RESPONSE TO INTERESTED PARTIES' DEADLINE 5 SUBMISSIONS: 9.31

DECARBONISATION

Cory Decarbonisation Project

PINS Reference: EN010128

April 2025

Revision A

The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 8(1)c

TABLES

EXECUTIVE SUMMARY

12 Interested Parties have made written submissions at Deadline 5 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 to the following parties:

- London Borough of Bexley
- Marine Management Organisation
- Environment Agency
- Ridgeway Users
- Save Crossness nature Reserve

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 5 (25 March 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 5. 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:

- London Borough of Bexley
- Marine Management Organisation
- Environment Agency
- Ridgeway Users
- Save Crossness nature Reserve

1.2.2. Within Section 2, the Applicant has responded to the submissions made using a separate table for each Party.

1.2.3. The Deadline 6 Cover Letter explains the latest position in respect of the discussions with WRWA **(REP5-049)**, Natural England **(REP5-045)** and PLA **(REP5-047).** It also outlines the position in respect of the Deeds of Obligation and the positions expressed by TWUL **(REP5-055)**, Peabody **(REP5-053)** and LBB **(REP5-042)**, as a result no response is provided to these parties in this document on these matters.

1.2.4. Similar to its relevant representation (RR-027) the Bexley Labour Group's Deadline 5 Submission (**REP5-050**) has focussed on Cory's waste facilities rather than the Proposed Scheme. As is made clear, not least in the **Project Benefits Report (PBR) (APP-042)** both Riverside 1 and 2 (including the electrical connection route to Littlebrook substation) are fully consented through both the planning and environmental permitting regimes. The Examination of the Proposed Scheme is focussed on the Cory Decarbonisation Project and has comprehensively addressed the other matters raised by the Bexley Labour Group in its D5 submission:

- The Proposed Scheme does not address recycling practices, this is not its function. However, through the capture of some 1.3 million tonnes of carbon dioxide annually, it will make an important and relevant contribution to tackling climate change and meeting national and local net zero carbon policy objectives. (see **PBR (APP-042)** and response to GLA (Table 2-3-3) in **Applicant's Response to Interested Parties Deadline 1 Submissions (REP2-019)**)

- The Applicant has submitted substantial evidence demonstrating that an appropriate site assessment has been undertaken, principally in the: **TSAR (APP-125); TSAR Addendum (AS044);** and **Written Summary of the Applicant's Oral Submission at ISH1 (REP1-025)** and its **Appendices (REP1-026)**. The London Borough of Bexley agrees that both the site assessment process and the site selected is appropriate (**LBB SoCG, Rev F (AS-096)**).
- 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. Loss of the Erith Marshes SINC and Crossness Local Nature Reserve is acknowledged and is fully mitigated through the **Outline LaBARDS (AS-094)** that will deliver at least 10% BNG. (see **REP4-012**)
- The **Outline LaBARDS (AS-094)** also makes provision for enhanced access to outdoor spaces, which will be of benefit to both current and any new communities in the area. (see **Applicant's Response to Examining Authority's First Written Questions (REP3-029)**
- The **Outline Code of Construction Practice (REP4-008)** and **Outline Skills and Employment Plan (REP2-022)** presents the commitments made by the Applicant to ensure good quality jobs underpinning the skills required to construct and operate the Proposed Scheme.

2. RESPONSES TO MATTERS RAISED IN DEADLINE 5 SUBMISSIONS

2.1. LONDON BOROUGH OF BEXLEY

Table 2-1 Applicant's Response to London Borough of Bexley Deadline 5 Submissions

Table ref	Summary of issue raised	Applicant's response
2.1.1	**Q2.3.1- i) Having regard to LBBC's response to ExQ1.3.1.1 [REP4-035] and the Applicant's written Summary [REP4-035] how will the specification for the LaBARDS [REP4-012] set out in R12. (3) ensure the submission of an Ecological Monitoring Strategy that provides for Ecological Monitoring Reports at least every five years (or an alternative suitable timeframe) following the approval of the LaBARDS? ii) Given the limited detail in chapter 14 of the LaBARDS, should R12 include a clause to require the submission of an Ecological Monitoring Strategy and the results of monitoring and how these will influence management activities at set intervals, as part of R12.-(3)? iii) In the absence of such a provision mentioned in ii) above, how would this aspect be controlled with sufficient effectiveness and certainty for all parties?** (i) The Council would expect that an Ecological Monitoring Strategy is secured via R12. In addition to this periodic Ecological Monitoring Reports would need to be submitted and these periodic reports should lead to updates to the LaBARDs. The periodic 'Ecological Monitoring Reports' would need to be submitted to the Council at regular intervals, for example in years 1, 2, 3, 5 of the development and then every 3 or 5 years (or less). The report should be produced, reviewed and agreed by the stakeholders and submitted to the Council for approval within 2 months of the end of each monitoring period. (ii) With regard to part two of this question, it is the view of the Council that Ecological Monitoring Strategies and Ecological Monitoring Reports would influence the LaBARDs and therefore management activities. **(iii)** (With regard to part three of this question it is the view of the Council that the absence of Ecological Monitoring Strategies and Ecological Monitoring Reports would mean that there is no control and therefore a lack of effectiveness. In this regard Ecological Monitoring Strategies and Ecological Monitoring Reports are essential in order to achieve the best outcome for ecology. **Q2.3.2- Having regard to the Applicant's response to ExQ1.3.1.2 [REP3-029], if there is no mechanism either within the LaBARDS [REP4-012] itself or in the specification for the LaBARDS in R12 for review, updating and approval, how can necessary changes be identified, implemented and verified, and compliance effectively monitored and enforced?** The Council is of the view that if there are no mechanisms for reviews, updates and Council approvals then the proposed development via the LaBARDS could not achieve a net gain in biodiversity. Paragraphs 14.2.5 of the LaBARDS(s) say that 'Once in place a review of the full LaBARDS(s), and any detailed habitat management and monitoring plans derived from it, should be carried out not less than every 3 years (or less frequent if agreed by LBB), for	In discussion, the Applicant and LBB had agreed that the **Outline LaBARDS, Rev E (REP5-017)** provided a suitable framework for any full LaBARDS(s) that would, necessarily, be submitted under Requirement 12 of the **Draft DCO.** However, the parties subsequently agreed to review the wording regarding monitoring and management to ensure there could be no ambiguity that both parties are content with it. The updated wording in the revised **Outline LaBARDS, Rev F (AS-094)** has been agreed with LBB (as acknowledged in the **SoCG (AS-096)**). Please see also the Applicant's response to the ExA's Rule 17 Request on this matter.

Table ref	Summary of issue raised	Applicant's response
	the lifetime of the Proposed Scheme, to ensure that the document, and the expanded Crossness Local Nature Reserve, remains fit for purpose and delivers on desired landscape, biodiversity, access and recreation outcomes. This review will be undertaken alongside engagement with Thames Water, Buglife, graziers, LBB and the Friends of Crossness LNR'. Paragraphs 14.2.6 of the LaBARDS(s) goes on to say that 'Any updates to the full LaBARDS(s) as a result of that review will be issued to LBB for record purposes and form the basis for ongoing management from that point.' The Council would expect periodic 'Ecological Monitoring Reports' to be submitted, as discussed in the Council LBBC's response to ExQ 1.3.1.1 REP3-038. This would need to include details of management activities that have taken place during the monitoring period; results of monitoring and how these will influence management activities going forward; recommendations for ongoing management including a review of implications for the full LaBARDS(s) and detailed habitat management and monitoring plans derived from it; details and engagement undertaken with stakeholders - Thames Water, Buglife, graziers, LBB and the Friends of Crossness LNR. The report should confirm it has been reviewed and agreed by the stakeholders. Any updates to the full LaBARDS(s) as a result of that review shall be issued to the Council with the monitoring report.	

2.2. MARINE MANAGEMENT ORGANISATION

Table 2-2 Applicant's response to Marine Management Organisations Deadline 5 Submission

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
Main DCO				
Part 2 Principal Powers				
2.2.1	2.5.2 Consent to transfer benefit of the Order The MMO objects to the provisions relating to the process of transferring and/or granting the deemed marine licenses set out in the draft DCO a Article 10(2) – (11) insofar as these are intended to apply to the MMO and requested paragraphs 10(2)(a)-(b) and (3) be removed in their entirety and all references to the MMO be removed from Article 10, with a clarification added to specially exclude these provisions from applying to the MMO (with corresponding wording added where appropriate in Schedule 11 Deemed Marine Licence) The MMO is concerned that the procedure proposed represents an unnecessary duplication of the existing statutory regime out in S72 of the Marine Coastal Access Act 2009 and that it will give rise to significant enforcement difficulties for the MMO. The MMO also considers that it has the potential to prejudice the operation of the system of marine regulatory control in relation to the proposed development. The MMO also regard the proposed procedure as cumbersome, more administratively burdensome, slower and less reliable than the existing statutory regime set out inS72 of the 2009 Act. In short, the MMO consider that little advantage is gained for the Applicant but these provisions and the tangible risks and disadvantages that it poses can be avoided by retaining the existing statutory regime in full.	The purpose of including the Deemed Marine License and the corresponding transfer provisions in the DCO is to ensure that the Order operates as a 'one-stop shop' to the consenting of the Proposed Scheme avoiding the need to seek separate consents under separate consenting regimes. As explain at point 8.2.1 of the Applicant's response to the MMO's DML Representations [**AS-043**], the ability of the Applicant to transfer the benefit of the DCO is required in order for the Applicant to retain commercial flexibility to transfer the benefit of the Order to a third party, subject to the provisions of the Article. It is important that the full provisions of the Order can be transferred, including a deemed marine licence, to ensure that the full scope of powers and controls under the Order are transferred as a complete package. Additional protections are already incorporated in the drafting of the Article for the benefit of the MMO, including Article 10(3) which provides that the undertaker requires the written consent of the Secretary of State to transfer the benefit of the deemed marine licence to any transferee or lessee. The Secretary of State must also consult the MMO before providing consent to the transfer (Article 10(3)). The ability to transfer the benefit of a DCO including a deemed marine licence is well precedented, including specifically in the River Thames in the Silvertown Tunnel Order (2019), the Port of Tilbury (Expansion) Order 2019, and in other recent DCOs such as the Hornsea Four Offshore Wind Farm Order 2023.	The MMO maintains our objection to the provisions relating to the process of transferring and/or granting the DML set out in the draft DCO at Article 10(2)-(11). The MMO do not consider that the Planning Act 2008 allows the DCO to make a provision to transfer the benefit of the DML in the way that is proposed. Section 120 of the Planning Act 2008 sets out what may be including in a DCO. S120(1) says a DCO can contain requirements connected with the development for which the DCO is granted. What is the development set out in s31. Developing is development which is or forms part of an NSIP project. What constitutes the NSIP is defined in S14. S20(3) says that the Order may make provision in relating to, or matters ancillary to, the development which consent is granted. The MMO considers this allows the Order to provide for things which are not part of the development itself. However, s120(3) is not a standalone provision. It must be read alongside s120(4). S120(4) sys that the provisions that can be made under 120(3) include in particular provisions for or relating to any of the matters listed in part 1 of Schedule 5. Where 'in particular' is used in connection with a set list of legislation, it means the list is exhaustive. However, if it is not on the list, it could be included if it is of the same kind, class or nature as something on this list. The list in Schedule 5 includes at 30A and 30B the ability for a DCO to contain provisions relating to the DML; 30A allows an Order to contain a provision which deems to grant a DML whilst 30B allows an Order to contain a provision which allows the Order to deem the conditions to be attached to the Order. However, the MMO do not consider it is	The Applicant maintains its position in respect of the provisions relating to the process of transferring and/or granting the DML set out in the draft DCO at Article 10(2)-(11). The justifications for this, including the need for these provisions, the protections incorporated for the benefit of the MMO and the strong precedent in favour of the provisions sought, has been set out already by the Applicant's previous response in the second column.

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
			sufficiently broad so as to include an ability in the DCO to provide a transfer provision for the DML in the way that is being proposed. Additionally, there are practical considerations. When the MMO transfer a license under s73(7 of the Marine and Coastal Access Act 2009, the MMO must vary it. If the transfer was affected under the Order the MMO are likely to need to vary the license as a result, under s153 and the schedule 6 of the Planning Act 2008 only the MMO can do that. The MMO could end up with the transfer being effected under the Order, but then having to vary separately using our own powers. If the transferring of the unvaried license impact on the MMO's ability to enforce during this time, this could lead to the MMO having to suspend the license whilst the variation was carried out.	
Part 4 Miscellaneous and General				
2.2.2	2.5.4 Deemed marine licence 42 This Article has been added as a response to the amendments made to Article 49 to be clear that the MMO is not to be subject to the arbitration provisions. The MMO does not agree with the inclusion of this Article because if this is included, it would apply the statutory appeals process that ordinarily applies to MMO decisions to refuse to grant a licence, or to decisions to attach conditions to a licence we grant, to the approval of the method statement and the sediment sampling plan under conditions 10 and 11 of the DML. This is not required because there is already a way to challenge our decision to refuse to approve it and that is via a Judicial Review. Therefore, the MMO requests that Article 42 be removed.	In absence of the Arbitration provisions (article 49 and Schedule 15) applying to the MMO, the Applicant considers that it is not appropriate for there to be no clearly defined route to appeal. The Marine Licensing (License Application Appeals) Regulations 2011 sets out a statutory appeals process that the MMO will be used to dealing with. Therefore, the Applicant considers this to be a suitable alternative give that the MMO is not agreeable to the arbitration, particularly given the critically of the Proposed Jetty, The Applicant considers that reliance on Judicial Review for the delivery of critical national priority infrastructure is not appropriate, particularly given that Judicial Review focusses on process and not merits. The wording at Article 42 ensures that there is another specific and defined procedure for appeals that will apply I the event that the MMO grants the defined marine licence application subject to conditions or refuses the application. This provision allows for a process the MMO is used to dealing with to be invoked instead.	The MMO maintains our position and does not agree with the inclusion of Article 42 for the reasons previously stated.	The Applicant maintains its position that the provisions at Article 42 must be included in absence of the arbitration provisions applying to the MMO to ensure there is an ability to have a dispute resolution process if desired by the Applicant.
Schedule 11 - Deemed Marine Licence Part 1 General				

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
2.2.3	2.5.5 *"the licence holder"* means Cory Environmental Holdings Limited […] and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order The MMO recommends that the latter part of the definition should be removed here: "*The license holder"* means Cory Environmental Holdings Limited […] ~~and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order~~ To ensure that the transferee/lessee is clearly bound by the conditions of the DML, which is required for enforcement purposes, the MMO requests that a provision be included within Article 10 (consent to transfer benefit of the Order) that states something along these lines: "*(12) Where an agreement has been made in accordance with paragraph [*] or [*] references in this Order to the undertaker except in paragraphs [*], [*], [*] and the first reference in paragraph [*] include references to the transferee or lessee."*	The Applicant considers that the existing wording already ensures that any transferee or lessee of the DCO is clearly bound by the conditions of the DML. Upon granting the DCO, the marine license set out in Schedule 11 (deemed marine license) will be deemed to have been issued to Cory Environmental Holdings Limited (CEHL) under Part 4 of the 2009 Act (marine licensing), subject to conditions. As explained at point 7.2. of the Applicant's response to the MMO's DML Representations [AS-043], it is important to ensure that the Deemed Marne License is distinguishable from the DCO. The Applicant would be the undertaker for the purpose would be the undertaker for the purposes of the DCO (as defined in Article 2 of the DCO) but would be a license holder pursuant to the Deemed Marine License as defined in part 1 of Schedule 11 of the DCO), which must be clearly differentiated. It is also important that the full provisions of the Order can be transferred, including a deemed marine license, to ensure that the full scope of the powers and controls under the Order are transferred as a complete package. Therefore, it is appropriate for the DCO to contain those broad transfer powers (Article 10), with the definition in the DML confirming on the face of the DML that it include any such transfer or lessee under those DCO provisions.	In line with our comments at 2.5.2, the MMO maintains our recommendation that the definition of *"the license holder"* is updated to remove the latter part: "*the licence holder"* means Cory Environmental Holdings Limited *[…] ~~and any transferee pursuant to article 10 (consent to transfer benefit of the Order) of the Order.~~* As such, the MMO maintains our request, that a provision be included within Article 10 of the Order along these lines: *"(12) Where an agreement has been made in accordance with paragraph [*] or [*] reference in this Order to the undertaker, except in paragraphs [*], [*], [*] and the first reference in paragraph [&] include references to the transferee or lessee."*	The Applicant maintains its position that the current definition is suitable and does not need to be amended. As explained previously, it is important for all of the provisions of the DCO (including the DML) to be able to be transferred. Therefore, it is appropriate for the DML, to confirm on the face of it, that it applies to any transferee or lessee under those DCO provisions. This is precedented. For example, the DML in the recent Rampion 2 Offshore Windfarm Order 2025 applies to the "undertaker", which is defined in the DML as expressly including "*…such other person to whom the benefit of this licence is transferred pursuant to the terms of article 5 (benefit of the Order)".* For the reasons explained previously by the Applicant (not least at the second column) this approach is appropriate to the Proposed Scheme.
2.2.4	2.5.6 *"the license holder"* The MMO has transitioned away from using the term 'Licence Holder' to the term 'Undertaker'. The MMO has noted that this phraseology has been used here and throughout the document and urgers the Applicant to amend the term @licence Holder' to 'Undertaker' throughout the DLM going forward.	The applicant intends to keep the existing wording. As explained at point 7.2.5 of the Applicant's response to the MMO's DML Representations [AS-043] and above, it is important to ensure that the Deemed Marine Licence is distinguishable from the DCO. The Applicant would be the undertake for the purpose of the DCO but would be a licence holder pursuant to the Deemed Marine Licence, which must be clearly differentiated.	The MMO maintains our position and requests that the Applicant amend the term 'Licence holder' to the term 'Undertaker' throughout the DML. The term 'Undertaker' is currently used within standard marine licences that the MMO grants.	The Applicant has updated the wording throughout the DML to refer to the 'Undertaker' instead of the 'Licence holder'.
2.2.5	2.5.9 The MMO considers that following definitions should be included within the DML. We would be happy to discuss wording for these definitions if required. "local Planning Authority"	The Applicant has responded to this request in the Applicant's Response to Interested Parties' Deadline 1 Submissions [REP2-019], specifically REP1-036.	The MMO are content that the following definitions do not need to be included within the DML: • Local Planning Authority • MCMS	The Applicant has included the definitions suggested by the MMO in the DML.

