

Cory Decarbonisation Project

Thames water Utilities Limited

Deadline 6 Response

1. Introduction

1.1 This document has been prepared on behalf of Thames Water Utilities Limited ("TWUL") and provides a general update as to TWUL's position on the Cory Decarbonisation Project ("Project") and responses to submissions made by Cory Environmental Holdings Limited ("Cory") at deadline 5 of the examination.

1.2 For the avoidance of doubt, TWUL's closing submission will follow at deadline 7.

2. Update

2.1 Without prejudice discussions are continuing between TWUL and Cory in terms of reaching a voluntary agreement for the sale and purchase of the TWUL-owned land required by Cory for both the construction of the Project's plant and for the purported ecological 'enhancement' and 'mitigation'. However, from TWUL's perspective, these negotiations are not progressing with any notable urgency and much work is required before any potential agreement is reached, with the parties yet to agree heads of terms. At this stage, it would be speculative to suggest when agreement is likely to be reached, if at all.

3. Management of the Crossness Local Nature Reserve

3.1 A matter that has complicated negotiations further materialised following deadline 5, in that as part of the negotiations taking place in relation to the revised section 106 agreement ('Deed of Obligation B'), it was confirmed by Cory that Cory would, in practice, be the party undertaking the management and maintenance of the part of the Crossness Local Nature Reserve ("CLNR") currently managed by TWUL pursuant to the 1994 section 106 agreement (save for the 'Member's Area').

3.2 Up until recently, TWUL had understood that, notwithstanding requirement 12 of the draft DCO to comply with the LaBARDS document, the management and maintenance of the TWUL-owned part of the CLNR would continue to be undertaken by TWUL in practice. This is reflected by TWUL's representations and submissions throughout the examination, and why TWUL has been seeking agreement from Cory to input into the design of the detailed LaBARDS. See, for example, paragraph 7.3 of TWUL's written representation ([REP1-058](#)), which states:

"Given that TWUL is being asked by the Applicant to manage the LNR in accordance with the approved detailed LaBARDS (pursuant to the proposed planning agreement), TWUL considers it necessary [...] to be involved in the design of the detailed LaBARDS" (emphasis added).

3.3 To the best of TWUL's understanding, this position has not been corrected by Cory until the recent clarification given as part of the section 106 discussions. Indeed, Cory responded directly to paragraph 7.3 above in its deadline 1 response ([REP2-019](#)), as follows:

"In respect of the LaBARDS, TWUL were added as a consultee in the Draft DCO (REP1- 002) submitted at Deadline 1, albeit noting that the Outline LaBARDS and the Deed of Obligation approach already set out that the Applicant had already provided for TWUL to play a key part in the development of the proposals for the expanded Crossness LNR" (emphasis added).

3.4 It is unclear why Cory's response did not correct TWUL's statement that it was being asked to manage the CLNR at this stage (or at any stage until recently), instead of suggesting TWUL would continue to play a part in the CLNR.

- 3.5 Further, it is noted from Cory's response to ExQ 2.5.3 and the proposed section 106 agreement (as amended) that Cory wants the public perception (and legal liability) to be that TWUL continues to have responsibility for management of the CLNR: "*it would be clearer if there is a public planning 'hook' for TWUL as landowner to be required to manage the land in accordance with the LaBARDS*". TWUL does not consider this would result in a 'clearer' position. To the contrary, there would be an expectation by the public that TWUL would be the party continuing to manage the CLNR given that, as drafted, the section 106 agreement requires TWUL to do so.
- 3.6 The draft effectively requires TWUL to accept a liability for the delivery of the LaBARDS that Cory are saying they will deliver on a day to day basis. It would be difficult for TWUL to do so with no current clarity as to the full extent of works and management regime proposed and no future control of the delivery of the plan, if Cory are indeed to manage the CLNR.
- 3.7 As such, TWUL's confusion at Cory's confirmation that TWUL will not be managing the CLNR going forward is unsurprising. Whatever the reason, and whether this is indicative of a change of position with Cory or a misunderstanding/miscommunication from either party (or both), the proposition that TWUL will play no part in the CLNR's management going forward is difficult for TWUL to accept, and it has resulted in the negotiations both in terms of the private agreement and the proposed section 106 agreement taking a step backwards.
- 3.8 Given that the above position was only realised and raised by TWUL in the last 2 weeks, the parties have not had much of an opportunity to consider and discuss potential solutions. Cory has, however, suggested (on a 'without prejudice' basis) that one option is to include provisions in the proposed section 106 agreement, to the effect that Cory and TWUL will agree, as part of the detailed LaBARDS submitted for approval, which party is to have primary responsibility for managing the various parts of the proposed extended local nature reserve. However, this position does not provide TWUL with any certainty and would be, in effect, an 'agreement to agree'. TWUL is considering this suggestion as at deadline 6 and a further update will follow.

