documents) to change the TWUL LNR plots to blue rights/restrictive covenant plots if Deed of Obligation (B) is entered into. This is discussed further in the response to ExA question 2.5.3.</p>
2.7.2	<p>Applicant seeking to reach a negotiated position with TW but in the absence of agreement CA powers are required (page 7)</p> <p>1.1 Response: The negotiated position relates to something other than outright acquisition. If a negotiated settlement falling short of outright ownership by the Applicant is acceptable and sufficient to provide the required mitigation and enhancement then a solution imposed upon the Applicant and TWUL under section 120(3) is also sufficient.</p>	<p>A negotiated settlement is only acceptable to the Applicant if it gives the Applicant the relevant protection against enforcement and imposes sufficient obligations and controls on TWUL it has discussed in previous submissions. Such a settlement would require TWUL to accept a significant imposition on its ability to enjoy and deal with its land that is akin to compulsory acquisition.</p> <p>As noted, above TWUL appears to accept such restrictions whilst still retaining ownership, the Applicant has now determined that it would be appropriate to change the Land Plans (and associated documents) to change the TWUL LNR plots to blue rights/restrictive covenant plots if Deed of Obligation (B) is entered into. This is discussed further in the response to ExA question 2.5.3.</p> <p>As above, the Applicant does not consider that modifying an existing section 106 Agreement is legally acceptable in policy terms as it would involve the imposition of new obligations akin to positive covenants compulsorily – using planning tools to override restrictions on compulsory acquisition powers. Furthermore, even if that was the approach taken, it leaves the Applicant in a position where it is required by a DCO to ensure that the LaBARDS is delivered and managed, without having any control or property rights over the land to ensure that happens.</p>
2.7.3	<p>Applicant believes rights not sufficient because that would not stop TWUL doing something inconsistent with the land, necessitating the imposition of restrictive covenants (page 7).</p> <p>2.1 Response: The proposition that granting rights to the Applicant would require there to be corresponding restrictive covenants on TWUL is, with respect to the Applicant, a nonsense. All that is required is a modification to the s 106 to require the maintenance of the enhancement works undertaken by the Applicant. Any actions by TWUL which then somehow undid the enhancement works, or were inconsistent with the enhancement works, would be a breach of the section 106 agreement as modified under the DCO. That is sufficient to secure that TWUL maintains rather than destroys the enhancement works.</p> <p>Thirdly, it is not legally possible for the Applicant to CA positive covenants requiring TWUL to look after the land the way it wishes it to be looked after in accordance with the Outline LABARDS.</p>	<p>This response conflates property and planning positions. A restrictive covenant would be required to ensure that there was a relationship between TWUL and the Applicant in terms of any breach of the LaBARDS, and also to ensure that TWUL did not dispose of the land without the Applicant's consent, to ensure that any buyer was not one who might unpick the LaBARDS arrangements. This would be seen alongside the rights the Applicant requires to deliver works itself.</p> <p>As noted above, if TWUL wishes to enter into a new section 106 Agreement as landowner, in arrangements with the Applicant, the Applicant welcomes this, and has reflected such an arrangement in the updated Deed of Obligation submitted at Deadline 4. Updating the existing 1994 section 106 to impose restrictive or additional obligations akin to positive covenants would not be appropriate in policy terms, as discussed above.</p>

Table ref	Summary of issue raised	Applicant's response
	3.1 Response: This is closely related to (2). Standalone positive covenants are not required. As above, all that is required is a modification of the section 106 to obligate TWUL to maintain and conserve the enhancements undertaken by the Applicant and for there to be a mechanism for the Applicant to pay the additional costs associated with maintaining the enhanced land and for those costs to be agreed or determined.	
2.7.4	<p>TP powers could deliver the works, but if you can't then manage them in accordance with the LaBARDS, then the Applicant would only have complied with part of what will be required by the DCO. The on-going management of the LaBARDS proposals will be requirement of them and a key to their success. (page 8)</p> <p>This is important in the context that ultimately, the Applicant cannot force Thames Water to enter into an agreement (page 8)</p> <p>This is important in the context that ultimately, the Applicant cannot force Thames Water to enter into an agreement (page 8).</p> <p>5.1 Response to (4) and (5): the S/S under section 120(3) can modify an agreement and that modification does not require all the parties to the section 106 to agree to the same, albeit as a matter of natural justice any affected party should be given an opportunity to make representations in relation to any such modification (for the avoidance of doubt TWIIL has been afforded such an opportunity and suggested at the hearings on 11 and 12 February 2025 that a modification of the section 106 agreement was (i) possible and (ii) a much less intrusive interference with TWIIL's rights than the alternative promoted by the Applicant of outright compulsory acquisition).</p>	<p>As above – the Applicant considers that it is not possible simply to amend an existing s.106 to impose new obligations.</p> <p>Even if it was, this would mean that the Applicant would be beholden to a third party to deliver works that it is required to achieve pursuant to the DCO, which leads to unacceptable enforcement risks.</p> <p>Noting the discussion at ISH2, the Applicant also notes that it would not be possible to amend the DCO/LaBARDS simply to state that TWUL is to undertake the works, when the works on the TWUL Land are proposed to be being brought forward as part of a consolidated, expanded local nature reserve; not a piecemeal approach across different fields.</p> <p>The LaBARDS is a comprehensive, coordinated approach sought to be delivered by the Applicant as part of the planning balance of the overall Proposed Scheme, a 'broken up' approach would not achieve this.</p>
2.7.5	<p>If TW retained ownership but didn't manage the land in accordance with those management requirements, the Applicant would be left in the position where it is legally responsible for that failure, and therefore subject to enforcement proceedings and consequential criminal liability. As such, the Applicant cannot be in position where it is not able to control the behaviour of a third party and would be exposed to those sorts of enforcement proceedings. (bottom page 8, top page 9)</p> <p>6.1 Response: Modifying the section 106 to oblige TW to maintain the nature reserve as enhanced addresses these concerns. When considering any enforcement action, the LPA would be obliged to conduct itself reasonably and rationally in considering any enforcement action and the only reasonable and rational enforcement response would be to enforce the terms of the section 106 against TWUL.</p> <p>The Applicant is willing to enter into an Agreement in respect of this land, that may involve TW accepting an easement + restrictive covenant position, but unless and until that position is accepted, it needs to ensure it has the appropriate powers to deliver and manage its LaBARDS commitments. (page 9)</p> <p>7.2 Response: The modified section 106 would oblige TW to maintain the enhanced NR and could be enforced by both the Council, as local planning authority and the Applicant, contractually. The section 106 can be modified without the agreement of TWIIL or, indeed, The Applicant provided that the principles of procedural fairness have been observed. As the matter has been canvassed in the Examination there is no problem re procedural justice.</p>	<p>As above – the Applicant considers that amending the section 106 is not acceptable. It is noted that even if this approach was taken, the DCO would still require the overall LaBARDS outcomes to be achieved, which would be in the 'name' of the undertaker, and so able to be enforced against it.</p>