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
	"MCMS "Notice to Mariners" "Percussive Piling" "Seabed" Vessel" "TH070"	To confirm, the following terms are not used in the DML: • Local Planning Authority • MCMS • Notice to Mariners As raised in its earlier response the Applicant would welcome proposals from the MMO as to definitions of "Percussive Piling, "Seabed" and "Vessel". The Applicant would also welcome proposals from the MMO as o the definition of "TH070".	• Notice to mariners Upon Further review of the DML, the MMO no longer considers it necessary to include a definition of "TH070" as sufficient context is provided in paragraph 20. The MMO proposed the following definitions should be included within the DML: "percussive piling" means piling by sinking or driving a pile by direct or indirect hammering or other percussive means, including piling by the use of a drop hammer, diesel hammer, double acting hammer, single acting hammer internal drop hammer, pneumatic hammer, steam hammer or other percussive device, other than a device that is portable and designed for operation while held by hand without any other form of support. "seabed" means the ground under the sea. "vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft of any other amphibious vehicle and any other thing constructed or adapted for movement through, in, or on or over water and which is at the time in, on or over water.	
Part 2 Conditions				
2.2.6	2.5.15 Notifications regarding licensed activities The obligation to make a copy of this licence available for inspection should be directly on those carrying you the licensed activity. The MMO suggested a potential wording change for the below: "*The masters of transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder as notified to the MMO under condition 5 must make a copy of this licence available*	The Applicant does not consider this wording to be necessary because in, additional to the obligation on the license holder to make the licence available for inspection, the DML also includes an obligation on the licence holder to request the same from the masters of transport managers. See Condition 8 of the DML which provides that: *"The licence holder must request that the master or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the licence holder as notified to the MMO under condition 5 make a copy of this licence available for inspection on*	The MMO notes that Condition 8 of the DML states that the licence holder must request that a copy of this licence be made available for inspection. However, with the current wording there is no obligation on the masters or transport managers responsible for the vessels that will be carrying out any licensed activity to comply with this request. Hence, the MMO's suggested wording to Condition 8 of the DML.	The Applicant has updated the drafting of Condition 8 to provide the wording suggested by the MMO.

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
	for inspection on board such vessels during the carrying out of any licensed activity"	*board such vessel during the carrying out of any licensed activity".*		
2.2.7	2.5.19 Marine written scheme of archaeological investigation The MMO considers that a marine written scheme of archaeological investigation should be included within the DML, and we suggest potential wording for this below: *"Archaeological method statements, together with a written report on any consultation carried out with Historic England and the relevant planning authority on matters related to their respective functions in their preparation, must be submitted to and approved by the MMO in writing in accordance with the provisions of the outline marine written scheme of investigation and a subsequent update must be provided to the MMO six weeks before commencement of any licensed activity to which the method statement relates"*	The Deemed Marine Licence forms part of the Draft DCO, which secures the requirement for an Archaeological Mitigation Strategy prior to commencement of the development (see Requirement 22). The Applicant updated the Draft DCO during pre-examination to include the MMO as a consultee for the purposes of Requirement 22. As a result for any archaeological survey/mitigation works within the marine environment and the development of the archaeological mitigation strategy, the MMO will have the opportunity to comment, prior to the works being carried out. It is important the appropriate heritage stakeholders are the approver for a heritage document.	The MMO recognises that the requirement for an archaeological mitigation strategy is secured in Requirement 22 of Schedule 2 of the Order, and that the MMO is included as a consultee for the purposes of Requirement 22. However, the MMO considers that the DML should include a condition which requires that all licensed activities must be carried out in accordance with any submitted archaeological mitigation strategy approved under Requirement 22. It is recommended that the wording of this condition be similar to Condition 9 of the DML, which relates to the code of construction practice approved under Requirement 7 of Schedule 2 of the Order.	The Applicant has updated the draft DCO to provide for this.
2.2.8	2.5.20 Notice to Mariners The MMO would expect to see provisions covering this along these lines: *"Notice to Mariners –(1) Local mariners fishermen's organisations and the UK Hydrographic Officer must be notified of any licensed activity or phase of licensed activity through a local Notice to Mariners. (2) A notice to Mariners must be issued at least 5 days before the commencement of each licensed activity or phase of licensed activity. (3) The MMO and Maritime and Coastguard Agency must be sent a copy of the notification within 24 hours of issue. The Notice to Mariners must include –(a) the start and end dates of the works; (b) a summary of the works to be*	The Applicant does not consider this wording to be necessary because Article 25 (Works in the river Thames: conditions) of the Draft DCO already provides that the public right of navigation over the River Thames may only be temporarily suspended within the written approval of the PLA and subject to the conditions set out in Article 25. The Draft DCO also includes protective provisions for the benefit of the PLA at Part 5 of Schedule 12 which require work approvals from the PLA. The PLA has ultimate navigational control for the River Thames and the necessary mechanisms are already in place within the DCO for the PLA to request notice to Mariners if the PLA considered that to be necessary.	The MMO considers the inclusion of the Notice to Mariners condition as standard for all DMLs and maintains our request that a provision for this is included in the DML.	The Applicant maintains its position and does not consider it necessary for a Notice to Mariners condition to be included in the DML, on the basis that Article 25 of the DCO and the protective provisions for the benefit of the PLA at Part 5 of Schedule are already sufficient.

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
	undertaken; (c) the location of the works area, including coordinated in accordance with WGS84; and (d) any markings of the works are that will be put in place. (4) A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraph (1).”			
2.2.9	2.5.22 Dredging The MMO notes that this is a very spartan provision with significant information gaps, such as a detailed description of water injection dredging, to make it clear what should not be undertaken within this period. This should be updated in line with other DCOs of a similar nature. Alternatively, this should be covered in detail in the method statement.	Condition 13 (Dredging) should be considered alongside the commitments in the code of construction practice pursuant to Condition 9 (Code of construction practice) and Requirement 7. The Outline Code of Construction Practice includes various commitments in respect of dredging and is the appropriate mechanism for such commitments to be secured. It is therefore not necessary for such commitments to be repeated in the method statement.	The MMO thanks the Applicant for the explanation and notes that a detailed description of water injection dredging should be provided within a method statement pursuant to Condition 10 of the DML. The MMO has no further comments on Condition 14 (Dredging) of the DML.	This is noted.
Part 3 Procedure for the discharge of conditions				
2.2.10	2.5.26 the MMO strongly disagrees with the inclusion of Part 4 as currently drafted. Further explanation should be provided by the applicant as to why Part 3 is considered necessary within the DML. It is unusual for a DML to place obligations on the regulator and whilst this uses language of “*the MMO* may” *in many places, it moves to “The MMO must*” within 26(2) and 27. If the MMO does not grant the application, grant it subject to conditions, or refuse it as soon as is reasonably practicable after the application is received, then the MMO will breach a condition of the DML. This would be an offence (the offence in s85 of the Marine and Coastal Access Act 2009 (MCAA0 is any person offence not a licence holder offence). The wording of a DML should not place obligations on the regulator for which there is criminal liability in the way this does.	The purpose behind Part 3 of the DML aligns with the justification for Schedule 14 (Procedure in relation to certain approvals etc.(of the draft DCO. The defined procedure for the discharge of conditions is required in order to ensure that decisions relating to the DML are dealt with efficiently so that the delivery of this project of national significance which will support the UK’s transition to a net zero economy, is not unduly delayed. The Applicant’s response at 2.4.28 below explains why the obligations at paragraph 26(2) is required and the Applicant’s response at 2.4.29 below explains why the obligations at paragraph 27 are required. The drafting is well precedented in DCOs (including The Thames Water Utilities Limited Thames Tideway Tunnel) Order 2014; The Silvertown Tunnel Order 2018; and The Lake Lothing (Lowestoft) Third Crossing Order 2020), however the Applicant will add drafting to be clear that the MMO will not have criminal liability for breach.	The MMO notes that Part 4 of the DML has bene updated and appreciates the Applicants explanation for its inclusion in the DML. However, the MMO still request that instances of the wording “*the MMO must”* is changed to *“the MMO may”* in paragraphs 28(2) and 29.	The Applicant does not intend to change the current wording. The use of “must” in the paragraphs referred to by the MMO is well precedented. For example, see The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 and The A122 (Lower Thames Crossing) Development Consent Order 2025. For the reasons explained previously by the Applicant (not least at the second column) this approach is appropriate to the Proposed Scheme.

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
2.2.11	2.5.28 Determination of application 26(1) just sets out what the MMO may have regard to. The MMO can have regard under public law rules to what is relevant so this is considered to be unnecessary in the DML. 26(2) is not appropriate. This will place the MMO under an obligation to do something and it brings with it a criminal liability under s85 of MCAA if we fail to do so. This is not acceptable and should not be included in the DML. This goes further than MCAA does in relation for the MMO's standalone marine license application decisions. Considering that s69 of MCAA says the MMO must have regard to the need to protect the environment, need to protect human health, need to prevent interference with legitimate uses of the sea, when determining application for licenses but t is not obliged in relation to standalone marine license applications to grant the licence unconditionally, rant it subject to the conditions we see fit or refuse it. The MMO can see no reason for justification for going beyond this for discharging conditions under this DML.	The Applicant does not consider the existing wording to be inconsistent with public law rules as paragraph 26(1)(c) (which following amendments made by the Applicant to the draft DCO at Deadline 4 is now paragraph 28(1)(c)) confirms that the MMO may have regard to *"such other matters as the MMO thinks relevant".* This catch-all ensures that the MMO retains full flexibility when determining whether to approve a method statement but makes it clear, on the face of the DML, what matters the MMO may take into account. The drafting does not seek to limit what the MMO can take into account. Paragraph 26(2) (which following amendments made by the Applicant to the draft DCO at Deadline 4 is paragraph 28 (2)) is required to ensure that there is no unnecessary impediment to the proposed Scheme. This provision requires the MMO to make a decision on any method statement submitted to the MMO under Conditions 10 or 11, which is essential for the delivery of the Proposed Scheme because Condition 10(3) prevents the license holder from commencing any licensed activity until the MMO has approved in writing the submitted method statement. The Applicant does not consider the unreasonable as it does not impose any obligation on the MMO for approval to be granted, However, in light of the MMO's concerns about potential criminal liability arising under the Marine Coastal Access Act 2009 in the event that the MMO is for some reason unable to determine a application in accordance with paragprag 28(2), the Applicant has inserted a new paragraph 28 (3) setting out if the MMO is unable to determine the application in accordance with paragprag 28(2) then this shall not constitute a breach of the condition nor be an offence under the Marine Coastal Access Act 2009.	The MMO notes the Applicant's response regarding paragraphs 28(1) and has no further comments on paragraph 28 (1). The MMO notes the inclusion of 28 (3) which sets out that if the MMO is unable to determine with paragraph 28(2) then this shall not constitute a breach of the condition nor be an offence under the Marine and Coastal Access Act 2009. However, the MMO still requests that any instances of the wording *"the MMO must"* is changed to *"the MMO may"* in paragraph 28 (2).	The Applicant does not intend to change the current wording. The use of "must" in paragraph 29(2) is well precedented. For example, see The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 and The A122 (Lower Thames Crossing) Development Consent Order 2025. For the reasons explained previously by the Applicant (not least at the second column) this approach is appropriate to the Proposed Scheme.
2.2.12	2.5.29 Notice of determination This again places an obligation on the MMO as it states that *"we must give notice"* of our decision as soon as is reasonably practicable and we *"must*	The obligations in paragraph 27 are necessary to ensure an efficient deliver of the Proposed Scheme. If the MMO s not given notice of the determination; made aware of a request for further information and/or informed of reasons for refusal, then this may result in an	The MMO acknowledges that the obligations are appropriately limited by providing that the notices at 29(1) and 29(2) must only be given *"as soon as reasonably practicable".*	The Applicant does not intend to change the current wording. The use of "must" in the paragraphs referred to by the MMO is well precedented. For example, see The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order

Table ref	Summary of Issue Raised	Applicant's Previous Response	MMO Comment	Applicant Response
	state the reasons" with a refusal notice. This is not appropriate and should not be included in the DML. There is an established route for challenges for the MMO either failing to approve plans or attaching conditions to approvals, through the Judicial Review process.	unnecessary delay to the Applicant being able to obtain the required approval of its method statement. By obliging the MMO to provide such notice (s) and/or provide reasons for refusal, ensures that the Applicant is in an informed position in an efficient manner to allow the Applicant to modify its application (if required) to secure the MMO's approval of the method statement. In any event, the Applicant considers that the obligations are appropriately limited by providing that the notices at sub-paragraphs 1) and (2) must only be given "*as soon as reasonably practicable".* There is no time limit on sub-paragraph (3) and the Applicant considers this is a reasonable request to avoid any risk of an unjustified refusal of its application.	However, the MMO still requests that any instances of the wording *"the MMO must"* is changed to *"the MMO may*" in paragraph 29/	2024 and The A122 (Lower Thames Crossing) Development Consent Order 2025. For the reasons explained previously by the Applicant (not least at the second column) this approach is appropriate to the Proposed Scheme.

2.3. ENVIRONMENT AGENCY

Table 2-3a Applicant's response to Environment Agency's Deadline 5 Submission

Table ref	Question	EA Response	Applicant's Response
2.3.1a	**Q2.4.2 Carbon cost of development platform vs disruption to CCF plant during flooding** Having regard to the EA's response to ExQ1.4.0.2 [REP3-037] and noting that discussions between the EA and the Applicant are ongoing, please could the parties provide an update on this issue including any conclusions on an extended exercise to determine the extent to which the carbon capture equipment will be out of action and the opportunities to protect the different equipment from damage during flooding	During a meeting between the Development Team and the EA on 13 February 2015 the Development Team explained more detailed work that they have now undertaken to assess the parts of the CCF that are tolerant and those that are vulnerable to being damaged during a flood. Some of the buildings and the equipment needs to be raised. Lower development platform levels have been worked up. The Environment Agency accept that it is reasonable for certain buildings to be raised to protect vulnerable elements from flood damage and have now agreed to revised wording for Design Principle DP_CL 1.5 to give affect to that which has been agreed. The applicant has confirmed that in the event of breach flooding from the River Thames the Power Stations Riverside 1 and 2 would not remain operational thereby limiting the importance of the CCF being protected from flooding. The link in question Q2.4.2 between the carbon cost of a raised development platform vs disruption to CCF plant during flooding therefore now has limited relevance.	The ability of Riverside 1 and 2 to remain operational in the event of a breach of the Thames tidal defences will depend on the location and nature of the breach, however it is considered likely that any event that would pose risk to the operation of the Carbon Capture Facility would also likely pose a risk to the operation of Riverside 1 and 2. It is therefore not considered necessary that the resilience of the Carbon Capture Facility needs to be greater than that of Riverside 1 and 2 and, as such, platform levels can be lowered beyond those previously presented in **Appendix 11-2: Flood Risk Assessment of the Environmental Statement (Volume 3) (AS-023)**, as described in **Appendix C: Flood Risk Technical Note** of the **Applicant's Response to Examining Authority's First Written Questions (REP3-035)**, albeit equipment particularly vulnerable to flood water inundation or that may pose pollution risk would be protected, as discussed with the Environment Agency in the meeting on 13th February 2025 referenced. The Applicant agrees that the link between the carbon cost of a raised development platform vs disruption to the Carbon Capture Facility during flooding therefore now has limited relevance.
2.3.2a	**Q2.4.3 Carbon cost of development platform vs disruption to CCF plant during flooding** The EA are requested to advise whether the Applicant's response on pages 12/13 of [REP4-033] and Applicant's Flood Risk Technical Note - Breach Assessment Scenarios document [REP3-035] (Appendix C to Applicant's Response to Examining Authority's First Written Questions) have addressed the point about the extent to which the carbon capture equipment would be out of action and the opportunities to protect the different equipment from damage during flooding.	The EA advise that the Applicant's response on pages 12/13 of [REP4-033] and Applicant's Flood Risk Technical Note - Breach Assessment Scenarios document [REP3-035] (Appendix C to Applicant's Response to Examining Authority's First Written Questions) have only partly addressed the point(s) about the extent to which the carbon capture equipment would be out of action and the opportunities to protect the different equipment from damage during flooding The EA note the conclusion that, *'… the existing Riverside 1 and Riverside 2 facilities for which the Proposed Scheme serves are also unlikely to remain operational should a breach occur meaning that the Carbon Capture Facility would not need to be operational itself.'* Please also see the EA answer to Q2.4.2 We recommend that if at the detailed design stage the area of buildings excluded from flooding and the areas where equipment will make the development platform hydraulically rougher increase above that which has been modelled that the development's impact on flooding is reassessed.	The Applicant has had positive discussions with the Environment Agency as detailed in the **Environment Agency Statement of Common Ground (as updated alongside this submission).** The Applicant does not consider that a re-assessment as part of the detailed design will be required, notably as the detailed design will be developed in accordance with the parameters and the commitments included in the **Design Principles and Design Code (REP5-009)**. However, in the unlikely event that the volume or density of structures or infrastructure change significantly beyond that assessed in **Appendix C: Flood Risk Technical Note** of the **Applicant's Response to Examining Authority's First Written Questions (REP3-035)**, the Applicant will discuss with the Environment Agency the need to undertake additional validations to address its concerns. The Environment Agency and the Applicant have agreed to have a meeting every two months (post DCO) to discuss the evolving detailed design (including platform levels, equipment functions, buffer zones and set backs), as detailed in the **Environment Agency Statement of Common Ground (as updated alongside this submission)**.
2.3.3a	**Q2.9.1 Flood Risk**	The new flood and coastal erosion risk data that has been published by the EA on 28 January,2025, and the data that is planned to be published on 25 March 2025, is more high	The Applicant agrees with the response provided by the Environment Agency.