4. **Grazier obligations**

- 4.1 As part of Cory's response to ExQ 2.5.3, it noted that Cory is now proposing (again, on a 'without prejudice' basis) to 'downgrade' its compulsory acquisition powers in relation to the TWUL-owned part of the CLNR not required for the Project's built form. Cory state that this change can only be formally agreed if the new section 106 agreement is entered into, because it is "the only way" Cory is able to secure ongoing access to graziers wishing to use TWUL's land (as proposed in the updated LaBARDS).
- 4.2 Before addressing the above contention, TWUL would like to note that this is considered to be a concession by Cory that the aims and requirements of the Project can be secured without Cory requiring freehold acquisition powers over the relevant part of the CLNR. If there is an alternative solution to freehold acquisition (which Cory say there is), then the case for freehold acquisition powers has not been made out and such powers should not be granted as part of the DCO.
- 4.3 With regards to the graziers and re-provision of licences, TWUL does not consider a section 106 obligation is necessarily required to achieve this. Notwithstanding that TWUL has been and, but for the Project, would continue to, permit access to the current (and potentially future) graziers, there are a number of other methods available to secure ongoing grazier access, which do not involve section 106 or compulsory acquisition, including as part of the DCO. For example, the requirement to secure approval of the detailed LaBARDS could be amended to include reference to grazing licences, i.e.:

"Landscape, biodiversity, access and recreation delivery strategy

12.—(1) *No part of the authorised development may commence until a written landscape, biodiversity, access and recreation delivery strategy for that part has been submitted to and approved by the relevant planning authority in writing, in consultation with TWUL, **such strategy to include evidence that TWUL will permit graziers to continue to access any part of the crossness local nature reserve as extended owned by TWUL.***" (suggested amendments shown in **bold**).

- 4.4 Such evidence could include an agreement between Cory and TWUL or a written undertaking from TWUL that TWUL will continue to permit access to graziers. TWUL confirm that such agreement/undertaking would be forthcoming, provided the terms of the licence(s) (or other means of permitting access) were not more disadvantageous to TWUL than they are at present.
- 4.5 Another example would be for Cory to propose to enter into a separate side agreement with TWUL. However, this has not been suggested to date by Cory.
- 4.6 It is therefore not considered to be correct for Cory to say, as they do in response to ExQ 2.5.3, that: *"the only way that these matters can be dealt with, absent of full compulsory acquisition powers, is for the Deed of Obligation to require TWUL to provide for them"*.
- 4.7 However and in any event, TWUL considers it unreasonable and insufficient (in terms of complying with the tests set out in section 122 of the Planning Act 2008), that freehold acquisition powers be granted to Cory, simply to enable Cory to grant grazing licences. This is completely disproportionate and there is no reasonable basis for supporting the contention that such powers are either *"required for the development to which the development consent relates"* or *"required to facilitate or is incidental to that development"* (as per section 122).
- 4.8 Even if there were, the third limb of section 122 – that there is a compelling case in the public interest for the land to be acquired compulsorily – cannot be reasonably considered to have been made out. A grazing licence is a private, personal right and so public interest does not come into the equation.
- 4.9 Further, obligations relating to grazing licences do not appear to serve any planning purpose or mitigate any planning harm. Again, they are private rights and it is inappropriate (and contrary to policy/the CIL Regulation 122 tests) to include them as planning obligations: a private right cannot reasonably be considered *"necessary to make the development acceptable in planning terms"* (CIL Regulation 122(2)(a)). It is also noted that Cory considers it contrary to the same policy/tests to vary the 1994 section 106 agreement but does not take this position where the above is concerned.