Table ref	Summary of issue raised	Applicant's response
2.7.6	<p>(8) It is right that the existing agreement can be modified...but crucially the Applicant is not just modifying what is under those Agreements but also seeking to ensure that additional mitigation over and above the requirements of those agreements is secured. As such the cleanest and most appropriate way is to take the 'clean-slate' approach to deliver on the Proposed Scheme commitments through a single composite approach to the delivery of ecological outcomes based on the Outline LaBARDS. (page 10)</p> <p>8.1 Response: It is acknowledged by the Applicant that the existing agreement could be modified. The reference to additional mitigation is noted but is irrelevant: if the agreement can be modified the degree of maintenance and conservation can be increased as well as being decreased. The proposition that CA of the freehold is the cleanest solution is mere assertion. Acquisition of the freehold may be a 'clean' approach from the Applicant's perspective but that is not the test under section 122 of the PA 2008 as is made clear by paragraph 8 to 11 of the Guidance.</p> <p>8.2 In short, the Applicant is obliged to demonstrate that all reasonable alternatives to CA have been explored (para 8 of the Guidance), that the proposed interference with TWUL's property rights is necessary and proportionate (para 8 of the Guidance), and that the rights/interest sought is no more than reasonably required for the development (para 11 of the Guidance). An appeal to convenience on the part of the Applicant shows that the Applicant has wilfully disregarded the well-known principles and guidance relating to CA and any decision based on the criterion of 'convenience' would be unlawful.</p> <p>8.3 Though it is not neither acceptable as currently drafted to TWUL nor a section 106 agreement the Deed of Obligation B, Rep 1-030, illustrates that drafting a modification of the section 106 to provide (i) that TWUL would maintain the enhancement works carried out by the Applicant and (ii) providing a mechanism for the Applicant to reimburse TWUL for the additional costs of doing so is straightforward. Furthermore, a modified section 106 agreement would have the advantage over the said Deed of Obligation because it would remain enforceable as a section 106 agreement rather than an agreement made under section 111 of the LGA 1972.</p>	<p>As set out above, in the Applicant's view, the only alternative to compulsory acquisition is a new section 106 which TWUL willingly signs up for, accompanied by property arrangements which impose positive easements for the Applicant's benefit and restrictive covenants.</p> <p>Taking these together; and having first discussed the principle of a three-way agreement between the Applicant, TWUL and Tilfen Land Limited which would seek to manage the arrangements between the parties and been rebuffed, the Applicant considered that there would be such a change to how TWUL could use the land that this would be akin to compulsory acquisition.</p> <p>The Applicant had allowed for the Member's Area to be included within the Deadline 1 Deed of Obligation, on the basis that this was not a section 106 agreement; and that TWUL could, if it wanted to, agree to include it within the overall expanded Local Nature Reserve. This would have been entirely voluntarily, rather than the imposition of a new planning obligation.</p> <p>It is now apparent that TWUL could accept a section 106 Agreement approach and is engaging with the Applicant on a voluntary agreement to sit behind it. That is the alternative as set out above, and the Applicant is exploring that with TWUL, but that is TWUL's choice to agree to such impositions being placed upon it.</p> <p>However, given this approach, the Applicant has determined that, if Deed of Obligation (B) is entered into, then the DCO powers can be reduced to be positive easements for the Applicant's benefit and restrictive covenants.</p>
2.7.7	<p>Crucially the Applicant is not taking the CA approach because it is easier but because it believes it is necessary to ensure delivery and enforcement of the mitigation and enhancement proposed. As noted above, it is important in this context that you cannot enforce a positive covenant over Thames Water using compulsory powers.</p> <p>9.1 Response: The requirement for positive covenants is a red herring as set out in TWUL's responses above: under a modified section 106 agreement TWUL would be obliged to maintain the nature reserve as enhanced by the Applicant's enhancement works under Works No 7.</p>	<p>See response to TWUL 2.1. and 3.1 above.</p>
2.7.8	<p>Furthermore, the Applicant does consider that there is a principle ('the Principle') that where you are changing the nature of what the party can do with their land to such a degree that it effectively deprives them of the ordinary incidence of that land then it is appropriate to compulsory acquire in those circumstances. (page 10)</p> <p>10.1 Response: There is no dispute as to the existence of the Principle but the Applicant wholly misapplies it in the context of the mitigation and enhancement land. The rationale for the Principle is that public authorities and developers exercising compulsory purchase</p>	<p>As noted above, the Applicant's proposals for the TWUL Land are not just in relation to capital works (although the Applicant notes that TWUL seems to be focussing on Island Field, when in fact their landholdings extend beyond this to the rest of the MEA outside of Norman Road Field, where a number of interventions are proposed), but also relate to on-going management as part of an expanded Crossness LNR.</p> <p>In particular, it is noted that maintenance works are likely to take place throughout the lifetime of the Carbon Capture Facility, and it is also the case that generally, the Applicant has</p>