Table ref	Question	EA Response	Applicant's Response
	The EA published new flood and coastal erosion risk data on 28 January 2025 following the release of its "National assessment of flood and coastal erosion risk in England 2024". Are there any implications for the relevant assessments for the proposed development, as a result of these updated data sets? The ExA is aware that further data updates are also expected to follow on 25 March 2025. If the EA considers that any updates to the relevant assessments are required, the ExA asks that it communicates this to the Applicant as soon as possible and ahead of Deadline 5, with an update provided at Deadline 5, in the interests of seeking a resolution of this matter prior to the close of Examination.	level than the assessments undertaken for the CCF. The EA confirms that for this development there are therefore no implications for the relevant assessments as a result of these updated data sets.	
2.3.4a	**Q2.9.2 Ground raising – development platform in vicinity of watercourses** Do the provisions in Revision C of the Design Principles and Design Code [REP3-007] address the EA's concern over what they considered to be "excessive flexibility created by the wording of the Design Principles and the Design Code in terms of how close the ground raising and the works can extend towards the watercourses"?	On Friday 21 March 2025, the EA agreed a further revision to the wording of Design Principle DP_PL 1.9 and Design Code DC_CCF 1.24 with the Applicant which addresses our concerns. We will work with the Applicant on the detailed design if the order is granted.	The Applicant confirms that following the meeting on Friday 21st March 2025, the wording of the **Design Principles and Design Code (REP5-009)** has been updated to address the Environment Agency's concerns. The Applicant has agreed to ongoing engagement with the Environment Agency during the detailed design of the Carbon Capture Facility, as reflected in the **Environment Agency Statement of Common Ground (as updated alongside this submission)**.
2.3.5a	**Q2.20.1 WFD assessment** Further to the Applicant's and the EA's responses [AS-087][AS-088] to the ExA's Rule 17 Questions (R17Q1.1 – R17Q1.8) [PD-013]. Given the outstanding disagreements between the Applicant and the EA relating to the Applicant's WFD Assessment, the ExA is mindful of the duty on the SoS (as the appropriate authority under the 2017 WFD Regulations3) to secure compliance with the WFD. The EA's position [REP3-037] regarding the applicant's WFD Assessment currently before the ExA [APP-106] is that "WFD compliance cannot logically be demonstrated". Whilst it is noted that work is ongoing to resolve the identified concerns, including production of a Technical Note by the applicant, the ExA notes comments from the EA [AS088] that: "We required a revised WFD assessment. We have no knowledge of what the applicant means by a technical note nor do we anticipate it would be adequate to replace a revised WFD assessment". The ExA also notes key differences of opinion in the responses to R17Q1.3 [PD-013] from the Applicant [AS-087] and the EA [AS-088], regarding whether additional baseline data is required to inform the assessment. The ExA has significant concerns about the amount of Examination time remaining to resolve this issue. In the event that compliance with the WFD cannot be demonstrated, the ExA would need information to give to the SoS regarding a derogation under Article 4.7 of the WFD - or in that absence of that information,	**Consequently: i) Please can the Applicant and EA confirm whether there is a risk that a derogation case (without prejudice or otherwise) might be necessary?** We have now met, and agreed that a technical note , provided that it addresses the fundamental questions of compliancy that remained outstanding (including incorporation of the new sediment data into any arguments for compliance and calculations to determine more quantitatively [using baseline water column data] whether compliance could be justified) , would be an acceptable way forward to us , not necessitating a full revision of the previously submitted WFD assessment. Furthermore, we have received the technical note and find it to provide convincing evidence that the proposed dredge methodology and associated dredged material disposal will fully comply with the water quality element requirement of the Water Framework Directive. Compliance with WFD from a marine water quality perspective is now not in doubt and we have no objection to the grant of a DCO in this regard While the applicant has demonstrated that the development will be WFD compliant from a water quality perspective we do however point out that the proposed maintenance dredging, whilst the case has been demonstrated for	**Consequently: i) Please can the Applicant and EA confirm whether there is a risk that a derogation case (without prejudice or otherwise) might be necessary?** The Applicant confirms that following a meeting with the Environment Agency to discuss the proposed methodology to address outstanding concerns that a technical note was provided and accepted by the Environment Agency, as described within the **Environment Agency Statement of Common Ground (as updated alongside this submission)**. The Applicant notes the Environment Agency's comment with reference to the technical note and potential changes to the regulatory framework in the future regarding RBMP cycle (2028-34). **ii) Please can the Applicant and the EA provide an update on progress of matters against the timelines set out in their responses to the ExA's Rule 17 Questions?** The Applicant confirms that matters against the timelines set out in the responses to the ExA's Rule 17 Questions have been addressed fully. **iii) The Applicant, the EA and the MMO are also invited to make any other comments they wish to at this stage.** The Applicant has no further comments to make. Please also see the Applicant's response to the ExA's Rule 17 Request, which confirms that, as the Environment Agency is consulted by the

Table ref	Question	EA Response	Applicant's Response
	would be likely to have no alternative other than to recommend refusal of the application, irrespective of any other merits or demerits of the case. Consequently: i) Please can the Applicant and EA confirm whether there is a risk that a derogation case (without prejudice or otherwise) might be necessary? ii) Please can the Applicant and the EA provide an update on progress of matters against the timelines set out in their responses to the ExA's Rule 17 Questions? iii) The Applicant, the EA and the MMO are also invited to make any other comments they wish to at this stage. Comments are requested by the deadlines set out in the Examination Timetable, however it would be helpful if any information which is exchanged between the parties and is available beforehand, is submitted into the Examination when available. The Applicant has confirmed it will submit the Technical Note at Deadline 5. Although Deadline 6 is the next identified deadline by which comments should be made, given its close proximity to the close of the Examination it would therefore be helpful if the EA and MMO could please submit any comments on this to the ExA as soon as they are available.	compliance under the existing regulatory framework during this cycle 3 (2021-27) River Basin Management Plan (RBMP) (by reference to the capital works as a (very) "worst case" version of a future maintenance dredge scenario which is a fair and reasonable argument to make), will probably take place under a slightly different regulatory scenario when maintenance dredging is actually needed, simply because beyond December 2027 there will be a new 6- year RBMP cycle (2028-34), the water column baselines will be reset (based on more recent monitoring results), and, if applicable, there may have been additional chemicals brought into regulation that would not have been considered of assessed in this current assessment , or revisions to the chemical limits used for existing chemicals. Whilst the sediment quality (chemical contaminant profile) of maintenance dredged material will be different from the material assessed for the capital dredge works , it is fairly unlikely (though not impossible) that the applicant's precautionary stance of using the capital dredge contamination levels as a proxy to assess maintenance dredging effect would not be sufficiently precautionary that it would invalidate their prediction of compliance against the chemical limits we do currently know about in this RBMP cycle. Since the EA cannot predict government regulations ahead of the next RBMP cycle there is a small risk that some combination of changes in baselines, EQS limits for chemicals or additional chemicals we may not yet have considered might invalidate the compliancy prediction for future maintenance dredges. We have similar concerns in all dredge cases where a licence extends beyond the current RBMP period, as we cannot predict where the "goal-posts" will move to. Until we know what additional regulation will apply in another RBMP cycle it is not logically possible to predict compliance with that regulatory environment. The logical approach here would be to re-assess for any additional WFD risk the proposed maintenance dredge at least once in every subsequent RBMP cycle to ensure that the activity has not fallen out of step with the prevailing regulation. If nothing much has changed in the regulatory environment between RBMP cycles then this is a rather undemanding check that sediment quality has not significantly worsened relative to previously assumed levels. If new chemical limits have been introduced (either entirely new chemicals requiring assessment or tightening of the existing standards to make compliance harder) then some additional numerical calculation may be required to demonstrate the activity will comply under the new circumstances. The applicant has satisfied us as far as they reasonably can that the risks of maintenance dredging being	MMO under the terms of the DML on the method statements for any capital or maintenance dredging undertaken for the Proposed Scheme, the EA would be able to consider the progress of the RBMP cycle at the point in time that it is consulted in giving its views to the MMO.

Table ref	Question	EA Response	Applicant's Response
		non - compliant in the future are small, and we know that they would be quite likely to continue to be able to demonstrate that to our satisfaction once any new regulatory requirements were known, by revision of the assessment within 6 months of the publication of the new RMBP , baselines and any additional regulatory requirements that might come into force at that time. **ii) Please can the Applicant and the EA provide an update on progress of matters against the timelines set out in their responses to the ExA's Rule 17 Questions?** As stated above, we have already reached the conclusion that the dredging will be likely to comply with WFD, and we are happy with the evidence provided to support that stance. It was slightly unfortunate that some of the proposed deeper sediment samples were unobtainable due to the nature of the underlying substrate being too hard to grab, but this is also an indication that chemicals in the harder material are not likely to be very mobile. We do not consider this negates the conclusions of compliance with WFD water quality criteria. **iii) The Applicant, the EA and the MMO are also invited to make any other comments they wish to at this stage.** The applicant has been cooperative and swift to address our initial concerns and has used what we would consider to be best practice in their calculations. The matter of long term (eg 10 year MMO) dredge licences vs WFD assessments valid only for the current RBMP cycle (6 years maximum) is the subject of discussion between EA and MMO and is an internal DEFRA matter which should not be taken to be predjudicial to the compliance arguments provided by the applicant. Longer licences result in a lower administrative burden but can prevent reaction to changes in legislation that might be necessary to ensure WFD compliance for waterbodies. It may be worth noting that within the Thames Estuary the Port of London authority is a second licence issuing authority, and they have overcome the problem by issuing shorter term licences more often; generally a 1 year licence is issued for capital dredges, and maintenance dredges are licensed for up to 3 years (half a RBMP cycle). This does have the advantage for the EA that we can be sure that an ongoing maintenance dredge programme will require a licence renewal at least once within any RBMP cycle, and that provides the opportunity to re-align the WFD assessment with whatever changes have occurred in baselines , EQS limits , or sediment quality. Even if the licence is granted in the final year of a RBMP cycle we know that it will not run over more than two years into the next	

Table ref	Question	EA Response	Applicant's Response
		cycle (possibly risking being non-compliant due to the changed regulations) before the need to renew will force re-assessment and any non compliance would be spotted , and additional mitigation applied to render it compliant again. This allows a faster response to try to steer the waterbody back into compliance within the new cycle. If we agree in advance (complete guesswork- no evidence) that a licence would be compliant for a 10-year term, our hands are effectively tied for ten years if we've guessed wrong.	

Table 2-3b Applicant's response to Environment Agency's 'Comments on other outstanding matters' Deadline 5 Submission

Table ref	EA Comment	Applicant's Response
2.3.1b	**Proximity to the Great Breach station** The EA request that more granular information including cross-section drawings are provided now on the works close to Great Breach pumping station and also close to the Thames Tidal Defences to allow needed assessment of the acceptability of the principle of the works close to those flood risk assets. This can be seen as a parallel to the recently undertaken assessment of the parts of the CCF that are tolerant and those that are vulnerable to being damaged during a flood.	The Applicant advises that more granular information regarding works in proximity to Great Breach Pumping Station and the Thames tidal defences will not be developed until detailed design of the Proposed Scheme. The Applicant highlights the following in response to the Environment Agency's question**:** • No works are proposed that would directly affect the Great Breach Pumping Station, the open channels discharging to it or the rising mains and culvert discharging from it. • Access to the Great Breach Pumping Station will be maintained during construction and operation of the Proposed Scheme, pursuant to the Protective Provisions within the **Draft DCO**. • The closest permanent works to the Great Breach Pumping Station and Thames tidal defences are for the Flue Gas Supply Ductwork for Riverside 2 (Work No. 2B shown on the **Works Plans (REP5-004)**) which is expected to be in excess of 16m from these assets and therefore not impede future maintenance or upgrade works. • Should any permanent works take place within 16m of the Great Breach Pumping Station or Thames tidal defences these will be subject to the Environment Agency's approval through the Protective Provisions within the **Draft DCO.** • A 5m vertical clearance could be achieved if required where the Access Trestle crosses the Thames tidal defences.
2.3.2b	**Removal of Old Power Station Jetty** In our opinion the removal of the Old Power Station Jetty should be undertaken as to mitigate for the impacts of the new in-channel works**.**	The Applicant notes the Environment Agency's preference for the removal of the Belvedere Power Station Jetty (disused). The Applicant will be confirming the choice as to whether this jetty will be retained (with modification) or removed as part of the detailed design. The **Draft DCO** includes a requirement for the Applicant to confirm the choice it has made to LBB as part of the detailed design and for the Environment Agency to be consulted on the environmental design proposed.
2.3.3b	**Disapplication of relevant legislation** We are concerned that the disapplication of legislation should not alter the ongoing requirement on the landowner to maintain the flood defences. We agree that if the EA are able to agree to the disapplication of the Land Drainage Byelaws and the Flood Risk Activity Permitting Regulations there would be no purpose in retaining a separate legal requirement to approve works under the 1879 Metropolitan flood act. However, the positive ongoing obligations on the landowner to maintain the flood defences on their land by virtue of the Metropolitan flood acts the needs to continue. The explanatory text on the	The Parties have now agreed the form of the Environment Agency's Protective Provisions which will be going into the Draft DCO at Deadline 7. On this basis, the Environment Agency has given its consent under section 150 of the Planning Act 2008 in respect of the disapplications set out in article 7 of the Draft DCO. This is set out in the **SoCG with the EA (as updated alongside this submission)**.

Table ref	EA Comment	Applicant's Response
	topic of legislative disapplication within the WRITTEN SUMMARY OF THE APPLICANT'S ORAL SUBMISSIONS AT ISSUE SPECIFIC HEARING 2 (ISH2): 9.25', does not address our concerns. It is possible that we are at cross purposes with the development team over this point. We will continue to discuss this with the applicant as part of the ongoing discussion of protected provisions.	
2.3.4b	**Updated breach modelling** The EA have reviewed the breach flood modelling submitted by the Applicant in support of the proposal. The are some issues with the modelling which we believe will overestimate the absolute flood levels but not the comparison between the before and after scenarios. We can therefore accept the modelling, although the applicant may wish to further refine it to improve the design.	The Applicant welcomes the confirmation that the breach flood modelling is considered fit for purpose and further review or amendment is not required to support the DCO application.