5. **Protective Provisions**

- 5.1 TWUL notes that Cory has amended TWUL's protective provisions as set out in the response to ExQ 2.5.3. In effect, this means that TWUL may now exercise its freehold acquisition powers in respect of the TWUL emergency access road without reaching agreement with TWUL. This is a significant change of position so far as TWUL is concerned, which has been effected without any engagement or consultation whatsoever and, for the avoidance of doubt, is not agreed by TWUL.
- 5.2 The emergency access road is statutory undertaker's land for the purposes of section 127 of the Planning Act 2008. As such, an order granting development consent may include provision authorising the compulsory acquisition of the access road only to the extent that either of the following are considered satisfied by the Secretary of State:
- 5.2.1 the access can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - 5.2.2 if purchased the access can be replaced by other land belonging to, or available for acquisition by, TWUL without serious detriment to the carrying on of the undertaking.
- 5.3 TWUL reiterates its position as submitted at CAH2 and throughout the examination: loss of the access road would cause serious detriment to the carrying on of TWUL's undertaking. Whilst paragraph 36 of the protective provisions prevents Cory from stopping up the access road until a new access has been provided, it remains the case that the serious detriment case cannot be assessed until the replacement is known (which will not be the case until the Project is consented and under construction). This uncertainty is not acceptable to TWUL and it is considered that the proposed amendment to paragraph 36(3) of the TWUL

protective provisions, as set out in Cory's response to ExQ 2.5.3, should be rejected and the original reinstated.

5.4 TWUL also wishes to reiterate its position at CAH2 that rights over the access road would be sufficient and a suitable solution in these terms should have been explored by Cory to date. However, this has not been the case and it appears that Cory has no interest in doing so.

5.5 In addition to the access road provisions being amended, Cory is seeking to introduce a requirement on TWUL to give notice before being able to rely on the protections given by paragraph 35(2) and 41(3) in relation to apparatus, unless in an emergency, as set out below (respectively):

*"(2) Regardless of the temporary alteration, diversion or restriction of any street under the powers conferred by article 14 (temporary closure of streets), TWUL is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street, **upon giving at least six weeks notice of such intended entry, unless in an emergency**"*

*"(3) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements or modifications as may be made in accordance with sub-paragraph (4) by TWUL for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and TWUL is entitled to watch and inspect the execution of those works **upon giving at least six weeks notice of such intended entry, unless in an emergency**"*

(additions in **bold**).

5.6 Whilst Cory has agreed to reduce the six week period to three weeks, TWUL cannot accept any situation whereby access to apparatus may not be given. As drafted, Cory could refuse entry if TWUL failed to give notice for any reason, even by a day and Cory could also claim they did not receive notice at all, again refusing entry. There is also no definition of what constitutes an emergency, which may also result in dispute/refused access.

5.7 Such notice provisions were not required in the recent Gatwick Airport Northern Runway, which recently received a "minded to approved" decision by the Secretary of State (see paragraphs 3(2) and 8(2) of the TWUL protective provisions in that [order](#) (pages 164 and 166, respectively). Nor were they required in the Luton Airport Expansion or Lower Thames Crossing DCOs and TWUL submits they are not required here.

6. **LaBARDS Updates**

6.1 It is noted that paragraph 10.1.19 of the LaBARDS (updated 27 March 2025) added text relating to the 'Member's Area' section of the CLNR, seemingly to supplement the obligation in the proposed section 106 agreement that TWUL must manage the Member's Area in accordance with the LaBARDS. As above, it would be difficult for TWUL to agree to this obligation without any clarity as to the full extent of works and management regime proposed, of which the additional text gives no indication.