Table ref	Summary of issue raised	Applicant's response
	<p>powers should be transparent and that form and substance should be aligned. For example, where a highway authority takes land for a new motorway it would offend the Principle if the acquisition was of rights to build the motorway and to the top two spits rather than outright acquisition. That is because the landowner of land taken for a motorway is left with nothing of practical utility: accordingly, the developer must either make out a case for outright acquisition or not proceed at all. Taking temporary powers and rights to the top two spits would lead to a conflict between form and substance.</p> <p>In this case, modifying the section 106 agreement would only have a modest impact on TWUL. The land is already a nature reserve which is maintained by TWUL which employs a manager for the nature reserve. The vast majority of the substantive mitigation proposed by the Applicant is to take place outside TWUL's ownership on the Norman Road Field. As explained by TWUL at the hearings on 11 and 12 February 2025, the proposals in terms of enhancement on its land, with the possible exception of the boundary with the CCF, is light touch. The principal work with financial implications for TWUL's management regime involves the proposed boardwalk.</p> <p>Accordingly, the Principle does not apply in this case. A modification of the section 106 agreement, together with temporary rights for the Applicant to carry out the works of enhancement is all that is required. Moreover, modification of the section 106 would result in form and substance being aligned. By contrast, the Applicant's proposal that it should acquire the freehold simply to undertake some light touch environmental enhancements is a wholly disproportionate means of pursuing those environmental ends.</p>	<p>committed to building on the existing Management Plan to create a new, enhanced management plan, with better facilities for graziers and ultimately a better local nature reserve.</p> <p>Fundamentally, there will be a change in how the TWUL Land looks, and is looked after, as a result of the Proposed Scheme, imposing new obligations on the land. That necessitates a new regime being put in place to ensure that can be delivered, with the legal ramifications for TWUL as discussed above. It is those legal ramifications which invoke the Principle.</p>
2.7.9	<p>The Applicant's case for CA powers does not rely solely on this latter point. As previously explained, the CA powers are necessary in order to deliver a single comprehensive approach to land management, rather than having parts of amended agreements. It is not just that it is de facto, that is an additional practical aspect, but the ExA can be satisfied that CA is necessary because the Applicant needs to ensure a clean slate to deliver not only what has gone before, but what [we] are proposing now and into the future.</p> <p>11.1 Response: The owner of the Norman Road Field is not actively objecting to the CA of its freehold. Furthermore, the mitigation works proposed for the Norman Road Field are much more substantive and the land is not at the moment a nature reserve. In short, CA of the freehold may well be justified in respect of Norman Road Field in which case there will only be one agreement.</p> <p>In any event, the existence of two agreements can hardly justify taking outright ownership when that is neither necessary nor proportionate. This is another example of the Applicant prioritising its own convenience rather than applying the Guidance. The clean slate metaphor is being asked to carry a burden that it cannot bear and which does not stand up to scrutiny.</p>	<p>The same position applies to Norman Road Field as for the TWUL Land – unless and until voluntary arrangements are in place, then compulsory acquisition powers are required to secure LaBARDS outcomes and enforcement scrutiny.</p> <p>The Applicant has not sought compulsory acquisition powers out of convenience, it has sought them because of the implications and non-agreement of the alternative approach – the need for a new section 106 Agreement imposing new obligations on parties who have not asked for them (and thus compulsory acquisition of positive covenants by the back door), alongside necessary property arrangements to ensure that the Applicant can both go onto land to deliver the LaBARDS on an on-going basis and ensure nothing is done that would lead to the need for enforcement.</p> <p>The Applicant remains open to agreeing such agreements, but in the absence of such agreement, requires DCO powers as a backstop position. This is the common approach on DCO projects.</p>
2.7.10	<p>There is nothing in property terms preventing TWUL from wishing to develop that land for development in the future.....As such, any consideration of the impact of CA powers needs to be seen in the context of whether or not any other powers would prejudice the ability of Thames Water to enjoy and exploit its land. (page 11)</p> <p>12.1 Response: The additional obligations under any modified section 106 would be modest and are likely to expire prior to the expiry of the current obligations on TWUL under</p>	<p>This point was not to seek to justify compulsory acquisition powers per se, but to make the point that existing use is not the only relevant matter in considering CA powers.</p>