2.4. RIDGEWAY USERS

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

Table ref	Summary of issue raised	Applicant's response
PFAS Management Plan Failures & Further Details		
2.4.1	**1.1 Groundwater Inclusion In The WFD** **1.1.1** In the applicant's responses to our representations at deadline 3, they accept that, although PFAS are present in these water channels, we have not adequately followed full assessment methodologies. Whilst we note that the applicant accepts that PFAS are present on the land, upon consultations with a Hydrologist, it appears that neither the applicant nor the EA have fully followed these methodologies for evaluating existing PFAS pollution in the soil themselves. That raises serious concern as to whether the WFD assessment will be fit for purpose. **1.1.2** Ridgeway Users enclose the following letter from a consulting Hydrologist regarding existing soil pollution: *We believe further clarification regarding EA's response (REP3-037) to Ridgeway Users previous representations on PFAS and Cory's WFD assessment process to date (APP-106) is required.* *While the site sits within the regulatory boundary of the Thames Middle Transitional Water Body (GB530603911402), this does not mean that the Thames itself is the only watercourse that should be considered under WFD, as the directive and the requirement for non-deterioration apply to all inland water bodies. There are several ordinary watercourses in the form of ditches and drains within the Crossness Marsh designated site that would likely not have been scoped out of the requirements for WFD if the site did not sit within the boundary of a transitional water body and instead of within the WFD area of a river.* *Following this we do not believe that Cory has sufficiently addressed the potential impacts of the scheme on the WFD status of the ordinary watercourses within the site boundary and within the zone of influence of the development. We have particular concerns in relation to potential deterioration of water quality from PFAS. While the EA states there is not an Environmental Quality Standard (EQS) for PFAS or PFOA, but only PFOS; the levels of PFOS in the ditch sampled exceed the EQS for PFOS by approximately 10 times, and it follows that there are likely high levels of PFOS contamination in the soils on site which is driving the PFOS levels in the ditch. This contamination pathway has not been evaluated by Cory in their assessments to date despite fire fighting runoff and offsite pollution incidents being cited as potential sources of PFAS in the preliminary land contamination risk assessment.* *Cory have not demonstrated beyond a reasonable scientific doubt that the development of the scheme will not cause further PFAS/PFOS to be mobilised from contaminated soils causing a deterioration of the water quality WFD status of the ordinary watercourses. Cory have also failed to consider the impacts of the scheme on the WFD*	1.1.1 It is not accurate to say that the Applicant accepts that PFAS is present on the land. The response given at 2.8.1.1 of the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** states "*Whilst the Applicant does not dispute that PFAS may be present within the water sample for which RU have provided chemical testing results, PFAS is a ubiquitous and diffuse pollutant with many potential sources".* The Applicant has not yet undertaken sampling of soil, groundwater or surface water within the Site for the Proposed Scheme (except within the River Thames). With reference to the WFD assessment (**Appendix 11-1: Water Framework Directive Assessment of the Environmental Statement (Volume 3) (APP-106)**), this is an assessment of whether the Proposed Scheme will impact the water quality of the Thames Middle Transition waterbody, a designated WFD waterbody. These works and assessment will not impact upon Crossness LNR. In regard to the Environment Agency's Land Contamination Risk Management (2023) Guidance, this has been used in the assessment presented in **Chapter 17: Ground Conditions and Soils of the Environmental Statement (Volume 1) (APP-066)**, this is the relevant place to do so. Consequently, the Applicant confirms that it has appropriately applied the relevant assessment methodologies. 1.1.2, 1.1.3 and 1.1.6 **Appendix 11-1: Water Framework Directive Assessment of the Environmental Statement (Volume 3) (APP-106)** provides a screening and scoping exercise, with explanation given for scoping out activities associated with the construction and operation of the Proposed Scheme. The ordinary watercourses are not WFD water bodies and therefore are not required to be assessed within the WFD assessment, the aim of which is to determine whether the proposed activity may cause deterioration or jeopardise the water body achieving good status. However, these ordinary watercourses are considered with the **Appendix 17-1: Preliminary Risk Assessment of the Environmental Statement (Volume 3) (APP-113)** as Controlled Waters and will be further considered during future site investigations following the Environment Agency's Land Contamination Risk Management (2023) Guidance. As previously outlined within **Section 7** of **Chapter 17: Ground Conditions and Soils of the Environmental Statement (Volume 1) (APP-066)**, a ground investigation will be undertaken as a requirement of the **Draft DCO** and shown on **Figure 17-3** of the chapter. The Phase II Ground Investigation will include testing soil, groundwater and surface water (where relevant) for a range of contaminants including PFOA and PFAS. As part of the Phase II Ground investigation, a Generic Quantitative Risk Assessment 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 a

Table ref	Summary of issue raised	Applicant's response
	status of the ordinary watercourses in relation to other WFD classification elements such as biological elements and hydromorphological elements. The impacts on which are likely to require significant mitigation to satisfy the requirement for non-deterioration. **1.1.3** In light of this, we do not believe their proposed technical note/addendum to the WFD will be adequate. This needs to be comprehensively rewritten as the EA has previously suggested. With the process fast coming to an end, we are worried about the timelines and whether all parties will have adequate time to examine any approved WFD assessment. **1.1.4** We have previously stated the applicant has not provided data on the nature or type of PFAS-containing material entering the site, nor the effect of their works on existing PFAS and how this will impact watercourses and the rare wildlife within them. The applicant states in 9.23 section 2.8.1.4 that *Due to the nature of the Proposed Scheme, PFAS will not be introduced by the carbon capture process*. This blanket response is weak and once again dismissive of the risks. We know from widespread evidence that PFAS are in the components and are required as part of the scheme and yet the applicant is unwilling to discuss the risks. Why is that? **1.1.5** In addition to this, we have repeatedly asked for data both directly and in submissions on the nature and types of plastics they bring to the site, and specifically how much recycling they bring to the facility. We received a response that failed to answer this question and instead answered questions we did not ask. We wish to be clear, does the applicant have data on the volume and type of recycling it brings to this facility? This data is vital if we are to understand the PFAS and pollution risks more comprehensively. It is also key to carbon accounting that forms a part of guidance for the CCS and whether any alternatives would make more sense. The applicant is obligated to adequately explore these alternatives. We explore this later in our representation. As it has become clear, it does not appear that this has been done **1.1.6** Ridgeway Users reiterate that Cory's proposed future ground investigation comes too late. The investigation needs to be done before the application concludes as part of a WFD. As a result, we are following the consulting Hydrologist's guidance and have conducted some final testing on this issue to provide a better understanding of the source and risks. We will present this data by the next deadline.	Remediation Strategy will be produced and provided to the Environment Agency and other relevant stakeholders. This is secured via Requirement 21 of the **Draft DCO.** **Appendix 11-1: Water Framework Directive Assessment of the Environmental Statement (Volume 3) (APP-106)** also considered impacts to the Greenwich Tertiaries and Chalk (GB40602G602500) groundwater body, which lies in the Greenwich Tertiaries Operational Catchment, the Thames Groundwater Management Catchment, and the Thames River Basin District. This waterbody was screened out from further assessment due to construction activities not being expected to impact the aquifer. A full explanation is provided in Section 6.1.5 of the **Appendix 11-1: Water Framework Directive Assessment of the Environmental Statement (Volume 3) (APP-106)**. This was accepted by the Environment Agency, as described in the **Environment Agency Statement of Common Ground (as updated alongside this submission)**. It should also be noted undertaking ground investigation as a post determination requirement of a DCO is common practice. 1.1.4 The Applicant has engaged appropriately with Ridgway Users on this topic, including lengthy discussion on the matter during the Accompanied Site Inspection. A full response to all of Ridgeway Users' comments on these matters is provide at Table 2.5.1 of the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032)**. This explains why it is correct to state that the Proposed Scheme does not introduce PFAS and that the Carbon Capture Facility will be appropriately regulated by the Environment Agency through the environmental permitting regime. 1.1.5 Ridgeway Users has persistently requested information on recycling volumes that is simply not available. As set out in **Table 2.8 of REP4-033**, Cory provides a service to manage *residual wastes* for its customers, in accordance with the waste hierarchy. It is not the role of Riverside 1 and 2 to undertake all stages of the waste hierarchy, but to safely and efficiently treat the residual wastes they receive. Further information is provided at table reference 2.4.6 below.
2.4.2	**1.2 Responses to Deadline 3** **1.2.1** **a)** The applicant states in 9.23 section 2.8.1.3 that our points regarding obligations under the Stockholm Convention are not relevant to the application.	1.2.1 The Applicant acknowledges that PFAS do not currently fall under the Environmental Permit for operations at the Riverside 1 or Riverside 2. As confirmed

Table ref	Summary of issue raised	Applicant's response
	We wish to reiterate that as we stated in Deadline 4 in more detail, this is in fact not the case. Whilst it is correct that under guidance, permitting should be considered to be effective at limiting that which it is supposed to limit, PFAS do not appear to be within the permit. Similarly, cumulative, pre-existing and other potential effects can be examined (or whether the permitted effects themselves are acceptable) and both the ExA and Secretary of State have the power to assess these risks appropriately **b)** Likewise, choosing less potentially polluting alternatives is indeed part of the assessment process. We are not the first party to bring this up. The Western Riverside Waste Authority has previously stated that it would prefer adequate sorting facilities as a tonic to the EfW facility emissions - this would also fit their strategic priorities more closely. However, this alternative has not been examined, apparently due to negative insurability risks. Given the manifest risks of CCF and CCS and the limited insurance options for these facilities, we are unsure these would be any more negative and we have yet to see any reasons as to why an alternative in the form of a sorting facility must be located in the exact same space, or even why co-located facilities must be insured together. Similarly, if this is the only reason for not pursuing this alternative, given the huge disadvantages of the current scheme, it appears this alternative appears rather good.	above, the Proposed Scheme does not introduce PFAS and that the Carbon Capture Facility will be appropriately regulated by the Environment Agency through the environmental permitting regime. One of the reasons given by the Secretary of State for making the Section 35 Direction in relation to the Proposed Scheme is that: '*The carbon capture element of the Proposed Project would provide and support the decarbonisation of energy from waste derived CO2 emissions in the UK, delivering over a million tonnes of CO2 savings per annum, and supporting the achievement of a fully decarbonised district heating network that crosses local authority areas. …*' The Climate Change Committee (CCC) has stated that carbon capture and storage is a '*necessity not an option*', a phrase repeated in National Policy Statement for Energy (NPS EN-1, at paragraph 3.5.2). In its Seventh Carbon Budget, the CCC confirms that '*Whilst its role is limited to sectors where there are few, or no, alternatives, we cannot see a route to Net Zero that does not include CCS*.' (page 14) There is no alternative to post-combustion carbon capture technology to address the carbon dioxide emissions that result from the sustainable treatment of residual waste through energy recovery facilities such as Riverside 1 and 2 (when operational). Following the grant of the Liverpool Bay CCS DCO on 20 March 2025, the Government awarded the carbon dioxide and storage licence to Liverpool Bay CCS Limited on 22 April (https://www.gov.uk/government/publications/award-of-carbon-dioxide-transport-and-storage-licence-liverpool-bay-ccs-limited) and financial close between the Government and the Developer (ENI) was confirmed on 24 April 2025. The UK Secretary of State for Energy Security and Net Zero, Ed Miliband, said: *"Today we keep our promise to launch a whole new clean energy industry for our country - carbon capture and storage - to deliver thousands of highly skilled jobs and revitalise our industrial communities. This investment from our partnership with Eni is government working together with industry to kickstart growth and back engineers, welders and electricians through our mission to become a clean energy superpower. We are making the UK energy secure so we can protect families and businesses and drive jobs through our Plan for Change."* (https://www.eni.com/en-IT/media/press-release/2025/04/eni-and-uk-reach-financial-close-for-the-liverpool-bay-ccs-project.html) These significant milestones, for ENI, the Hynet Cluster and for CCUS deployment in the UK, demonstrate the Government's commitment to CCS to deliver Net Zero. This is also seen in the very latest policy, with the consultation draft of NPS EN-1 (April 2025) confirming that CCS is still CNP Infrastructure as a result of paragraph 3.5.7. The consultation draft of NPS EN-3 (April 2025) proposes (at paragraph 2.7.19) that the requirement for Decarbonisation Readiness will be applied to '*new and substantially refurbished EfW developments from 28 February 2026*.' It is clearly the Government's intention that efficient EfW facilities, such as Riverside 1 and Riverside 2, are fitted with post-combustion carbon capture technology.
Romani Graziers & Equalities Act Obligations/Guidance		
2.4.3	**2.1 Failure By The Applicant To Take Into Account New Information**	

Table ref	Summary of issue raised	Applicant's response
	2.1.1 In 9.23 Section 28.2 Cory appears to once again dismiss our strong evidence, which includes direct interviews that the use of the land could be constituted as part of a traditional Romani way of life, stating: *The Romani community (as opposed to specific individuals, even if it was considered that the current individual graziers are Romani, even though that has not been confirmed to the Applicant) do not partake in their traditional way of life on the land affected by the Proposed Scheme.* The applicant has not responded directly to the content of the interview evidence we provided previously, which directly contradicts what they say.	2.1.1. The Applicant can confirm it has not dismissed any of the submissions made by Ridgeway Users. The information contained within the interview has been considered by the Applicant, even if a specific, discrete response has not been made to it. However, that submission does not change the fact that (not least as stated at **Table 2.8.2.1** of the **Applicant's Response to Interested Parties Deadline 3 submissions (REP4-033)**) the land within the Order limits is not generally available to any community; it is all private property that is held freehold with grazing tenancies held by two parties on the land Ridgeway Users refer to. **Table 2.8.2.2** of that same response outlines the limitations relevant to the tenancy held between Thames Water and Ms Anderson (the Crossness Nature Reserve grazier). The Applicant has engaged appropriately with both graziers and their landlords.
	2.1.2 We believe the applicant appears to misunderstand how the Equalities Act works. New evidence cannot be dismissed so easily. In government guidance for equalities duties, it very clearly states that bodies carrying out public functions (this includes waste management/any future management of the nature reserve), should**:** *Evaluate the outcomes of your decision and whether your assessment of the equality impact was correct. The duty is a continuing duty and you should take account of new evidence as it arises.* The applicant has clearly not taken into account or adapted to the new evidence as it has been provided. Their policy and mitigation has remained unwavering since we first brought this issue up. They need to take into account this new information and adapt their scheme accordingly or they fail to adhere to this guidance. **2.1.3** We believe that the applicant's limp excuse that the reason they did not tackle Romani issues sooner in their submissions is that they forgot to submit part of their response to us initially is neither very plausible, nor very commendable if this is the case. Ridgeway users believe that the likely case is that Cory simply did not take us or this issue seriously and we note this pattern has been repeated throughout. We are yet to see concessions for Romani issues, we are yet to even see them come to the table with us. We reiterate that a failure to provide adequate and reasonable mitigation to Romani graziers that meets their needs for this scheme should be reasonable grounds to refuse it.	2.1.2 and 2.1.3 As stated above, and has been made clear in previous submissions, the Applicant has not dismissed any of the representations made to the Examination and has engaged appropriately with affected parties. The Applicant's Equalities Considerations as relevant to the Proposed Scheme are set out at **Appendix A** to the **Written Summary of the Applicant's Oral Submission at CAH1 (REP1-028)**. This report considers the impact of the Proposed Scheme on persons or groups of persons who share characteristics that are protected under Section 4 of the Equality Act 2010 ('protected characteristics'). The purpose of the Equalities Considerations report was to set out: • the potential impacts of the Proposed Scheme on persons or groups of persons that share a 'protected characteristic'; and • the mitigation measures identified to improve equality of opportunity and eliminate discrimination. The Applicant has considered all the information submitted by all Interested Parties and responded accordingly. The Applicant has taken the interests of all Affected Parties seriously and sought to engage with both graziers from an early point in pre-submission consultation, and has continued to consult with both of them throughout the Examination. The graziers' interests have been formally considered within the DCO Application, not least within the submitted Environmental Statement (particularly at **Chapter 14: Population, Health and Land Use (APP-063)**) and in the discussions recorded in the Land Rights Tracker **(REP5-040)**. The Equalities Considerations report accompanied the **Written Summary of the Applicant's Oral Submission at CAH1 (REP1-028)**. These documents were submitted in November 2024, some two months prior to the **Applicant's Response to the Examining Authority's First Written Questions (REP3-029)** demonstrating that the Applicant has taken the graziers' interests seriously. At paragraph 1.6.5, the Equalities Considerations report concludes: ' ... *with the proposed mitigation measures in place, no differentiated or disproportionate impacts on groups with protected characteristics under the Equalities Act 2010 are predicted as a result of the Proposed Scheme.'*

Table ref	Summary of issue raised	Applicant's response
		Ridgeway Users has submitted no evidence to change that conclusion.
2.4.4	**2.2 Misunderstanding Wider Community Ties To Land** **2.2.1** In section 2.8.2.1 in response to our claims about wider ties to the land, the applicant states that *There is no prejudice to the Romani community because of the Proposed Scheme. The Romani community in a general sense do not, and are not authorised, to use this land.* This misunderstands the principle of community ties to land. There are many places that are considered historically or culturally significant to protected identities/communities that one as an individual does not under ordinary circumstances have complete or even partial access to, but can reasonably under law claim community ties to, in order to assist in granting it some form of protection. These might include (but are in no way limited to) the protected ruins of old places of worship (or even the structure itself of former places of worship that are no longer used for the same purpose and are under private ownership) and sites of historic significance that are under private ownership. **2.2.2** The applicant states the following in 9.2.3 section 2.8.2.3 that *Overall, with the proposed mitigation measures in place, no differentiated or disproportionate impacts on groups with protected characteristics under the Equalities Act 2010 (including, specifically, the graziers) are predicted as a result of the Proposed Scheme.* Ridgeway users reiterate that it is not a cogent argument to state that Romani graziers are the ones who have sole access to much of the land that will be lost, but that they are not disproportionately affected. This is quite evidently contradictory. **2.2.3** When Ridgeway Users brought up there being no evidence of direct and targeted outreach to Romani communities and their affiliated civic organisations, the applicant has claimed that it requested a traveller liaison and grazier contact in rebuttal to this. We reiterate that once again this misunderstands our point and is not an adequate response. A liaison officer does not have oversight over wider civic community ties, nor an in depth network of stakeholders who understand the significance of a parcel of land to a community. To claim otherwise would be implausible. Our point stands, Cory has, as far as we are aware, not made any attempt to reach out to actual Romani civic bodies to understand how best to make appropriate mitigation. These bodies have expertise in understanding wider cultural nuances and they should have been consulted from the start. **2.2.4** Ridgeway Users believe these compounded and repeated misunderstandings of the Romani community and Equalities Act obligations add to a growing body of evidence that the applicant might not fulfil their Equalities Act duties if this permission is granted. We call for it to be refused.	2.2.1 In its **Response to the Examining Authority's First Written Questions (REP3-029)** and summarised in response to the Ridgeway Users (at **Table 2.8.26 of REP4-033)** the Applicant acknowledges the former use of the Belvedere Marshes by gypsies (the term used in the information provided by Ridgeway Users) and that this was effectively ended by the great flood of 1953 and consequent removal by the local authority. These events happened many years prior to Cory's involvement in the area (with the construction of Riverside 1 commencing in 2008) and are in no way related to the Proposed Scheme. 2.2.2 The Applicant cannot respond further than to reassert that the land within the Order limits is not generally available to any community; it is all private property that is held freehold with grazing tenancies held by two parties. **Table 2.8.2.2** of **Applicant's Response to Interested Parties Deadline 3 submissions (REP4-033)** outlines the limitations relevant to the tenancy held between Thames Water and Ms Anderson (the Crossness Nature Reserve grazier). 2.2.3 **The Applicant's Response to the Examining Authority's First Written Questions (REP3-029)** (see Q1.0.2.1, from page 11) presents a comprehensive overview of the engagement undertaken by the Applicant. An appropriate level of engagement with parties relevant to the Proposed Scheme has been undertaken by the Applicant, and will continue to do so not least as required under commitments set out within the **Outline LaBARDS (AS-094).** 2.2.4 As has again been demonstrated through the above responses to the Ridgeway Users, the Applicant has fulfilled the requirements of the Equalities Act 2010.