6.2 Paragraphs 10.2.8 to 10.2.11 set out some additional proposals for the CLNR, in particular that Cory will provide a new route for "maintenance and grazier access" to replace the TWUL emergency access, which is shown on the amended Figure 9. Clarity is required from Cory as to whether this means access to TWUL along the existing access for the purposes of maintaining the CLNR at present is to be revoked (and when) and, if so, whether the new route provides for vehicular access. Clarification is also required that the proposal does not affect TWUL's access to/egress from the Crossness STW, with or without vehicles.

6.3 Again, Cory has not consulted TWUL to any extent in relation to these changes, and is another example of Cory's lack of engagement with TWUL both before and during the examination (and a further reason why negotiations have not progressed).

- 6.4 From TWUL's perspective, the proposed changes to the route do not address any of the concerns already raised by TWUL and the CLNR groups to date, particularly with regards to:
- 6.4.1 the inappropriate location of proposed relocated stables;
 - 6.4.2 the further loss of habitat on TWUL land (including grazing land) with the Triangle and Lagoon Field lost/impacted, leaving only Island Field not directly impacted by this development;
 - 6.4.3 further loss of existing habitat on Norman Road Field and in fact, including that which has significant ecological value (Frog Rush, Borrer's Saltmarsh Grass and other important plant species along the eastern boundary, as identified by Dr. Mark Spencer on behalf of the Save Crossness Nature Reserve campaign group in its written submissions, and those made during February's site visit);
 - 6.4.4 TWUL's need for a road sufficient to accommodate maintenance vehicles (excavators, dump trucks etc associated with ditch management for example) and for the grazier's requirements: horse lorries or towing of horse-boxes, large vehicles bringing in winter hay etc.; and
 - 6.4.5 the significant flooding potential of Norman Road Field, such that it is unusable in winter. This will only get worse when ground levels are raised and built structures placed in the vicinity as part of the CCF: a 'slightly-raised' path is considered will be unusable.
- 6.5 It is also considered that the management requirements of the proposed route will be significant due to: (a) its length; (b) being situated in a flood-risk wetland; and (c) being situated alongside the trees proposed for 'mitigation/screening'. This will result in considerable time requirements and expense which, although not a direct concern for TWUL (as TWUL will not agree to maintain the Norman Road Field), TWUL is concerned it will have an indirect impact on TWUL land.
- 6.6 Finally, the gateway proposed is also considered to be dangerous, as it is opposite the Asda distribution vehicle entrance and close to the dangerous corner of Norman Rd/Eastern Way. When TWUL has public events, cars are lined up along the Norman Rd for access. TWUL wishes to be clear that it will take no responsibility for the management of the proposed car park or any issues arising from it.
7. **Summary of TWUL's position since deadline 5**
- 7.1 In summary, TWUL is concerned there remain a number of principles which are not yet resolved and which have not been discussed with TWUL, despite having multiple impacts on TWUL's operations, as set out above.
- 7.2 However, the main concerns from TWUL's perspective remain that:
- 7.2.1 it wishes to retain its freehold interest in the part of the CLNR subject to the LaBARDS;
 - 7.2.2 it wishes to continue to have the primary responsibility for the management and maintenance of the area (and cannot agree to being 'sub-contracted' to do so on behalf of Cory); and
 - 7.2.3 the loss of any part of the emergency access road is not acceptable.
- 7.3 The confirmation from Cory that it is proposing to manage the relevant part of the CLNR going forward means that TWUL is not clear how a voluntary agreement can be reached, nor can it consider entering into the proposed section 106 agreement until the matter is resolved. The suggested solution by Cory is not acceptable to TWUL as it does not provide for sufficient certainty: absent of agreement, the parties would have no option but to turn to dispute resolution.

- 7.4 It remains TWUL's position that the cleanest and most straightforward way of dealing with this matter is for the 1994 agreement to be varied to impose an obligation on TWUL to manage and maintain the relevant part of the CLNR in accordance with the approved detailed LaBARDS. However, Cory has made it clear that it does not consider this a viable option, to which TWUL will respond in detail in its closing submissions.
- 7.5 TWUL will also address the amended access road proposals in further detail in its closing submissions.

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