Table ref	Summary of issue raised	Applicant's response
	the extant section 106. The proposition that the additional burden of maintaining the limited enhancement works proposed by the Applicant which is a burden which is limited would somehow be unacceptable, but that acquiring the entire freehold interest in the nature reserve (excluding the members area) is justifiable is manifestly wrong, since outright acquisition would necessarily preclude any future development by TWUL	
2.7.11	Reference to DfT Circular 02/97 and the MCHLG Guidance. 13.1 Response. This a reiteration of the Principle. It does not apply to the facts of this matter for the reasons set out at 10.1 to 10.3 hereof.	See response to 10.1 to 10.3 above.
2.7.12	14.1 Response	The Applicant has not responded to this section, as it considers the points made are covered in the rows above and below.
2.7.13	<p>At the hearings on 11 and 12 February 2025 the Applicant put forward a further reason as to why modification of the section 106 was not an acceptable alternative. That further reason is that modifying the section 106 would breach the tests under regulation 122 of the CIL Regulations that such obligations should be:</p> <ul style="list-style-type: none"> (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. <p>15.1 Response The Applicant's argument is based on taking 'the development' for the purposes of the tests as being the planning permission obtained by TWUL in 1994 which gave rise to the original section 106 agreement. The Applicant misidentifies the development: any modification to the section 106 agreement should be tested by reference to the Applicant's carbon capture and storage project not the historic project. The Applicant's argument is thus misconceived.</p> <p>15.2 That the Applicant's argument is wrong because it identifies the wrong development is also apparent if one considers the power by which a DCO is able to modify agreements, namely section 120(3) which reads as follows: "An order granting development consent may make provisions relating to, or to matters ancillary to, the development for which consent is granted"</p> <p>15.3 The development which is contemplated in s 120(3) is the DCO not the development which was subject to the 1994 permission. Accordingly, it is perfectly obvious that as the power to abrogate or modify a land agreement under paragraph 3 of Schedule 5 only arises in respect of the development which is subject to the DCO that 'the development' for assessing whether the CIL tests are met is the Applicant's carbon capture and storage project.</p> <p>15.4 Finally, it cannot be the case that the CIL Regulations apply only to modifications of agreements relating to land and not to abrogation. The Applicant is apparently of the view that the CIL Regulations are irrelevant when it comes to abrogating the 1994 agreement but asserts that they are relevant when it comes to its modification – so much so that they somehow override the powers provided by the PA 2008. Both of these positions – that the CIL Regulations apply to modification but not abrogation – cannot be correct, and indeed</p>	<p>The Applicant does not agree with TWUL's proposition for the reasons set out above.</p> <p>Whilst section 120 would allow for modifications of existing agreements, the acceptability of the application of that power still needs to be considered in policy terms.</p> <p>Using the ability to modify planning obligations to impose the equivalent of positive covenants in compulsory acquisition terms is not considered appropriate in policy terms.</p>

Table ref	Summary of issue raised	Applicant's response
	are not correct: section 120 and paragraph 3 of Schedule 5 to the PA 2008 make no such distinction and so where an agreement may be abrogated, it may also be modified.	

Appendices



APPENDIX A: APPLICANT'S RESPONSE TO SCNR'S CRITIQUE OF THE OUTLINE LABARDS

DECARBONISATION

Cory Decarbonisation Project

PINS Reference: EN010128

March 2025

Revision A

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1. INTRODUCTION

- 1.1.1. This document provides a response to Save Crossness Nature Reserve's (SNCR) critique of the management and mitigation proposals described within **Paragraph 8.3.4** of the **Outline LaBARDS (as updated alongside this submission)**, as detailed in Table 1 and Table 2 of **SCNR's Deadline 4 Representation (REP4-044)**.

2. RESPONSE

Table 1 – Applicant's Response to Critique of Mitigation Proposals at Paragraph 8.3.4 of Outline LaBARDS

Proposal	SCNR Critique	Applicant's Response
<p>“improvement in Flood Plain Grazing Marsh habitat from Poor condition to Moderate condition secured through improved ground wetting delivered via proposed drainage proposals associated with improved existing ditches and new ditches”</p>	<p>Assessment of current ditches was skewed by assessment during a heatwave in June 2023 (see previous submissions)</p> <p>No detail provided on how water levels will be increased – TWUL already manages water levels in ditches (affecting overall ground wetting)</p> <p>NRF Ecological Master Plan already requires seasonal inundation of scrapes, establishment of a hydrological regime and active manipulation of water levels in ditches (non-compliance means this is still enforceable)</p> <p>Risk of harm to SPI species (e.g nesting bees) without specific management plan</p>	<p>Condition assessment of ditches was undertaken at the optimal time of year. Water levels in ditches were in line with those reported for many years by the current Crossness Nature Reserve Management Plan¹ which highlights low water levels as a problem for the reserve with no current solution, demonstrating this occurs independently of weather conditions. Water level relates to only one of the Statutory Metric condition assessment criteria used (Criterion F), with plant growth, shading and other factors also relevant tests for ditch condition.</p> <p>Proposals are provided within the Outline Drainage Strategy (AS-027), whereby surface water runoff from the Carbon Capture Facility will be directed to the Mitigation and Enhancement Area, to enhance and maintain the wet grassland and aquatic habitats with the creation of scrapes and grips (to assist in keeping soils moist within the wetland and to produce some variability in water level and moisture conditions). The water quality in the Mitigation and Enhancement Area will be improved by reducing the flows that currently run into</p>

¹ The Crossness Nature Reserve Management Plan 2016-2020 is presented in **Appendix 2** of the **Outline LaBARDS (as updated alongside this submission)**.