Table ref	Summary of issue raised	Applicant's response
Doubts On Cory Achieving 95% As Cory's Emissions Rise		
2.4.5	**3.1 Relevance To Planning Not Permitting** **3.1.1** In 9.2.3 Section 2.8.3.1, the applicant states that *In summary, the Carbon Capture Facility will be designed to capture at least 95% of the emissions of carbon dioxide from Riverside 1 and Riverside 2 and it will be operated under an Environmental Permit that will control the capture rate. The Secretary of State is dictated by policy to rely on the fact that the permitting regime will control emissions, including carbon emissions and does not need to duplicate any controls within the DCO. In any event, the Applicant is commercially incentivised to maximise the benefits arising from the Carbon Capture Facility as it will be paid for the carbon it captures. The Proposed Scheme will entail a significant financial investment, and the Applicant will seek to optimise efficiency of operations and operational availability.* Ridgeway Users believe this appears to be a misinterpretation of the guidance. It is the planning, not the permitting guidance clearly states that 95% of emissions is a target that is to be aimed for. We have read the permitting guidance for CCS and do not see in the permit guidance that it mentions percentages, let alone one of 95% needing to be achieved. It is thus a subject for planning not permitting. We remind the applicant that the guidance states that the permit only can be deemed to be effective at controlling what it is supposed to control. That is its limit. To then say that a permit that does not rely on, or make mention of the achievement of 95%, can act as a guarantee on achieving 95% carbon capture rates, is nonsensical and cannot be seen to adhere to guidance. It must be addressed here, not in permitting. **3.1.2** The applicant states in 9.2.3 Section 2.8.3.4 that *In the context of the permitting regime requiring the Proposed Scheme to be designed to capture 95%, the historical performance of other carbon capture plants is not relevant; as the Applicant will need to comply with its permit.* We once again state that contrary to what the applicant states, their reliance on permitting is flawed. If past examples are not relevant, we are unsure why the applicant cited them in the first place. As we do believe that it is a subject for planning not permitting and the guidance appears to back this up, past examples are absolutely relevant and as we reiterate, have not achieved 95%.	3.1.1 to 3.1.3 There is no definitive threshold for carbon capture within the planning regime. There is little further that the Applicant can say on this topic, substantive responses have been provided at **Table 2.8** of **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP4-033)**, **Table 2.5** of the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032)** and pages 22 and 23 of the **Written Summary of the Applicant's Oral Submissions at CAH1 (REP1-028)** which is repeated below for ease of reference. *'In all of those projects, and as is the case with the Proposed Scheme, the mechanism for achieving the capture rate is the Environmental Permit.'* (page 22) *'In particular, it is noted that in considering the Environmental Permit for the Proposed Scheme, the EA will have regard to its March 2024 Post combustion carbon dioxide capture: emerging techniques Guidance. This Guidance states that:* ***"You should aim to design your plant to achieve a CO2 capture rate of at least 95% during normal operating conditions, although operationally this can vary, up or down".*** ***"Capturing at least 95% of the CO2 in the flue gas during normal operating conditions is considered BAT"*** ***The Applicant's permit application will therefore be based on meeting this Guidance and The EA will therefore consider whether the Applicant has achieved this design capture rate in determining the permit application****.* *This context is important in light of section 4.12 of the Energy NPS, where it is stated that:* ***"4.2.10: The Secretary of State should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. The Secretary of State should act to complement but not seek to duplicate them.*** ***4.2.16: The Secretary of State should not refuse consent on the basis of pollution impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.*** *The clear policy direction, therefore, is that the permitting regime will operate effectively and that the DCO should not duplicate controls that can be imposed through that alternative regime. Furthermore, it is clear that achieving a 95% capture rate is a reasonable assumption upon which to base the ES.'* (page 23) The quote presented by Ridgeway Users in its Deadline 5 submissions summarises the Applicant's position. Environmental permitting is the correct regime for this control and the Secretary of State can rely on that regime to secure carbon capture rates. This

Table ref	Summary of issue raised	Applicant's response
	3.1.3 Failure to provide this information is to fail to meet this guidance. Whilst we understand the applicant is incentivised to achieve greater rates of capture due to government grants, most energy/waste sector businesses are incentivised to achieve greater efficiencies. It does not always mean they do so, nor that their designs will achieve a specific percentage.	approach complies with policy and ensures that the matter is regulated by the correct body (the Environment Agency) that has appropriate technical resources at its disposal. Further, on 8 April 2025, it was confirmed that Cory has entered into a partnership with Imperial College (available at: https://www.corygroup.co.uk/media/news-insights/cory-group-and-imperial-college-london-partner-drive-innovation-carbon-capture/) to drive innovation in carbon capture and storage technology. '*The Department of Chemical Engineering at Imperial has a long-standing research track record across the whole carbon capture, usage and storage (CCUS) chain. It is home to a world-leading Carbon Capture Pilot Plant, and offers an MEng degree in Chemical Engineering with a strong focus on sustainability and particularly carbon management*.' Together the two organisations will drive research and innovation in carbon capture technology. This demonstrates the Applicant's level of commitment to the carbon capture sector and its position as a sector leader.
2.4.6	**3.2 As Cory's Emissions Rise, 95% Appears Less Feasible** **3.2.1** The emissions trend per tonnage of waste is alarming and has the potential to make any design calculation meaningless in the future. From the data we have been able to find which contains raw emissions, we see the following alarming trend. • In 2021 Cory burned 782,000 tonnes of waste and released 766,000 tonnes of CO2 (Ratio of 0.97) • In 2022 Cory burned 789,000 tonnes of waste and released 829,000 tonnes of CO2 (Ratio of 1.05) • In 2023 Cory burned 790,239 tonnes of waste and released 854,678 tonnes of CO2 (Ratio of 1.08) The guidance on 95% calculations should be based on normal operating conditions when it opens. 95% design specification will most certainly not be achieved if plastic percentages increase and the total volume of CO2 increases. **3.2.2** We once again reiterate the need for data on the volume of recycling over time that enters the facility as this will have a massive impact on emissions. Emissions per tonne of waste have increased by over 11% over just the last three years. We believe this is likely due to the changing constituents within the waste processed. As we have previously stated, it has been reported that there is an escalating shortage of recycling processing capacity across London more broadly and this is only set to rise. Burning a greater volume of plastics, as the applicant has previously confirmed leads to higher emissions when compared to biogenic waste - this affects CO2 capture percentages. This data is key to understanding if Cory has followed guidance, or if they need to explain why they will not achieve 95%.	3.2.1 and 3.2.3 The way the Environmental Permit works is that the facility is monitored in real time; the performance of the facility, under all the conditions of the Permit, is under normal operating conditions, not historical figures. The Carbon Capture Facility will be designed to capture at least 95% of carbon dioxide under normal operating conditions, that apply at that and consequently will comply with the Environmental Permit. The data presented in the submission is placed in the public domain by Cory through its own Annual Reports and annual submissions to the Environment Agency. However, Ridgeway Users seems to have misunderstood what the figures mean. The increasing ratio is because of more carbon in the waste, but that carbon can come from a range of materials including wood, food, carboard and plant-based plastic; it doesn't mean more fossil-fuel based plastic. The reduction of fossil-fuel based plastic in residual waste has been an objective for some time, not least seen in the rise of plant-based plastics that are readily available to buy. In November 2024, the Government established a Circular Economy Taskforce, not least to enable co-design of the first strategy to begin the transition to a circular economy in England. The Taskforce is chaired by Andrew Morlet, former CEO of the Ellen McArthur Foundation and includes representation from WRAP, Chatham House, Low Carbon Materials, the waste industry, Green Alliance and Leeds University. In a speech given on 27 March 2025, Environment Secretary Steve Reed confirmed that the Circular Economy is one of his five priorities for Defra, and that it is '*part of the Government's national Plan for Change*.' He advised that *'carrier bags sold by the main supermarkets have reduced by over 98% since 2014'* and recognised the benefits of having banned single-use plastic cutlery and polystyrene cups. He also confirmed a number of initiatives due to start over the next 12 months or so. The table below sets out current waste reduction policies and Defra's future policies. **Overview of waste reduction policies** **Policy** / **About** Simpler Recycling / Reforms to standardise recycling practices across England for all households, businesses and relevant non-domestic premises (such as schools and

Table ref	Summary of issue raised	Applicant's response

	hospitals). The new default requirement from 31 March 2025 will be separate containers for residual waste, food waste, paper and card, and all other dry recyclable materials (plastic, metal and glass).
Plastics Packaging Tax (PPT)	Introduced in April 2022 to encourage the use of recycled plastic, PPT applies to plastic packaging manufactured or imported into the UK which contains less than 30% recycled plastic. As of 1 April 2024, the tax is charged at a rate of £217.85 per tonne.
Deposit Return Scheme (DRS)	Designed to incentivise the return of single-use drinks containers, including plastic bottles, steel and cans, by adding a small deposit to the purchase price. Consumers can reclaim this deposit upon returning the container to designated collection points. The scheme aims to reduce littering and increase recycling rates of beverage containers. Implementation details, including the deposit amount and labelling on containers, are being finalised, with the scheme expected to launch across the UK in October 2027.
Extended Producer Responsibility (EPR)	From October 2025, producers will bear the full cost of managing packaging waste, incentivising them to design more sustainable and easily recyclable packaging. Producers will be required to collect and report data on the packaging they supply or import and pay waste management fees covering the costs associated with the collection and recycling of packaging waste.
Single-Use Plastic Bans	The government has begun enforcing bans on specific single-use plastic items. Items banned from October 2023 include single-use plastic plates, cutlery, balloon sticks, and expanded and extruded polystyrene food and drinks containers. From 1 June 2025 there will be a ban on disposable vapes.
Landfill Tax Increases	Effective 1 April 2025, the standard rate of landfill tax will rise to £126.15 per tonne (up from £103.70 in 2024). This increase is designed to discourage landfill use and promote alternative waste management solutions such as recycling and composting.
Emissions Trading Scheme	The EfW sector will be included in the UK Emissions Trading Scheme (UK ETS) from 2028, with a monitoring, reporting and verification (MRV) period beginning in 2026. The UK ETS places a limit on the total amount of GHG emissions permitted within certain industries. It is designed to support the UK's transition away from fossil fuels and drive investment in cleaner technologies.

It is much more likely that the amount of fossil-fuel based plastics in residual waste will decrease, than increase. Indeed, this is already being observed at Riverside. The split of fossil based/biogenic carbon assumed within **Chapter 13: Greenhouse Gases of the ES (APP-062)** was essentially 50:50 (see paragraph 13.6.8). In summer 2024, Cory installed Carbon-14 testing at Riverside 1. Carbon-14 testing, also known as radiocarbon dating, is used in industry to determine if CO_2 emissions are sourced from plants/biomass or from fossil-based materials. For an EfW facility, it records the amount of CO_2 emissions that are derived from combusting waste that is comprised of biomass (i.e. plants, food, paper, cardboard) and fossil sources (i.e. plastics). It is a more accurate method of determining the fossil and biogenic split of CO_2 emissions than the annual waste composition analysis used hitherto. In 2024, this testing indicated that 62.17% of the waste processed at Riverside 1 was biogenic.

Ridgeway Users has persistently requested information on recycling volumes that is simply not available. As set out in **Table 2.8 of REP4-033**, Cory provides a service to manage *residual wastes* for its customers, in accordance with the waste hierarchy. It is not the role of Riverside 1 and 2 to undertake all stages of the waste hierarchy, but to safely and efficiently treat the residual wastes they receive. In February 2014, Defra published 'Energy from Waste: A guide to the debate', which describes residual waste as *'mixed waste which at that point in time would otherwise go to landfill*'. Riverside 1 (and 2 when operational) only receives residual waste; mixed waste that cannot be usefully reused or recycled. It may contain materials that could theoretically be recycled, if they

Table ref	Summary of issue raised	Applicant's response
		were perfectly separated and clean, but these materials are currently too contaminated for recycling to be economically or practically feasible. It may also be that there is currently no market for the material or it is uneconomic to take to market. Consequently, it is discarded residual waste - not recycling – that is treated at the energy from waste facilities at Riverside. Operation of the Carbon Capture Facility will take Riverside 1 and Riverside 2 into their next phase of operation, enabling the carbon dioxide emitted from the residual waste treatment provided by these strategic facilities to be captured and safely sequestrated. 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 '*CCS is installed to capture 90-95% of emissions from EfW*.' (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 biodegradable waste sent to landfill by 2028 and the near elimination of all waste sent to landfill by 2045 – there remains an integral role for CCS with EfW, not least '*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*.' (Seventh Carbon Budget, pages 248 and 249). An increase in plant-based plastics would enable a greater proportion of net negative carbon to be achieved.

2.5. SAVE CROSSNESS NATURE RESERVE

Table 2-5 Applicant's Response to Save Crossness Nature Reserve Deadline 5 Submissions

Table ref	Summary of issue raised	Applicant's response
Compulsory Acquisition, Temporary Possession and Other Land Rights		
2.5.1	Minimisation of Land to be Compulsory Acquired 1. We maintain that the Applicant has failed to show that it has limited acquisition of land to what is strictly necessary (under the s122 test) and have reduced the development footprint as far as possible to comply with the mitigation hierarchy. 2. In section 3 of the Written Summary of the Applicant's Oral Submissions at CAH2, the Applicant tries to shift the question to whether there is a form of proposal which can avoid taking any land from LMJ. This is an illegitimate flipping of the legislative test: the Applicant must demonstrate that the full extent of land acquired is necessary; even if only a small part is deemed not necessary, then the test is not met. 3. On page 15 of the Written Summary of the Applicant's Oral Submissions at CAH2, the Applicant introduces a new possibility of delivering water storage as open surface water attenuation ponds instead of underground tanks and suggests the final strategy will be developed as part of the detailed design of the plant. The Applicant does not set out any benefits of using ponds, nor does it explain why this design detail cannot be confirmed at this stage. Therefore, there is no justification for the Appellant increasing land acquisition in order to keep its options open. The design details – for the tanks and the other design aspects discussed – need to be confirmed now, and the most space-efficient option must be chosen. 4. The Applicant goes on to explain why it is "undesirable" to provide the outage laydown area above the water tank – namely access, the need to use reinforced tanks to withstand loading, and the potential for differential settlement leading to increased maintenance. Firstly, none of these appear to create insurmountable problems; minor constraints on use and increased maintenance are not sufficient to demonstrate necessity in satisfaction of the s122 test. In any event, there are other potential uses above the water tanks that could minimise these issues – the Applicant must demonstrate that they have tested all reasonable potential layouts to maximise the space. It seems highly unlikely that there is no feasible use of the land above the underground tanks. 5. If it is true that the space above the underground tanks was unusable, then we maintain that above-ground tanks, which require 900m2 less space, should be used instead. The Applicant notes we have selected "just one element of the Proposed Scheme", suggests 900m2 is only a small saving, and claims to have taken a "balanced approach across all relevant criteria" including minimisation of land acquisition and visual impact. It is not appropriate to take a "balanced approach" to the extent this places the s122 test and mitigation hierarchy on a level with, or below, weaker policy objectives . It is perfectly legitimate for SCNR to focus on one element of the scheme if it demonstrates that more land is being taken than required. Furthermore, we reject the implication that 900m2 is insignificant in this context – if a part of Crossness Nature Reserve the size of three and a half tennis courts can feasibly be retained, it must be retained. In any even this is just one example to demonstrate the point – the potential total savings are much larger.	1. to 5. The Applicant has sought to minimise the overall development footprint and confirms that the submitted Indicative Equipment Layout represents the minimum overall development footprint required for the Carbon Capture Facility. The development of this layout has been informed by footprint requirements specified by world-leading carbon capture technology providers, equipment suppliers and the Applicant's technical advisors. It takes into consideration the specific constraints of the site, including its irregular shape, the presence of existing ditches and watercourses, and the requirements for stand-off separation between site boundaries/ditches and process equipment, while maintaining the necessary design flexibility for a project at a relatively early stage of design development. The drainage solution for the Proposed Scheme is a matter of detailed design, as is standard for DCO projects, and the **Outline Drainage Strategy (AS-027)** provides for a range of sustainable drainage measures that could be used, to account for the detailed design for the Proposed Scheme. Even in a scenario where the necessary flexibility was reduced to require an operational compound to be placed on top of a below ground water tank, that would not release sufficient land to avoid the Local Nature Reserve land (noting also the concerns in respect of South Zone 3 and South Zone 5 set out in the **Terrestrial Sites Alternatives Report (APP-125)**. Therefore, the Applicant has limited acquisition of land to what is strictly necessary (under the s122 test) and has reduced the development footprint as far as possible to comply with the mitigation hierarchy. As stated above, the Applicant considers that it has demonstrated that the full extent of land acquired is necessary

Table ref	Summary of issue raised	Applicant's response
2.5.2	S106 as Alternative to Compulsory Acquisition 6. The Applicant's assertion that "acquiring a lesser interest… would not be sufficient [and] would need to be accompanied by a restrictive covenant" is simply untrue. We have made extensive submissions to show that a s106 agreement entered into by TWUL / Tilfen would provide sufficient protection without the need for acquisition or further restrictive covenants and would bypass the limitations on positive covenants. The Applicant is yet to provide any example of a restrictive covenant that is required that could not be achieved via s106 agreement. 7. Regarding the claim that "to disaggregate parts [of Crossness Nature Reserve] would limit the requisite control and undermine the management vision" , the Applicant has not given an example of any specific control or management measures which could not be achieved via s106 agreement. In any event, the vague notion of the Applicant's 'management vision' does not demonstrate necessity of acquisition under the s122 tests. 8. Draft Deed of Obligation B is now a s106 agreement and includes parts of Crossness Nature Reserve within the Order Limits (i.e. not just the Member's Area) as well as Norman Road Field (with Tilfen Land added as a party). This affirms what SCNR has argued all along: that a s106 agreement can be used to avoid compulsory acquisition. The Applicant states it is "seeking negotiated agreements with TWUL and Tilfen Land Limited (regarding Norman Road Field) but until these are in place, it cannot rely on those agreements being in place" . Before the Applicant can turn to compulsory acquisition, it must provide detailed evidence of efforts to secure agreement with TWUL and Tilfen, and a clear explanation if agreement cannot be reached. Cursory or unevidenced negotiations are insufficient. 9. We note that the side comment at paragraph 3 of Schedule 1 refers to a "voluntary agreement… that will include protections for the Applicant to ensure it can take stepin powers" – it is unclear to us why these provisions could not be included in the s106 agreement. We ask the Applicant to explain what further agreements are anticipated and why they are considered necessary.	6. to 9. The Applicant has set out its position in its **Response to ExA Second Written Questions (REP5-033)** (question 2.5.3) and its response to TWUL's Deadline 4 submissions (**REP5-032**) on the matter of the powers required to ensure that the LaBARDS is able to be delivered. These submissions explain why the Applicant requires property powers to ensure that the LaBARDS is positively delivered, that no action is taken that would cause non-compliance with the LaBARDS, and that it is not appropriate to seek to those outcomes through using the DCO to amend an existing section 106. The Applicant has sought, and continues to seek, to agree voluntary agreements with TWUL and Tilfen Land Limited, as reported in the Land Rights Tracker submitted at each deadline. Commercial matters continue to be the key aspect of discussion between the parties. Such voluntary agreements would avoid the need to use compulsory powers to achieve the protections sought by the Applicant and would enable TWUL and Tilfen Land Limited to have certainty on the commercial returns for the use of their land for the Proposed Scheme. Such commercial matters are relevant to any 'step-in' powers that would be able to be undertaken by the Applicant (for example, the value of any financial recompense to the Applicant if such step-in powers were exercised) and are therefore a matter for discussion outside the section 106 agreement.
2.5.3	Alternative Sites and Bifurcation 10. We maintain that the Thames Water Access Road bifurcates the Site, meaning that the Proposed Site performs worse than the East Zone on this metric. The Applicant continues to misunderstand and understate the usage of the Access Road by third parties. The Applicant claims that the road is used "*very infrequently*" by the EA, but then undermines this by admitting that the EA has its key and "i*t's possible that the EA may use the Access Road more frequently than Cory is aware of*". For example, during the recent upgrades to the Great Breach Pumping Station, EA access occurred multiple times a day across many months. 11. In terms of TWUL and volunteer use, until recently volunteers would commonly visit the site twice a week, gaining access via the Norman Road gate and TWUL's access road. We note this has reduced recently since the main volunteer passed away, but the intention is to find replacement volunteers. 12.We maintain that community events have been reduced due to Riverside 2 construction. The Applicant's comments about communication between the site manager and Applicant site team (which are accepted), do not change the reality that active	10. to 14. It is not surprising that the EA has accessed the Great Breach Pumping Station more regularly during a period of upgrading the asset. However, to the best of Cory's knowledge, being neighbours and sharing access along Norman Road, the standard use of the Access Road by the EA is, whilst essential, not frequent. The Applicant confirms (not least as set out at Table 2.7.1 of the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP 4-033)** that the Thames Water Access Road would not bifurcate the site when the Carbon Capture Facility is built out. The Applicant is disappointed to hear from SCNR that CNR Volunteer attendance has dropped, despite implementing the approved Code of Construction Practice and allowing Friends of CNR to park within the Riverside 2 construction compounds. The Applicant would be pleased to see volunteer days increase again and has set out appropriate provision for their safe access within the Proposed Scheme. Further details on this have been provided in the **Applicant's Response to Examining Authority's Second Written Questions (REP5-033)** at Q2.11.3.

Table ref	Summary of issue raised	Applicant's response
	construction and associated road usage have made it more difficult and less attractive for visitors to come to the site. The site manager has confirmed that event activity has been reduced, and that it would continue to be reduced during construction of the CCF. 13.Beyond construction, there is a strong risk that the completed Proposed Scheme would also result in limitations on community events. When such events do occur, naturally there is extensive use of the Access Road with guests coming and going at different times, all co-ordinated by the TWUL site manager. These events depend on the ability of the site manager to allow access and exit on a rolling, casual basis. 14. There are two important points to conclude from the above. Firstly, the baseline (i.e. post-construction) use of the Access Road is greater than the Applicant suggests, and this usage means that the Proposed Site would be bifurcated. Secondly, giving control of the Access Road to the Appellant and limiting its use would severely impact the ability to run community events. This harm has not been considered or mitigated. 15. In relation to the East Zone, we maintain that a relocation of FP4 could be achieved to avoid a bifurcated site. The Appellant's claim that we have not suggested a replacement route is false. We also reject their further claim that "it is not readily possible" to find a replacement route. The fundamental point remains that the Applicant has not tested a scenario of delivery on the Iron Mountain site and Aviva land, with FP4 relocated around the southern and western edges. See Figure 1 below: while acknowledging this is a somewhat crude calculation, it shows that potentially over 7.2 ha would be available under this approach, suggesting Lidl and Asda plots could be avoided. Given the roundabout in the south-western corner is only used by Iron Mountain, it would be available for development. It may even be possible to extend use further south along the road. 16.We repeat our assertion that, if it is not accepted that delivery at the above location is possible, a split delivery across the East Zone and Borax North/Borax South must be considered. It does not appear that this would require two Carbon Capture Plants as previously suggested – it may require a bifurcated site, but for the reasons above this is true of the South Zone.	However, the points made by SCNR do not lead to a bifurcated site and indicate other pressures that have affected volunteer numbers, which would not apply when both Riverside 2 and the Carbon Capture Facility are operational. 15. and 16. The bifurcated site point has been addressed above. The Applicant apologises for incorrectly stating that an alternative route had not been provided. However, the solution presented by SCNR in its Deadline 5 submission does not meet the Project Objectives; a site encompassing Iron Mountain Records Storage Facility is not acceptable for reasons previously set out. In the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032)** the Applicant confirmed that it 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)**. Throughout these responses the Applicant has demonstrated why the East Zone is not a reasonable alternative. Further, the Applicant would note that agreement has been reached with LBB that an appropriate and proportionate site assessment process has been undertaken, that all reasonable site locations have been considered and that and appropriate location for the Proposed Scheme has been selected (LBB Deadline 5 Response (REP5-042) **and LBB SoCG, Rev F (AS-096)**). Not least of the problems with the site indicated by SCNR is its inclusion of the flood embankment on the southside of the Thames Path. Whilst this would cause some construction difficulties, fundamentally it would not be permitted by the Environment Agency, as noted at both **paragraph 2.4.6** of the **Applicant's Response to Relevant Representations** and **Appendix C: Flue Gas Ductwork Note** (paragraphs 1.1.3 and 1.1.4) **(AS-044).** If the embankment is excluded from the site indicated by SCNR, its size reduces to around 6.7ha as shown in the figure below.

Table ref	Summary of issue raised	Applicant's response
		
2.5.4	Public Recreation 17. We maintain that the parts of Crossness Nature Reserve that are not publicly accessible are used for the purposes of public recreation. Before considering the public aspect, the concept of recreation should be defined. In the Muir case, the High Court endorsed a broad legal definition of recreation, consistent with the dictionary definition: "a means of refreshing or enlivening the mind or spirits by some pleasant occupation, pastime or amusement". Wildlife observation / nature watching within a nature reserve would clearly fall within such use. On a natural reading, this would include inaccessible but viewable areas of a nature reserve which provide a key part of the pastime. Therefore, the East Paddock and Stable Paddock, which can be viewed from accessible parts of Crossness Nature Reserve (and even have allocated public viewing points), should be considered part of its recreational use. The analogies previously provided were intended to demonstrate this point: the non-accessible parts of a sculpture park are naturally considered part of the recreation. 18. Whether a recreational use is public recreation depends on whether it is freely available to members of the public. Given Crossness Nature Reserve is freely accessible to the public, the recreational use related to it is public recreation. This extends to areas that are not publicly accessible, but inherently part of, that recreational use. Therefore, East Paddock and Stable Paddock should be considered part of the public recreation. To refer back to the sculpture park example: if a sculpture park were free to access, you would not say that the publicly accessible areas were part of the public recreational use, but the cordoned-off areas were private recreational use. The Applicant's point that	In the Applicant's view, this question ultimately comes down to a matter of decision maker judgement as to whether there is both public and recreation use of the land in question. In that context it is noted that neither field can be 'stood in' to 'refresh' or 'enliven' someone's spirits and that: • East Paddock, whilst part of the LNR designation, clearly looks like a private horse paddock, rather than a wild nature reserve, and is separated from the rest of the Nature Reserve by the grazier's stables. It is only able to be seen and appreciated as part of the wider reserve 'green space' in limited, filtered, views from the viewpoint that looks out onto Stable Paddock; and • Stable Paddock can only be viewed from that viewing point, with such views in isolation from the rest of the Nature Reserve. As such, both these fields are not analogous to a sculpture park within a wider countryside setting or a cricket pitch within a park, they are specific, closed off areas of the Nature Reserve, not open to public access. In the Applicant's view, including taking account of the precedent noted in its **Response to the ExA's First Written Questions (REP3-029)** (question 1.5.0.9), those fields are not used for public recreation, and are not available for such use.

Table ref	Summary of issue raised	Applicant's response
	sculpture parks are "not normally publicly access except by ticket" is of course irrelevant to the analogy. 19. The Applicant suggests that taking our definition "to an extreme would suggest that any land adjacent to a park, for example, should be considered as special category land". We completely disagree: land adjacent to a park is not an inherent part of its recreational use. Our definition accords with a natural reading, is supported by the above caselaw, and is not prone to being extended in this way. Therefore, we submit that the East Paddock and Stable Paddock qualify as Special Category Land.	In any event, the public benefit of the Proposed Scheme is confirmed through the very latest policy, with the consultation draft of NPS EN-1 (April 2025) confirming that CCS is still CNP Infrastructure as a result of paragraph 3.5.7. Further, and as the Applicant has previously stated, whether the East Paddock and Stable Paddock is Special Category Land or not does not make a difference to the Secretary of State's decision making in respect of the Proposed Scheme. This is because, as established in section 8 of the **Statement of Reasons (APP-020)**, there is no suitable 'alternative land' that can be used in exchange for the Special Category Land already identified. This remains the case even if the amount of Special Category Land were to increase as all land within the relevant catchment zone is either: already open space; allocated for development, so unlikely to be sold; or built on with existing development. In the Statement of Reasons, the Applicant goes on to explain why it considers that the tests in section 131(4A) are met for the Proposed Scheme in that context, and this reasoning would continue to hold were East Paddock and Stable Paddock considered to be Special Category Land.
Biodiversity, Ecology and Natural Environment		
2.5.5	<u>Ecological Harm</u> Determining National Importance 20. The Applicant insists that SPIs are not inherently of National importance, vaguely citing CIEEM Guidelines. However, under the 'Determining Importance' section of those Guidelines, paragraph 4.18 states: "Species that are considered to be priorities for conservation in England are listed as species of principal importance under sections 41 of the Natural Environment and Rural Communities Act, 2006". Clearly the intention is for SPIs to be considered as having National importance. Furthermore, paragraph 4.20 adds "a species could be considered particularly important if it is rare and its population is in decline" - this is true of Borrer's Saltmarsh-grass and Divided Sedge, which are both in "strong decline". 21. The Applicant has not provided any explanation as to how its methodology is "adapted from CIEEM's Guidelines". We see nothing in the Guidelines that supports the view that a "large population" of an SPI is required for it to qualify as Nationally important, or that "a regularly occurring, locally significant population of a SPI" should be only of Regional/County importance. The other literature cited by the Applicant does not relate directly to the determination of 'importance', nor does it negate the above reading of the CIEEM Guidelines. We accept that size is relevant to assessing the general extent and quality of habitats, and may even help determine importance in the absence of clear criteria such as the SPI list – but in the present case SPI status is determinative of National importance.	20. The Applicant has provided a response providing further detail and justification for the evaluation of ecological features for botanical features in the **Applicant's Responses to Interested Parties' Deadline 3 Submissions (REP4-033)**, see 2.7.26. The points raised here substantially repeat material already covered. The geographic scales assigned to ecological features within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** are appropriately applied and justified with evidence from ecological surveys. The process follows established best practice guidance for evaluation of ecological features as issued by the Chartered Institute of Ecology and Environmental Management (CIEEM) for Ecological Impact Assessment (hereafter 'the CIEEM guidelines)[1] and the Applicant does not accept citation of these guidelines, and their application, has been vague through the impact assessment process. The botanical community of the Site has been evaluated to be of County importance which remains the appropriate geographic scale to apply to this ecological feature. SCNR reference the list of Species of Principal Importance (SPI) maintained by the Secretary of State as per Section 41 of the Natural Environment and Rural Communities Act 2006, suggesting that the presence of a species on this list requires evaluation under the CIEEM guidelines (as used in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**) at the National scale. This is false and has already been the subject of a response by the Applicant (see **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)**, see 2.7.25. To reiterate, the legislation requires the Secretary of State to compile the list for England and is not a legal test for national importance. Many species on the list are of conservation concern but remain common and widespread; examples include dunnock *Prunella modularis* which is common garden bird that is widely distributed in England and the UK as a whole, and herring gull *Larus argentatus* which is found widely in

[1] CIEEM (2022). Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Marine. Version 1.2. Chartered Institute of Ecology and Environmental Management, Winchester. (Note: an updated version, 1.3, was released in September 2024; the version quoted is that used by the Chapter 7. This does not change the text but provides changes to aid accessibility only).

Table ref	Summary of issue raised	Applicant's response
	22. The Applicant has failed to respond to our additional point: even if a large SPI population were required to achieve National importance, Mr Spencer has confirmed that there is in fact a large population of Borrer's Saltmarsh-Grass on the Site and, while it was harder to confirm the extent of Divided Sedge at the time of year of his site visit, he believes it is highly likely there is an extensive presence of this SPI too. The Applicant has no evidence of population size and so has no authority to dispute this view. 23.In relation to water voles, the Applicant states our finding of National importance is "not credible", because we rely again on SPI status, in additional to legal protection. For the reasons given above, this is the natural reading of the CIEEM Guidelines. In any event, the Applicant itself accepts the population is large, meaning the Applicant's own criteria for National importance is met: "A large population of a species identified as a Species of Principal Importance (SPI)". We are therefore confused as to how this can lead to a conclusion of anything but National importance. 24. In relation to BoCC Red List breeding birds, we accept that the CIEEM Guidelines do not expressly state that this designation equates to National importance in England. However, we note paragraph 4.18 (also in the 'Determining Importance' section) says: "There is no equivalent list of national priority species in Ireland [referring to SPI lists], apart from species protected under the Wildlife Acts 1976 to 2012, Red Lists and Birds of Conservation Concern in Ireland species". Given the BoCC for Ireland and UK are of equal standing (affirmed by Box 14), the inference is that the BoCC list also indicates National importance in England.	numbers within UK towns and cities. Neither of these species meet the criteria for National importance as laid out in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** and the CIEEM guidelines. SCNR is incorrect in its statement that the intention of the England SPI list is to indicate National importance; the intention of the list is to highlight species that are a Material Consideration to statutory processes in England due to their conservation status. Lastly, the Applicant does not dispute that Borrer's Saltmarsh-grass and Divided Sedge can be considered to both be in 'strong decline', but that County importance remains the correct evaluation of the botanical community at the Site taking this into account alongside other factors related to it as laid out in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**. 21. The methodology used in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** for the assessment of impacts on ecological features is described between **Paragraphs 7.4.7 and 7.4.16**. These paragraphs describe how the CIEEM guidance has been adapted. Table 7-6 lay out criteria for the evaluation of ecological features. The CIEEM guidance states in Paragraph 4.6 that "*Various characteristics contribute to the importance of ecological features. Examples include: … large populations of species or concentrations of species considered uncommon or threatened in a wider context*". The application of population size is therefore appropriate and in line with the CIEEM guidance. With regards 'other literature' referred to by SCNR, the response has not been specific as to what documents are considered not to be related to determination of Importance. Evaluation criteria are supported with reference to designations and lists of species of conservation importance. With reference to SPI, the Applicant provides an explanation of why this designation is not analogous to National Importance in its response to Point 20 above; SPI status is not determinative of National Importance. However, the Applicant welcomes agreement from SCNR that population size is relevant in determining importance. 22. The Applicant has responded to points raised regarding populations of botanical species in the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** (Table 2-7, Table Reference 2.7.26). To attempt to respond to the additional point that SCNR believes the Applicant has not responded to: in relation to both the populations of Borrer's Saltmarsh-grass and Divided Sedge, the Applicant believes the population sizes of plants are sufficiently taken into account within the County importance evaluation of the Site's Botanical Community, as demonstrated within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**. Although exact population sizes of both plants are not known, the Applicant accepts significant populations of both are present (acknowledging the findings of Mark Spencer's Botany Report (REP1-050)) but has already responded to points related to that report, including points about population size of individual botanical species, in the **Applicant's Response to Interested Parties Deadline 1 Submissions (REP2-019)** (Table 2-4-6, Pages 53-56). Given these facts and existing responses, the Applicant has appropriately confirmed and demonstrated its position in response to the SCNR's submissions. 23. The Applicant maintains its position that water voles are of County importance as reported in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**, with points on evaluation of this species responded to in the **Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019)** (Table 2-4-6, Page 63) and **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** (Table 2-7, Table Reference 2.7.29). In **Chapter 7: Terrestrial Biodiversity of the Environmental**