Proposal	SCNR Critique	Applicant's Response
		<p>the highway drainage features along Norman Road, contributing road runoff/silt into Great Breach Dyke.</p> <p>¹The Ecological Master Plan as relevant to the NRF has been implemented and is now expired. There remains no mitigation commitments at NRF.</p> <p>The Applicant does not intend to raise the water table to such a level that it would detrimentally impact SPI species associated with Crossness LNR. Habitat enhancement will benefit SPI species including bees (see responses on this topic provided in Table 2-6 of the main text of this report and previously at Page 67 of the Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019)).</p>
<p>“establishment of new ditch and reedbed habitat”</p>	<p>Creation of ditches is minimal (0.176ha) and is undermined by loss of some existing ditches (0.091ha)</p> <p>Creation of reedbed (0.505ha onsite and 0.21ha on TGC) is undermined by loss of existing reedbed (0.373ha)</p> <p>NRF Ecological Master Plan already requires seasonal inundation of scrapes, establishment of a hydrological regime and active manipulation of water levels in ditches (non-compliance means this is still enforceable)</p> <p>Risk of harm: soil removed to create ditches might be dumped on site, damaging grazing</p>	<p>To mitigate for the removal of approximately 540m of drainage ditch, a total of approximately 1.3km of ditches will be dug within two receptor sites within the Mitigation and Enhancement Area of the Site.</p> <p>Additionally, existing ditches (totalling approximately 540m) within the Site will be enhanced for water voles. Therefore, an overall increase in the length of ditch will be achieved as a result of the Proposed Scheme, as well as enhancement of the existing ditch network. This constitutes compensation for ditch loss as well as enhancement such that a net gain for biodiversity is achieved. Natural England is content that these measures are appropriate for water vole and issued (on 25th February 2025) a Letter of No Impediment (LONI)</p>

Proposal	SCNR Critique	Applicant's Response
	marsh habitat underneath. This is common, and there is no guarantee this won't occur	<p>for the Applicant's Water Vole mitigation proposals (appended to the Applicant's Response to the ExA's Second Written Questions).</p> <p>Loss of reedbed is balanced by creation of new reedbed onsite within the Mitigation and Enhancement Area and offsite within the Biodiversity Opportunity Area subject to the area requirements presented in Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 1) (APP-088) and summarised in the Applicant's Response to the ExA's Second Written Questions (see Question 2.3.5).</p> <p>1The Ecological Master Plan as relevant to the NRF has been implemented and is now expired. There remains no mitigation commitments at NRF.</p> <p>Soil removed to create ditches will not be 'dumped' onsite. As described within Paragraphs 14.2.1 and 14.2.4 of the Outline Construction Code of Practice (CoCP) (as updated alongside this submission), the Contractor(s) will reuse excavated arisings (which would include those from ditch creation) on the Proposed Scheme where suitable. If not suitable, it will be taken offsite for reuse, unless circumstances dictate it must be disposed to landfill. The Outline CoCP (as updated alongside this submission) also sets out the following:</p>

Proposal	SCNR Critique	Applicant's Response
		<ul style="list-style-type: none"> • Soil and stockpiles will not be located within 10m of surface waterbodies or drainage lines without appropriate cut-off features or flow barriers. • Stockpiles will be appropriately managed through use of tarpaulins and jute matting to mitigate release of sediment load, and damping down exposed surfaces using water spray. <p>The full CoCP(s), which will be in substantial accordance with the Outline CoCP (as updated alongside this submission) as secured by Requirement 7 of the Draft DCO (as updated alongside this submission), will ensure that Site arisings (including soil) are suitably stockpiled, where appropriate, to maximise reuse. Stockpiles will be designed to minimise quality degradation, damage and loss of resource.</p>
“establishment of new neutral grassland habitat”	Creation of grassland (1.738ha) is less than what is lost (1.819ha)	Created grassland will be of higher value (through factors such as higher floristic diversity, greater variation in vegetation structure etc) through enhancement of its condition over that existing (as specified in Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 1) (APP-088)).
“establishment of ditch, reedbed replacement habitat	Ongoing concerns from Environment Agency and Natural England	Natural England issued a LONI to the Applicant's Water Vole mitigation proposals (appended to the Applicant's Response to the ExA's Second Written Questions). The Applicant continues to discuss the potential impacts of

Proposal	SCNR Critique	Applicant's Response
and enhancement of existing ditch habitat for water voles, secured pursuant to licensing"	This is at best as mitigation for specific harm to water voles and compliance with legislative requirements; it does not constitute mitigation for any other harm. See above for general points on ditches	land raising to watercourses and biodiversity with the Environment Agency, recent discussions have been positive, as described within the Environment Agency SoCG (as updated alongside this submission) . An overall increase in the length of ditch will be achieved as a result of the Proposed Scheme, as well as enhancement of the existing ditch network. This constitutes compensation for ditch loss as well as enhancement, such that a net gain for biodiversity is achieved. Reedbed creation will achieve compensation for the loss of this habitat. Ditches have both intrinsic value (as a habitat) and supporting value (as habitat for water voles). Providing ditch creation and enhancement serves the purpose of both providing compensation for lost ditch habitat, and for lost water vole habitat. However, it should be noted that the ditch creation and enhancement required as mitigation for water voles has not been counted towards Biodiversity Net Gain totals as is required by rules governing the use of the Statutory Metric.
"establishment of supporting habitat for protected and notable species including bats: foraging and commuting habitat;	Net loss in potential habitat for these species Further harm through fragmentation Applicant's Environmental Statement ascribes the residual effects to these species as 'negligible' (see Table 7-11 of Chapter 7) so cannot be considered a benefit. Our	There will be a loss of habitat due to the footprint of the Proposed Scheme, however this will be balanced by compensatory habitat creation and enhancement as discussed within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056) such that there will be no significant effects on these species (see Table 7-11 of the chapter).

Proposal	SCNR Critique	Applicant's Response
breeding birds: nesting habitat; wintering birds: foraging habitat; and habitat for reptiles and invertebrates"	assessment (as per previous submissions) is that the residual effect is <i>adverse</i> in each case	Fragmentation effects, and other effects on important species, are discussed within Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056) . No significant adverse residual effects of fragmentation or from other effects were identified for important species (see Table 7-11 of the chapter), as described in Table 3-2 of the Applicant's Response to Relevant Representations (AS-043) . Furthermore, Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 1) (APP-088) demonstrates that habitat creation and enhancement will lead to a quantitative and qualitative net gain for biodiversity.
"increasing biodiversity of existing deciduous woodland habitat through management"	Only management proposed (no works), and no detail on how this would be achieved Most of existing woodland is on southern edge of NRF – improved management could be achieved through enforcement of Ecological Master Plan	The level of detail provided in the Outline LaBARDS (as updated alongside this submission) is appropriate for this stage in the design of the Proposed Scheme. It provides a commitment to woodland management. A requirement of the Draft DCO (as updated alongside this submission) will ensure that the onsite measures identified to mitigate effects on landscape, biodiversity, access and recreation, provide enhancements to the same, along with onsite BNG provision, are included in any full LaBARDS(s), to be prepared for the Proposed Scheme prior to the construction phase commencing. The full LaBARDS(s) will detail the mitigation and enhancement measures to be implemented, and their ongoing management and

Proposal	SCNR Critique	Applicant's Response
		<p>monitoring, and will be in substantial accordance with the Outline LaBARDS (as updated alongside this submission).</p> <p>The Ecological Master Plan as relevant to the NRF has been implemented and is now expired. There remains no mitigation commitments at NRF.</p> <p>The mitigation measures approved for NRF did not address woodland. Through the Proposed Scheme, and as described in the Outline LaBARDS (as updated alongside this submission), biodiversity of existing deciduous woodland habitat will be increased through renewed management of this habitat.</p>
<p>“management of ditches and water courses to improve aquatic planting species diversity”</p>	<p>No detail provided</p> <p>Improved management of water courses in NRF could be achieved through enforcement of Ecological Master Plan (non-compliance means this is still enforceable)</p>	<p>The level of detail provided within the Outline LaBARDS (as updated alongside this submission) is appropriate for this stage in the design of the Proposed Scheme. The document provides a commitment to ditch management with appropriate techniques to be provided in full LaBARDS(s), as described above. These techniques are secured through a requirement in the Draft DCO (as updated alongside this submission).</p> <p>The Ecological Master Plan as relevant to the NRF has been implemented and has now expired. There remains no mitigation commitments at NRF.</p> <p>The Applicant is proposing ditch and watercourse improvements, as described within this table (above).</p>

Table 2 – Applicant's Response to Critique of Mitigation Proposals at Table 1 of Outline LaBARDS

Proposal	SCNR Critique	Applicant's Response
Species composition and structure following habitat classification system	Does not justify loss of naturally occurring plant species that create and maintain the habitat in the first place Basic measure	Habitat creation and enhancement will provide compensation for habitat loss, and due to the overall gain in condition of habitats remaining (i.e. by the removal of factors limiting their value) the botanical community of the nature reserve will benefit overall. Although some measures identified by the Respondent may be basic, they are standard, widespread and fundamental principles, known to be effective in promoting the development of diverse and ecologically important habitats. The Applicant considers the proposals essential to the delivery of ecological compensation and work to achieve a net gain for biodiversity.
Sward height management	Basic measure Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed	Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment). It is acknowledged that management is undertaken as part of the existing Crossness Nature Reserve Management Plan ¹ . However, this does not cover Norman Road Field, and by extending management to the whole area within Crossness LNR the reserve as a whole will benefit. Sward height management will be extended to all areas of the extended Crossness LNR. The sward management measures will be detailed through the development of the full LaBARDS to respond to habitat enhancements.

Proposal	SCNR Critique	Applicant's Response
Minimise cover of scrub	Basic measure Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed	Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment). As above, management will be extended to include the Norman Road Field and scrub management will be detailed through the development of the full LaBARDS to respond to habitat enhancements.
Minimise bare ground	Basic measure Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed.	Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment). As above, management will be extended to include the Norman Road Field and grazing regimes adjusted to control the formation and persistence of bare ground, which will be minimised to promote development and maintenance of habitats and their botanical communities.
Minimise physical damage	Basic measure Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed	Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment). As above, management will be extended to include the Norman Road Field and detailed through the development of the full LaBARDS to minimise physical damage.
Prevention of invasive species	Basic measure Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed	Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment). As above, management will be extended to include the Norman Road Field and detailed through the development of the full LaBARDS to respond to habitat enhancements.