Table ref	Summary of issue raised	Applicant's response
		Statement (Volume 1) (APP-056) the Applicant does not describe water vole population as 'large' in its evaluation of water voles (Paragraphs 7.6.48 to 7.6.50). This is deliberate to maintain clarity with regard to evaluation and to place the population size in the right context, which is done in Paragraph 7.6.50 of **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**. Moreover, the Applicant has confirmed in the **Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019)** in Table 2-4-8, Page 63 that the population is not considered large; it described the population as "*not particularly large*" to strike a balance such that the importance of the population to Greater London is acknowledged, but differentiation with more important populations is achieved. SCNR is wrong therefore to suggest the Applicant has contradicted its own evaluation with its language used. The Applicant has responded as to why the use of SPI status to justify National importance alone is incorrect, above under Point 20, which cross references with other responses made on this subject. 24. The Applicant welcomes that SCNR recognises that the CIEEM guidelines do not state that inclusion of a species on the Birds of Conservation Concern (BoCC) Red List equates to National importance in England. However, SCNR's quoted passage from the CIEEM guidelines has been misused and does not justify listing on the BoCC as equivalent to National importance. The quoted passage identifies lists of species in the Republic of Ireland similar to the list of SPI in England. The Applicant has established above that listing as an SPI is not analogous to being of National importance. There is no logic to suggest that National importance is inferred for BoCC Red list species because there is no list of SPI in the Republic of Ireland.
2.5.6	*Assessment of Harm and Mitigation for Harm to SPIs* 25.According to the Applicant, the addition of two SPI plant species "does not change the assessment of the botanical community as County importance and it would not change the considered impact on Crossness LNR". Notwithstanding the points made above that each of the SPIs by themselves are of National importance, the Applicant simply cannot make this statement without carrying out a further site assessment and a further environmental impact assessment to reflect this new information. It is unacceptable and unlawful to rely on an informal assessment and reach new conclusions without any evidence or formal process. 26.We repeat that the SCNR Botanical Report does not definitively confirm all important plant species (including SPIs) potentially on site and the Applicant cannot rely on it as such. Furthermore, there may be important fauna species (including SPIs) present that were not identified during the Applicant's poor-quality inspection. Therefore, the Applicant is unable to give an accurate assessment of the conditions onsite and the potential harm of the Proposed Scheme. 27. The Applicant equivocates at page 49 of the Applicant's Response to Interested Parties' Deadline 3 Submissions when it states: "The objective of the botanical survey was to … identify any populations of rare or notable plants… Notable plant species were identified by the botanical survey, and these findings are detailed in the species lists presented in [the Applicant's Botanical Survey]". Yes, some notable plant species were identified, but crucially not all of the notable plant species were identified – clearly the latter is required in order for the Botanical Survey, and the environmental assessment which relies on it, to be valid.	25. The Applicant has established above that listing as an SPI is not analogous to being of National importance, and its prior statement as cited by SCNR is reasonable given the balance of evidence available to it. The statement is not unlawful, and does not represent a new conclusion, rather that a prior conclusion is robust in the fact of new evidence. 26 and 27. The Applicant has undertaken a robust assessment of effects on ecological features, including habitats and species, based on survey data. The Applicant does not agree it is unable to give an accurate assessment of the conditions on site and the potential harm of the Proposed Scheme. Ecological surveys are undertaken with limitations in their methodology and no survey can identify all species due to temporal and spatial variation in the plant and animal communities present. Survey methods instead attempt to balance limitations to provide representative data about the populations under study to provide sufficient information in order to undertake impact assessment. The Applicant's survey work was robust in this regard and has remained so in response to Examination, in particular the submission by SCNR of its Botanical Report (Mark Spencer's botany report dated 26 November 2024 (REP1-050)). Responses from the Applicant can be found in the **Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019)** in Table 2-4-6; the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** in Table 2-7 at Table References 2.7.20, 2.7.23, 2.7.24, 2.7.25, 2.7.26 and 2.7.27. These responses have explained why conclusions derived from survey data are robust, notwithstanding Mark Spencer's botany report (REP1-050). In turn, the assessment within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** remains valid and a robust description of the impacts of the Proposed Scheme on ecological features including the botanical community. 28. The argument given by the Applicant on Page 51 of the **Applicant's Response to Interested Parties' Deadline 3 (REP4-033)** is not new, but is the logical application of the detail within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume**

Table ref	Summary of issue raised	Applicant's response
	28. On page 51 of the Applicant's Response to Interested Parties' Deadline 3 Submissions, it offers a new argument: the "enhancement and creation of Coastal Floodplain Grazing Marsh will not only increase the population of Borrer's Saltmarshgrass on Site but all other SPIs that are found within this habitat", simply by virtue of the fact that Borrer's Saltmarsh-Grass "resides" on this type of habitat. There is nothing to suggest that the Applicant's proposals, which are generic and offer no measures targeted at promoting Borrer's Saltmarsh-Grass, will lead to an increase in this species or any other SPI. If these SPIs could be expected to flourish and spread naturally in Coastal Floodplain Grazing Marsh, then surely they would already have spread over Crossness Nature Reserve? There is also no attempt to show how the general enhancements will lead to their population growth. Clearly, the extensive direct loss of Borrer's Saltmarsh-Grass outweighs any unsubstantiated indirect benefit that might result from the generic (and limited) enhancements proposed. The Applicant's response does not even mention the other SPI identified (Divided Sedge).	**1) (APP-056)** and its supporting appendices to botanical species of particular concern to SCNR (i.e. Borrer's Saltmarsh Grass). Improvements to habitats are also improvements for the species forming the botanical community defining those habitats. The Applicant disagrees that the measures proposed are generic with raising the water table to improve floodplain grazing marsh habitat, for example, requiring specific solutions as per the **Outline Drainage Strategy (AS-027)**. Measures proposed in the **Outline LaBARDS (AS-094)** aim to address conservation problems highlighted in the current management plan for Crossness LNR, which are known to have negatively affected the reserve's habitats, botanical community and biodiversity over many years. These problems, including a low water table and prevalence of bare ground due to over grazing in certain areas, are reasons that may explain why SPI such as Borrer's Saltmarsh Grass occupies the distribution within Crossness LNR that they do. Enhancement may therefore favour the expansion in their range within the Site, but is certain to secure the future of such species in the face of the current poor condition of floodplain grazing marsh, and against future decline due to factors such as climate change (see Paragraphs 7.6.75 to 7.6.98 of **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**). Overall, the Applicant has shown through the assessment of impacts on habitats and the botanical community of Crossness LNR as detailed in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)**, and as quantified in **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)** that although the Proposed Scheme would lead to impacts on Crossness LNR, its habitats and botanical community, habitat creation and enhancement would compensate for these effects such that once the Proposed Scheme is operational they are not significant. The arguments above apply equally to Divided Sedge and other SPI found on site.
2.5.7	*Reduction in Tree Planting* 29. The Applicant suggests that the proposed tree planting "does not affect the outcomes" of the assessment under ES Chapter 7, because tree planting is not directly cited as mitigation. This is clearly not true. 30. Firstly, ES Chapter 7 repeatedly relies on "buffer planting" (understood to mean tree planting) as a key piece of noise mitigation, particularly in relation to breeding birds, water voles and wintering birds. Naturally, a reduction in tree planting will undermine this mitigation. 31. Furthermore, ES Chapter 7 repeatedly relies on the habitat creation and enhancement measures set out in the Outline LaBARDS, which include tree planting. There is nothing to suggest references to the Outline LaBARDS in ES Chapter 7 should exclude tree planting proposals. Therefore, tree planting was in fact relied on throughout the assessment, and so the reduction must affect the outcomes. 32. This is yet another example of how the ES assessment no longer reflects the reality of the proposals, meaning it does not accurately assess the proposed mitigation and residual harm, and it would be unlawful to continue to rely on it. It also once again demonstrates the Applicant's unacceptable approach of relying on vague and outline mitigation proposals in a generalised and unmeasurable way. Under such an approach, it is not possible to accurately demonstrate that the ecological harms have been adequately mitigated.	29. In points 29 to 32, SCNR has confused two different elements of landscaping; proposals for buffer woodland planting within the Carbon Capture Facility, and diffuse planting proposed within Crossness LNR by the **Outline LaBARDS (AS-094)** where it interfaces with the Carbon Capture Facility. Woodland planting within the Carbon Capture Facility is cited within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** as mitigation for sources of disturbance such as noise from the operational Carbon Capture Facility. Tree planting in the boundary zone between the Carbon Capture Facility and Crossness LNR is not relied upon by **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** as mitigation, nor has planting of trees in the boundary zone been used as a source of biodiversity units to achieve a net gain within **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**. The landscape buffer located in the Carbon Capture Facility is citied as mitigation within **Chapter 10: Townscape and Visual of the Environmental Statement (Volume 1) (APP-059)** for effects on visual amenity. The reduction in planting relates only to the trees proposed in the Norman Road Field and not the Carbon Capture Facility, which is not relevant to the assessment of townscape and visual effects. 30. Given the above, this point mistakenly identifies woodland planting within the Carbon Capture Facility that provides a buffer to sources of operational disturbance as being located within Crossness LNR. It is not, and no reduction in tree density has been proposed for woodland within the Carbon Capture Facility, and it will serve its purpose as a landscape buffer.

Table ref	Summary of issue raised	Applicant's response
		Tree planting within Crossness LNR as proposed in the **Outline LaBARDS (AS-094)** is not relied upon for the purposes of ecological mitigation. 31. Thus, in response to Point 31, although **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** and **Environmental Statement Appendix 7-1: Biodiversity Net Gain Report (Volume 3) (APP-088)** rely on compensatory habitat creation and enhancement, and woodland planting within the Carbon Capture Facility to mitigate disturbance effects, the assessment in neither document is predicated on tree planting within Crossness Nature Reserve as proposed in the **Outline LaBARDS (AS-194)**. As stated in the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** in a prior response to SCNR's queries regarding this type of planting it has been included on the *"eastern fringes of the grazing marsh, on the understanding that sparse tree planting could be accommodated within grazing marsh and would add to the diversity of habitats"* (Table 2-7, Table Reference 2.7.36). 32. These facts demonstrate that there has been no change to the assessments in **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** and **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**. The assessments remain accurate reflections of the impacts and effects of the Proposed Scheme. There is no basis for SCNR's assertion that they are unlawful, and to the contrary, have remained robust in the face of questioning. It is wrong to suggest the Applicant's approach is 'unmeasurable', given the quantification of habitat retention, loss, creation and enhancement detailed within **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**. The supplied documentation demonstrates not only that impacts will be mitigated and compensated for, but that a net gain for biodiversity is achievable as a result of the Proposed Scheme.
2.5.8	*Impact of Additional PRoW* 33. The Applicant has confirmed that "the routes of any new or altered PRoW will not be available during the examination" and "disagrees that there would be residual risk of harm to ecological features". It relies on the fact that the Outline LaBARDS "gives consideration to ecological features… and demonstrates how additional PRoW will avoid effecting these features". However, the only wording in the Outline LaBARDS to this affect is at paragraph 6.4.14: "Proposals for new footpath and permissive paths or links will be developed with terrestrial biodiversity in mind and through engagement with LBB and relevant user groups to ensure that potential negative impacts are understood, mitigated and managed through construction and operation phases". Merely having terrestrial biodiversity in mind in no way translates into a guarantee of no residual risk of harm to ecological features. It is also unmeasurable and unenforceable. Avoiding key ecological features is not enough. It is obvious that new PRoW will result in some ecological harm – at the very least, harm will occur through the direct loss of grazing marsh HPI. 34. Flowing from this, we reject the Applicant's claim that "Proposed PRoW would not contribute to habitat fragmentation". The Woodland Trust says "fragmentation happens when parts of a habitat are destroyed, leaving behind smaller unconnected areas" – that is exactly what is happening here. They add that "a simple example is the construction of a road through a woodland… a barrier has been created that effectively divides the wood. What was once one habitat has become two smaller habitats". The creation of PRoW through grazing marsh is directly comparable to this example. The Applicant suggests certain animals would not be affected: "it would not be a barrier to movement of birds	33. The Applicant, as highlighted by SCNR, has provided responses on the impact of additional PRoW in the **Applicant's Response to Interested Parties Deadline 1 Submissions (REP2-019)** (Table 2-4-8) and the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** (Table 2.7, Table Reference 2.7.6). Broadly Point 33 repeats concerns that SCNR has regarding ecological harm of additional PRoW to be added by the Proposed Scheme and does not introduce new material; the Applicant's existing responses lay out a robust argument demonstrating that the additional PRoW proposed would not affect ecological features. However, to address SCNR's point regarding the **Outline LaBARDS (AS-094)**, the purpose of this document is to provide an outline strategy for implementation of ecological mitigation and compensation, including how habitat creation and enhancement will be integrated with public access. Impacts of the Proposed Scheme have been assessed within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** and it is not the place of the **Outline LaBARDS (AS-094)** to enter into discussions of impacts on ecological features. However, the commitments of **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** and the **Outline LaBARDS (AS-094)** will, as clarified in the Applicant's prior responses on additional PRoW, will not lead to residual effects on ecological features such that the conclusions of the impact assessment are upheld. As such, the Applicant disagrees with SCNR that the additional PRoW proposed will result in ecological harm, including to floodplain grazing marsh HPI. 34. The additional PRoW proposed in the **Outline LaBARDS (AS-094)** would not lead to habitat fragmentation as established in the Applicant's prior responses on this subject in **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** (Table 2.7, Table Reference 2.7.6). The addition of unsealed and permeable pathways would not

Table ref	Summary of issue raised	Applicant's response
	(which can fly over it), reptiles (which may use it as a basking spot) or other animals that may be found in this area". Firstly, this overlooks the various other animals that would be directly affected, particularly invertebrates and amphibians. Secondly, it overlooks indirect effects, also affecting birds and reptiles, resulting from the impact on the prey and plants they depend on. These plants will be impacted not only through direct loss, but also through the limitation on their ability to disperse. The Applicant has no authority to make such a bold, categorical statement before the detail of the PRoW has even been confirmed, let alone before it's been tested. 35.We stress again that the additional PRoW proposed in the north-east corner of Sea Wall Field is completely unnecessary given the existing PRoW adjacent to it.	prevent movement of animals between vegetated areas and SCNR's example cites construction of a road through a woodland which bears no similarity to the improvements to public access being proposed within Crossness LNR. Additional PRoW will be created without direct or indirect effects to ecological features, such as plants, reptiles, amphibians, birds and invertebrates. As set out in paragraph 6.4.15 of the **Outline LaBARDS (AS-094): "***Proposals for new footpaths, grazier access routes and permissive paths or links will be developed with terrestrial biodiversity in mind and through engagement with LBB, the graziers and relevant user groups to ensure that potential negative impacts are understood, mitigated and managed through construction and operation phases".* 35. The Applicant has included additional PRoW as an improvement which will provide enhanced access to the public through Seawall Field to the England Coast Path (FP3/NCN1). Other than the diversion of FP2, proposed footpath network improvements are optional enhancements to be developed as part of the detailed design with the relevant stakeholders (listed under Paragraph 6.4.15 of the **Outline LaBARDS (AS-094)** and approved via submission "*The alignment of new public rights of way (footpaths) will be secured through submission and approval of the full LaBARDS"*. This includes the detailed design and materiality of proposed routes, which could comprise but is not limited to surfaced paths, reinforced grass, raised boardwalks or feature no new formal surfacing where conditions permit.
2.5.9	<u>Level of Harm and Conflation of BNG and Ecological Mitigation</u> 36. On page 46 of the Applicant's Response to Interested Parties' Deadline 3 Submissions, the Applicant maintains the level of ecological impact "is not unusual for a project of this scale, with direct loss of habitat limited to some 2.5ha; importantly, it is readily mitigated and compensated with the proposals set out in the Outline LaBARDS [and] Biodiversity Net Gain Report… providing for biodiversity net gain". It adds: "habitat creation and enhancement included in the Proposed Scheme is such that it achieves additionality (i.e. biodiversity net gain) and is not also used for the mitigation and compensation of the ecological impacts of the Proposed Scheme". 37. Firstly, the overall habitat loss is in fact 6.87 ha, and net loss is 2.83 ha. Secondly, the Applicant has not responded to our point that this habitat is of especially high quality given its extensive designations. Thirdly, it is unclear whether the Applicant's position is that the direct harm itself (i.e. pre-mitigation/compensation) is not unusual, or whether it is not unusual once mitigation/compensation is factored in. This again reveals a misunderstanding of the ecological mitigation hierarchy. Fourthly, we refute the quality of the mitigation and compensation measures. Fifthly, the Applicant is again conflating BNG and ecological mitigation and relies on a blurred boundary between the two. It remains unclear where one ends and the other begins – we believe this is because the requisite detail is simply not there, and if a comprehensive review were undertaken, it would reveal that the Proposed Scheme falls short.	36. This point repeats responses made by the Applicant in the **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** and does not provide new information requiring a new response. 37. This point repeats points 14 to 17 of the response made by SCNR at Deadline 4 and responded to in the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032)** in Table 2-6, Table Reference 2.6.5 and 2.6.6. SCNR is referred to the responses already provided by the Applicant. This confirms the sum of habitat loss as 6.78ha rather than 6.87 as SCNR have suggested, as can be found in **Table 4-1** and **Table 4-5** within **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**. SCNR's figure of 6.87ha appears on further inspection (since the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032)**) to have been derived by including the 0.09ha of watercourse footprint which acts as a placeholder in the metric for watercourses (in this case ditches), allowing them to be removed from the area-based habitats tabs; watercourses are dealt with in their own metric sheets and net gain calculated in linear units; km (see **Table 4-2** within **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**). It is incorrect to include watercourse footprint as a habitat in both the area-based habitat and watercourse tab as this would be double-counting of the loss. Taking the sum of habitat creation on-Site and off-Site (see **Table 4-3** and **Table 4.6** within **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**) as follows and subtracting it from the 6.78ha of habitat loss detailed above gives the following net loss of habitat area: • On-Site (Table 4-3) Other neutral grassland (Moderate) – 1.74ha • On-Site (Table 4-3) Coastal floodplain and grazing marsh (Moderate) – 0.67ha • On-Site (Table 4-3) Reedbeds (Moderate) – 0.51ha • On-Site (Table 4-3) Lowland mixed deciduous woodland (Poor) – 0.74ha