Proposal	SCNR Critique	Applicant's Response
Seeding broad mix of wildflowers in grassland areas	<p>This proposal risks being actively harmful by introducing less-desirable species and creating competition</p> <p>Cheap and basic measure</p> <p>Inherently random approach – not specific / considered</p>	<p>This measure will be undertaken as an ecological improvement as part of habitat creation and enhancement measures and will not be harmful.</p> <p>The Applicant considers this measure to be an important improvement mechanism as it will increase floristic diversity of the grassland.</p> <p>Seeding of wildflowers will not be an inherently random approach, further information about the seeding of wildflowers is described in Table 1 of the Outline LaBARDS (as updated alongside this submission).</p>
Removal of rubbish and waste from ditches	<p>The Applicant themselves is a contributor of waste</p> <p>Basic measure</p> <p>Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed</p>	<p>Riverside 1 and 2 (when operational) are strategic waste treatment facilities. The Applicant does not release waste into the environment, including the ditches, and it's staff undertake daily weekday litter picks along Norman Road. For the Proposed Scheme, all waste arisings will be disposed in accordance with the waste hierarchy, in accordance with the Outline Site Waste Management Plan (APP-130) during the construction phase and Operational EMP (prepared prior to the Proposed Scheme becoming operational), both requirements of the Draft DCO (updated alongside this submission).</p> <p>Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment).</p> <p>The Applicant has committed to keeping rubbish and waste from ditches as part of management of Crossness Local Nature Reserve through the Outline LaBARDS (as</p>

Proposal	SCNR Critique	Applicant's Response
		<p>updated alongside this submission). Even though efforts to remove rubbish and waste are already active through various parties, including the Applicant and TWUL, it is important that on-going commitment is made such that this process is embedded within site management going forward. Furthermore, the Applicant's proposals will unify such processes over the whole nature reserve under one management plan, which will be more effective at achieving the goal of keeping the ditches free of rubbish and waste.</p>
<p>Water supply of good quality</p>	<p>This is "<i>expected to be met by existing supplies of water at the site</i>" – therefore this is not a change from existing position</p> <p>There are concerns around the quality of the water supply, in large part due to the Applicant's disposal of waste into the water network</p>	<p>This measure will be achieved in compliance with the Outline Drainage Strategy (AS-027) which provides a change from the existing position, as described in the current TWUL management plan, that the low water is a conservation concern affecting the condition of nature reserve habitats.</p> <p>The Applicant describes the approach to water supply and wastewater discharge for the construction phase (which includes a connection to an existing potable water main for water supply and foul sewer for wastewater) within Paragraphs 2.4.19 to 2.4.24 within Chapter 2: Site and Proposed Scheme Description of the Environmental Statement (Volume 1) (APP-051).</p> <p>For the operational phase, Paragraphs 2.2.52 to 2.2.60 and 2.2.97 to 2.2.103 of the chapter describe the approach to water supply and waste water discharge (which includes supply via a potable water main and</p>

Proposal	SCNR Critique	Applicant's Response
		<p>recycled effluent from the Carbon Capture Facility via a Water Treatment Plant and for wastewater a Wastewater Treatment Plant and discharge to the local foul sewer).</p> <p>Chapter 11: Water Environment of the Environmental Statement (Volume 1) (APP-060) assesses the impacts of the construction and operation of the Proposed Scheme to the potable water supply. The assessment concluded a Slight Adverse (Not Significant) effect for both construction and operation of the Proposed Scheme. TWUL have been consulted with throughout the development of the Proposed Scheme and will be able to provide a water supply.</p>
<p>Increase water supply to floodplain grazing marsh</p>	<p>No evidence as to how this will be achieved</p> <p>Already part of TWUL management: TWUL uses a wind pump to increase water levels, but lack of wind during dry months has made success limited – to the extent the Applicant proposes going further than the existing regime, this is not detailed</p> <p>Risk of harm to SPI species (e.g. nesting bees) without management plan</p>	<p>The Applicant will be raising the water levels in the Mitigation and Enhancement Area, as described in the first row of Table 1 above.</p> <p>This proposal will be enacted in accordance with the measures in the Outline Drainage Strategy (AS-027). The Outline Drainage Strategy (AS-027) is secured by a requirement in the Draft DCO (as updated alongside this submission). The use of run-off and diversion of other sources of water as proposed in these documents will provide a greater and more reliable flow to ground than the single wind pump in use at present, and will be more effective at the goal of raising the water table, not reliant on wind for this purpose.</p> <p>The Applicant does not intend to raise the water table to such a level as that it would detrimentally impact SPI</p>

Proposal	SCNR Critique	Applicant's Response
		species associated with Crossness LNR. Habitat enhancement will benefit SPI species including bees (see responses on this topic already provided in Table 2-6 of the main text of this report and at Page 67 of the Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019)).
Maintain low cover of scrub	Basic measure Already part of TWUL management regime – to the extent the Applicant proposes going further than the existing regime, this is not detailed	Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment). As above, management will be extended to include the Norman Road Field and scrub management will be revised to respond to habitat enhancements.
Establish new woodland	This proposal risks being actively harmful: woodland may dry out adjoining grazing marsh habitat Poor condition of woodland is assumed “ <i>due to the limitations of the woodland block sizes and proximity to the working CCF site</i> ” – woodland not appropriate in the location, and its value limited due to the Proposed Scheme itself	The creation of woodland would not be harmful. It is incorrect to assert that woodland creation and tree planting always leads to drying of soils. Ample examples of woodlands which exist in wetland environments in the UK, and trees often form part of grazing marsh habitats. Trees that thrive in wet lowland environments would be used; planting such species will not dry out the adjoining grazing marsh soils and will not be actively harmful to the nature reserve habitats. Woodland will be created such that it will not conflict with raising ground water levels within the extended Crossness LNR, pursuant to the measures in the Outline Drainage Strategy (AS-027) . Further information is provided in Table 2-6 of the main report above.

Proposal	SCNR Critique	Applicant's Response
		<p>The tree planting is appropriate as it is proposed for several reasons including biodiversity enhancement, habitat creation, townscape integration, visual amenity, and visual screening. It will contribute to screening parts of the lower-level operational equipment of the Proposed Scheme for users of the Accessible Open Land. Further detail is provided in Table 2-6 of the main text of this report.</p>
Creation of new NRF ditches	<p>Risk of harm: soil removed to create ditches might be dumped on site, damaging grazing marsh habitat underneath. This is common, and there is no guarantee this won't occur</p> <p>Poor condition of ditches is assumed "<i>due to the limitations of the site's location close to several industrial facilities and the need to maintain open water to support other habitats</i>" – value limited due to the Proposed Scheme itself (and REP1 and REP2)</p>	<p>Soil removed to create ditches will not be 'dumped' onsite. As described within Paragraphs 14.2.1 and 14.2.4 of the Outline Construction Code of Practice (CoCP) (as updated alongside this submission), the Contractor(s) will reuse excavated arisings (which would include those from ditch creation) on the Proposed Scheme where suitable. If not suitable, it will be taken offsite for reuse, unless circumstances dictate it must be disposed to landfill. The Outline CoCP (as updated alongside this submission) sets out the following:</p> <ul style="list-style-type: none"> • Soil and stockpiles will not be located within 10m of surface waterbodies or drainage lines without appropriate cut-off features or flow barriers. • Stockpiles will be appropriately managed through use of tarpaulins and jute matting to mitigate release of sediment load, and damping down exposed surfaces using water spray. • The full CoCP(s), which will be in substantial accordance with the Outline CoCP (as updated

Proposal	SCNR Critique	Applicant's Response
		<p>alongside this submission) as secured by Requirement 7 of the Draft DCO, will ensure that Site arisings (including soil) are suitably stockpiled, where appropriate, to maximise reuse. Stockpiles will be designed to minimise quality degradation, damage and loss of resource.</p> <p>Although 'Poor' condition as defined by the Statutory Metric is targeted for ditch creation, this does not indicate a lack of ecological value. Moreover, this condition does not set an inappropriately high bar for the ecological value of ditches noting the difficulties that would be presented in maintaining such features. Overall, with this target condition in place the ditches created will provide the ecological functionality required at Crossness LNR without an unduly high burden on future management that may not be realistic for a grazed marshland site. The target condition is therefore appropriate for ditch creation and as per the Applicant's statement quoted by the Respondent, is part of the precautionary approach to habitat creation taken by the Applicant.</p>
NRF woodland enhancement	<p>Basic measure</p> <p>Most of existing woodland within NRF – improved management could be achieved through enforcement of Ecological Master Plan (non-compliance means this is still enforceable)</p>	<p>Please see the response to the second bullet point in the first row of Table 2 above (duplicate comment).</p> <p>The Ecological Master Plan as relevant to the NRF has been implemented and has now expired. There remains no mitigation commitments at NRF. The mitigation measures approved for NRF did not address woodland. Through the Proposed Scheme, and as described in the</p>

Proposal	SCNR Critique	Applicant's Response
		<p>Outline LaBARDS (as updated alongside this submission), biodiversity of existing deciduous woodland habitat will be increased through renewed management of this habitat.</p>
<p>Modify Crossness Nature Reserve water supply to retain ground water</p>	<p>No evidence as to how this will be achieved Already part of TWUL management: TWUL uses a wind pump to increase water levels, but lack of wind during dry months has made success limited – to the extent the Applicant proposes going further than the existing regime, this is not detailed</p>	<p>Proposals of how this would be achieved are provided within the Outline Drainage Strategy (AS-027), whereby runoff from the Carbon Capture Facility will be directed to the Mitigation and Enhancement Area (including the extended Crossness LNR, this will enhance and maintain the wet grassland and aquatic habitats with the creation of scrapes and grips (to assist in keeping soils moist within the wetland and to produce some variability in water level and moisture conditions). The water quality in the Mitigation and Enhancement Area will be improved by reducing the flows that currently run into the highway drainage features along Norman Road, contributing road runoff/silt into Great Breach Dyke.</p> <p>The Applicant intends to put the measures described in the bullet point above in place, which are considered to be more effective than the current management techniques for managing surface water within the Site.</p>



DECARBONISATION

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