Table ref	Summary of issue raised	Applicant's response
		• Off-Site (Table 4-6) Open mosaic habitat (Moderate) – 0.88ha • Off-Site (Table 4-6) Reedbed (Moderate) – 0.21ha **Sum total of habitat creation = 4.75ha** **6.78ha – 4.75ha = 2.03ha net loss** The assessment of impacts within **Chapter 7: Terrestrial Biodiversity of the Environmental Statement (Volume 1) (APP-056)** is undertaken based on the unique circumstances found at the Site based on supporting survey data. Likely effects have been determined by assessing impacts in the absence of mitigation and this has determined the requirements for embedded and additional mitigation. Effects in the absence of mitigation are not unusual for a development of this scale, and residual effects not unusual upon the application of mitigation which follows best practice guidance and, for water voles, has been agreed through a Letter of No Impediment with Natural England. There has been no misunderstanding of the mitigation hierarchy, and the Applicant has demonstrated this in its responses to SCNR listed below: • **Applicant's Response to Interested Parties' Deadline 1 Submissions (REP2-019) - Table 2-4-8**, Page 58, 117, 118, 120, 121, 123, 124, 128, 129 and 130. • **Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033) – Table 2-7**, Table References 2.7.1, 2.7.7, 2.7.9, 2.7.10, 2.7.14, 2.7.16, 2.7.16, 2.7.22, 2.7.28 and 2.7.39 • **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032) – Table 2.6**, Table References 2.6.1.0, 2.6.1.3, 2.6.5, 2.6.10 and 2.6.12 Regarding the statement refuting the quality of the mitigation and compensation measures proposed by the Applicant, it is noted but does not change the Applicant's position that mitigation and compensation measures for ecological features are of high quality and are appropriate for the effects they are associated with. Lastly, the Applicant has not conflated mitigation and biodiversity net gain as responded to in the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032), Table 2.6** Table Reference 2.6.10.
2.5.10	<u>Review of LaBARDS – Management, Maintenance and Monitoring</u> 38. The management, maintenance and monitoring proposed under the Outline LaBARDS (section 14) fails to secure a meaningful mechanism for review, update and approval. To highlight some key examples: • It refers to the establishment of an "overarching Riverside Campus management body with clear roles and responsibilities" – but does not define what those 'clear roles and responsibilities' are, making this an effectively empty commitment; • It assumes "management activities will be undertaken in conjunction with the Friends of CLNR supported by specialists for defined works based on an agreed management programme" – but does not define the works or suggest what this management programme will be. This is a very big assumption: the continued free labour and input of Friends of Crossness Nature Reserve should not be assumed, especially considering many members will not want to contribute to a project they view as being incredibly harmful to Crossness Nature Reserve;	The Applicant has carefully drafted the **Outline LaBARDS (AS-094)** to provide a proportionate and effective framework for future full LaBARDS(s) that ultimately require approval from LBB; including in relation to all of the detail that SCNR is currently seeking, but which is inappropriate to provide at this time. The Applicant reaffirms that the biodiversity outcomes are secured through the DCO, principally Requirement 12. The **Outline LaBARDS (AS-094)** provides the framework for how those outcomes will be achieved with the detail to be considered at the appropriate time, through engagement with the relevant (and named) stakeholders and presented in the full LaBARDS(s) for submission to LBB. The **Outline LaBARDS (AS-094)** has been updated throughout the Examination as appropriate in response to comments made by Interested Parties. Most recently (and as submitted on 16 April 2025 with other updates from the Applicant **(AS-090)** the **Outline LaBARDS (AS-094)** has been amended to incorporate the terminology and processes required by LBB in relation to monitoring, management and maintenance. The Applicant confirms that it has worked with LBB to agree (**SOCG (AS-096)**) the revised wording as set out in the final submission of the **Outline LaBARDS (AS-094).**

Table ref	Summary of issue raised	Applicant's response
	• "the quality and maintenance standards of the landscape, habitats, PRoW and recreation facilities will be defined in the full LaBARDS" – currently there is no indication of what these standards would include. There is no detail nor any measurable standards for the ExA to consider in order to ensure 'quality' will be achieved and maintained; a. "Management of the Site and expanded LNR will ensure that the key aim of providing an appropriate visual setting for the Riverside Campus, a healthy natural environment for the community and an attractive landscape and recreational setting which will support a range of recreational activities as well as a range of thriving and diverse habitats are achieved" – again there is nothing measurable here, and nothing that can be meaningfully enforced; • "Management would be considered effective if it maintains both the character of habitats in reference to their definition (primarily with reference to the UK Habitats Classification system, which incorporates definitions of Habitats of Principal Importance) and their target condition. Monitoring would assess: • ditches against the criteria within the Statutory Biodiversity Metric to ensure they are meeting targets detailed, as well as against habitat definitions within the UK Habitats Classification system to check they are not deviating from their desired habitat type; • plant species diversity in line with expectation of their UK Habitats Classification type; and • that ground water levels are being maintained at the desired raised level". As a general comment, it is unclear who would carry out this monitoring, how it would be externally reviewed, and how any necessary changes would be implemented and verified, and how it could ultimately be enforced. More specifically: • Ditches – given the target condition of the ditches is 'poor' (i.e. passes 5 or fewer of the condition criteria), there is no minimum condition threshold, rendering the monitoring meaningless and any enforcement action impossible; i. UK Habitats Classification type – this is far too vague to present anything measurable or enforceable. For example, for coastal floodplain grazing marsh, the Classification refers you to steps 18k and 27b, with Secondary Code 25. Each of these steps merely describes the sort of landscape and topology you might expect to see, but does not provide any measurable or enforceable benchmark; ii. Ground water levels – "desired raised level" is not a measurable or enforceable concept; • "Details of monitoring, management and maintenance procedures should be defined in the submission of the full LaBARDS(s), following engagement with Thames Water, Buglife, graziers, and the Friends of Crossness LNR" – there is no detail on what these procedures must include. There is no means to ensure engagement translates into meaningful changes to the procedures; b. The management of the Site and expanded LNR will work to a detailed and agreed annual programme of maintenance works" – there is no detail as to what this programme must include, or how (and when) it must be agreed;	The Applicant understands that the current members of the FoCNR may be feeling disinclined to work with Cory at the current time. However, it is hoped that in the future, with updated strategies, a refreshed management plan and renewed intentions for biodiversity benefit across the extended Nature Reserve, that the FoCNR (old and new members) would be interested to volunteer once more to achieve those outcomes.

Table ref	Summary of issue raised	Applicant's response
	• "The programme of works can be adjusted through the course of any year, if necessary, if conditions require this but should be reviewed not less than every 2 years seeking input from stakeholders including graziers, to ensure the annual maintenance requirements are still appropriate as the planting matures and habitats establish" – there is no detail as to what extent of adjustments are allowed, and how they can be secured. It appears this would give the Applicant free reign to adjust as it saw fit without any external review or approval. There is no detail as to how the biennial review must be conducted, including how it is verified. Again, there is nothing to ensure 'input' from stakeholders translates to meaningful outcomes. The benchmark for what is considered 'appropriate' is entirely undefined; c. "Any maintenance measures would take into consideration the recommendations set out in the Operational Environmental Management Plan secured through DCO Requirement, including seasonal constraints to address timings of works as a result of wildlife nesting, breeding or emergence must be strictly adhered to" – DCO Requirement 14 does not set out any benchmark for what is required under the Operational Environmental Management Plan, and the requirement to only take it 'into consideration' is not enforceable in practice; • "Once in place a review of the full LaBARDS(s), and any detailed habitat management and monitoring plans derived from it, should be carried out not less than every 3 years (or less frequent if agreed by LBB) ... This review will be undertaken alongside engagement with Thames Water, Buglife, graziers, LBB and the Friends of Crossness LNR" – there is no detail as to what is required under such a review or how it will translate to any specific outcome. Again, there is nothing to ensure the undertaking of the review 'alongside engagement with' third parties is meaningful; and • "Any updates to the full LaBARDS(s) as a result of that review will be issued to LBB for record purposes and form the basis for ongoing management from that point" – there is no mechanism for scrutiny and approval of the review by LBB. 39.All of the above reveals the proposed management, maintenance and monitoring to be a hollow exercise, with no clarity of process, no measurable or enforceable standards (and often no right of enforcement at all) and no guarantee that engagement results in meaningful outcomes. Therefore, there is nothing to ensure the commitments elsewhere in the LaBARDS – which in any event are of limited value – will be effectively delivered over time.	
2.5.11	<u>Alternative Offsite Delivery</u> 40.At ISH2, the Applicant committed to providing more certainty about the proposals for off-site delivery of ecological proposals in the event that delivery on TGC does not occur; in its Post Hearing Note, it now states that this further certainty "is in fact not necessary". It suggests this is explained by side comments in the latest Draft Deed of Obligation, but we see no such comment.	The Applicant has been clear that Open Mosaic Habitat (OMH) and reedbed would be delivered at the Biodiversity Net Gain (BNG) Opportunity Area as compensation for loss of these habitats within the Site. This is clearly stated in **Appendix 7-1: Biodiversity Net Gain Report of the Environmental Statement (Volume 3) (APP-088)**. Ecological mitigation and biodiversity net gain have not been conflated and are treated as separate requirements. The BNG Opportunity Area will provide both compensation and net gain. OMH currently does not exist but would otherwise be restored to the Gannon Land following completion of the Riverside Energy Park Project; the Proposed Scheme would restore OMH to the BNG Opportunity Area

Table ref	Summary of issue raised	Applicant's response
	41.We disagree with this view and assert that it is still necessary to provide more certainty about any alternative off site delivery of ecological proposals. The proposals on the 'BNG Opportunity Area Land' are in fact more than BNG proposals – they are an essential part of the Applicant's ecological mitigation including, in particular, replacement OMH for that lost on the Gannon Land. Insofar as these proposals are ecological mitigation, it is irrelevant that DCO Requirement 12 secures 10% BNG, or that the BNG regime allows for conservation covenants. This is yet another flawed conflation of the two regimes. 42.In order to demonstrate that mitigation is sufficient, and that the mitigation hierarchy has been complied with, the ExA needs greater detail as to what these proposals would involve, and some certainty that they will be delivered. Currently, there is not even the vaguest indication of what these alternative proposals might be, or on what land they would be carried out. Delaying these details until a revised LaBARDS (i.e. after the grant of DCO) is too late. 43. Furthermore, the definition of 'Alternative Off-Site Delivery Mechanism' in the Draft Deed of Obligation is vague: "an alternative strategy… to ensure that… off-site ecological compensation to be set out in the Landscape, Biodiversity, Access and Recreation Delivery Strategy is delivered". The Applicant has failed to provide a clear and measurable breakdown of (1) the extent to which the TGC proposals are ecological mitigation or part of BNG, and (2) what proportion of the total ecological mitigation can be considered to be delivered under the TGC proposals. Therefore, the "off-site ecological mitigation" is not a clear or measurable notion that could be compared against the alternative delivery. Even if it could, which is denied, it is necessary for the ExA to make that assessment, not LBB.	instead where it would have a more secure, long term future rather than in the location it is currently proposed for which without the Proposed Scheme is allocated as employment land. In respect of SCNR's final point, the Applicant notes that the practical reality of what is used to achieve 10% BNG, is a matter for LBB to consider, as that what is secured by Requirement 12 of the **Draft DCO.** This approach reflects all DCOs made to date since the introduction of the BNG regime to date, and indeed the principles in the Environment Act 2021 that the details of BNG are finalised post-consent. The **Deed of Obligation** simply provides more detail on the mechanics of how that is done. This is also the case for establishment of off-site OMH – delivery is secured via Requirement 12 of the **Draft DCO**; even if the Thamesmead Golf Course is unable to be used an alternative would need to be found. The Applicant has amended Requirement 12 at Deadline 6 to ensure that there is no doubt about this.
2.5.12	44. These failings reveal the inadequacy of Deed of Obligation A proceeding as a s111 agreement: a s106 agreement is necessary to bind the TGC and ensure the obligation binds successors in title. A s106 agreement would also facilitate enforcement via an injunction, which could include specific performance to require delivery of the ecological mitigation (or LBB could be empowered to take to the land and delivery the mitigation themselves). At ISH2 the Applicant said it would consider an additional covenant to ensure that any transferee enters into, but no such covenant appears in the latest draft.	Such drafting did appear in the Deadline 4 draft of the Deed of Obligation, at clause 8.3. As set out in previous submissions, it is Requirement 12 of the Draft DCO which secures delivery of BNG, whatever the status of the Deed of Obligation. In any event, please see the Deadline 6 Cover Letter for the latest updates on the status of Deed of Obligation (A).
2.5.13	<u>Applicant's Track Record</u> 45. In response to concerns around the Applicant's lack of experience owning and managing nature reserves, the Applicant cited Mucking Landfill and five local off-site Conservation Sites associated with Riverside 2. However, the Applicant does not actively manage any of these sites. Mucking Landfill is managed by the local Wildlife Trust. Four of the five Conservation Sites haven't even been delivered to date. The Applicant advises that the four Conservation Sites owned by LBB are going through the final stages of procurement; this has been the case for a number of years now. In any event, it is not clear who will implement, manage and monitor these Conservation Sites - but our understanding is it will not be the Applicant. 46. Therefore, these examples only serve to confirm the Applicant's complete lack of experience of actively managing ecological sites, let alone a nature reserve.	45. and 46 **Table 2.7.19 of the Applicant's Response to Interested Parties' Deadline 3 Submissions (REP4-033)** presents how Cory has successfully managed sites for biodiversity and public access over its company history. It has relevant and applicable experience in this regard. Further, it has always been the intention that the role of Nature Reserve Manager would continue. Consequently Cory, just as Thames Water does today, would have a suitably qualified and experienced person managing the site on a day-to-day basis.
2.5.14	<u>Norman Road Field</u>	47.

Table ref	Summary of issue raised	Applicant's response
	47.We rely on our Deadline 4 submission for detailed points on this topic. However, in response to the Applicant's acknowledgement that only a small part of Norman Road Field was intended to be enhanced under the Veridion Park proposals, we believe this actually supports our argument. It shows that the initial enhancement works, the part everyone agrees did occur, was only the capital works, and that the greater value would have come from the ongoing maintenance, management and monitoring (and further improvements flowing from them), which were to be secured through the Management Plans. We repeat the fact that, to date, no evidence has been produced that the required management and monitoring were ever carried out. Our Deadline 4 submissions explain why these Management Plans remain enforceable and therefore still relevant to the determination of the baseline for Norman Road Field.	**Table 2.6.4** of the **Applicant's Response to Interested Parties' Deadline 4 Submissions (REP5-032)** refers to **Appendix F** to **Written Summary of the Applicant's Oral Submissions at ISH1 (REP1-026)** which sets out the planning history relevant to Norman Road Field and confirms that the mitigation measures have been implemented and have now expired. Revision B of the SoCG with LBB (REP2-010) submitted in December 2024 confirmed that LBB agreed that '*there remains no mitigation commitments at Norman Road Field*.' LBB reasserted this conclusion in its D4 Response (REP4-036). The SCNR's suggestion that because the enhancements works only applied to a small area within Norman Road Field means this was limited to capital works requiring ongoing maintenance across the whole of Norman Road Field cannot be correct. The description of development in both decision notices (07/08166/FULM and 08/01834/FUL) refers to *'the creation of a seasonal wetland **on 0.47 hectare of the site and the remaining 0.84 hectare** converted to a species rich neutral grassland*'. (emphasis added) The Committee Report to 07/08166/FULM confirms *'the **application site is a 1.31 hectares (3.21 acres) area** of flat open grassland and drainage dykes* ...'. (emphasis added) The description of development and the Committee Report is very clear as to the limited extent of the application area. There is no suggestion that any greater element of the Norman Road Field should be subjected to any different management regime than the area benefitting from the planning permissions. 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-094)**.

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